



## The Urgency of Reconstructing the Regulation of *Parate Execution* of Fiduciary Security Objects

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### **Abstract**

This study aims to analyze and identify the urgency of reconstructing regulations on parate execution of fiduciary collateral, particularly after Constitutional Court Decision Number 18/PUU-XVII/2019, from philosophical, juridical, and sociological perspectives. The method used in this study is normative legal research using a legislative approach, a case approach, and a conceptual approach. Based on an in-depth philosophical analysis, it was found that philosophically, the urgency of reconstructing the regulations on parate execution of fiduciary collateral arises from the need for a sense of justice for the parties and legal certainty for creditors to execute collateral objects quickly and efficiently in the event of default. Juridically, after Constitutional Court Decision Number 18/PUU-XVII/2019, there has been a lack of clarity or vagueness (*vague normen*) in the norms, due to the requirement of a "default agreement" that must exist before execution can take place. Sociologically, the ambiguity of the regulations on parate execution has resulted in inconsistent practices in courts regarding the execution of fiduciary collateral.

**Keywords:** *Parate Execution; Fiduciary Guarantee; Reconstruction*

### **Introduction**

The growth of economic activity will have an impact on the need for sources of funds to finance business activities. The community, as business actors, will continue to seek the most appropriate sources of funds according to their needs.<sup>1</sup> One of the sources of funding needed to meet the needs of the business

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<sup>1</sup> Endang Prasetyawati, "Legal Protection for Parties in Consumer Financing," *DiH: Journal of Law* 8, no. 16 (2012), <https://doi.org/10.30996/dih.v8i16.267>.

world is obtained through borrowing and lending activities through credit facilities.<sup>2</sup> The provision of credit is considered a very strategic part of connecting parties in need of funds with financial institutions as fund providers.<sup>3</sup> In this case, the function of banks as financial intermediary institutions (*financial intermediary institution*) is crucial to the success of community economic development.<sup>4</sup>

Based on the World Bank's *Ease of Doing Business (EoDB)* report for 2020, Indonesia ranks 73rd out of 190 countries assessed in the ease of doing business index. This index shows that countries with a good index score will be considered investment-friendly countries.<sup>5</sup> Guarantee law, which falls under the field of economic law (*the economic law*),<sup>6</sup> has the function of supporting economic activities and development activities in general.<sup>7</sup> The role of law in development is to ensure that the changes resulting from development occur in an orderly manner.<sup>8</sup>

Fiduciary guarantees were known and enforced in Roman society. Fiduciary guarantees arose in Roman society due to the community's need for guarantee laws.<sup>9</sup> Regulations regarding fiduciary guarantees in Indonesia are stipulated in Law Number 42 of 1999 concerning Fiduciary Guarantees, as explained by experts, this is an extension due to the many shortcomings of pawnshops (*pand*) in meeting the needs of society and their inability to keep up with developments in society.<sup>10</sup>

One of the characteristics of fiduciary guarantees is the ease of execution, namely if the fiduciary grantor breaches the agreement as stipulated in the Explanation of Article 15 paragraph (3) of the Fiduciary Guarantee Law. The Fiduciary Guarantee Law provides ease for creditors who are recipients of fiduciary guarantees in their efforts to settle debts when debtors breach the agreement through parate execution institutions. However, with the issuance of Constitutional Court (MK) Decision Number 18/PUU-XVII/2019, which in its decision states that Article 15 paragraph (2) of the Fiduciary Guarantee Law, insofar as the phrase "enforceability" and the phrase "equivalent to a court decision that has permanent legal force" are contrary to the Constitution of the Republic of Indonesia of 1945 and has no binding legal force. Based on Constitutional Court Decision Number 18/PUU-XVII/2019, settlement through parate execution may be carried out if the debtor as the fiduciary grantor acknowledges that they have committed a breach of contract and the creditor as the fiduciary recipient accepts the fiduciary object from the debtor fiduciary grantor who willingly surrenders it.<sup>11</sup>

A philosophical problem has arisen regarding the unfairness to creditors who have extended credit or consumer financing to debtors. Constitutional Court Decision Number 18/PUU-XVII/2019 has eliminated the existence of parate execution in fiduciary. The executory nature of fiduciary guarantee certificates, which served as a means for creditors to carry out direct execution if the debtor defaulted, has changed to conditional execution based on the debtor's acknowledgment and willingness. Theoretically,

<sup>2</sup> Krisnadi Nasution, "The Position of Creditors on Distributed Property," *Mimbar Keadilan* 12, no. 2 (2019): 167, <https://doi.org/10.30996/mk.v12i2.2383>.

<sup>3</sup> Ervira Sekar Langit and Erny Herlin Setyorini, "Legal Protection for Defaulting Debtors in Home Loan Agreements Secured by Mortgage Rights," *Bureaucracy Journal: Indonesia Journal of Law and Social-Political Governance* 2, no. 2 (2022): 777–93, <https://doi.org/10.53363/bureau.v2i2.107>.

<sup>4</sup> Made Warka and Erie Hariyanto, "The Position of Islamic Banks in the Banking System in Indonesia," *IQTISHADIA: Journal of Islamic Economics & Banking* 3, no. 2 (2016): 235, <https://doi.org/10.19105/iqtishadia.v3i2.1076>.

<sup>5</sup> World Bank, "Easy Doing Business Archive," World Bank, 2024, <https://archive.doingbusiness.org/en/data/exploreconomies/indonesia>.

<sup>6</sup> Sri Soedewi Maschoen Sofwan, *Law of Security in Indonesia, Principles of Security Law and Personal Security* (Yogyakarta: Liberti, 1980). 33

<sup>7</sup> Putri Ayi Winarsasi, *Security Law in Indonesia, (Development of Electronic Security Registration)* (Surabaya: Jakad Media Publishing, 2020). 7

<sup>8</sup> Mochtar Kusumaatmadja, *Legal Concepts in Development* (Bandung: Alumni, 2002). 19

<sup>9</sup> Rumawi Rumawi et al., "Parate Executie in Fiduciary According to the Ratio Decidendi of the Constitutional Court Decision," *Jurnal Konstitusi* 19, no. 3 (2022): 554–79, <https://doi.org/10.31078/jk1933>.

<sup>10</sup> Salim HS, *The Development of Security Law in Indonesia* (Jakarta: PT. Raja Grafindo Persada, 2004). 57

<sup>11</sup> Nabil Luthfi Abyan and Wardani Rizkianti, "Creditor's Responsibility for Forced Withdrawal of Fiduciary Objects After Constitutional Court Decision," *Jurnal Ius Constituendum* 9, no. 2019 (2024): 22–35.

the regulation on parate execution as stipulated in Article 15 paragraph (2) of the Fiduciary Guarantee Law, which is the basis for the existence of executory power, was subsequently declared unconstitutional by the Constitutional Court's Judicial Review. This theoretically gives rise to incomplete (*uncompletely norm*) and vague (*vage normen*) norms governing parate execution in fiduciary guarantees.

## Method

This study used a normative legal research method by analyzing literature sources and legal principles, including ideal elements that form legal norms through legal philosophy and factual elements that form a particular legal order. This study examines the systematic structure of law by identifying fundamental concepts such as legal subjects, rights and obligations, and legal events. Legal research is a method for discovering legal rules, principles, and doctrines to resolve relevant legal issues.<sup>12</sup> The purpose of this study is to analyze and find the urgency of reconstructing the regulation of parate execution of fiduciary objects after Constitutional Court Decision Number 18/PUU-XVII/2019, from philosophical, juridical, and sociological aspects. The approaches used in this study are the legislative approach, case approach, and conceptual approach.<sup>13</sup>

## Results and Discussion

### 1. Fiduciary Guarantees as a Means of Credit Protection

Credit is the most important source of financing in modern business activities. It is rare for a business activity to rely entirely on internal financing in the form of capital participation or *self-financing*. For banks, credit is also the largest source of income and profit, as well as the main cause of major problems for banks in running their businesses.<sup>14</sup> Credit is one of the main activities of banking because the largest income from banking comes from credit.<sup>15</sup> In lending, there are many regulations that govern and restrict it, because banking is the business activity that is most regulated and restricted by legislation. With such conditions, legislation is one of the main elements of lending activities.<sup>16</sup>

Credit means trust,<sup>17</sup> obtaining credit facilities means gaining trust. Credit and trust are like two sides of the same coin that cannot be separated.<sup>18</sup> This is an element that must be upheld as a common thread throughout the philosophy of credit in its true sense, regardless of its form, origin, or recipient.<sup>19</sup> In banking practice, this principle of prudence in lending is known as the *five Cs of credit analysis*, namely: *Character, Capacity, Capital, Collateral, and Condition of Economy*.<sup>20</sup>

The assessment of *collateral* is an important aspect of lending. Collateral in the form of property is a superior means of security when granting loans to prospective borrowers. Various risks may arise and cause losses to banks in the course of their business activities, even leading to bankruptcy, which will

<sup>12</sup> Peter Mahmud Marzuki, *Legal Research* (Jakarta: Kencana Prenada Media Group, 2009). 35

<sup>13</sup> Irwansyah and Ahsan Yunus, *Legal Research: Method Choices & Article Writing Practices, Revised Edition* (Yogyakarta: Mirra Buana Media, 2024). 133

<sup>14</sup> Rudyanti Dorotea Tobing, *Credit Agreement Law: The Concept of Syndicated Credit Agreements Based on Economic Democracy* (Yogyakarta: Laksbang Grafika, 2014). 14

<sup>15</sup> Muhamad Djumhana, *Banking Law in Indonesia* (Bandung: Citra Aditya Bakti, 2006). 471

<sup>16</sup> Hermansyah, *Indonesian National Banking Law* (Jakarta: Prenada Media, 2005). 56

<sup>17</sup> Munir Fuady, *Contemporary Credit Law* (Bandung: Citra Aditya Bakti, 1996). 5

<sup>18</sup> Irham Fahmi, *Banks & Other Financial Institutions: Theory and Application* (Bandung: Alfabeta, 2021). 90

<sup>19</sup> Tjiptoadinugroho, *Banking Credit Issues: Understanding, Analysis, and Guidance* (Jakarta: Pradnya Paramita, 1994). 14

<sup>20</sup> Irham Fahmi, *Banks & Other Financial Institutions: Theory and Application*. 90

ultimately have an impact on the country's economy as a whole.<sup>21</sup> The assessment of *collateral* is an important aspect of lending. Collateral in the form of property is a superior means of security when granting loans to prospective borrowers.

## 2. Parate Execution as an Effort to Accelerate the Fulfillment of Creditors' Rights

The legal principles that determine and regulate how to exercise the rights and obligations stipulated in substantive civil law are regulated in civil procedural law.<sup>22</sup> In this case, it regulates how to ensure compliance with substantive civil law through a judge. The claim for rights in this case is an action aimed at obtaining legal protection provided by the court to prevent *eigenrichting* or vigilante justice.<sup>23</sup> Self-judgment or unilateral action or *eigenrichting* is nothing more than the exercise of rights according to one's own will in an arbitrary manner, without the consent of other interested parties. In essence, this act of self-judgment is the imposition of sanctions by individuals.<sup>24</sup>

The judge's next task after examining the evidence submitted by the parties is to make or pass a decision that has legal consequences for the other party. A judge's decision is a statement by a judge as a state official who is authorized to do so, pronounced in court and aimed at ending or resolving a case or dispute between the parties.<sup>25</sup> Article 2 paragraph (1) of Law Number 48 of 2009 concerning Judicial Authority stipulates that the formulation of a decision in all courts in Indonesia must include a heading or preamble at the top that reads "*In the Name of Justice Based on Belief in One God*". This heading gives the decision executory power, in other words, so that the decision can be executed.<sup>26</sup> If this heading is not included in a court decision, the judge cannot implement or execute the decision.<sup>27</sup>

In addition to enforcement related to court decisions, there is also enforcement related to collateral law. Enforcement against collateral is the exercise of the rights of the creditor holding the collateral against the collateral by selling the collateral if the debtor defaults or fails to perform.<sup>28</sup> The regulation on enforcement specifically related to the exercise of security rights gives creditors the special right to sell the collateral on their own authority if the debtor defaults. This method of enforcement is called parate enforcement. The regulation of parate execution as a means of fulfilling the rights of creditors to sell collateral objects without the need to obtain a court order is found in the pledge guarantee regulated in Article 1155 of the Civil Code, Mortgage, Lien, and Fiduciary Guarantee. The execution is a means of collecting the debt from the debtor due to the debtor's breach of contract.

Parate execution in the field of collateral law is interpreted by experts as carrying out or performing oneself.<sup>29</sup> Parate execution is a "legal institution used by creditors as an effort to collect their receivables and is therefore similar to an execution."<sup>30</sup> Parate execution is carrying out or taking what is rightfully theirs without the intervention of a judge.<sup>31</sup> Simply put, parate execution is an execution carried out by either the first mortgage holder with *beding van eigenmachtige verkoop* or the pawn holder, because the debtor as the mortgagee and pawn giver cannot pay the principal debt or interest.<sup>32</sup> Parate execution,

<sup>21</sup> A Fauziana and R Apriani, "The Application of Risk Management in Credit Provision with Educator Certificates as Collateral During the Covid-19 Pandemic," *Repertorium: Journal of Notarial Law* 10, no. 1 (2021): 79, <https://doi.org/10.28946/rpt.v10i1.1091>.

<sup>22</sup> Retno Wulan Sutantio and Iskandar, *Civil Procedure Law in Theory and Practice* (Bandung: Alumni, 1983). 2

<sup>23</sup> Sudikno Mertokusumo, *Indonesian Civil Procedure Law* (Yogyakarta: Liberty, 1985). 2

<sup>24</sup> Sudikno Mertokusumo, *Understanding Law (An Introduction)* (Yogyakarta: Liberty, 1986). 21

<sup>25</sup> Yahya Harahap, *Civil Procedure Law* (Jakarta: Sinar Grafika, 2005). 797

<sup>26</sup> Lilik Mulyadi, *Judicial Decisions in Indonesian Procedural Law: Theory, Practice, Techniques, and Issues* (Bandung: Citra Aditya Bakti, 2009). 161

<sup>27</sup> Sudikno Mertokusumo, *Indonesian Civil Procedure Law*. 182

<sup>28</sup> Johannes Ibahim Kosasih, Anak Agung Istri Agung, and Anak Agung Sagung Laksmi Dewi, *Parate Execution of Fiduciary: The Polemic of Legal Certainty and Business* (Bandung: Mandar Maju, 2021). 140

<sup>29</sup> Rumawi, *Parate Executie Security Law in the Auction of Collateral Objects* (Yogyakarta: Bakbuk, 2021). 58

<sup>30</sup> J Satrio, *Parate Execution as a Means of Overcoming Bad Debt* (Bandung: Citra Aditya Bakti, 1993). 2

<sup>31</sup> Mariam Darus Badruzaman, *Chapters on Mortgages* (Bandung: Citra Aditya Bakti, 1991). 65

<sup>32</sup> Tartib, "Notes on Parate Executie," *Varia Peradilan Magazine*, 1996. 149

particularly in the case of collateral rights, allows the holder of collateral rights to sell the collateral directly without the need for the consent of the owner of the collateral and without the need to request an execution order from the court.<sup>33</sup> Through this parate execution institution, the process of selling collateral objects through public auction can be facilitated, allowing creditors to obtain repayment of their debts more quickly.

### 3. The Urgency of Reconstructing the Regulation of Parate Execution of Fiduciary Collateral

#### Philosophical Urgency

The Fiduciary Security Act (UUJF) initially positioned the fiduciary certificate as an executory title that allowed creditors to execute directly without state intervention. However, Constitutional Court Decision Number 18/PUU-XVII/2019 shifted this philosophical foundation by placing the state as the party responsible for ensuring that enforcement does not violate the principles of justice, propriety, and protection of debtors. This shift indicates that the legitimacy of enforcement no longer relies solely on agreements and certificates, but on constitutional principles of protection of fundamental rights, particularly the right to security and protection from arbitrary actions. Creditors' rights have undergone a change towards a balance between legal certainty and substantive justice.

Following Constitutional Court Decision Number 18/PUU-XVII/2019, parate execution of fiduciary guarantees, which was initially a *private enforcement* measure, has become a semi-public measure, particularly in the case of parate execution without the consent of the debtor. This is because the validity of parate execution becomes dependent on state legitimacy through court proceedings when disputes arise. Philosophically, this raises an identity problem for creditors: can fiduciary guarantees still be viewed as a *self-help remedy* for creditors, or have they changed into a public mechanism subject to the principles of *due process of law*? If execution must always go through a process of proof, then the material character of fiduciary guarantees as *droit de suite* and *droit de preference* becomes functionally degraded. Consequently, creditors' confidence in the effectiveness of fiduciary guarantees may weaken, which philosophically indicates a crisis of purpose (teleological) of the UUJF. Thus, the main problem after Constitutional Court Decision Number 18/PUU-XVII/2019 is not only a technical matter of execution, but also a paradigm shift that has not been systematically accommodated in the concept of fiduciary guarantees itself. Philosophically, this means that regulations must formulate narrow, measurable, and functional boundaries rather than prohibitions that sacrifice the purpose of the UUJF as a credit liquidity tool.<sup>34</sup>

Philosophically, there needs to be a paradigm shift from the dichotomy of private enforcement actions and semi-public enforcement actions so that parate enforcement remains recognized as a fast and efficient mechanism when clear objective conditions are met and/or there is written acknowledgment of default. If these conditions are not met or the debtor expressly objects, the mechanism must switch to a simple court-based enforcement process for execution. This approach philosophically reconciles two fundamental values: creditors obtain certainty of enforcement to recover their receivables, while debtors still obtain legal protection in the enforcement process. Internal legal protection is legal protection created by the parties themselves when drafting an agreement. At the stage of drafting the clauses in the agreement, both parties set out various aspects that reflect their interests so that they can be accommodated and agreed upon by both parties.<sup>35</sup>

<sup>33</sup> Purnama Tioria Sianturi, *Legal Protection for Buyers of Immovable Collateral Through Auctions* (Jakarta: Mandar Maju, 2008), 79

<sup>34</sup> Natalia Karelina, Lastuti Abubakar, and Tri Handayani, "Legal Implications of Constitutional Court Decision Number 18/Puu/Xvii/2019 and Its Confirmation in Constitutional Court Decision Number 2/Puu-Xix/2021 on Fiduciary Collateral Execution and the Formulation of Agreement Clauses," *Acta Diurnal Journal of Notarial Law and PPAT* 5, no. 2 (2022): 187–201, <https://doi.org/10.23920/acta.v5i2.738>.

<sup>35</sup> Moch. Isaeni, *Introduction to Property Security Law* (Surabaya: Revka Petra Media, 2016), 159

The law as an instrument works to provide legal protection to the weaker party, especially in debt agreements followed by fiduciary guarantee agreements. The creditor has a strong position in the debt agreement at the pre-contractual and contractual stages, but at the post-contractual stage, namely during the implementation of the agreement, the creditor is in a weak position and runs the risk of not recovering their receivables. Therefore, a guarantee institution is needed as a safeguard for loans that have been granted.<sup>36</sup> The urgency of reconstructing the regulation of parate execution of fiduciary guarantees arises from the need for legal certainty for creditors. Effective and clear regulations on the parate execution of fiduciary guarantees play a very strategic role in supporting national economic development.

### Legal Urgency

The regulation on parate execution as stipulated in Article 15 paragraph (2) of the UUJF, which forms the basis for the existence of executory power, was subsequently declared unconstitutional by the Constitutional Court, giving rise to a legal problem regarding the authority to carry out parate execution on fiduciary collateral when the debtor defaults. Constitutional Court Decision Number 18/PUU-XVII/2019 has had a major impact on the Indonesian property security legal system, including:

- a. Changing the character of fiduciary guarantee certificates from being directly enforceable to being conditional upon the debtor's recognition and willingness;
- b. Shifting the balance of legal standing from creditor dominance to debtor protection;
- c. Creating legal uncertainty, as the limits of debtor recognition and disputes are not explained normatively;
- d. Creating an additional burden on the courts, as almost every dispute over the execution of fiduciary guarantees will require an application to the court.

The provisions on parate execution as stipulated in Article 15 paragraph (2) of the Fiduciary Guarantee Law, which form the basis for the existence of executory power, were subsequently declared unconstitutional by the Constitutional Court, thereby theoretically giving rise to incomplete (*uncompletely norm*) and vague (*vague normen*) norms governing parate execution on fiduciary guarantees. Constitutional Court Decision Number 18/PUU-XVII/2019 confirms that parate execution can only be carried out if there is an agreement regarding default between the creditor and the debtor, and the debtor acknowledges that a default has occurred.

Constitutional Court Decision Number 18/PUU-XVII/2019 emphasizes that parate execution can only be carried out if there is an agreement regarding default between the creditor and the debtor, and the debtor acknowledges that a default has occurred. Legally, this provision causes uncertainty because the previous UUJF did not regulate the mechanism or form of a "default agreement" that must exist before execution. Since Constitutional Court Decision Number 18/PUU-XVII/2019 came into effect, the government has not revised the UUJF in relation to its enforcement, nor has it issued implementing regulations that accommodate the new interpretation of Article 15 of the UUJF. This situation creates a normative conflict between the law, which still grants direct enforcement authority, and the constitutional ruling, which limits that authority. The absence of technical regulations has led law enforcement officials, notaries, financing companies, and courts to apply different standards in determining the validity of enforcement. As a result, there is legal uncertainty in the enforcement process, the potential for increased disputes, and a lack of synchronization with the national enforcement legal system, which requires a judicial mechanism for determining enforcement.

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<sup>36</sup> Benny Krestian Heriawanto, "The Execution of Fiduciary Collateral Based on Executorial Title," *Legality: Scientific Journal of Law* 27, no. 1 (2019): 54, <https://doi.org/10.22219/jihl.v27i1.8958>. 62

## Sociological Urgency

Prior to Constitutional Court Decision Number 18/PUU-XVII/2019, fiduciary guarantee certificates were considered to have the same executory power as court decisions, allowing creditors to execute objects without the involvement of judicial institutions. Constitutional Court decisions are final and binding *erga omnes*, meaning they immediately acquire permanent legal force upon announcement and must be obeyed by everyone, including state institutions, the government, and the general public.<sup>37</sup> However, the implementation of Constitutional Court decisions is often hampered by aspects of enforceability, where there is no executing agency that can directly enforce the implementation of a decision if the obligated party refuses to comply. The absence of clear sanctions and an institution tasked with executing Constitutional Court decisions has led to legal uncertainty and low compliance with constitutional decisions among officials.<sup>38</sup>

The issuance of Constitutional Court Decision Number 18/PUU-XVII/2019 without further regulations on how to execute fiduciary guarantees through separate execution has created uncertainty in the execution procedure, how long the execution request process in court will take, and what documents are required in the execution request. Following Constitutional Court Decision Number 18/PUU-XVII/2019, judicial practice in various District Courts (e.g., Bogor District Court, Medan District Court, Surabaya District Court) shows that judges generally apply a relatively uniform examination pattern: examining the existence of default through evidence of arrears, declaring the validity of the agreement and fiduciary certificate, and then issuing an execution order if the debtor is proven to have refused to surrender the object. The court also orders standard enforcement measures, namely *aanmaning* (warning), executory seizure (*conservatory/executory attachment*), and then sale through auction. In several rulings, judges have stated that the act of forced repossession by *debt collectors* without the debtor's consent and without a court order constitutes an unlawful act, thereby obligating the creditor to pay compensation.

## Conclusion

The urgency of reconstructing the regulation of parate execution of fiduciary guarantees philosophically arises from the need for a sense of justice for the parties and legal certainty for creditors to execute collateral objects quickly and efficiently in the event of default. Effective and clear regulations on parate execution of fiduciary guarantees play a very strategic role in supporting national economic development. Juridically, Constitutional Court Decision Number 18/PUU-XVII/2019 has created unclear or *vague norms*, because the previous FSA did not regulate the mechanism or form of a "default agreement" that must exist before execution. Sociologically, the ambiguity of the regulations on parate execution has resulted in inconsistent practices in courts regarding the execution of fiduciary collateral. It has also had an impact on economic activities in society in the form of weakened business activities and disruption of the business climate in the financial sector that uses fiduciary collateral.

## References

Abyan, Nabil Luthfi, and Wardani Rizkianti. "Creditor's Responsibility for Forced Withdrawal of Fiduciary Objects After Constitutional Court Decision." *Jurnal Ius Constituendum* 9, no. 2019 (2024): 22–35.

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<sup>37</sup> M. Agus Maulidi, "Questioning the Execution Power of Final and Binding Decisions of the Constitutional Court," *Jurnal Konstitusi* 16, no. 2 (2019): 339, <https://doi.org/10.31078/jk1627>.

<sup>38</sup> Fadly Ikhsan Pradana and Wicipto Setiadi, "Constitutional Court Decisions That Are Not Implemented in the Review of Laws from the Perspective of the Erga Omnes Principle (Analysis of Constitutional Court Decision Number 1/PUU-XI/2013)," *Indonesian State Law Review (ISLRev)* 3, no. 2 (2021): 77–88, <https://doi.org/https://doi.org/10.15294/islrev.v3i2.45660>.

- Badruzaman, Mariam Darus. *Chapters on Mortgages*. Bandung: Citra Aditya Bakti, 1991.
- World Bank. "Easy Doing Business Archive." World Bank, 2024. <https://archive.doingbusiness.org/en/data/exploreconomies/indonesia>.
- Fauziana, A, and R Apriani. "The Application of Risk Management in Credit Provision with Educator Certificates as Collateral During the Covid-19 Pandemic." *Repertorium: Scientific Journal of Notarial Law* 10, no. 1 (2021): 79. <https://doi.org/10.28946/rpt.v10i1.1091>.
- Fuady, Munir. *Contemporary Credit Law*. Bandung: Citra Aditya Bakti, 1996.
- Heriawanto, Benny Krestian. "The Implementation of Fiduciary Collateral Execution Based on Executorial Title." *Legality: Scientific Journal of Law* 27, no. 1 (2019): 54. <https://doi.org/10.22219/jihl.v27i1.8958>.
- Hermansyah. *Indonesian National Banking Law*. Jakarta: Prenada Media, 2005.
- HS, Salim. *The Development of Security Law in Indonesia*. Jakarta: PT. Raja Grafindo Persada, 2004.
- Irham Fahmi. *Banks & Other Financial Institutions: Theory and Application*. Bandung: Alfabeta, 2021.
- Irwansyah, and Ahsan Yunus. *Legal Research: Method Selection & Article Writing Practice, Revised Edition*. Yogyakarta: Mirra Buana Media, 2024.
- Isnaeni, Moch. *Introduction to Property Security Law*. Surabaya: Revka Petra Media, 2016.
- Karelina, Natalia, Lastuti Abubakar, and Tri Handayani. "Legal Implications of Constitutional Court Decision Number 18/Puu/Xvii/2019 and Its Confirmation in Constitutional Court Decision Number 2/Puu-Xix/2021 on the Execution of Fiduciary Guarantees and the Formulation of Agreement Clauses." *Acta Diurnal Journal of Notarial Law and PPAT* 5, no. 2 (2022): 187–201. <https://doi.org/10.23920/acta.v5i2.738>.
- Kosasih, Johanes Ibahim, Anak Agung Istri Agung, and Anak Agung Sagung Laksmi Dewi. *Parate Fiduciary Execution: The Polemic of Legal Certainty and Business*. Bandung: Mandar Maju, 2021.
- Kusumaatmadja, Mochtar. *Legal Concepts in Development*. Bandung: Alumni, 2002.
- Langit, Ervira Sekar, and Erny Herlin Setyorini. "Legal Protection for Defaulting Debtors in Home Loan Agreements Secured by Mortgage Rights." *Bureaucracy Journal: Indonesia Journal of Law and Social-Political Governance* 2, no. 2 (2022): 777–93. <https://doi.org/10.53363/bureau.v2i2.107>.
- Marzuki, Peter Mahmud. *Legal Research*. Jakarta: Kencana Prenada Media Group, 2009.
- Maulidi, M. Agus. "Questioning the Executive Power of Final and Binding Decisions of the Constitutional Court." *Jurnal Konstitusi* 16, no. 2 (2019): 339. <https://doi.org/10.31078/jk1627>.
- Muhamad Djumhana. *Banking Law in Indonesia*. Bandung: Citra Aditya Bakti, 2006.
- Mulyadi, Lilik. *Judicial Decisions in Indonesian Procedural Law: Theory, Practice, Techniques, and Issues*. Bandung: Citra Aditya Bakti, 2009.
- Nasution, Krisnadi. "The Position of Creditors on Distributed Property." *Mimbar Keadilan* 12, no. 2 (2019): 167. <https://doi.org/10.30996/mk.v12i2.2383>.
- Pradana, Fadly Ikhsan, and Wicipto Setiadi. "Constitutional Court Decisions That Are Not Implemented in the Review of Laws from the Perspective of the Erga Omnes Principle (Analysis of Constitutional Court Decision Number 1/PUU-XI/2013)." *Indonesian State Law Review (ISLRev)* 3, no. 2 (2021): 77–88. <https://doi.org/https://doi.org/10.15294/islrev.v3i2.45660>
- Prasetyawati, Endang. "Legal Protection for Parties in Consumer Financing." *DiH: Journal of Law* 8, no. 16 (2012). <https://doi.org/10.30996/dih.v8i16.267>.
- Purnama Tioria Sianturi. *Legal Protection for Buyers of Immovable Collateral Goods Through Auctions*. Jakarta: Mandar Maju, 2008.
- Retno Wulan Sutantio, and Iskandar. *Civil Procedure Law in Theory and Practice*. Bandung: Alumni, 1983.
- Rudyanti Dorotea Tobing. *Credit Agreement Law: The Concept of Syndicated Credit Agreements Based on Economic Democracy*. Yogyakarta: Laksbang Grafika, 2014.
- Rumawi. *Parate Executie Security Law in the Auction of Collateral Objects*. Yogyakarta: Bakbuk, 2021.
- Rumawi, Rumawi, Udiyo Basuki, Mellisa Towadi, and Supianto Supianto. "Parate Executie in Fiduciary According to the Ratio Decidendi of the Constitutional Court Decision." *Jurnal Konstitusi* 19, no. 3 (2022): 554–79. <https://doi.org/10.31078/jk1933>.

- Satrio, J. *Parate Eksekusi Sebagai Sarana Mengatasi Kredit Macet*. Bandung: Citra Aditya Bakti, 1993.
- Sofwan, Sri Soedewi Maschoen. *Security Law in Indonesia, Principles of Security Law and Personal Security*. Yogyakarta: Liberty, 1980.
- Sudikno Mertokusumo. *Indonesian Civil Procedure Law*. Yogyakarta: Liberty, 1985.
- . *Understanding Law (An Introduction)*. Yogyakarta: Liberty, 1986.
- Tartib. "Notes on Parate Executie." *Varia Peradilan Magazine*, 1996.
- Tjiptoadinugroho. *Banking Credit Issues: Understanding, Analysis, and Guidance*. Jakarta: Pradnya Paramita, 1994.
- Warka, Made, and Erie Hariyanto. "The Position of Islamic Banks in the Banking System in Indonesia." *IQTISHADIA: Journal of Economics & Islamic Banking* 3, no. 2 (2016): 235. <https://doi.org/10.19105/iqtishadia.v3i2.1076>.
- Winarsasi, Putri Ayi. *Law of Security in Indonesia, (Development of Electronic Security Registration)*. Surabaya: Jakad Media Publishing, 2020.
- Yahya Harahap. *Civil Procedure Law*. Jakarta: Sinar Grafika, 2005.

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