

# Modeling the Contract and Execution Fiduciary on Constitutional Court Decision



Nur Putri Hidayah<sup>a</sup>, Komariah<sup>a</sup>, Satria Unggul Wicaksana Prakasa<sup>b</sup>, Sonny Zulhuda<sup>c</sup>

<sup>a</sup> Faculty of Law, Universitas Muhammadiyah Malang, Indonesia.

<sup>b</sup> Faculty of Law, Universitas Muhammadiyah Surabaya, Indonesia.

<sup>c</sup> International Islamic University Malaysia, Kuala Lumpur, Malaysia.

\*corresponding author: [nurputri@umm.ac.id](mailto:nurputri@umm.ac.id)

## ARTICLE INFO

## ABSTRACT

### Article history

Received: January 15, 2023.

Revised: March 13, 2023.

Accepted: March 29, 2023.

### Keywords

*Contract;*

*Execution;*

*Fiduciary;*

*Modeling;*

Many facts of disputes between creditors and debtors regarding the excesses of fiduciary guarantees and the existence of a decision of the Constitutional Court, which changed the legal provisions regarding the execution of fiduciary securities. This research aims to determine how clauses concerning an agreement over a breach of contract are outlined in a fiduciary agreement and what hinders the execution of fiduciary security. With normative and empirical methods, this research indicates that the clause regarding a breach of contract is outlined in a fiduciary deed by the creditor and debtor concerned. Some hindrances, however, interrupt the execution of the fiduciary security; the client denies any breach of contract, believing that this negligence represents force majeure; and the client refuses to voluntarily hand in the fiduciary object or even attempts to embezzle the fiduciary thing. Following these two hindrances, the creditor offers a persuasive negotiation to encourage the client to admit the breach of contract committed and to release the fiduciary object willingly.



This is an open-access article under the [CC-BY 4.0](https://creativecommons.org/licenses/by/4.0/) license.



## 1. Introduction

The Constitutional Court Decision Number 18/PUU-XVIII/2019 was issued following the request for judicial review of Article 15(2) and (3) of Law Number 42/1999 towards Article 28 G (1) of the 1945 Constitution of the Republic of Indonesia. The petitioner of this request, who believed that his constitutional rights were violated and who provided the fiduciary security, was ensured that the fiduciary certificate, according to Law Number 42/1992 was equal to a court decision and had permanent legal force<sup>1</sup>.

<sup>1</sup>Ayu Pramudyaningtyas, 'International Journal of Multicultural and Multireligious Understanding Legal Certainty of Execution of Fiduciary Guarantees After the Decision of the Constitutional

This petition represents an objection of the debtor to the condition where the fiduciary object receiver who held the fiduciary certificate could execute the fiduciary security without any approval of the person who provided the security. This situation indicates arbitrariness from the fiduciary receiver, where the security object was seized in the hands of debt collectors. According to his basis of claim, the petitioner stated that this seizure was triggered by the provision of Article 15 (2) and (3) of Law Number 42/1999<sup>2</sup>. The problems are with the issuance of Constitutional Court Decision Number 18/PUU-XVIII/2019, in terms of the aspect of the fiduciary agreement, between the creditor and the debtor must expressly state the condition of the debtor's default in the fiduciary agreement. If it is not stated, then the creditor has no basis to designate a "default" debtor and of course also has no basis to carry out the execution of the collateral object. Another problem, with the requirement of a default clause in a fiduciary agreement, acknowledgment of default and voluntary submission of collateral by the debtor, will make execution efforts more difficult.

Fiduciary security refers to a moveable and immovable object (an object that cannot bear any mortgage right) under the power of a debtor (the security provider) based on trust (*fiduciary*)<sup>3</sup>. The trust may be defined from two different perspectives: *first*, the trust implies that the fiduciary object does not simply give the fiduciary receiver the right to own the object set as security<sup>4</sup>, *second*, although the fiduciary object is categorized as a moveable object, the ownership of the object does not simply turn to the fiduciary receiver, but it is still under the control of the fiduciary provider<sup>5</sup>. To guarantee protection for a fiduciary receiver, preference right is given to a fiduciary receiver under a fiduciary certificate that is issued following the registration of a fiduciary guarantee deed to Directorate General of Administration of General Law (ditjen AHU). That is, the registration of the

---

Court Number 18 / PUU-XVII / 2019 & Number 2 / PUU-XIX / 2021', *International Journal of Multicultural and Multireligious Understanding (IJMMU)*, 9.6 (2022), 555–63 <https://doi.org/http://dx.doi.org/10.18415/ijmmu.v9i6.3919>; Nur Putri Hidayah and Komariah, 'The Urgency of Strengthening Creditor Legal Protection in Fiduciary Guarantee Agreements', *KnE Social Sciences*, 2022.1 (2022), 492–504 <https://doi.org/10.18502/kss.v7i15.12123>

<sup>2</sup>Mahkamah Konstitusi, *Putusan Mahkamah Konstitusi No. 18/PUU-XVIII/2019, Mahkamah Konstitusi Republik Indonesia*, 2019, pp. 1–127 [https://www.mkri.id/public/content/persidangan/putusan/putusan\\_mkri\\_6694.pdf](https://www.mkri.id/public/content/persidangan/putusan/putusan_mkri_6694.pdf) [accessed 12 February 2021].

<sup>3</sup>Katharine N. Farrell and D. Löw Beer, 'Producing the Ecological Economy: A Study in Developing Fiduciary Principles Supporting the Application of Flow-Fund Consistent Investment Criteria for Sovereign Wealth Funds', *Ecological Economics*, 165 (2019), 106391 <https://doi.org/10.1016/j.ECOLECON.2019.106391>

<sup>4</sup>Khoirul Anwar, 'Fiduciary Collateral Object Execution Mechanism Post Constitutional Court Decision Number 2/PUU-XIX/2021', *International Journal of Social Science Research and Review*, 6.2 (2023), 194–98 <https://doi.org/10.47814/IJSSRR.V6I2.969>

<sup>5</sup>Anwar; Helitha Novianty Muchtar, Miranda Risang Ayu, and Muhamad Amirulloh, 'Development of a Valuation System of Technology for the Enhancement of Innovation in Indonesia', *Heliyon*, 9.2 (2023), e13124 <https://doi.org/10.1016/j.HELİYON.2023.E13124>

fiduciary guarantee deed not only represents the fulfillment of the publicity principle. This certificate, as intended in Article 15(2) of Law Number 14/1999, holds executorial power equal to a court decision that has permanent legal force<sup>6</sup>. The juridical consequence is that this executorial power would enable the receiver to sell the security object under his/her own control, as set forth in Article 15(3) of Law Number 14/1999. This provision results from a demanding need for available funds to support businesses, especially during economic crises in 1998. Legal certainty and protection for creditors who receive fiduciary securities are needed according to the main agreement<sup>7</sup>.

On the other hand, this provision rather harms those who provide the fiduciary security, resulting in seizure by debt collectors<sup>8</sup>. This situation has been heavily criticized by petitioners of judicial reviews since most believe that this practice violates the constitutional right to get the protection of dignity, asset, and protection from threats, as intended in Article 28G (1) of the 1945 Constitution of the Republic of Indonesia. In a further analysis, the issuance of the Constitutional Court Decision Number 18/PUU-XVIII/2019 marks a legal revolution in fiduciary security since the core provision in the fiduciary security agreement has been amended regarding the clauses concerning a breach of contract that is specifically regulated in a fiduciary agreement. The execution process of the security has also been amended, implying that the fiduciary receiver can no longer perform the execution of the object set as security following a breach of contract committed by the fiduciary provider. All these amendments certainly affect the fiduciary security process, ranging from agreement drafting to the execution process when a debtor commits a breach of contract.

Previous studies show that following the issuance of Constitutional Court Decision Number 18/PUU-XVIII/2019, executorial power is no longer embedded in an object with a fiduciary security certificate<sup>9</sup>. To enable execution, there should be

---

<sup>6</sup>Erma Defiana Putriyanti, 'Legal Status of Credit Bank Guarantee in Indonesia's Legal Guarantee', *Sriwijaya Law Review*, 1.2 (2017), 128–41 <http://journal.fh.unsri.ac.id/index.php/sriwijayalawreview/article/view/38> [accessed 10 March 2023].

<sup>7</sup>Nowinri Hilgutsiany and Marini Pratiwi Pitanuki, 'Executions of Fiduciaryry Guarantee Post Constitutional Court Decision No. Nomor: 18/Puu-Xvii/2019', *Constitutionale*, 1.2 (2020), 123–38 <https://doi.org/10.25041/CONSTITUTIONALE.V1I2.2173> Ni Luh Putu Geney Sri Kusuma Dewi, Putu Eka Trisna Dewi, and Ni Putu Riyani Kartika Sari, 'Regulation of Copyright Certificate As A Material Guarantee and Bankrupt Estate/Beodel In Indonesia', *ADI Journal on Recent Innovation*, 2.2 (2021), 186–200 <https://doi.org/10.34306/AJRI.V2I2.76>

<sup>8</sup>Nurmin K Martam, 'Executive Implementation By Debt Collector Against Fidusian Object Guarantee', *DiH: Jurnal Ilmu Hukum*, 15.2 (2019), 134–42 <https://doi.org/10.30996/dih.v15i2.2527> Yifei Mao, 'Managing Innovation: The Role of Collateral', *Journal of Accounting and Economics*, 72.1 (2021), 101419 <https://doi.org/10.1016/J.JACCECO.2021.101419>

<sup>9</sup>Hilgutsiany and Pitanuki; Elisabeth Nurhaini Butarbutar, 'Constitutional Issue of the Executorial Power of Fiduciary Certificates as Equal to Court Decision', *Jurnal Konstitusi*, 19.3 (2022), 606–22 <https://doi.org/10.31078/JK1935>

clauses stating an agreement of breach of contract<sup>10</sup>, willingness from the fiduciary provider to allow execution, and a condition implying that the breach of contract is not unilaterally decided by a creditor. If these are not met, a lawsuit could be filed to court<sup>11</sup>. This approach is intended to protect a debtor from any arbitrariness in fiduciary object execution<sup>12</sup>. However, with this decision, there is a possibility that the debtor may deny any breach of contract, which could disadvantage the creditor<sup>13</sup>. As a consequence, it may be costly and time-consuming for the creditor to settle this issue<sup>14</sup>. Decision Number 18/PUU-XVIII/2019 may also tend to cause the rise in loan interest rate, the rise in related cases at courts, and falling trust of investors in finance sectors in Indonesia<sup>15</sup>.

However, the previous studies were all normative, and there have not been any studies specifically discussing the execution of the fiduciary security agreement following the issuance of Constitutional Court Decision Number 18/PUU-XVIII/2019. So in this study, empirical legal research methods were used which made it different from previous studies. This research employed empirical-juridical methods to investigate how the fiduciary security agreement is performed following Constitutional Court Decision Number 18/PUU-XVIII/2019, the core problems of how the clauses concerning a breach of contract are formulated, and hindrances faced by a fiduciary security receiver in the execution of the security when a debtor commits a breach of contract. BPRS Bumi Rinjani, a sharia rural bank, served as the object of this research. Sebagaimana fungsi bank, BPRS Bumi Rinjani menghimpun dana dari masyarakat melalui dana tabungan<sup>16</sup>. This bank provides loan services with various financing models<sup>17</sup>, and with fiduciary security as a guarantee.

---

<sup>10</sup>Hilgutsiany and Pitanuki; Muchtar, Ayu, and Amirulloh; Nurdjanah Hamid and Ida Bagus Anom Purbawangsa, 'Impact of the Board of Directors on Financial Performance and Company Capital: Risk Management as an Intervening Variable', *Journal of Co-Operative Organization and Management*, 10.2 (2022), 100164 <https://doi.org/10.1016/J.JCOM.2021.100164>

<sup>11</sup>Sanusi Dosen and Ups Tegal, 'Legal Protection Of The Creditor On Fiduciary Guarantee Objects Unlisted In The Fiduciary Registration Office', *International Journal of Law Reconstruction*, 1.1 (2017), 74–86 <https://doi.org/10.26532/IJLR.V1I1.1636>

<sup>12</sup>Dalia M. Feltman and others, 'Seeking Normalcy as the Curve Flattens: Ethical Considerations for Pediatricians Managing Collateral Damage of Coronavirus Disease-2019', *The Journal of Pediatrics*, 225 (2020), 233–38 <https://doi.org/10.1016/J.JPEDI.2020.06.067>

<sup>13</sup>Hilgutsiany and Pitanuki.

<sup>14</sup>Charles W. Calomiris and others, 'How Collateral Laws Shape Lending and Sectoral Activity', *Journal of Financial Economics*, 123.1 (2017), 163–88 <https://doi.org/10.1016/J.JFINECO.2016.09.005>

<sup>15</sup>Muchtar, Ayu, and Amirulloh.

<sup>16</sup>Agus Pandoman, 'Islamic Financial Infrastructure towards the Establishment of Sharia Central Banks', *Formosa Journal of Applied Sciences*, 1.5 (2022), 873–90 <https://doi.org/10.55927/fjas.v1i5.1459>

<sup>17</sup>Anggulyah Rizqi Amaliyah and Ika Insiyroh, 'Financial Ratio Analysis To Assess The Financial Performance At Islamic Rural Bank (Irb) Bumi Rinjani Kepanjen', *International Journal of Business Marketing and Management*, 6 (2021), 2456–4559 [www.ijbmm.com](http://www.ijbmm.com) [accessed 16 April 2023].

This research aims to find out how clauses concerning an agreement of breach of contract are outlined in a fiduciary agreement in BPRS Bumi Rinjani and what hindrances are faced by BPRS Bumi Rinjani in performing the execution of the fiduciary security when a debtor breaches a contract following the effectuation of Constitutional Court Decision Number 18/PUU-XVIII/2019. This research is conducted to contribute to science on the law of securities and serves as a preventive and repressive measure to settle fiduciary security-related disputes.

## 2. Research Method

This research employed normative-empirical methods, where the normative method<sup>18</sup> aims to give answers to the first research problem regarding the formulation of the clauses concerning a breach of contract between fiduciary security provider and receiver in a fiduciary security agreement according to Constitutional Court Number 18/PUU-XVIII/2019. The empirical method<sup>19</sup>, on the other hand, is intended to find out the hindrances faced by the fiduciary receiver when the receiver performs the execution of the security following a breach of contract committed by the party providing the fiduciary security. This research also used statutory and case approaches. The research data involved primary and secondary materials, where the former was obtained from structural interviews as conducted in other studies<sup>20</sup>. Bank Pembiayaan Rakyat Syariah (BPRS) Bumi

---

<sup>18</sup>Bo Zhang, Bingyang Wei, and Ruiping Zhang, 'Research on Evolution Laws of Pitch Cones and Characteristic Values on Whole Tooth Surface of Hypoid Gears', *Mechanism and Machine Theory*, 174 (2022), 104915 <https://doi.org/10.1016/J.MECHMACHTHEORY.2022.104915> Theresia Anita Christiani, 'Normative and Empirical Research Methods: Their Usefulness and Relevance in the Study of Law as an Object', *Procedia - Social and Behavioral Sciences*, 219.1 (2016), 201–7 <https://doi.org/10.1016/j.sbspro.2016.05.006> Cezary Kowalczyk and others, 'How Does Government Legal Intervention Affect the Process of Transformation of State-Owned Agricultural Land? The Research Methods and Their Practical Application', *Land Use Policy*, 111 (2021), 105769 <https://doi.org/10.1016/J.LANDUSEPOL.2021.105769>

<sup>19</sup>Salem Alhababsah and Sina Yekini, 'Audit Committee and Audit Quality: An Empirical Analysis Considering Industry Expertise, Legal Expertise and Gender Diversity', *Journal of International Accounting, Auditing and Taxation*, 42 (2021), 100377 <https://doi.org/10.1016/J.INTACCAUDTAX.2021.100377> Jian Zhang, Ke Li, and Yang Feng, 'Criminal Sanctions on Identity Theft in Shanghai: An Empirical Case Law Analysis', *International Journal of Law, Crime and Justice*, 71 (2022), 100562 <https://doi.org/10.1016/J.IJLCJ.2022.100562>

<sup>20</sup>Nur Putri Hidayah, Quincy R Cloet, and David Pradhan, 'The Implementation of Labor Development Principles According to Job Creation Law as a Reason to Protect Wages Rights', *Bestuur*, 9.1 (2021), 68–76 <https://doi.org/https://dx.doi.org/10.20961/bestuur.v9i1.49252> N.P. Hidayah, F. Wiryani, and H.P. Madyasti, 'The Strengthening Legal Protection of Indigenous People in Facing Investment Climate in Era of Asean Economic Community In', in *IOP Conference Series: Earth and Environmental Science*, 2018, CLXXV, 1–5 <https://doi.org/10.1088/1755-1315/175/1/012208> Budiman Budiman and Abdul Kadir Jaelani, 'The Policy of Sustainable Waste Management Towards Sustainable Development Goals', *Journal of Human Rights, Culture and Legal System*, 3.1 (2023), 70–94 <https://doi.org/10.53955/JHCLS.V3I1.73> Stephanie R. Morain and others, 'Identification and Management of Pragmatic Clinical Trial Collateral Findings: A Current

Rinjani was picked as the research object since this sharia bank provides loan services to its clients under fiduciary security. BPRS Bumi Rinjani has been serving its clients since 1898 and has 1 headquarter, 2 branch offices, and 10 cash offices. Primary data was obtained by interviewing staff at the legal department of BPRS Bumi Rinjani. The secondary data were sourced from library research related to fiduciary security, including Constitutional Court Decision Number 18/PUU-XVIII/2019, Law Number 14/1999 concerning Fiduciary Security and other laws concerning fiduciary security as primary data, the secondary data such as scientific research papers on fiduciary security, especially those closely related to the analyses of the execution of fiduciary security after the issuance of Constitutional Court Decision Number 18/PUU-XVIII/2019, and law dictionary as tertiary data.

### 3. Results and Discussion

#### *The Contract and Execution Fiduciary's Existing Conditions of Regulations*

The clauses concerning a breach of contract serve as the main issue to discuss in Constitutional Court Decision Number 18/PUU-XVIII/2019, stating that Article 15 Paragraph (2) does not hold any binding legal force if *there is no agreement of a breach of contract* and Article 15 Paragraph (3) does not have any *binding legal force if a breach of contract is unilaterally declared by a creditor*. That is, a breach of contract is based on two matters, first, clauses concerning breach of contract outlined in a fiduciary agreement, and *second*, an agreement ensuring that a breach of contract has taken place.

The main agreement between a client and BPRS Bumi Rinjani refers to *Murabahah* contract, while the imposition of fiduciary security is set forth in Fiduciary Security Deed consisting of 14 articles; Article 1 regulates the site of an object set as a fiduciary security; Article 2 is concerning the use of a fiduciary security object; Article 3 is concerning authority to the party receiving the fiduciary object; Article 4 regulates the replacement of the fiduciary security object; Article 5 regulates proscription of repeating the process of fiduciary security; Article 6 regulates the insurance for the fiduciary security object; Article 7 regulates buyers based on executorial title; Article 8 regulates the transfer of the security to the fiduciary security receiver; Article 9 regulates the time of the imposition of fiduciary security; Article 10 regulates the authority to register the fiduciary security object; Article 11 regulates the authority regarding deed revision; Article 12 regulates guarantees; Article 13 regulates legal domicile; Article 14 regulates expenses.

The problem, The clauses concerning breach of contract in Fiduciary Security Deed are not mentioned in Article 5 of Fiduciary Security Deed. The provisions

contain if the Fiduciary Provider fails to appropriately fulfill the requirements set forth herein or the debtor fails to fulfill the requirements pursuant to the credit contract, failing to fulfill the responsibility on time indicates that the fiduciary security provider or the debtor violates or neglects the requirements, in which the fiduciary object with the rights attached to it must be immediately transferred by the fiduciary provider after a written warning is made by the fiduciary security receiver.

The above clauses constitute the consensus of a breach of contract, *first*, indicated by the phrase “if the Fiduciary Provider fails to appropriately fulfill the requirements set forth herein”. This phrase represents the condition where a debtor does not fulfill his/her responsibility as outlined in the deed of fiduciary agreement as an *accessory* agreement. Second, this is indicated by the phrase “the debtor fails to fulfill the requirements pursuant to the credit contract”. This phrase represents the condition where the debtor fails to meet his/her responsibility as set forth in *murabbahan* contract as the main agreement. The first and second phrases indicate the incapability of the debtor to fulfill his/her contract. However, the debtor cannot be simply considered committing a breach of contract when he/she fits what is outlined in phrases 1 and 2 since an emphasizing phrase “failing to fulfill the responsibility on time indicates that the fiduciary security provider or the debtor violates or neglect the requirements” has to be taken into account. That is, a debtor can be declared that he/she commits a breach of contract when the conditions elaborated in phrases 1 and 2 continue and exceed the due date

The above provision indicates that Fiduciary Security Deed asserts that the clauses concerning breach of contract are set forth in this deed, as in line with the Constitutional Court Decision No.18/PUU-XVIII/2019. In terms of the breach of contract as regulated in Article 15 Paragraph (3) of Fiduciary Law, according to Constitutional Court Decision Number 18/PUU-XVIII/2019, the decision over breach of contract must not be unilaterally made only by a creditor. In its practice, BPRS Rinjani refers to the condition of breach of contract committed by the creditor as stated in the clauses agreed upon by the two parties in the Fiduciary Security Deed. In other words, if one of the clauses in the deed states that the debtor is deemed to have breached a contract when he/she fails to make the payment on time, the creditor has to clarify if the debtor has committed a breach of contract, and this breach of contract must also involve the agreement from the debtor since it serves as the basis of the legal force for Article 15 Paragraph (2) of Fiduciary Law

The interview results show that sometimes debtors disagree that they have breached a contract, especially amidst the condition of COVID-19 these days. Most debtors think that this issue should not be classified as a breach of contract, but rather as *force majeure*. Lockdown during the pandemic has slowed

their earnings and affected their capacity to pay their loans on time. Referring to the Constitutional Court Decision Number 18/PUU-XVIII/2019, the breach of contract discussed was without the agreement from the debtor, making the BPRS Rinjani have no right to execute the fiduciary security. This issue then led to a dispute between the two parties.

Following this dispute, BPRS Rinjani decided to negotiate to settle the dispute over this breach of contract. In general, similar disputes have been settled through negotiation, resulting in an agreement between the parties involved. When parties fail to come to an agreement over this case, they usually go with the litigation process taking place at religious courts.

### ***Modeling the Contract and Execution Fiduciary on Constitutional Court Decision***

Normally, the execution of a fiduciary object will take place when a bank client is insolvent<sup>21</sup>. To ensure that the debtor is in such a state, BPRS Rinjani went through a series of procedures involving debt collection according to SOP and POJK. The debt collection follows these standard steps: *first*, on the due date, Account Officer (AO) will send a notification letter to the debtor. This notification letter informs the debtor that the payment is due. The debtor is subject to 3-5 days to pay the installment of the month. At this stage, the debtor was not deemed to have committed a breach of contract and no fines /*ta'widh* were imposed. Second, if within 3-5 working days the debtor does not show any intention to pay off the debt, a writ will be sent. This writ is sent gradually, ranging from the first to the third writ.

The issuance of Constitutional Court Decision Number 18/PUU-XVIII/2019 tends to give more hindrances for the creditor to execute the fiduciary security since the condition of breach of contract has to take the agreement of the two parties. Moreover, the debtor, in this case, is forced to be in the position to willingly release his/her object of security executed by the creditor. Regarding the potential of the new problem following the issuance of the Constitutional Court

---

<sup>21</sup>Rihab Grassa, Nejia Moumen, and Khaled Hussainey, 'Is Bank Creditworthiness Associated with Risk Disclosure Behavior? Evidence from Islamic and Conventional Banks in Emerging Countries', *Pacific-Basin Finance Journal*, 61 (2020), 101327 <https://doi.org/10.1016/J.PACFIN.2020.101327> Matheus Henrique de Sousa Oliveira and others, 'The Impact of the European Development Fund and European Bank as Financing Sources on Traffic Estimation Biases', *Research in Transportation Business & Management*, 45 (2022), 100884 <https://doi.org/10.1016/J.RTBM.2022.100884> Robert Bartlett and Eric Talley, 'Law and Corporate Governance', *The Handbook of The Economics of Corporate Governance*, 1 (2017), 177-234 <https://doi.org/10.1016/BS.HECG.2017.11.009> Noriza Mohd Saad, Mohd Nizal Haniff, and Norli Ali, 'Corporate Governance Mechanisms with Conventional Bonds and Sukuk' Yield Spreads', *Pacific-Basin Finance Journal*, 62 (2020), 101116 <https://doi.org/10.1016/J.PACFIN.2019.02.001> Marco Di Maggio, Mark Egan, and Francesco Franzoni, 'The Value of Intermediation in the Stock Market', *Journal of Financial Economics*, 145.2 (2022), 208-33 <https://doi.org/10.1016/J.JFINECO.2021.08.020>

Decision Number 18/PUU-XVIII/2019, BPRS Rinjani has taken the measure to conduct mitigation by reviewing both the main agreement and the supplementary agreement (fiduciary agreement). The results show that BPRS Rinjani should not be concerned about matters of the clauses on breach of contract since the related clauses are set forth in a fiduciary agreement between the creditor and debtor.

Although the clauses concerning a breach of contract are regulated in the fiduciary agreement and breach-of-contract conditions are agreed upon by the two parties, this does not guarantee that the execution process is easy to perform. Commonly, most debtors are not willingly releasing their fiduciary objects to other hands. In some cases, some debtors made a false report saying that the security objects disappear or they even pawned these objects. According to Article 15 Paragraph (2) of Fiduciary Law, a fiduciary certificate under the control of a creditor would enable the creditor to perform *parate* execution without having to confirm the willingness of the debtor to release the fiduciary object. However, following the Constitutional Court Decision 18/PUU-XVIII/2019, the creditor could only execute the object concerned if the debtor willingly releases the object. This condition triggers another new problem for the creditor since the creditor has to consider the litigation process to allow the execution.

To settle this problem, BPRS Rinjani took a non-litigation process by offering negotiation. The marketing representative of BPRS Rinjani managed to proceed with the execution process and the debtor was finally willing to release the object. This allowed the execution to take place according to legislation. However, BPRS Bumi Rinjani is aware that execution is the last step to take to settle the loan dispute. Before the execution takes place, the bank usually gives an offer to repeat a contract process. This repeated contract process highlights an extended contract period that reduces the amount paid monthly but stretches the contract period. The debtor is insolvent, the execution has to take place. Before the execution, BPRS Rinjani will suggest the debtor sell the object on the debtor's will. This is encouraged with the hope that the object will be sold for a higher value for the sake of the benefit of the debtor. If the debtor rejects this offer, the execution will be performed by BPRS Rinjani.

Negotiation as a non-litigation settlement effort carried out are smart efforts considering basically many risks that will be borne if obstacles in the execution of fiduciary guarantees are resolved through court channels. These risks include long turnaround times, greater costs in the trial process<sup>22</sup>, and there is no guarantee that

---

<sup>22</sup>Ferlyawan Isnanda Nuh, Herwastoeti Herwastoeti, and Dwi Ratna Indri Hapsari, 'Implementation of E-Court in Civil Life Settlement to Realize Simple Principles Quickly and Low

BPRs Bumi Rinjani as creditors will win in court. Non-litigation ledge will provide a win win solution for both parties. In addition, creditors will also not lose the trust of debtors as customers and have a long impact on the sustainability of BPRs Bumi Rinjani's business.

#### 4. Conclusion

The issuance of the Constitutional Court Decision No.18/PUU-XVIII/2019 hinders the execution of fiduciary security in a way that it can be performed when clauses concerning a breach of contract are set forth in a fiduciary deed, when a breach of contract is agreed upon by both the creditor and debtor, and when the debtor willingly releases the fiduciary security object. Departing from these provisions, BPRS Bumi Rinjani and its clients have clearly set breach-of-contract clauses in Article 5 of Fiduciary Deed to enable the execution. The contract in accordance with the provisions of the constitutional court decision makes it clear what the default conditions agreed between creditors and debtors are, so that creditors have a basis in declaring the debtor in default as stipulated in the constitutional court decision. Moreover, The hindrances faced in the execution involve, the client denies any breach of contract and is adamant that the condition concerned is nothing but *force majeure*, and the client refuses to willingly give his/her fiduciary object, or he/she even attempts to make it as if it disappeared or to embezzle it. Encountering these two issues, BPRS Bumi Rinjani usually offers a negotiation to encourage its client to willingly give the fiduciary object. The steps taken are appropriate, because if resolved through litigation, there will be losses, starting from the long dispute resolution time, the large amount of costs that must be incurred, and most importantly, it is not certain that the creditor can win the dispute.

#### References

- Alhababsah, Salem, and Sina Yekini, 'Audit Committee and Audit Quality: An Empirical Analysis Considering Industry Expertise, Legal Expertise and Gender Diversity', *Journal of International Accounting, Auditing and Taxation*, 42 (2021), 100377 <https://doi.org/10.1016/J.INTACCAUDTAX.2021.100377>
- Amaliyah, Anggulyah Rizqi, and Ika Insyiroh, 'Financial Ratio Analysis To Assess The Financial Performance At Islamic Rural Bank (Irb) Bumi Rinjani Kepanjen', *International Journal of Business Marketing and Management*, 6 (2021), 2456–4559 [www.ijbmm.com](http://www.ijbmm.com) [accessed 16 April 2023]
- Anwar, Khoirul, 'Fiduciary Collateral Object Execution Mechanism Post Constitutional Court Decision Number 2/PUU-XIX/2021', *International Journal*

---

Costs (Study in Malang District Court Class 1a)', *Indonesia Law Reform Journal*, 2.3 (2022), 367–81 <https://doi.org/10.22219/ILREJ.V2I3.23264>

- of *Social Science Research and Review*, 6.2 (2023), 194–98  
<https://doi.org/10.47814/IJSSRR.V6I2.969>
- Bartlett, Robert, and Eric Talley, 'Law and Corporate Governance', *The Handbook of The Economics of Corporate Governance*, 1 (2017), 177–234  
<https://doi.org/10.1016/BS.HECG.2017.11.009>
- Budiman, Budiman, and Abdul Kadir Jaelani, 'The Policy of Sustainable Waste Management Towards Sustainable Development Goals', *Journal of Human Rights, Culture and Legal System*, 3.1 (2023), 70–94  
<https://doi.org/10.53955/JHCLS.V3I1.73>
- Butarbutar, Elisabeth Nurhaini, 'Constitutional Issue of the Executional Power of Fiduciary Certificates as Equal to Court Decision', *Jurnal Konstitusi*, 19.3 (2022), 606–22 <https://doi.org/10.31078/JK1935>
- Calomiris, Charles W., Mauricio Larrain, José Liberti, and Jason Sturgess, 'How Collateral Laws Shape Lending and Sectoral Activity', *Journal of Financial Economics*, 123.1 (2017), 163–88 <https://doi.org/10.1016/J.JFINECO.2016.09.005>
- Christiani, Theresia Anita, 'Normative and Empirical Research Methods: Their Usefulness and Relevance in the Study of Law as an Object', *Procedia - Social and Behavioral Sciences*, 219.1 (2016), 201–7  
<https://doi.org/10.1016/j.sbspro.2016.05.006>
- Dewi, Ni Luh Putu Geney Sri Kusuma, Putu Eka Trisna Dewi, and Ni Putu Riyani Kartika Sari, 'Regulation of Copyright Certificate As A Material Guarantee and Bankrupt Estate/Beodel In Indonesia', *ADI Journal on Recent Innovation*, 2.2 (2021), 186–200 <https://doi.org/10.34306/AJRI.V2I2.76>
- Farrell, Katharine N., and D. Löw Beer, 'Producing the Ecological Economy: A Study in Developing Fiduciary Principles Supporting the Application of Flow-Fund Consistent Investment Criteria for Sovereign Wealth Funds', *Ecological Economics*, 165 (2019), 106391  
<https://doi.org/10.1016/J.ECOLECON.2019.106391>
- Feltman, Dalia M., Gregory P. Moore, Andrew F. Beck, Emily Siffermann, Carlo Bellieni, and John Lantos, 'Seeking Normalcy as the Curve Flattens: Ethical Considerations for Pediatricians Managing Collateral Damage of Coronavirus Disease-2019', *The Journal of Pediatrics*, 225 (2020), 233–38  
<https://doi.org/10.1016/J.JPEDS.2020.06.067>
- Grassa, Rihab, Nejia Moumen, and Khaled Hussainey, 'Is Bank Creditworthiness Associated with Risk Disclosure Behavior? Evidence from Islamic and Conventional Banks in Emerging Countries', *Pacific-Basin Finance Journal*, 61 (2020), 101327 <https://doi.org/10.1016/J.PACFIN.2020.101327>
- Hamid, Nurdjanah, and Ida Bagus Anom Purbawangsa, 'Impact of the Board of

- Directors on Financial Performance and Company Capital: Risk Management as an Intervening Variable', *Journal of Co-Operative Organization and Management*, 10.2 (2022), 100164 <https://doi.org/10.1016/J.JCOM.2021.100164>
- Hidayah, N.P., F. Wiryani, and H.P. Madyasti, 'The Strengthening Legal Protection of Indigenous People in Facing Investment Climate in Era of Asean Economic Community In', in *IOP Conference Series: Earth and Environmental Science*, 2018, CLXXV, 1–5 <https://doi.org/10.1088/1755-1315/175/1/012208>
- Hidayah, Nur Putri, Quincy R Cloet, and David Pradhan, 'The Implementation of Labor Development Principles According to Job Creation Law as a Reason to Protect Wages Rights', *Bestuur*, 9.1 (2021), 68–76 <https://doi.org/https://dx.doi.org/10.20961/bestuur.v9i1.49252>
- Hilgutsiany, Nowinri, and Marini Pratiwi Pitanuki, 'Executions of Fiduciaryry Guarantee Post Constitutional Court Decision No. Nomor: 18/Puu-Xvii/2019', *Constitutionale*, 1.2 (2020), 123–38 <https://doi.org/10.25041/CONSTITUTIONALE.V1I2.2173>
- Kowalczyk, Cezary, Alina Żróbek-Rózańska, Sabina Żróbek, and Hubert Kryszk, 'How Does Government Legal Intervention Affect the Process of Transformation of State-Owned Agricultural Land? The Research Methods and Their Practical Application', *Land Use Policy*, 111 (2021), 105769 <https://doi.org/10.1016/J.LANDUSEPOL.2021.105769>
- Di Maggio, Marco, Mark Egan, and Francesco Franzoni, 'The Value of Intermediation in the Stock Market', *Journal of Financial Economics*, 145.2 (2022), 208–33 <https://doi.org/10.1016/J.JFINECO.2021.08.020>
- Mahkamah Konstitusi, *Putusan Mahkamah Konstitusi No. 18/PUU-XVIII/2019, Mahkamah Konstitusi Republik Indonesia*, 2019, pp. 1–127 [https://www.mkri.id/public/content/persidangan/putusan/putusan\\_mkri\\_6694.pdf](https://www.mkri.id/public/content/persidangan/putusan/putusan_mkri_6694.pdf) [accessed 12 February 2021]
- Mao, Yifei, 'Managing Innovation: The Role of Collateral', *Journal of Accounting and Economics*, 72.1 (2021), 101419 <https://doi.org/10.1016/J.JACCECO.2021.101419>
- Martam, Nurmin K, 'Executive Implementation By Debt Collector Against Fidusian Object Guarantee', *DiH: Jurnal Ilmu Hukum*, 15.2 (2019), 134–42 <https://doi.org/10.30996/dih.v15i2.2527>
- Mohd Saad, Noriza, Mohd Nizal Haniff, and Norli Ali, 'Corporate Governance Mechanisms with Conventional Bonds and Sukuk' Yield Spreads', *Pacific-Basin Finance Journal*, 62 (2020), 101116 <https://doi.org/10.1016/J.PACFIN.2019.02.001>
- Morain, Stephanie R., Debra J.H. Mathews, Gail Geller, Juli Bollinger, Kevin Weinfurt, Jeffrey G. Jarvik, and others, 'Identification and Management of

- Pragmatic Clinical Trial Collateral Findings: A Current Understanding and Directions for Future Research', *Healthcare*, 9.4 (2021), 100586 <https://doi.org/10.1016/J.HJDSI.2021.100586>
- Muchtar, Helitha Novianty, Miranda Risang Ayu, and Muhamad Amirulloh, 'Development of a Valuation System of Technology for the Enhancement of Innovation in Indonesia', *Heliyon*, 9.2 (2023), e13124 <https://doi.org/10.1016/J.HELİYON.2023.E13124>
- Nuh, Ferlyawan Isnanda, Herwastoeti Herwastoeti, and Dwi Ratna Indri Hapsari, 'Implementation of E-Court in Civil Life Settlement to Realize Simple Principles Quickly and Low Costs (Study in Malang District Court Class 1a)', *Indonesia Law Reform Journal*, 2.3 (2022), 367–81 <https://doi.org/10.22219/ILREJ.V2I3.23264>
- Pandoman, Agus, 'Islamic Financial Infrastructure towards the Establishment of Sharia Central Banks', *Formosa Journal of Applied Sciences*, 1.5 (2022), 873–90 <https://doi.org/10.55927/fjas.v1i5.1459>
- Pramudyaningtyas, Ayu, 'International Journal of Multicultural and Multireligious Understanding Legal Certainty of Execution of Fiduciary Guarantees After the Decision of the Constitutional Court Number 18 / PUU-XVII / 2019 & Number 2 / PUU-XIX / 2021', *International Journal of Multicultural and Multireligious Understanding (IJMMU)*, 9.6 (2022), 555–63 <https://doi.org/http://dx.doi.org/10.18415/ijmmu.v9i6.3919>
- Putri Hidayah, Nur, and Komariah, 'The Urgency of Strengthening Creditor Legal Protection in Fiduciary Guarantee Agreements', *KnE Social Sciences*, 2022.1 (2022), 492–504 <https://doi.org/10.18502/kss.v7i15.12123>
- Putriyanti, Erma Defiana, 'Legal Status of Credit Bank Guarantee in Indonesia's Legal Guarantee', *Sriwijaya Law Review*, 1.2 (2017), 128–41 <http://journal.fh.unsri.ac.id/index.php/sriwijayalawreview/article/view/38> [accessed 10 March 2023]
- Sanusi, 'Legal Protection of the Creditor on Fiduciary Guarantee Objects Unlisted in the Fiduciary Registration Office', *International Journal of Law Reconstruction*, 1.1 (2017), 74–86 <https://doi.org/10.26532/IJLR.V1I1.1636>
- de Sousa Oliveira, Matheus Henrique, Edilson F. Arruda, Gregório Luz, and Rosário Macário, 'The Impact of the European Development Fund and European Bank as Financing Sources on Traffic Estimation Biases', *Research in Transportation Business & Management*, 45 (2022), 100884 <https://doi.org/10.1016/J.RTBM.2022.100884>
- Zhang, Bo, Bingyang Wei, and Ruiping Zhang, 'Research on Evolution Laws of Pitch Cones and Characteristic Values on Whole Tooth Surface of Hypoid

---

Gears', *Mechanism and Machine Theory*, 174 (2022), 104915  
<https://doi.org/10.1016/J.MECHMACHTHEORY.2022.104915>

Zhang, Jian, Ke Li, and Yang Feng, 'Criminal Sanctions on Identity Theft in Shanghai: An Empirical Case Law Analysis', *International Journal of Law, Crime and Justice*, 71 (2022), 100562 <https://doi.org/10.1016/J.IJLCJ.2022.100562>