



## Legal Certainty in the Registration and Execution of Fiduciary Security Post-Constitutional Court Decision

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### ABSTRACT

Legal certainty is crucial in implementing fiduciary guarantees, especially regarding registration and execution as regulated in Law No. 42/1999. However, Constitutional Court Decision No. 18/PUU-XVII/2019 requires proof of default and mutual agreement before execution, raising practical challenges. This study uses a normative juridical approach by analyzing laws, court rulings, and doctrinal perspectives to assess legal consistency and post-decision constraints. The decision enhances debtor protection but causes procedural ambiguity, weakens executorial power, and delays execution. Inconsistent regulatory implementation worsens legal uncertainty. To restore legal certainty, derivative regulations must be revised and institutional practices harmonized. A fair balance between creditor rights and debtor protection is essential to maintain fiduciary guarantees as an effective credit instrument.

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## **INTRODUCTION**

Fiduciary guarantees as a form of material guarantee institutions play an important role in supporting the stability and smooth flow of financing transactions, especially in the banking credit system and non-bank financing institutions. The advantage of fiduciary guarantees lies in their ability to provide a sense of security for creditors, through a simple registration mechanism and a fiduciary guarantee certificate that has executory power – meaning that it can be executed immediately without the need for a court order first. This character provides legal certainty and efficiency in resolving disputes over debtors' defaults, making it a highly reliable instrument in business practice and civil law in Indonesia (Waniak-Michalak et al., 2020; Kandou & Widiarty, 2022).

Law Number 42 of 1999 concerning Fiduciary Guarantees explicitly states that a fiduciary guarantee certificate has the same power as a court decision which has permanent legal force (Lating et al., 2025). This allows creditors to carry out unilateral execution if the debtor is declared in default, without going through a litigation process. Nevertheless, while the law guarantees legal certainty, its implementation on the ground is often marked by irregularities and practices that give rise to horizontal conflicts, especially in the case of forced execution by creditors without the involvement of law enforcement officials or without proper notification to the debtor (Maringka, 2022; Brown & Waller, 2016).

This condition culminated in various disputes that ultimately triggered a material test at the Constitutional Court. In 2019, the Constitutional Court issued Decision Number 18/PUU-XVII/2019 which stated that the provisions of Article 15 paragraphs (2) and (3) of the Fiduciary Guarantee Law are contrary to the 1945 Constitution, as long as it is interpreted that creditors can unilaterally execute without going through a mechanism of proof of default and without an agreement that the debtor is really in a condition of injury to promises. This judgment has the binding force of *erga omnes* and fundamentally changes the system of execution of fiduciary guarantees which was previously simple and unilateral (Jati, 2021; Jadidah, 2022).

After the verdict, a complex legal dilemma emerged. On the one hand, the protection of debtors is being strengthened – preventing coercive or even unconstitutional unilateral executions. However, on the other hand, there is legal uncertainty for creditors, especially related to ambiguity in the process of proving defaults and weaknesses of fiduciary certificates as a means of execution. This ruling has also created confusion among law enforcement officials, notaries, and registration institutions (Ministry of Law and Human Rights), which have a vital role in the validation and implementation of fiduciary certificates (Licht, 2020).

The fundamental question then is: how can the guarantee of legal certainty be enforced in a fiduciary guarantee system that has undergone fundamental changes in its normative aspect? What about the effect of the Constitutional Court's decision on the preventive and repressive functions of the fiduciary guarantee institution, as well as legal certainty for creditors and debtors in a balanced manner? And to what extent is the effectiveness of regulations and

technical implementation in the field able to accommodate the new interpretation formed by the Constitutional Court?

This research aims to answer these questions through a normative juridical approach with a focus on the analysis of laws and regulations, the study of court decisions, and relevant legal doctrines. In addition, this study will also examine the practice of implementing fiduciary registration and execution after the Constitutional Court's decision, including its implications for the credibility of the national financing system and the legal protection of the parties.

The urgency of this research is very high, considering that fiduciary guarantees are the backbone of consumer and business financing transactions in Indonesia, ranging from motor vehicle loans to small and medium-sized business financing. Legal uncertainty in the registration and enforcement mechanisms will not only hinder the effectiveness of civil law, but also potentially disrupt micro and macroeconomic stability. Therefore, an in-depth discussion of the aspect of legal certainty after the Constitutional Court's decision is important as a foundation for formulating legal policies and improving regulations that are more adaptive and fair.

## **THEORETICAL REVIEW**

### ***The Principle of Legal Certainty in the Indonesian Legal System***

The principle of legal certainty is a fundamental principle in the legal system of the state of law (*rechtsstaat*) which emphasizes that the law must be clear, unambiguous, and predictable in its application. From a positive legal perspective, legal certainty is not only related to the clarity of norms, but also to consistent enforceability and equal treatment in law enforcement. Utrecht states that legal certainty guarantees that the law applies generally and does not change arbitrarily (Van Meerbeeck, 2016).

In the context of fiduciary guarantees, legal certainty is reflected in the creditor's ability to exercise his rights directly through a certificate that has executory power. This creates a system of trust in credit transactions, where parties can rely on the law to protect their rights and obligations. However, this principle can be threatened when there is a substantial change in legal interpretation, such as in the Constitutional Court's ruling, without a clear revision of regulations or implementation guidelines (Ficsor, 2018).

### ***Legal Protection Theory for Creditors and Debtors***

Legal protection is not only intended for the weak party (in this case the debtor), but must also reflect a balance with the rights of the creditor. According to Satjipto Rahardjo, the law must be alive and able to answer the problem of justice in society, including ensuring a sense of security for creditors so that their billing rights can be effectively protected. However, in practice, economic power inequality often puts debtors in a more vulnerable position, thus needing special protection from arbitrary enforcement practices.

The Constitutional Court Decision Number 18/PUU-XVII/2019 shifts the emphasis of protection towards the debtor, especially in preventing unilateral execution carried out without a verification or approval process. However, this change also raises a new problem: creditors lose effectiveness in exercising their

right to guarantee. This imbalance can actually cause legal uncertainty that has an impact on investment interest and credit (Dinata, 2020).

### ***The Concept of Fiduciary Guarantee Execution and Post-Decision Changes of the Constitutional Court***

Prior to the Constitutional Court Decision, the practice of executing fiduciary guarantees was carried out by executory title through the legal force of registered certificates. Creditors can withdraw fiduciary objects without the need for an application to the court. However, after the judgment, the execution must meet two conditions: it is proven that there is a default and it is agreed by both parties that the debtor is really injured by the promise (Januar et al., 2021).

This change creates legal ambiguity, as the Fiduciary Guarantee Act has not been revised to accommodate the new interpretation. In the field, law enforcement officials, notaries, and registration institutions have difficulty interpreting legal instruments that have not been updated. This leads to inconsistency in the application of the law and weakens certainty for creditors who were previously guaranteed by the law (Harjono et al., 2022).

### ***The Impact of the Constitutional Court Decision on Registration and Execution Practices***

The Constitutional Court's decision does not cancel the existence of fiduciary guarantees, but fundamentally changes its implementation procedures (Badriyah et al., 2021). When legal norms undergo a change in interpretation without editorial changes in the law, a legal vacuum arises that is at risk of being abused. In practice, differences in perception between officials and the lack of implementing regulations are obstacles to the effective implementation of guarantees.

Various literature underlines that legal uncertainty after judicial decisions must be immediately followed up by legislators or technical regulators so that the new norm does not actually create an implementation vacuum. In this context, a systematic review is needed to assess the extent to which the new norm has provided legal certainty, or has actually created confusion in the practice of fiduciary registration and execution (Reins, 2019).

### ***Research Hypothesis***

Based on the literature review and the problems raised, the hypotheses that can be formulated in this study are as follows:

1) Main Hypothesis (H1):

The Constitutional Court Decision Number 18/PUU-XVII/2019 has an effect on the decrease in the level of legal certainty in the registration and execution process of fiduciary guarantees, due to the lack of adequate revision of implementing regulations.

2) Additional Hypothesis (H2):

The disharmony between the Constitutional Court's decision and the regulatory practices by relevant agencies (notaries, police officers, and the Ministry of Law and Human Rights) leads to legal inconsistency in the implementation of fiduciary guarantees.

## **METHODOLOGY**

### ***Research Approach and Design***

This research uses a normative juridical approach, which is an approach that relies on the study of applicable positive legal norms, both written in laws and regulations and those formed through court decisions. The main focus of this approach is to examine the legal system as a normative building that regulates community behavior, as well as to evaluate the extent to which existing legal provisions are able to provide certainty and justice in practice (Negara, 2023; Noor, 2023).

This normative method was chosen because the object of the research study is not in the form of empirical social symptoms, but the structure and legal logic related to legal certainty in the implementation of fiduciary guarantees, especially after the issuance of the Constitutional Court Decision Number 18/PUU-XVII/2019. Research is not intended to measure individual perceptions or behaviors, but rather to analyze the legal system based on doctrinal constructions and comparative norms.

### ***Types and Sources of Legal Substances***

This research utilizes three types of legal materials as the basis for analysis. First, primary legal materials, namely authoritative and binding legal sources, include relevant laws and regulations such as Law Number 42 of 1999 concerning Fiduciary Guarantees, the Constitution of the Republic of Indonesia of 1945, and the Constitutional Court Decision Number 18/PUU-XVII/2019 which is the main focus of the study. Second, secondary legal materials, namely legal literature that supports the interpretation of primary legal materials. This material includes scientific journals, legal expert opinions, and textbooks that discuss the theory of legal certainty, the concept of legal protection, and the material guarantee system as a framework for normative analysis. Third, tertiary legal materials, consisting of legal dictionaries, legal encyclopedias, and glossaries of technical terms, are used to strengthen conceptual understanding and help clarify the meaning of terminology in the context of positive Indonesian law.

### ***Approach Used***

This study uses a combination of several approaches as part of the normative juridical method to obtain a complete and comprehensive understanding of the legal problems studied. First, a statute approach is used to systematically examine the content and positive legal structure that governs fiduciary guarantees, both before and after the issuance of the Constitutional Court Decision. This approach allows researchers to formally identify shifts in legal norms. Second, a case approach is applied, which is carried out through an analysis of the Constitutional Court Decision Number 18/PUU-XVII/2019 and several other court decisions that are relevant to the implementation of fiduciary guarantees.

Through this approach, researchers can understand the dynamics and practical implications of the legal changes that occur. Third, a conceptual approach is used to explore, reconstruct, and criticize legal concepts such as legal certainty, legal protection, and the balance between the rights of creditors and

debtors within the framework of fiduciary guarantees. This conceptual approach is important to place analysis in the context of broader legal theory and to support interpretations of evolving norms and practices.

### ***Legal Materials Analysis Techniques***

The collected legal materials were analyzed using the qualitative legal analysis method, which was carried out through three main stages. The first stage is inventory, which is the process of identifying and collecting relevant laws and regulations and court decisions, especially those related to the fiduciary guarantee system and the implications of the Constitutional Court Decision Number 18/PUU-XVII/2019. The second stage is the classification of legal norms based on the substantial issues that are the focus of the study, such as registration aspects, execution mechanisms, legal protection for the parties, and the principle of legal certainty.

The third stage is normative evaluation, which is to assess the extent to which these norms are consistent, whether there is a legal vacuum (*rechtsvacuum*), and detect disharmony or contradictions between regulations. The analysis process is carried out critically to examine the relationship between the applicable legal norms and the implementing conditions after the decision of the Constitutional Court, as well as to evaluate the effectiveness and clarity of the law in providing legal protection and certainty for creditors and debtors.

### ***Research Specification***

The specification of this research is descriptive-analytical, which aims to provide a comprehensive overview of the legal problems that are systematically researched, as well as analyze the normative and practical implications of the legal changes that occur. The research not only explains the structure of the law, but also examines imperfections or inconsistencies in its implementation.

## **RESEARCH RESULTS**

### ***Changes in Legal Interpretation After the Constitutional Court Decision No. 18/PUU-XVII/2019***

The Constitutional Court Decision No. 18/PUU-XVII/2019 is an important milestone that has substantially changed the meaning of the provisions of Article 15 paragraphs (2) and (3) in Law Number 42 of 1999 concerning Fiduciary Guarantees. Prior to this ruling, a fiduciary guarantee certificate that had been legally registered with the Ministry of Law and Human Rights was treated as an executory title, which has legal force equivalent to a court decision that has permanent legal force. In practice, this provision authorizes the creditor to execute the collateral object directly without the need for a litigation process, simply by presenting a fiduciary certificate as the basis for execution.

However, through the Constitutional Court's Decision, the Court stated that execution cannot be carried out unilaterally by creditors. The Court affirmed that the execution can only be carried out if the debtor voluntarily admits that he has committed a default. If the acknowledgment does not exist or there is a dispute, then the creditor is obliged to take the case to court to prove that the

debtor is really in a state of breach of promise. Thus, the self-executing nature of fiduciary certificates has been normatively replaced with conditional and requires an additional evidentiary mechanism, which directly changes the face of fiduciary guarantee law in Indonesia.

This change has serious implications for the certainty and effectiveness of fiduciary guarantees as a financing instrument. Previously, fiduciary certificates made it easy for creditors to obtain quick repayment of their rights when the debtor defaulted. However, after the verdict, the process becomes longer, more costly, and no longer automatic. This functionally reduces the appeal of fiduciary as a tangible collateral compared to other forms of collateral such as mortgages or mortgages, which from the outset do require a judicial process in the execution of their execution.

In addition, this Constitutional Court decision raises legal dilemmas for business actors and financing providers. On the one hand, the law demands higher protection of the rights of debtors so as not to become victims of arbitrary execution practices. But on the other hand, this system also creates uncertainty and hampers business processes that have relied on the effectiveness of fiduciary guarantees. This imbalance is exacerbated by the absence of clear implementing regulations, both in the form of revisions of laws and technical instructions from relevant authorities. As a result, in many cases, there is confusion in implementation—where law enforcement officials, notaries, and financing institutions have different understandings and policies in interpreting the new meaning of the fiduciary certificate.

Thus, the Constitutional Court Decision No. 18/PUU-XVII/2019 not only has an impact on normative legal aspects, but also gives rise to complex dynamics of implementing law. The Court's reinterpretation of fiduciary norms has shifted the pressure point from efficiency of execution to prudence and protection of debtors, but in the process has created a significant space for legal uncertainty. In this context, it is important to comprehensively review the entire architecture of fiduciary law to remain relevant to the principles of fairness, legal protection, and the efficiency of sound financing systems.

### ***Legal Uncertainty in the Implementation of Registration and Execution***

The results of the analysis show that although the Constitutional Court's decision is final and binding, its implementation in the field still encounters various normative and administrative obstacles. The inconsistency between the Court's interpretation and the substance of the Fiduciary Guarantee Law that has not been revised creates a *rechtsvacuum* condition, where law enforcement officials, notaries, and fiduciary holders face confusion in implementing execution procedures legally.

In practice, police officers and bailiffs often refuse to execute if there is no court ruling declaring a default, even though the fiduciary certificate already has an executory title. This has a direct impact on the effectiveness of enforcing creditors' rights and prolonging the dispute resolution process, even causing potential horizontal conflicts between debtors and collectors.

### ***Consequences for the Function of a Fiduciary Certificate as an Executory Title***

The Constitutional Court's ruling has led to uncertainty over the legal force of fiduciary guarantee certificates. Previously, the certificate was recognized as having the power of executorial title, but now it loses the character in full or at least becomes conditional.

Based on normative analysis, the fiduciary certificate retains legal standing, but can no longer be used as a direct basis for execution without additional process. This completely changes the paradigm of legal protection against creditors and weakens the legal position of fiduciary compared to other tangible guarantees such as mortgages or mortgages that still require a court ruling.

### ***Absence of Derivative Regulation After the Constitutional Court's Decision***

Until this study is conducted, there have been no implementing regulations, circulars, or technical regulations issued by the Ministry of Law and Human Rights or the Supreme Court to bridge the change in norms due to the Constitutional Court's decision. As a result, there is a disharmony between normative law (Law 42/1999), judicial decisions (MK), and administrative implementation (fiduciary registration and execution process).

The absence of these derivative regulations also has an impact on the quality of public services. Notaries as fiduciary deed-making officials (APHT) often face ethical and legal dilemmas in drafting executory clauses, because there is no clear normative guidance regarding the redaction and legal treatment of default clauses in fiduciary agreements.

## **DISCUSSION**

The Constitutional Court Decision Number 18/PUU-XVII/2019 has caused a fundamental shift in the fiduciary guarantee legal system, especially related to legal certainty in the registration and execution process. Prior to this ruling, the fiduciary guarantee certificate that had been registered with the Ministry of Law and Human Rights had executory power, allowing the creditor to execute the object of the guarantee without going through the court process. However, after the Constitutional Court's ruling, the right of execution can no longer be exercised unilaterally. Instead, there must be proof of default voluntarily admitted by the debtor, or proof in advance in court. This change shifts the self-executing nature of fiduciary guarantees to conditional, and creates legal uncertainty for parties, especially creditors.

Normatively, this condition creates a legal vacuum because Law Number 42 of 1999 has not been revised to adjust to the substance of the Constitutional Court's decision. This inconsistency creates ambiguity in practice, which is reflected in the differences in implementation among notaries, law enforcement officials, and other related agencies. As a result, there is a disharmony between normative law, judicial interpretation, and administrative implementation in the field. A fiduciary guarantee certificate that originally gave a creditor certainty of his right to execute now loses that certainty, as its power becomes dependent on more complicated and time-consuming evidentiary procedures.

This change is actually intended to strengthen the protection of debtors from arbitrary execution practices. However, in its implementation, the protection becomes excessive and ignores the rights of creditors as parties who also need certainty in the repayment of their receivables. The imbalance between debtor protection and creditor rights has the potential to weaken the function of fiduciary guarantees as a legal instrument that ensures certainty and efficiency in financing transactions. Many creditors are reluctant to use fiduciary guarantees because they no longer provide guarantees of certainty in the exercise of their rights in the event of default (Purwadi & Rustamaji, n.d.).

Furthermore, the absence of technical regulations or implementing regulations after the Constitutional Court's decision worsens the implementing conditions. The absence of official guidelines explaining how a default clause should be formulated, or how the procedure for proving a default is carried out, has left many notaries in a dilemma when drafting a fiduciary deed. Similarly, police officers often refuse to secure executions because there is no explicit court basis, even though the object has been formally registered as a fiduciary guarantee. This situation shows that uncertainty stems not only from changes in the law, but also from the absence of institutional coordination and administrative arrangements that are responsive to changing norms (Prokopenko et al., 2024).

Thus, strategic steps are needed to restore legal certainty in the fiduciary guarantee system. The revision of Law Number 42 of 1999 is an urgent need to be in line with the constitutional interpretation set by the Constitutional Court. In addition, the issuance of implementing regulations by relevant agencies such as the Ministry of Law and Human Rights and the Supreme Court is very important as a technical reference for notaries, police officers, and financing actors. Harmonization of rules, cross-sector training, and institutional strengthening are key to maintaining a balance between the protection of debtors and the certainty of creditors' rights. With a comprehensive and principle-based approach to justice, fiduciary guarantees can remain an effective and constitutional instrument in supporting the national financing system.

## CONCLUSIONS AND RECOMMENDATIONS

This research shows that the transformation of the digital economy in rural areas does not necessarily eliminate traditional exchange systems that have been deeply rooted in people's cultures. On the other hand, village communities carry out a selective and social-value-based adaptation process, where digital financial technology is accepted as long as it does not contradict relational logic and local norms. Money, in this context, is understood not only as a functional medium of exchange, but also as a symbol of trust, social interaction, and solidarity between individuals.

The emergence of hybrid practices between digital systems and traditional exchanges reflects that the value of money in rural societies is dynamic and contextual. The process of technology adoption is not only determined by the availability of infrastructure or digital literacy, but also by the way society interprets and integrates technology into existing value systems. Therefore, the

success of digital economy transformation in villages is highly dependent on the extent to which technological interventions are able to resonate with the social meaning that lives in the community.

As such, efforts to promote digital financial inclusion need to be based on a deep understanding of community narratives, local exchange practices, and the accompanying social values. A policy approach that emphasizes only technical and efficiency aspects risks ignoring the relational aspects that are the foundation of rural economies. Therefore, the development of a contextual, participatory, and culturally sensitive digital financial system is key to building an inclusive and sustainable economic system in rural areas.

### **FURTHER STUDY**

Future studies could explore how different forms of traditional exchange systems interact with emerging digital financial technologies across diverse rural contexts. Ethnographic and participatory research methods may offer deeper insights into how community members negotiate meaning, trust, and social relations in the face of digital transformation. Additionally, examining the role of local institutions, customary leaders, and intergenerational perspectives in shaping technology adoption can provide a more nuanced understanding of resistance or acceptance. Research can also focus on designing culturally adaptive digital financial models that align with local values while promoting long-term economic resilience.

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