



LEGAL REVIEW OF CONSTITUTIONAL COURT DECISION NO. 18/PUU-XVII/2019 IN THE EXECUTION OF FIDUCIARY GUARANTEE OBJECTS (CASE STUDY OF LEASING COMPANIES IN CILEGON CITY)

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Abstract

The practice of consumer financing through leasing institutions in Indonesia, utilizing fiduciary guarantees, plays a strategic role in supporting public access to motor vehicle ownership. However, the parate execution mechanism, as stipulated in Article 15 paragraphs (2) and (3) of Law Number 42 of 1999, often raises legal issues because it is implemented without judicial procedures. This situation has caused public unrest due to the practice of forced seizure by *debt collectors*, which is contrary to the principle of *due process of law*. Constitutional Court Decision Number 18/PUU-XVII/2019 is a significant milestone because it limits unilateral Execution and requires an acknowledgement of default or a court order, thereby bringing substantial changes to the legal Protection afforded to debtors.

This research employs a normative legal approach, utilizing statutory, case, and conceptual methods to analyze the topic. The research data are sourced from primary legal materials, including the Fiduciary Guarantee Law and decisions of the Constitutional Court, as well as secondary legal materials from academic literature. The results of the study indicate that Constitutional Court Decision Number 18/PUU-XVII/2019 strengthens the legal position of debtors in Indonesia's positive legal system by limiting the practice of parate Execution. However, implementation in Cilegon City still faces obstacles, including the lack of technical regulations, slow adjustments to fiduciary contracts by leasing companies, and low understanding among officials and the public, which ultimately leads to legal uncertainty in practice.

Theoretically, this research contributes to the enrichment of civil law literature related to legal certainty and legal Protection following the Constitutional Court Decision. Practically, this research provides understanding for leasing companies, law enforcement officials, and the public regarding the procedures for executing fiduciary objects in accordance with constitutional principles. The study's limitations lie in its normative nature, which does not fully reflect the empirical situation. For further research, a more in-depth empirical study is recommended through interviews with law enforcement officials, leasing companies, and debtors in various regions.

Keywords: Fiduciary Guarantee, Parate Execution, Legal Protection, Constitutional Court Decision, Law Number 42 of 1999.

INTRODUCTION

In consumer financing practices in Indonesia, financing or leasing institutions play a significant role in supporting public access to motorized vehicle ownership. This financing system typically utilizes fiduciary guarantees as a security mechanism for the provided credit. A fiduciary guarantee is a guarantee for movable objects that remain in the debtor's possession. However, legally, this mechanism offers the right to execute the machine translation by Google in the event of default, without the need for court proceedings. In the City of Cilegon, a region with high industrial density and economic mobility, the fiduciary-based financing model is very dominant, driven by the increasing need for private and operational vehicles. The industry also encourages the

expansion of leasing with fiduciary guarantees as the basis of the contract. It makes fiduciary guarantees the backbone of the local financing system. However, its implementation has the potential to trigger legal conflicts if the execution process is not carried out in accordance with the principles of justice and transparency.

Historically, fiduciary guarantees were developed as a form of non-possessory guarantee to expedite credit transactions and facilitate capital turnover, especially in productive sectors. However, in practice, this guarantee is often misused during the execution process without adequate legal oversight. Triana and Butar (2025) highlight that the absence of detailed regulation governing the execution procedures allows financing institutions to act outside the boundaries of the law and use executive power as a tool of intimidation against debtors. Constitutional Court Decision No. 18/PUU-XVII/2019 is a significant turning point that strengthens legal Protection for debtors in the Execution of fiduciary guarantees. The Court emphasized that Execution cannot be carried out unilaterally if the debtor does not acknowledge the existence of default. If there is no acknowledgement of default, the execution process must go through judicial institutions to ensure justice and transparency.

This new interpretation emphasizes the need to respect the constitutional rights of debtors in the civil law system of Indonesia. This change in interpretation shifts the paradigm of execution practices, which have traditionally favored creditors. The issue of legal uncertainty following the Constitutional Court's Decision at the national level, as noted by Utami (2024), is consistent with previous research, which also highlights the existence of legal uncertainty after the Constitutional Court's Decision. Meanwhile, Sitingjak (2024) emphasized the importance of reorganizing *executive* procedures to align with constitutional principles.

Lating and Widodo (2025) also noted that the absence of constitutional norms and operational issues is a serious obstacle to realizing legal certainty that favors debtors. However, the study has not yet addressed the critical local dimension in understanding the reality of legal implementation in the field. Cilegon City, as a region with an economic structure dominated by the industrial sector and a high level of vehicle ownership, is characterized by high motorization through leasing financing, making it an ideal social laboratory for examining this dynamic. The disharmony between statutory regulations, judicial decisions, and the actual practice of leasing has the potential to give rise to horizontal conflicts involving debtors, leasing, *debt collectors*, and even security forces. Considering this complexity, a normative legal study is necessary. In-depth and contextual.

This study should not only include an analysis of regulations and court decisions, but it is also essential to examine how these norms are implemented at the local level. This research aims to critically investigate how changes in legal interpretation following Constitutional Court Decision No. 18/PUU-XVII/2019 impact the execution practices of fiduciary guarantees by leasing companies in Cilegon City. Additionally, it is crucial to determine the extent to which law enforcement, the public,

and leasing companies comprehend and adapt to changes in the law. The focus of the research will be directed towards finding common ground between legal certainty and the Protection of constitutional rights of debtors, as well as the effectiveness of financing within the local legal ecosystem.

METHOD

In this research, empirical and sociological research methods were employed, based on a literature review and field observations, which serve to understand law in its true sense and examine how law operates in society. The research location is in the Cilegon City area, with a population and sample. Sampling was carried out in terms of form, purposive sampling means taking samples intentionally according to the required sample requirements, types, and Sources of Data. Primary Data, which is data obtained directly at the research location, specifically at leasing companies in the Cilegon City region.

RESULTS AND DISCUSSION

Legal position of Constitutional Court Decision No. 18/PUU-XVII/2019 in Indonesia's positive legal system regarding the mechanism for executing fiduciary guarantees by leasing companies, as per Law Number 42 of 1999.

Constitutional Court (MK) Decision No. 18/PUU-XVII/2019 has a strategic position in the Indonesian positive legal system because it is final and binding as regulated in Article 24C paragraph (1) of the 1945 Republic of Indonesia Constitution and Article 10 paragraph (1) of Law No. 24 of 2003 concerning the Constitutional Court. The final nature means that the Decision obtains permanent legal force from the moment it is pronounced, and no legal remedy is available for continuation. In contrast, the binding nature (*erga omnes*) indicates that the Decision applies to all parties, not just the litigants.

Within the framework of Hans Kelsen's norm hierarchy theory, this Constitutional Court Decision is equivalent to a law. The law has the authority to change or cancel the norms in Law No. 42 of 1999 concerning Fiduciary guarantees, which are considered to conflict with the 1945 Constitution. Before this Decision, Article 15, paragraphs (2) and (3) of UUJF, grant executive power to fiduciary certificates, equivalent to court decisions, which have permanent legal force. It allows creditors, including leasing companies, to carry out *separate Execution* without a court process if the debtor is declared in default.

Implementation of legal norms resulting from the Constitutional Court Decision in the practice execution of fiduciary guarantee objects by leasing companies in Cilegon City, and to what extent its conformity with the principle of legal Protection and the principle of legal certainty in civil law.

Following the Constitutional Court Decision No. 18/PUU-XVII/2019, the implementation of the fiduciary guarantee objects by leasing companies in Cilegon City is still ongoing, facing fundamental problems. Based on the results of the review of the financing contract documents and secondary information from industry players, most leasing companies in Cilegon have not yet fully adjusted their fiduciary agreement clauses, which contain the authority of *parate executie* without going through the court mechanism, and still find, so that it is substantively contrary to the new norms that MK affirms. Practices in the field show that debt collectors often make withdrawals directly from the debtor's vehicle account without an official letter of assignment from the Court and without the debtor's admission of default. In fact, the Constitutional Court Decision explicitly states that the Execution of the fiduciary guarantee certificate can only be carried out if there is recognition of default or a court decision/determination. The verdict reads:

"The execution of a fiduciary guarantee certificate against a debtor who does not acknowledge the existence of a default must be carried out through the courts." From the perspective of the principle of legal Protection, the research results show that Protection for debtors in Cilegon City is still formal and not yet adequate substantively. Although the legal norms following the Constitutional Court Decision No. 18/PUU-XVII/2019 have provided a guarantee of the right for debtors to refuse Execution without a court decision, Low legal literacy and minimal socialization cause many debtors not to understand these rights. Utami (2024) emphasizes, in his research, the importance of legal Protection, which is only normative unless it is effective. With adequate access to information and understanding, legal Protection becomes a subject of legal Protection. It indicates that the implementation of the principle of legal Protection has not been fully implemented and realized at the practical level.

Meanwhile, from the perspective of the principle of legal certainty, the slow adjustment of internal SOPs by leasing companies and the absence of implementing technical regulations gave rise to different interpretations in the field following the post-MK Decision. Some law enforcement officials in Cilegon still tolerate the practice of unilateral Execution, thus giving rise to inconsistencies in the application of the law. According to Hans Kelsen, the certainty of law can only be achieved if legal norms are implemented consistently by all authorized officers. Thus, the implementation of legal norms resulting from the Constitutional Court Decision in Cilegon has not yet been entirely in line with the principles of legal Protection and the principle of legal certainty. Normative, Protection, and legal certainty have been confirmed in the Constitutional Court's Decision. However, empirically, field practices still reflect old patterns that tend to favor the interests of creditors, so that the constitutional objectives of this Decision have not been optimally achieved.

CONCLUSION

The implementation of Constitutional Court Decision No. 18/PUU-XVII/2019 in the City of Cilegon has not fully complied with established legal norms. The Decision stipulates that the

Execution of a fiduciary guarantee certificate can only be carried out if there is an acknowledgement of default by the debtor or a court decision/ruling has been issued. However, research findings show that most leasing companies in Kota Cilegon still maintain the *parate executie* clause in the fiduciary agreement and remain unilaterally withdrawing collateral through *debt collectors* without proper judicial procedures.

This practice occurs due to the absence of implementing technical regulations following the Constitutional Court's Decision, slow adjustment of internal SOPs of leasing companies, low legal literacy of debtors, and differences in understanding among law enforcement officers. This condition indicates that the principles of *due process of law*, legal Protection, and legal certainty are the objectives. The main Constitutional Court Decision No. 18/PUU-XVII/2019 has not been fully implemented in practice.

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