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ANALYSIS OF LEGAL PROTECTION FOR DEBTORS IN GOOD FAITH IN FORCED WITHDRAWAL BY THIRD PARTY IN A FIDUCIARY BONDS (STUDY OF COURT DECISION NO. 63/PDT.G.S/2025/PN SRG)

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Abstract

This research is motivated by the widespread practice of third parties (debt collectors) forcibly withdrawing fiduciary collateral objects without complying with legal procedures, thereby potentially harming debtors with good intentions and creating legal uncertainty. This study aims to analyze the validity of the execution of fiduciary collateral without a summons or court order, as well as the form of legal protection for debtors under Decision Number 63/Pdt.G.S/2025/PN Serang. The research uses a normative legal method with a statutory, conceptual, and case approach. Primary, secondary, and tertiary legal materials are analyzed qualitatively using a descriptive-analytical method. The results of the study indicate that the execution of fiduciary collateral without a summons, without a default agreement, without voluntary surrender of collateral objects by the debtor, and without a court mechanism is contrary to Law Number 42 of 1999 concerning Fiduciary Guarantees and Constitutional Court Decision Number 18/PUU-XVII/2019 in conjunction with Constitutional Court Decision Number 2/PUU-XIX/2021. Forced withdrawal by a third party under these circumstances constitutes an unlawful act because it violates the debtor's rights and the principle of due process of law. Legal protection is provided through preventive mechanisms, including the regulation of legitimate execution procedures, and through repressive measures, including lawsuits to obtain rights restoration and compensation. Therefore, the enforcement of fiduciary guarantees must be carried out in accordance with the law to ensure legal certainty, justice, and protection for debtors acting in good faith.

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A. INTRODUCTION

The development of the national economy, followed by increasing public demand for transportation facilities, has encouraged the growth of consumer financing, especially for two- and four-wheeled motor vehicles, guaranteed by fiduciary guarantee institutions. The existence of financing companies helps expand public access to vehicle ownership through installment payment plans, so that people are no longer dependent on cash payments. This condition has led to the development of financing agreements with fiduciary guarantees into a widely used legal instrument in consumer financing. However, the increasing use of these financing schemes has also been accompanied by greater complexity in the legal issues involved in implementing fiduciary guarantees, especially in determining debtor default and in executing collateral objects by creditors. The problem becomes even more complex when execution is carried out through third parties (debt collectors) without following the legal procedures stipulated by law and regulation, thereby potentially violating debtors' rights, reducing legal certainty, and contradicting the principles of justice, good faith, and due process of law.¹

The development of Indonesia's financing industry shows a continuous upward trend, particularly in the motor vehicle financing sector organized by financing companies (multifinance). This increase in financing activity reflects strong public demand for access to financing. However, it is also accompanied by an increased risk of debtor default, with implications for the implementation and execution of fiduciary collateral objects. In practice, the execution process is not always carried out in accordance with applicable legal provisions. Various news reports indicate that there are still cases of collateral collection by third parties (debt collectors) carried out in public spaces or at the debtor's residence using intimidating methods, accompanied by threats, and often even resulting in verbal and physical violence. This condition indicates a deviation in the exercise of executive rights, as the withdrawal of collateral objects is often carried out without presenting valid documents, without following the proper legal mechanisms, and without protecting the debtor's rights as a party to the financing agreement. Such practices not only create legal uncertainty but also have the potential to conflict with the principles of consumer protection, good faith, and due process of law that underpin the implementation of fiduciary collateral execution.²

Legal protection for debtors in the implementation of fiduciary guarantees is realized through preventive and repressive mechanisms. Preventive protection aims to prevent disputes by establishing clear execution procedures and limiting the parties' authority. In contrast, repressive protection provides a means to resolve disputes through judicial mechanisms in the event of a rights violation. However, its implementation still faces various

¹ Otoritas Jasa Keuangan, *Statistik Perusahaan Pembiayaan Indonesia*, (Jakarta: OJK, 2025), hlm. 12.

² *Ibid*, hlm. 15.

problems. The practice of third parties (debt collectors) withdrawing fiduciary guarantees is still often carried out unilaterally, without complying with applicable legal procedures, such as the absence of a valid assignment letter, failure to go through the court mechanism, and disregard for the debtor's rights. In some cases, withdrawals are carried out in public spaces in an intimidating manner, accompanied by threats, thereby causing not only material and immaterial losses for debtors but also triggering legal disputes in both the civil and criminal realms. This condition indicates that the implementation of executive rights over fiduciary guarantees does not fully reflect the principles of legal certainty, justice, consumer protection, and due process of law.³

In a study by Ni Putu Natasya Angela Diputri and Gusti Ayu Arya Prima Dewi, entitled "Legal Protection for Debtors in the Execution of Fiduciary Guarantees Based on Constitutional Court Decision No. 18/PUU-XVII/2019," published in *Kertha Wicara: Journal of Legal Science*, Volume 15, Number 9, Year 2025, pp. 536-549. This study discusses legal protection for debtors following the issuance of Constitutional Court Decision No. 18/PUU-XVII/2019, using both a legislative and a conceptual approach. This study has the advantage of systematically explaining changes in the execution mechanism of the fiduciary guarantee following the Constitutional Court decision. In addition, this study provides insight into the limitations on creditors' authority to execute fiduciary guarantees. However, this study tends to focus on debtor protection, thereby failing to strike a balance between creditors' interests and the implementation of fiduciary agreements. The research is also still normative and has not examined the implementation of the Constitutional Court decision empirically in the field.⁴

This issue demonstrates a gap between legal norms and the implementation of fiduciary guarantee execution. Although the Constitutional Court Decision has set limits on the execution process, the practice of forced withdrawal by financing companies and third parties (debt collectors) without following legal procedures continues to occur frequently. This condition reflects the suboptimal legal protection for debtors, especially debtors with good intentions. From the perspective of contract law, a good-faith debtor is a party who remains determined to fulfill their obligations despite obstacles. The principle of good faith, as stipulated in Article 1338 of the Civil Code, requires that every agreement be executed honestly, properly, and fairly by the parties. Therefore, the unilateral withdrawal of a fiduciary guarantee without regard to legal procedures and without considering the debtor's good

³ Gunawan Widjaja dan Ahmad Yani, *Jaminan Fidusia*, (Jakarta: Raja Grafindo Persada, 2001), hlm. 145.

⁴ Ni Putu Natasya Angela Diputri dan Gusti Ayu Arya Prima Dewi, "Perlindungan Hukum Bagi Debitur Dalam Eksekusi Jaminan Fidusia Berdasarkan Putusan MK No. 18/PUU-XVII/2019," *Jurnal Kertha Semaya* Vol. 13 No. 2 (2025): 145-156. <https://garuda.kemdiktisaintek.go.id/documents/detail/5850000>. Doi: KW.2025.v15.i09.p4.

intentions contradicts the principles of legal protection, legal certainty, and justice in contractual relationships.⁵

One relevant decision to examine legal protection for debtors in the implementation of fiduciary guarantees is the Serang District Court Decision Number 63/Pdt.G.S/2025/PN Serang. This decision raises a dispute regarding the withdrawal of fiduciary guarantee objects by a third party (debt collector) from a debtor deemed to have committed default. The legal issues that arise are not only related to the validity of the execution action outside the court mechanism, but also concern the fulfillment of the rights of debtors who act in good faith in financing relationships. Analysis of this decision is important because it provides an overview of the application of the provisions of Law Number 42 of 1999 concerning Fiduciary Guarantees following the Constitutional Court Decision Number 18/PUU-XVII/2019 in conjunction with Decision Number 2/PUU-XIX/2021. In addition, this decision reflects how the court interprets the limits of creditors' authority in exercising executorial rights and implements the principles of legal protection, legal certainty, and justice for debtors in the practice of resolving fiduciary guarantee disputes.⁶ In a study by Made Mulyawan Subawa, entitled "Legal Protection for Creditors Against Fiduciary Guarantees in Debtor Default," published in the Raad Kertha Journal Vol. 9 No. 01 for the period February 2026-July 2026, pages 50-58.

This study uses an empirical legal approach, discussing not only the theory but also the practice of implementing fiduciary guarantees in the field. This study has the advantage of explaining in detail the implications of Constitutional Court Decision Number 18/PUU-XVII/2019 for creditors' positions and the mechanism for executing fiduciary guarantee objects. The weakness of this study lies in its analysis, which remains descriptive rather than critical and in-depth. In addition, the study focuses more on protecting the interests of creditors than on protecting debtors, so that the discussion regarding debtor rights has not been analysed in a balanced manner.⁷ In the research of Dinah Fathinah Nurdin, Zainuddin, and Mustamin, entitled "Legal Protection for Debtors in the Fiduciary Guarantee Execution Process," published in the Legal Dialogica Journal Volume 1 No. 1 (2025) pp. 01-10. This research examines the legal protection of debtors following the Constitutional Court Decision Number 18/PUU-XVII/2019, using a normative approach grounded in statutory regulations. The advantage of this research is its ability to systematically explain changes in the fiduciary

⁵ Kitab Undang-Undang Hukum Perdata.

⁶ Pengadilan Negeri Serang, Putusan Nomor 63/Pdt.G.S/2025/PN Srg.

⁷ Made Mulyawan Subawa, "Perlindungan Hukum Bagi Kreditur Terhadap Jaminan Fidusia Dalam Wanprestasi Debitur," *Jurnal Aktual Justice* Vol. 11 No. 1 (2026): 33-47. DOI: <https://doi.org/10.47532/raadkertha.v9i1.609><https://ejournal.universitasmahendradatta.ac.id/index.php/raadkertha/article/view/609>.

execution mechanism before and after the Constitutional Court decision. The research also provides insight into the legal protections afforded to debtors in the execution of fiduciary agreements. However, this research does not use empirical data, so it does not yet describe the real conditions in society. The analysis is also still general and descriptive and does not discuss implementation obstacles in depth.⁸ In the research of Avila Rizky, Yuliana Setiadi, and Felicitas Sri Marniati, entitled "Legal Protection for Debtors Against Arbitrary Withdrawal of Fiduciary Collateral by Creditors," published in *Al-Zayn: Journal of Social Sciences & Law*, Volume 4, Number 1, Year 2026, pp. 5482–5488. This research examines the legal protections afforded debtors, both preventive and repressive, against the arbitrary withdrawal of fiduciary collateral.

The advantage of this research is its ability to link legal theory, practice and jurisprudence, thereby making it more applicable. The research also confirms that forced withdrawal can be categorized as an Unlawful Act (PMH). However, this research still uses a normative method, so it does not describe the empirical conditions in the field in depth. In addition, the solutions provided are still general and not yet implementable.⁹ In a study by Hanchen Stephanus Dermawan Butar Butar and Yeni Triana, entitled "Legal Protection for Debtors in the Execution of Fiduciary Guarantee Objects in Financing Institutions," published in *PESHUM: Journal of Education, Social and Humanities*, Vol. 4, No. 3, April 2025, pp. 3736–3748. The study discusses how debtors should be protected from unilateral actions by creditors and debt collectors, especially regarding the element of default and the implementation of execution, which must be based on an agreement or court decision.¹⁰

The study of this decision is relevant to analyzing the judge's considerations in assessing the validity of a third party's forced withdrawal of fiduciary collateral, while also examining the implementation of the principle of legal protection for debtors acting in good faith. This research also aims to examine the alignment between the application of the provisions of Law Number 42 of 1999 concerning Fiduciary Guarantees and Constitutional Court Decision Number 18/PUU-XVII/2019, in conjunction with Decision Number 2/PUU-XIX/2021, in resolving disputes through judicial mechanisms. The results of this research are expected to enrich civil law studies, particularly regarding the implementation of fiduciary

⁸ Dinah Fathinah Nurdin, Zainuddin, dan Mustamin, "Perlindungan Hukum Bagi Debitur dalam Proses Eksekusi Jaminan Fidusia," *Jurnal Al-Ahkam* Vol. 20 No. 1 (2025): 88–101. <https://jurnal.fh.umi.ac.id/index.php/legal/article/view/1616>

⁹ Avila Rizky, Yuliana Setiadi, dan Felicitas Sri Marniati, "Perlindungan Hukum Bagi Debitur Terhadap Penarikan Objek Jaminan Fidusia Oleh Kreditur Secara Sewenang-Wenang," *Al-Zayn: Jurnal Ilmu Sosial & Hukum* Vol. 4 No. 1 (2026): 5478–5490. <https://ejournal.yayasanpendidikandzurriyatulquran.id/index.php/AlZayn/article/view/4052>. DOI: <https://doi.org/10.61104/alz.v4i1.4052>

¹⁰ Hanchen Stephanus Dermawan Butar Butar dan Yeni Triana, "Perlindungan Hukum terhadap Debitur dalam Eksekusi Objek Jaminan Fidusia pada Lembaga Pembiayaan," *PESHUM: Jurnal Pendidikan, Sosial dan Humaniora* Vol. 4, No. 3 (April 2025): 3736. <https://doi.org/10.56799/peshum.v4i3.8138>. <https://al-haramjournal.id/index.php/PESHUM/article/view/8138?articlesBySimilarityPage=6>

guarantee execution, while also strengthening the concepts of legal protection and legal certainty in the legal relationship between creditors and debtors.

B. RESEARCH METHODS

This research employs a normative legal research method, focusing on legal norms derived from secondary legal sources, including statutes, court decisions, doctrines, and relevant legal literature. This method analyzes the legal protection for good-faith debtors in the execution of fiduciary guarantees by third parties under applicable legal provisions. The research approach includes a statute approach, a case approach, and a conceptual approach. The statutory approach is used to examine various provisions governing fiduciary guarantees and legal protection for debtors. The case approach is conducted by analyzing Decision Number 63/Pdt.G.S/2025/PN Serang, which serves as the focus of the research, to identify the judge's legal considerations in assessing the validity of the withdrawal of fiduciary guarantees. Meanwhile, the conceptual approach is used to examine legal concepts related to legal protection, the principle of good faith, default, and unlawful acts as the basis for analyzing the research problem.

This study uses three types of legal materials: primary, secondary, and tertiary. Primary legal materials include laws and court decisions related to fiduciary guarantees, particularly the Civil Code, Law Number 42 of 1999 concerning Fiduciary Guarantees, and Constitutional Court Decisions concerning the execution of fiduciary guarantees. Secondary legal materials consist of books, journal articles, and relevant prior research, while tertiary legal materials include legal dictionaries and encyclopedias used to support understanding of legal terms and concepts.

C. RESULT AND DISCUSSION

1. The validity of enforcing a fiduciary guarantee without following the summons procedure and without a court ruling

The legal facts in Decision Number 63/Pdt.G.S/2025/PN Serang show that the Plaintiff is a debtor of PT Adira Dinamika Multi Finance Tbk based on Financing Agreement Number 014625210042 dated January 20, 2025, relating to the financing of one Toyota Calya vehicle. At the outset of the agreement's implementation, the Plaintiff made the instalment payments in accordance with the agreed provisions. However, the late payment in the subsequent period was used by the creditor as grounds to declare the Plaintiff in default, which then became the basis for taking action against the fiduciary guarantee, underscoring the need for proper legal procedures to ensure enforceability.

Based on the facts of the trial, before the fiduciary collateral object was controlled, the Defendant never sent a warning letter (summary) to the Plaintiff as a form of notification of

the alleged default. This fact is supported by the testimony of witnesses presented by the Defendant, namely Bagus Praja Yuswanto, the Collector, and Wahyu Maulana, the Head of Collection, who explained that the Plaintiff had never received a warning letter regarding late instalment payments. In addition to not being preceded by a summons, the act of controlling the vehicle was carried out without a court determination or execution order. Although the Defendant argued that the vehicle had been handed over voluntarily, as evidenced by the Vehicle Handover Report (BASTK), the panel of judges held that the handover did not satisfy the voluntariness requirement. This consideration was based on the fact that the Plaintiff and her husband did not understand the legal consequences of the signed document, while the collateral object was already in the control of field officers acting in the creditor's interests. Based on these considerations, the panel of judges stated that taking control of the collateral object without a summons and without an execution mechanism through the courts constitutes an unlawful act under Article 1365 of the Civil Code.

According to Philipus M. Hadjon, legal protection is the protection of human dignity and respect and recognition of human rights held by every legal subject based on applicable legal provisions.¹¹ In this case, the debtor, as the fiduciary provider, has the right to seek legal protection against creditors who carry out executions that do not comply with statutory procedures. Theory of Unlawful Acts: According to Rosa Agustina, Unlawful Acts are acts that violate the subjective rights of others, are contrary to the legal obligations of the perpetrator, are contrary to morality, or are contrary to propriety in society. In the a quo case, the creditor's actions in taking control of the vehicle without a summons and without a legal execution mechanism have violated the debtor's subjective rights to control the object of fiduciary guarantee. According to Sudikno Mertokusumo, legal certainty is a guarantee that the law is implemented in accordance with applicable provisions, thereby protecting society.¹² The execution of a fiduciary guarantee without following legal procedures results in a loss of legal certainty for the debtor.

2. The Concept of Legal Protection for Consumers Against Creditor Actions within the Framework of Fiduciary Security (A Study of Court Decision No. 63/Pdt.G.S/2025/PN Srg)

The legal protection for debtors as consumers in Decision Number 63/Pdt.G.S/2025/PN Serang stems from a dispute regarding the execution of fiduciary collateral by PT Adira Dinamika Multi Finance Tbk., which was carried out without prior notice and without the enforcement mechanism provided for in a court order.

¹¹ Philipus M. Hadjon, *Perlindungan Hukum Bagi Rakyat di Indonesia* (Surabaya: Bina Ilmu, 1987), hlm. 25

¹² Sudikno Mertokusumo, *Mengenal Hukum: Suatu Pengantar* (Yogyakarta: Liberty, 2008), hlm. 160.

Based on the facts revealed at trial, the Plaintiff experienced delays in instalment payments, but the creditor never issued a warning letter as notification of the alleged default. This circumstance was supported by the Defendant's witness testimony, who acknowledged that no warning letter was issued to the Plaintiff before the Defendant took possession of the collateral. In its legal reasoning, the panel of judges emphasised that Financing Agreement Number 014625210042 requires the creditor to issue a written warning to the debtor before taking further action in the event of default. This provision binds the parties under the principle of *pacta sunt servanda*, as stipulated in Article 1338 of the Civil Code. Therefore, the creditor's disregard of these procedures was deemed a breach of the agreement. In addition to basing its considerations on contractual provisions, the panel of judges also referred to Constitutional Court Decision No. 18/PUU-XVII/2019, together with Constitutional Court Decision No. 2/PUU-XIX/2021, which imposes limitations on the exercise of executive rights over fiduciary guarantee certificates. The decision emphasises that execution can occur only if there is an agreement on the occurrence of default and the debtor voluntarily surrenders the collateral. If these conditions are not met, execution must be pursued through judicial mechanisms to protect the debtor's rights and to embody the principle of due process of law.

In the *a quo* case, the panel of judges thinks that the Plaintiff's surrender of the fiduciary collateral object cannot be qualified as a voluntary surrender. This assessment is based on trial facts showing that the keys and Vehicle Registration Certificate (STNK) were in the possession of an officer acting in the creditor's interests. At the same time, the Plaintiff did not receive an adequate explanation of the legal consequences of the documents he signed. Thus, the element of voluntariness as a prerequisite for execution, as emphasised in the Constitutional Court Decision Number 18/PUU-XVII/2019 in conjunction with Decision Number 2/PUU-XIX/2021, was not fulfilled. Based on these considerations, the panel of judges stated that the act of controlling the collateral object by the creditor was an act that was contrary to the law because it violated the Plaintiff's rights as a debtor and fulfilled the elements of an Unlawful Act as referred to in Article 1365 of the Civil Code. On that basis, the court granted part of the Plaintiff's lawsuit by declaring the Defendant to have committed an Unlawful Act. It sentenced the Defendant to return the collateral object to the Plaintiff. Theory of Legal Protection: One of the main objectives of law is to guarantee the rights of the people. According to Philipus M. Hadjon, legal protection safeguards

human dignity. It recognizes the human rights of legal subjects under applicable legal provisions (Philipus M. Hadjon, *Legal Protection for the People in Indonesia*).¹³

In the context of consumer financing relationships, debtors are considered consumers and must receive protection from arbitrary actions by business actors or financing companies. This protection can take the form of preventive or repressive measures. Preventive protection is provided through regulations governing fiduciary guarantee execution procedures, while repressive protection is provided through court-based dispute resolution mechanisms. According to Satjipto Rahardjo, legal protection aims to safeguard human interests by empowering individuals to defend their rights. In this case, the Plaintiff was granted legal protection through a judge's decision restoring the right to control the vehicle that the creditor had illegally seized.¹⁴ Furthermore, the theory of consumer protection can be linked to Law Number 8 of 1999 concerning Consumer Protection, which grants consumers the right to comfort, security, and fair treatment when using goods and/or services.¹⁵

Legal protection is provided through a civil lawsuit mechanism to the court. In this case, the judge protected the debtor by declaring the creditor's actions to be PMH and ordering the vehicle returned to the debtor. This shows that the court functions as an instrument for protecting consumer rights from arbitrary actions by financing service providers, Recognition that consumer/debtor rights have been violated, the judge's statement that the creditor's actions constitute PMH, an order to return the vehicle to the debtor, Imposition of dwangsom (forced money) if the decision is not implemented, affirmation that fiduciary execution must comply with the Constitutional Court Decision and the principle of due process of law. Thus, Decision Number 63/Pdt.G.S/2025/PN Serang is a concrete example of legal protection for debtors or consumers against fiduciary execution actions carried out unilaterally and in violation of legal procedures.

Strengthening of OJK Supervision needs to increase supervision of financing companies that still withdraw fiduciary objects without fulfilling legal procedures, Electronic and Written Summons Obligations Regulations need to require verifiable summons evidence before execution actions are carried out, standardization of Fiduciary Execution Procedures. There is a need to create a uniform national SOP regarding the procedures for withdrawing fiduciary objects after the Constitutional Court Decision Number 18/PUU-XVII/2019, increasing Consumer Education Debtors need to be given an understanding of their rights in financing agreements, especially

¹³ Philipus M. Hadjon, *Op. Cit.* hlm. 30

¹⁴ *Ibid.*

¹⁵ Undang-Undang Republik Indonesia Nomor 8 Tahun 1999 tentang Perlindungan Konsumen.

regarding the mechanism of default and fiduciary execution, Stricter sanctions Financing companies that withdraw without valid legal procedures need to be subject to effective administrative and civil sanctions to create a deterrent effect, optimizing the Role of the Court If there is no voluntary surrender from the debtor, then the entire execution process must be carried out through the court mechanism to guarantee the protection of the rights of the parties and prevent eigenrichting (vigilante) actions.

D. CONCLUSION

Research shows that executing a fiduciary guarantee without a summons procedure and court order violates applicable legal provisions, rendering it invalid. Based on Constitutional Court Decision No. 18/PUU-XVII/2019 and Decision No. 2/PUU-XIX/2021, enforcement is only valid if the debtor acknowledges default and voluntarily surrenders collateral. In the absence of these conditions, creditors must pursue a court-ordered resolution. Decision No. 63/Pdt.G.S/2025/PN Serang confirms that forcibly removing collateral by a third party without following these legal procedures is unlawful, violating Law No. 42 of 1999, the Civil Code, and principles of legal certainty, good faith, and due process. Legal protections for debtors as consumers are ensured through both preventive and repressive mechanisms. Preventive measures uphold debtors' rights during enforcement procedures, while repressive measures allow debtors to file lawsuits to secure legal certainty, restore rights, and obtain compensation for unlawful acts. Enforcement of fiduciary guarantees must always follow legitimate, proportionate, and fair procedures to balance creditors' and debtors' rights, ensuring effective legal protection in consumer financing

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