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Fiduciary Security and Non-Performing Loan Collection Practices by Financing Companies in Indonesia

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A B S T R A C T

This study analyzes fiduciary security practices in motor vehicle financing and examines the implementation and implications of Constitutional Court Decision Number 18/PUU-XVII/2019 on fiduciary security execution mechanisms. The research employs a normative juridical approach with analytical descriptive specifications. The findings reveal that financing companies play a significant role in providing funds with consumer eligibility assessment and security agreements as protective instruments. The use of debt collectors in non-performing loan collection is regulated through OJK regulations requiring complete documentation and prohibiting intimidation or threats. Constitutional Court Decision Number 18/PUU-XVII/2019 fundamentally altered fiduciary security execution by eliminating the executorial title concept, affirming that execution can only proceed when default is based on explicit agreement between debtor and creditor. Consequently, fiduciary security execution now requires court involvement through application, judicial decision, seizure, and auction. Implementation challenges include failure to register fiduciary objects, unfavorable negotiations, and insufficient legal education. The study concludes that regulatory strengthening, enhanced legal education, and legislative revision following the Constitutional Court decision are essential to ensure balanced legal protection for both creditors and debtors in fiduciary security practices.

INTRODUCTION

Economic development is an integral part of national development aimed at improving the overall welfare of the people. In this development process, business actors need substantial funding support to sustain and continue their business activities (Hasanli, 2025). As development activities increase, the need for a credit system continues to grow as a vital instrument supporting a country's economic growth. Money-lending services have become a crucial component in driving economic dynamics and providing access to capital for various levels of society. Sustainable economic growth also needs to be balanced with sound resource management practices, including in the industrial sector, so that the benefits of development can be felt more evenly (Mardikaningsih & Nuraini, 2022).

The existence of financing institutions contributes significantly to economic growth, particularly for low-income communities in need of capital access (Tony, 2023). In urban areas, the use of credit services has become an inseparable part of daily life. Fiduciary institutions are often used to support the smooth operation of companies through a guarantee mechanism that provides legal protection for both parties. Legal oversight of financing schemes needs to be strengthened so that the public is genuinely protected from investment practices that carry legal risk (Rizaldi et al., 2024). However, in some cases this effort fails when debtors experience financial difficulty and file for bankruptcy with the commercial court (Siregar & Siregar, 2025). In such bankruptcy cases, the legal position of concurrent creditors and the responsibilities of the curator in managing the debtor's assets become crucial issues that require clear regulation (Prabowo et al., 2024).

Bonds, as financial instruments, play an important role in supporting Indonesia's economic development and have long been accepted and used by the public. Financing through the banking industry is a primary source for meeting development needs; however, the disbursement of funds requires a guarantee institution to bind debtors as fund recipients (Miranti, 2024). Guarantee institutions function to ensure that fund disbursement remains secure and to provide legal

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certainty for creditors. Credit, as a loan approved by a bank or financial institution, must be repaid according to the agreement, either in full or through installments. This process needs to be supported by ethical and responsible financial practices so that the interests of all parties involved are properly protected (Putra et al., 2022). Such practices, in turn, help build customer trust, which is an important factor in maintaining loyalty toward financial institutions (Darmawan, 2022).

Fiduciary guarantees have developed rapidly as one form of guarantee institution in Indonesia, providing legal protection for parties in debt-and-receivable relationships. This guarantee institution was initially developed through jurisprudence before eventually being formally regulated under statutory law (Satory et al., 2024). Fiduciary transfer is a form of ownership transfer based on trust, in which the debtor retains control of the collateral object even though ownership has been transferred fiduciarily to the creditor. This characteristic gives fiduciary guarantees an advantage over other guarantee institutions, as it does not hinder the debtor's operational activities (Prasetyo et al., 2022).

Financing companies, as one type of non-bank financial institution, are increasingly favored by the public in providing capital goods or funds without having to raise funds from the general public. In carrying out their operations, financing companies are responsible for ensuring that financing facilities are repaid according to the agreed amount and time, covering the principal, interest, and other costs. Consumer protection also needs attention, especially given the growing use of digital banking services, which are vulnerable to cases of account tampering (Fitrotinisak et al., 2023). The increasing use of technology in financing company operations should also be examined from the perspective of fair treatment among employees, so that digitalization does not create new forms of inequality in the workplace (Darmawan, 2024). Assessment of prospective consumers' eligibility is carried out before the agreement is signed to ensure the fulfillment of obligations. Understanding consumer switching behavior can also help financing companies design strategies to maintain customer loyalty (Darmawan, 2022). Security mechanisms through guarantee agreements are an important instrument to ensure that debtor obligations can be fulfilled within the specified period (Hayatuddin et al., 2024).

The use of debt collectors in collecting problematic credit is a common practice among financing companies, although its regulation and supervision still face various legal challenges. Debt collection practices often spark controversy in society because the methods used are considered inconsistent with ethical or legal norms (Husen & Santoso, 2024). Authentic leadership within financing companies plays a role in shaping a positive work climate and encouraging employees, including debt collectors, to act ethically in carrying out their duties (Mardikaningsih et al., 2022). Flexible human resource management is also needed to adjust debt-collection work patterns to current conditions without compromising legal compliance (Mardikaningsih, 2025). The pressure inherent in debt-collection work also needs to be considered from a mental health perspective, so that the work environment provided by the company remains humane (Issalillah & Khayru, 2025). Debt-collection work, which is often repetitive in nature, requires strategies to keep employee knowledge and engagement high, particularly as more of this work becomes automated (Darmawan, 2024). Financing companies are prohibited from conducting collections through unlawful means, such as coercion, threats of physical or mental harm, or actions that violate norms of decency and social/ethnic/religious sensitivity. Collection must be carried out according to procedures that include sending a warning letter containing complete information on the due date, principal, interest, and applicable penalties.

The Constitutional Court's decision brought significant change to the mechanism for executing fiduciary guarantees in Indonesia by eliminating the concept of executorial title that had previously attached to fiduciary guarantee certificates. This decision affirms that provisions granting creditors the right to direct execution have no binding legal force when default is not based on a clear agreement between debtor and creditor. As a result, the execution of fiduciary collateral objects can no longer be carried out unilaterally by creditors without court involvement (Arief, 2024). This change underscores the need for a formal procedure to ensure that fiduciary execution takes place fairly, transparently, and in line with the principle of legal protection for both debtors and creditors.

The implementation of fiduciary guarantees in the field still faces significant obstacles despite being comprehensively regulated under statutory law. Common problems include the failure to register fiduciary objects limited only to the drafting of the original deed negotiations that burden the debtor during the execution process, and a lack of legal education for the public regarding their rights and obligations under fiduciary guarantees. This condition shows that legal protection for debtors in fiduciary practice still requires systemic improvement and stronger oversight so that the goal of legal protection for both creditors and debtors can be optimally achieved.

Based on this description, this research aims to analyze fiduciary guarantee practices in motor vehicle financing as well as examine the implementation and impact of the Constitutional Court Decision on the execution mechanism of fiduciary guarantees. This research also explores the role of financing institutions and debt collectors in recovering non-performing loans, alongside identifying legal obstacles encountered in the execution of fiduciary guarantees. Thus, this research is expected to contribute intellectual insights toward strengthening a just fiduciary guarantee legal system for all involved parties.

RESEARCH METHOD

This research uses a normative juridical approach with an analytical descriptive research specification. The normative juridical approach was chosen because the research focuses on analyzing positive legal provisions governing fiduciary guarantees as well as the implementation of Constitutional Court Decision Number 18/PUU-XVII/2019 in fiduciary execution practice. This research examines legal norms contained in Law Number 42 of 1999 concerning Fiduciary Guarantees, Presidential Regulation Number 9 of 2009 concerning Financing Institutions, and other implementing regulations relevant to financing practices and fiduciary guarantees.

The type of data used is secondary data obtained from primary legal materials and secondary legal materials. Primary legal materials consist of laws and regulations governing fiduciary guarantees and financing institutions, including Law Number 42 of 1999 concerning Fiduciary Guarantees, the Indonesian Civil Code, Presidential Regulation Number 9 of 2009 concerning Financing Institutions, OJK Regulation (POJK) Number 35/POJK.05/2018 and POJK Number 7/POJK.05/2022 concerning the Business Operations of Financing Companies, and Constitutional Court Decision Number 18/PUU-XVII/2019. Secondary legal materials include scientific literature, legal journals, scholarly articles, and previous research results relevant to fiduciary guarantees and financing practices. Tertiary legal materials, such as legal dictionaries and encyclopedias, are used to clarify legal terms employed.

The data collection technique was carried out through a literature study by examining various legal documents and literature related to fiduciary guarantees, financing institutions, and guarantee execution. The collected data were then analyzed qualitatively using legal interpretation methods, namely interpreting statutory provisions to discover the meaning and intent of the lawmakers (Khulaili et al., 2024). The analysis was conducted using a systematic approach, which involves interpreting legal provisions by connecting them with other articles in the same regulation or other related regulations. This approach aims to obtain a comprehensive understanding regarding the regulation of fiduciary guarantees and their execution mechanisms.

This research also uses a case approach to analyze the implementation of Constitutional Court Decision Number 18/PUU-XVII/2019 in fiduciary guarantee execution practices and to identify obstacles encountered in its implementation. A conceptual approach is used to examine theories of security law and principles of legal protection for creditors and debtors. The analysis results are then used to evaluate the effectiveness of fiduciary guarantee regulations and the implications of the Constitutional Court decision on financing practices in Indonesia.

RESULT AND DISCUSSION

The Position of Fiduciary Guarantees in the Indonesian Financing Legal System

Every country relying on a market economic system requires legal instruments that regulate the relationship between capital providers and recipients. Economic development is an integral part of national development aimed at comprehensively improving public welfare. In this development process, legal entities require significant funding support to maintain and continue business activities sustainably (Nazarenko et al., 2024). Along with increasing development activities, the need for funds through the credit system continues to grow as a vital instrument to support a country's economic growth. Money-lending services have become a very important component in driving economic dynamics and providing access to capital for various segments of society. The existence of financing institutions makes a major contribution to economic growth, especially for low-income communities requiring access to capital. A credit system that functions optimally will accelerate economic development and the equitable distribution of public welfare. In urban areas, the utilization of credit services has become an inseparable part of daily community life (Firmansyah, 2024).

Legal certainty in credit disbursement is a fundamental prerequisite for creating a fair relationship between creditors and debtors. Bonds, as financial instruments, play an important role in supporting Indonesia's economic development and have long been accepted and used by the public. Financing through the banking industry, which extends credit to borrowers, is a primary source for meeting development needs; however, the disbursement of funds requires a guarantee institution to bind debtors as fund recipients (Miranti, 2024). Guarantee institutions function to ensure that fund disbursement remains secure and to provide legal certainty for creditors. Credit, as a loan approved by a bank or financial institution, must be repaid according to the agreement, either in full or through installments. Legal protection for both parties in a credit agreement will increase public trust in the national financial system. Ethical leadership in the management of financial institutions also helps shape a positive work culture that supports the formation of such trust (Mardikaningsih et al., 2022). Healthy competition among financial institutions is likewise important to maintain customer trust and satisfaction, since excessive dominance by one party can be detrimental to consumers (Hardyansah et al., 2021). In addition, protection of customers' personal data has become an important part of legal certainty in the financial sector (Hardyansah et al., 2024). Financial institutions are generally grouped into three main categories banks, non-bank institutions, and financing institutions which provide various services to meet public needs.

The role of financing institutions in providing public access to capital cannot be separated from the legal framework that binds them. Financing institutions play an important role in supporting economic growth by providing capital goods or funds to debtors without having to raise funds from the general public. Under Presidential Regulation Number 9 of 2009 concerning Financing Institutions, Article 2, financing institutions consist of three types: financing companies, venture capital companies, and infrastructure financing companies. A flexible organizational structure within a financing company also determines its capacity to adapt to changing economic conditions (Darmawan & Mardikaningsih, 2023). Based on Article 3 of the same Presidential Regulation, financing companies may carry out several business activities, including leasing, factoring, credit card operations, and consumer financing (Rifki et al., 2024). In its capacity as a lender, a financing company is responsible for ensuring that the financing facility provided to a consumer is repaid according to the agreed amount and time, covering the principal, interest, and other costs. Compliance with legal provisions in every financing activity protects the interests of creditors while also safeguarding consumers' rights. To ensure the fulfillment of these obligations, a financing company first assesses the eligibility of prospective consumers through various factors before signing a financing agreement. Employees' ability to adapt to credit-assessment technology also affects the accuracy of the process for selecting prospective consumers (Mardikaningsih & Darmawan, 2022). Sound management of consumer knowledge and data is likewise one of the factors that supports the accuracy of financing decisions (Darmawan, 2023).

Fiduciary guarantees serve as a legal solution that protects creditors without eliminating the debtor's right to control the collateral object. Fiduciary guarantees have developed rapidly as one form of guarantee institution in Indonesia, providing legal protection for parties in debt-and-receivable relationships. This guarantee institution was initially developed through jurisprudence before being formally regulated under Law Number 42 of 1999 concerning Fiduciary Guarantees. Fiduciary transfer is a form of ownership transfer based on trust, in which the debtor is still permitted to control the collateral object even though ownership has been transferred fiduciarily to the creditor. This is regulated in Article 1152 of the Civil Code, which states that a guarantee becomes void if the collateral remains under the debtor's control without a valid transfer of ownership. The characteristic of fiduciary guarantees that allows the debtor to retain control of the collateral gives it a distinct advantage compared to other guarantee institutions. A fiduciary guarantee is defined in Article 1, paragraph (1) of Law Number 42 of 1999 concerning Fiduciary Guarantees as the transfer of ownership rights over an object based on trust, provided that the object remains under the control of its owner.

Optimal legal protection in fiduciary guarantees requires compliance with the registration procedures set out in the applicable regulations. A fiduciary guarantee right holds priority status over other creditors and must be registered with the Fiduciary Registration Office to settle specific obligations. Accordingly, fiduciary guarantees provide legal certainty for creditors as well as convenience for debtors in using the collateral object for their operational needs. Fiduciary guarantees cover rights to movable or immovable objects that cannot be encumbered with a mortgage. Creditors have the right to collect receivables from debtors in accordance with the credit agreement, although this right may be limited under certain conditions pursuant to Article 3 of Law Number 42 of 1999 concerning Fiduciary Guarantees. Registration of a fiduciary guarantee at the Fiduciary Registration Office provides strong legal certainty for creditors regarding their rights over the collateral object. Under Article 5 of the Fiduciary Guarantee Law, the names of the parties must be stated in the fiduciary guarantee deed, which must be made before a notary. This deed serves as the legal basis for the creditor to execute its rights over the collateral object should the debtor default.

The validity of a fiduciary guarantee certificate as proof of a creditor's right determines the legal force of the execution that may be carried out. Creditors, or fiduciary recipients, are required to register objects encumbered with a fiduciary guarantee at the Fiduciary Registration Office in accordance with Articles 11, 13, and 15 of Law Number 42 of 1999. This registration process aims to provide legal certainty to creditors regarding their rights over the collateral object. After the registration application is submitted, the Fiduciary Registration Office issues a fiduciary guarantee certificate, which is then handed over to the creditor or fiduciary recipient as stipulated in Article 15, paragraph (1) of the same law. This certificate serves as valid proof of the creditor's fiduciary ownership right over the collateral object. Registration of a fiduciary guarantee is a crucial step in ensuring legal certainty for both creditors and debtors, and it grants executory power over the collateral object equivalent to a final and binding court decision. The legal certainty created through fiduciary registration helps reduce the potential for disputes between creditors and debtors in the future. In practice, financing companies often employ debt collectors to handle overdue consumer credit payments; however, in some cases, the actions of debt collectors can harm consumers, such as the forced seizure of vehicles on the road. The work dynamics and psychological pressure experienced by debt collectors in carrying out their duties can also affect how they interact with consumers (Darmawan, 2023).

The validity of the fiduciary guarantee certificate as proof of the creditor's right determines the legal force of the execution that can be carried out. Creditors or fiduciary recipients are required to register objects encumbered with fiduciary guarantees at the Fiduciary Registration Office in accordance with Article 11, Article 13, and Article 15 of Law Number 42 of 1999. This registration process aims to provide legal certainty to creditors regarding rights over the collateral object. Upon submitting a registration application, the Fiduciary Registration Office will issue a fiduciary guarantee certificate, which is then handed over to the creditor or fiduciary recipient as stipulated in Article 15 paragraph (1) of the same law. This certificate serves as valid proof of the creditor's ownership of fiduciary rights over the collateral object. The registration of a fiduciary guarantee is a crucial step in ensuring legal certainty for both creditors and debtors, and provides executive power over the collateral object equivalent to a court decision with permanent legal force. The legal certainty created through fiduciary registration will reduce the potential for disputes between creditors and debtors in the future. In practice, financing companies often employ debt collectors to handle delinquent consumer credit bills, but in some cases, the actions of debt collectors can harm consumers, such as the forced seizure of vehicles on the street.

The Legal Regulation of Fiduciary Guarantees and Their Characteristics

Fiduciary guarantees have developed rapidly as a form of guarantee institution in Indonesia that provides legal protection for parties involved in debt-receivable engagements. This guarantee institution was initially developed through jurisprudence before finally being formally regulated through Law Number 42 of 1999 concerning Fiduciary Guarantees. A fiduciary is a form of transfer of ownership rights based on trust, where the debtor is still permitted to possess the collateral goods even though ownership has been transferred fiduciary-wise to the creditor. This is regulated in Article 1152 of the Civil Code, which states that a guarantee becomes void if the collateral goods remain in the debtor's possession without a valid transfer of ownership rights. This characteristic gives fiduciaries an advantage over other guarantee institutions because it does not hinder the debtor's operational activities (Yudhoyono et al., 2025). A fiduciary guarantee is defined in Article 1 paragraph (1) of Law Number 42 of 1999 concerning Fiduciary Guarantees as the transfer of ownership rights of an object on the basis of trust with the provision that the object remains in the possession of the owner of the object. This guarantee is provided by the debtor to the creditor as a form of security for a specific obligation. As an accessory agreement, the fiduciary guarantee attaches to the principal agreement secured by it, but its existence is not affected by changes or termination of that principal agreement. Pursuant to Article 6 of Law Number 42 of 1999, data on the principal agreement secured by the fiduciary must be stated in the fiduciary guarantee deed to ensure clarity and legality of the legal relationship between the creditor and the debtor.

In Indonesia, guarantee institutions comprise four main categories: pledge (gadai), mortgage rights (hak tanggungan), fiduciary (fidusia), and hypothec (hipotek). Fiduciary is a form of property guarantee resembling a pledge, but with movable objects whether tangible or intangible as the collateral. One advantage of fiduciary guarantees is their applicability to objects not subject to mortgage rights, such as certain buildings, as regulated under Law Number 4 of 1996 concerning Mortgage Rights. A fiduciary guarantee right holds priority status over other creditors and must be registered with the Fiduciary Registration Office to settle specific obligations. Accordingly, fiduciary guarantees provide legal certainty for creditors as well as convenience for debtors in using the collateral object for their operational needs (Badriyah & Marjo, 2024). This certainty needs to be complemented by bank vigilance in verifying applicant identity, since misuse of another person's name in credit applications can undermine the validity of the underlying agreement (Firmanto et al., 2024). Consumer protection also deserves attention as banking services increasingly move into digital channels, which carry risks such as account tampering (Fitrotinisak et al., 2023). Fiduciary guarantees cover rights to movable or immovable objects that cannot be encumbered with a mortgage. Creditors have the right to collect receivables from debtors in accordance with the credit agreement, although this right may be limited under certain conditions pursuant to Article 3 of Law Number 42 of 1999 concerning Fiduciary Guarantees. Such limitations are reasonable considering that trust between creditors and debtors is also shaped by service quality and institutional reputation (Hardyansah & Jahroni, 2023).

Under Article 5 of the Fiduciary Guarantee Law, the names of the parties must be stated in the fiduciary guarantee deed, which must be drawn up before a notary. This deed serves as the legal basis for the creditor to execute its rights over the collateral object should the debtor default. Creditors, or fiduciary recipients, are required to register objects encumbered with a fiduciary guarantee at the Fiduciary Registration Office in accordance with Articles 11, 13, and 15 of Law Number 42 of 1999. This registration process aims to provide legal certainty to creditors regarding their rights over the collateral object. The shift of this registration process into a digital system needs to be balanced with attention to the human side of service, so that efficiency gains do not come at the expense of accuracy or accessibility for the parties involved (Darmawan, 2023). This digitalization also needs to consider older business actors, who may require additional support in adapting to online registration procedures (Darmawan, 2023). After the registration application is submitted, the Fiduciary Registration Office issues a fiduciary guarantee certificate, which is then handed over to the creditor or fiduciary recipient as stipulated in Article 15, paragraph (1) of the same law. This certificate serves as valid proof of the creditor's fiduciary ownership right over the collateral object. Registration of a fiduciary guarantee is a crucial step in ensuring legal certainty for both creditors and debtors, and it grants executory power over the collateral object equivalent to a final and binding court decision (Napitupulu, 2024). In practice, financing companies often employ debt collectors to handle overdue consumer credit payments; however, in some cases, the actions of debt collectors can harm consumers, such as the forced seizure of vehicles on the road.

Debt Collection Practices by Debt Collectors and Their Regulation

Financing companies manage debtor payment delays by applying a number of mechanisms, including penalties for each late payment. Lending companies are obliged to notify debtors of payment due dates. Under certain conditions, if there is an agreement or acknowledgment of default along with voluntary surrender of the vehicle by the debtor, the creditor or leasing company is permitted to repossess the fiduciary vehicle. The collection procedure includes sending a warning letter containing complete information on the number of days the obligation is overdue, the principal, interest, and applicable penalties (Hayatuddin et al., 2024). Collection must be carried out in accordance with the provisions stated in the financing agreement, so that the rights and obligations of both parties remain legally protected. If these requirements are not met, both the debt collector and the creditor who forcibly seizes the vehicle may face legal consequences, including criminal charges. This risk of forced seizure shows why debt collectors' conduct must be guided by ethical principles and professional integrity, so that the collection process does not turn into an act that violates the law (Saktiawan et al., 2021). Such actions also need to be viewed from the perspective of human rights awareness, given that improper collection practices can directly harm debtors as consumers (Hardyansah et al., 2022). As a third party in the collection process, debt collectors are required to carry important documents to prove the legality of their actions, including an identity card, a copy of the fiduciary guarantee certificate, an official assignment letter from the financing company, and a professional certificate in the field of collection issued by a professional certification body registered with the Financial Services Authority (OJK).

Provisions regarding debt collector documents are regulated under OJK Regulation Number 35/POJK.05/2018 concerning the Operation of Financing Company Business, as updated by OJK Regulation Number 7/POJK.05/2022. Financing companies are prohibited from conducting collections through unlawful means, such as coercion, threats of physical or mental harm, or actions that violate social/ethnic/religious norms and demean the dignity of debtors, whether directly or through online media. If a debtor defaults, the financing company is still required to collect in accordance with legal procedures. Collection by debt collectors employed by financing companies must comply with OJK Regulation Number 35/POJK.05/2018, which prohibits intimidating actions, physical or mental threats, and violations of norms of decency and social/ethnic/religious sensitivity in the collection process against debtors (Fahirattunisa et al., 2022). Compliance with these provisions also depends on the competence of the personnel carrying out collection work, since productivity and professionalism in the digital era cannot be separated from the creativity and skill of the individuals involved (Darmawan, 2023). Leasing companies in Indonesia carry out two main types of financing, namely direct finance lease and sale-and-leaseback, which give consumers flexibility in obtaining the capital goods they need. This flexibility also needs to be supported by clear legal protection in the lease agreement itself, so that potential disputes between the parties can be anticipated from the outset (Syariffudin et al., 2025). In Indonesia, a number of leasing companies are registered with the Financial Services Authority, thereby ensuring the security and legitimacy of their operations (Husen & Santoso, 2024). Financing institutions also include credit card issuers that focus on providing financial services to consumers. With this broad scope, financing institutions play a significant role in providing funds and capital goods to the public.

Banks in Indonesia and other countries may use debt collector services to handle problematic credit, but the use of such services must comply with strict rules to protect consumer rights. In Indonesia, there is no specific regulation within the banking legal system that comprehensively governs the limits on the use of debt collectors (Aryanti et al., 2025). This regulatory gap is worth noting given that public interest in using bank services, including Islamic banks, is also influenced by trust in and knowledge of the products offered, which in turn depends on how well banks are perceived to protect their customers (Hardyansah et al., 2023). No law explicitly prohibits banks from using third-party services to collect debts from their clients. As a result, if a criminal act is committed by a debt collector, the bank's legal responsibility toward its client becomes unclear. This lack of clarity also relates to the broader issue of legal certainty in dispute resolution, since debtors need assurance that the same matter will not be repeatedly litigated or used against them across different legal proceedings (Simanjuntak et al., 2026). Bank Indonesia Circular Letter Number 11/10/DASP of 2009 concerning the Operation of Card-Based Payment Instrument Activities provides general guidelines on the collection procedures banks must follow, aimed at ensuring that the collection process is carried out professionally and does not violate consumer rights. Bank Indonesia, as the authority responsible for regulating and supervising the banking sector, has issued policies concerning the operation of card-based payment instrument activities. Article 177, paragraph (5) of Bank Indonesia Circular Letter Number 11/10/DASP of 2009 stipulates that credit card collection may be carried out directly by the card issuer or through an appointed third-party service (Husen & Santoso, 2024). In cases of problematic credit, collection by debt collectors from credit card users experiencing non-performing loans must be carried out in a lawful manner; however, the regulation in the Circular Letter does not provide detailed explanation of actions considered unlawful, thereby creating potential for multiple interpretations and legal ambiguity in its implementation (Bank Indonesia Circular Letter).

Execution of Fiduciary Guarantees Prior to the Constitutional Court's Decision

Before the change brought about by Constitutional Court Decision Number 18/PUU-XVII/2019, the execution of fiduciary guarantees was expressly regulated under Law Number 42 of 1999 concerning Fiduciary Guarantees. Article 15, paragraph (2) of Law Number 42 of 1999 concerning Fiduciary Guarantees granted fiduciary recipients the right to carry out direct execution without going through the courts, based on an executorial title equivalent to a court decision with permanent legal force. This provision was initially intended to make it easier for creditors to execute collateral objects, but in practice it created the potential for violations of debtors' rights by opening the possibility of unilateral execution (Anwar, 2023). This risk of unilateral action illustrates why the resolution of non-performing loans requires a balanced approach that protects the interests of both banks and debtors, rather than favoring one party alone (Hardyansah et al., 2026). In the fiduciary guarantee system, a creditor's right to execute the collateral object is an important aspect of managing credit risk. Sound management of this risk also depends on adequate governance within the lending institution, including in Islamic banking, so that the exercise of execution rights remains consistent with the principle of fairness for all parties (Darmawan, 2026). Article 15, paragraph (1) grants fiduciary recipients the right to sell the fiduciary collateral object directly (parate execution) if the debtor defaults. This right to direct execution needs to be exercised carefully, as default in an agreement can give rise to legal consequences that harm the party being held responsible, as also seen in cases of default in other forms of sale-and-purchase or lease agreements (Aryanto et al., 2023; Anggoro et al., 2024). In cases of consortium credit financing, Article 8 stipulates that a fiduciary grantor may extend credit to more than one fiduciary recipient, allowing for flexible and efficient financing management. In collecting from debtors, financing companies may cooperate with third parties. Creditors have the right to receive payment from debtors in accordance with the agreed amount of receivables, although this right does not apply in certain situations as regulated under Article 3 of Law Number 42 of 1999 concerning Fiduciary Guarantees.

The Constitutional Court's Decision and Changes to the Execution Mechanism

Constitutional Court Decision Number 18/PUU-XVII/2019 had a significant impact on the execution of fiduciary guarantees in Indonesia, particularly regarding the balance of rights between creditors and debtors. The Constitutional Court ruled that Article 15, paragraph (2) of Law Number 42 of 1999 concerning Fiduciary Guarantees has no binding legal force. This decision states that the provision equating fiduciary guarantees with the force of a final and binding court decision applies only where there is an agreement explicitly stipulating default. In the absence of an agreement stipulating default, the provision is considered inconsistent with the 1945 Constitution of the Republic of Indonesia. In the course of reviewing this provision, the Constitutional Court found an imbalance in legal protection between creditors and debtors. Debtors' rights, which should have received legal protection equal to that of creditors, were deemed to have been disregarded by this provision (Siregar & Siregar, 2025). This kind of imbalance is not unique to fiduciary execution; a similar concern arises in bankruptcy proceedings, where the position of concurrent creditors and the limits on protecting their rights also require careful attention from the curator managing the debtor's assets (Prabowo et al., 2024). The Constitutional Court's decision affirms that the right to direct execution cannot be exercised if there is no agreement on default or if the debtor does not voluntarily surrender the collateral object. Accordingly, this decision places clear limits on creditors' authority to execute fiduciary guarantees, while also affirming the importance of the principles of agreement and good faith in every implementation of a financing contract. Good faith of this kind is consistent with the broader principle that financial institutions, including Islamic banks, are expected to align their practices with ethical standards and responsible conduct toward the parties they serve (Putra et al., 2022).

The Constitutional Court also highlighted the ambiguity of the norm in Article 15, paragraph (3) of Law Number 42 of 1999 concerning Fiduciary Guarantees, particularly regarding the definition and determination of default. This ambiguity created a legal loophole that allowed creditors to unilaterally determine a debtor's default and sell the fiduciary collateral object without court oversight. The Constitutional Court's decision affirms the need for clearer regulation and court supervision procedures to ensure that fiduciary execution is carried out fairly and protects debtors' rights (Ermita & Sumaryanto, 2024). This need for legal clarity is also relevant to other areas of consumer protection, such as ensuring that customers' interests remain secured amid the growing complexity of financial transactions, including cross-border payments (Rahman et al., 2024). The law's role in this regard is not only to regulate execution mechanisms but also to guarantee the overall protection and security of bank customers as financial service users (Sulistiono et al., 2024). In response, the Constitutional Court ruled that the application of the executorial title in the Fiduciary Guarantee Law must be revised. Fiduciary guarantee certificates no longer include the phrase "For Justice Based on the One Almighty God," and the concept of executory power that previously allowed creditors to execute collateral objects without court assistance has been abolished. This decision affirms the necessity of court involvement in every fiduciary execution, thereby providing greater legal certainty for debtors and limiting the potential for abuse of authority by creditors.

Implications of the Constitutional Court's Decision for Financing Practices

A fundamental change in the execution of fiduciary guarantees occurred after the Constitutional Court eliminated the concept of executorial title that had previously attached to fiduciary guarantee certificates. With this concept abolished, the execution of fiduciary guarantees can no longer be carried out directly by creditors without court involvement. Creditors, as holders of fiduciary guarantee certificates, no longer have the authority to unilaterally execute the collateral object (Tambuann, 2024). The court has now become an institution that plays an important role in providing legal protection for both creditors and debtors. Execution of the fiduciary collateral object must go through court procedures equivalent to the enforcement of a judge's decision that has obtained permanent legal force. Steps such as filing an execution request with the court, obtaining a judge's ruling, seizing the object of execution, and selling the object of execution are now prerequisites that must be fulfilled. Filing such a request through the court is not always straightforward, since parties seeking legal remedy often face practical obstacles that can slow down the process of asserting their rights (Hardyansah et al., 2021). This new procedure emphasizes the court's role in every fiduciary execution, thereby providing greater legal certainty for both debtors and creditors while limiting the potential for abuse of power by creditors. If a case involves a debtor's objection to surrendering the fiduciary collateral object and there is no agreement on the occurrence of default, parate execution can no longer be applied. As a result, one of the main advantages of fiduciary guarantees ease of execution is lost. In situations like this, an alternative approach that emphasizes restorative outcomes over purely punitive measures could help resolve creditor-debtor disputes more proportionately (Darmawan & Negara, 2023). Non-litigation mechanisms, such as mediation grounded in local dispute-resolution practices, may also offer a faster and less burdensome path for settling disagreements between creditors and debtors (Futriyah et al., 2023).

Constitutional Court Decision Number 18/PUU-XVII/2019 concerning the execution of fiduciary guarantees provides new direction for financing law practices in Indonesia. This decision carries important implications for the parties involved in fiduciary credit schemes. Both debtors and financing companies must exercise greater caution in extending and receiving credit. To minimize the risk of non-performing loans that could slow down financial turnover, creditors are required to ensure that fiduciary guarantees have legal clarity and have been officially registered (Nasution et al., 2025). The Constitutional Court's decision reinforces the procedure for direct execution of fiduciary guarantees by creditors, provided it is accompanied by an agreement and does not conflict with the principle of fairness (Jadidah, 2022). Creditors are also expected to exercise caution in transferring their credit to other parties, given the potential conflicts and legal consequences that may arise. Prudence and compliance with legal procedures are the main keys for creditors in managing fiduciary assets and rights so as not to create disputes that harm either party. In credit lending practice, the risk of loss is an aspect that cannot be ignored by creditors because it directly affects the financial stability of financing institutions. Loss risk arises as a direct or indirect consequence of a debtor's default, whether on the principal or the interest of the loan, and if not properly mitigated, will disrupt the bank's overall soundness (Rochendi, 2020). Weak credit risk management can increase the ratio of non-performing loans, which in turn affects the financial stability of the bank (Putra, 2015).

Implementation Challenges and Efforts to Improve the Fiduciary Guarantee System

Although fiduciary guarantee regulation aims to protect debtors' rights, its implementation on the ground still faces a number of significant obstacles. Protection of debtors continues to encounter difficulties in practice. Common problems include the failure to register fiduciary objects limited only to the drafting of the original deed negotiations that burden the debtor, particularly during the execution of fiduciary objects, and a lack of legal education for the public regarding fiduciary certificates. Public legal awareness of credit agreements, especially those conducted online, still needs to be strengthened so that debtors truly understand their rights and obligations from a consumer protection standpoint (Hardyansah et al., 2022). Improved outreach, legal education, and procedural compliance in fiduciary registration and execution are crucial steps to ensure balanced legal protection between creditors and debtors (Yudhoyono et al., 2025). This procedural compliance also extends to the validity of authorization documents used by the parties, since a power of attorney that does not meet legal requirements may create further disputes in its execution (Putri et al., 2026). Although Law Number 42 of 1999 concerning Fiduciary Guarantees provides a clear legal framework, its implementation in the field faces various obstacles that show fiduciary guarantee implementation remains far from optimal. Efforts to improve the system and strengthen oversight are needed so that the goal of legal protection for both creditors and debtors can be optimally achieved.

The complexity of fiduciary credit collection shows that conflict and tension remain significant issues. The interaction between vehicle owners and financing institutions illustrates the active participation of financing institutions in supporting the dynamics of motor vehicle credit. This dynamic also touches on the position of creditors when a debtor is declared bankrupt, where the constraints on protecting creditors' rights and the responsibilities of the curator in managing the debtor's assets become important considerations (Prabowo et al., 2024). Clarity regarding the conditions for default and execution procedures is important to ensure that fiduciary guarantees continue to function effectively as a legal instrument that protects creditors' rights while maintaining legal certainty for debtors (Setiono et al., 2025). This clarity should be guided by the principles of propriety and fairness, particularly in determining compensation when a debtor is found to have breached the agreement (Wahyudi et al., 2026). Oversight of and compliance with regulations are key to ensuring that debt collection through debt collectors is conducted ethically, transparently, and in a manner that continues to protect debtors' rights. This is regulated under Bank Indonesia Regulation Number 11/11/PBI/2009, as refined by PBI Number 14/2/PBI/2012 and Bank Indonesia Circular Letter Number 11/10/DASP of 2009. The manner in which debt collectors carry out their duties in the field is also inseparable from their level of engagement and commitment to their work, which in turn affects how professionally and ethically their tasks are carried out (Darmawan & Mardikaningsih, 2022). Although debt collectors can play a role in supporting credit collection, this practice must still comply with regulations and protect consumer rights so as not to give rise to legal violations or conflicts with debtors.

The development of regulations concerning fiduciary guarantee institutions shows significant progress in Indonesia's financing legal system. Law Number 42 of 1999 is an important milestone in the establishment and growth of this institution, which plays an increasingly crucial role in supporting financing, particularly in vehicle credit. This growth needs to be supported by strong institutional capacity within financing companies, so that the human resources managing fiduciary guarantee practices can adapt to changing conditions and maintain the industry's competitiveness in the long run (Mardikaningsih & Darmawan, 2026). This novelty is also reflected in the application of the law, which provides a clear legal framework for financing practices while protecting the legal interests of creditors and debtors. A well-managed operational chain within the vehicle financing industry is also important to consider, given that operational performance and social responsibility toward consumers cannot be separated from one another (Barzani et al., 2022). With more structured regulation in place, fiduciary practices in Indonesia are expected to operate more transparently and fairly for all parties involved.

CONCLUSION

Fiduciary guarantees play an important role in motor vehicle financing, providing legal protection for creditors and flexibility for debtors in possessing collateral goods. Financing companies as non-bank financial institutions contribute significantly to the provision of funds through consumer eligibility assessment mechanisms and guarantee agreements as security instruments.

The use of debt collectors in recovering non-performing loans is regulated through rules that require document completeness and prohibit intimidating or degrading practices toward debtors. The absence of specific regulations regarding the limits of debt collector usage creates ambiguity in legal responsibility, while general collection guidelines without detailed explanations have the potential to cause multiple interpretations.

The Constitutional Court Decision fundamentally changes the fiduciary execution mechanism by removing the executive title and stating that direct execution is only valid when default is based on clear agreement. The execution of collateral objects must now go through the court via application procedures, judge's decisions, seizure, and the sale of execution objects.

The implementation of fiduciaries still faces obstacles in the form of unregistered collateral objects, burdensome negotiations for debtors, and a lack of legal education. Changes to the execution procedure remove the advantage of ease of execution, which has the potential to slow down dispute resolution; thus, clarity on the conditions of default and execution procedures is crucial so that fiduciaries remain effective in protecting creditor rights and debtor legal certainty.

Strengthening the regulation of debt collector usage is needed by formulating more detailed and binding provisions, including strict sanctions and OJK monitoring mechanisms. Financing companies are required to ensure that debt collectors possess professional certification registered with the OJK and comply with all applicable regulations.

The government needs to improve socialization and public legal education regarding rights and obligations in fiduciary agreements as well as the importance of registering collateral objects through cross-institutional cooperation. Procedural compliance in registration and execution must be a priority to guarantee balanced legal protection.

Legislation needs to follow up on the Constitutional Court Decision by revising fiduciary execution provisions to make them clearer and more equitable, regulating execution procedures that involve the court as well as certainty in determining default. Further research is needed to evaluate the impact of the decision's implementation on financing practices and the effectiveness of fiduciary guarantees as a legal instrument.

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