

## RECONSTRUCTING THE LEGAL FRAMEWORK FOR THE EXECUTION OF FIDUCIARY SECURITY IN CONSUMER FINANCING AGREEMENTS IN THE EVENT OF DEBTOR BANKRUPTCY IN INDONESIA

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### ABSTRACT

This study aims to analyze the implementation of fiduciary guarantees in consumer financing agreements when debtors are declared bankrupt according to Indonesian law and to formulate a reconstruction of the legal framework for its implementation in order to realize legal certainty and justice for creditors and debtors. The research problem is focused on two things, namely how the implementation of fiduciary guarantees is regulated in consumer financing agreements when the debtor is declared bankrupt and how the legal framework for the implementation of fiduciary guarantees needs to be reconstructed in order to provide legal certainty and justice for the parties in the bankruptcy process. This study uses normative legal research methods with a statutory approach, a conceptual approach, and a case approach. The legal materials used include primary legal materials in the form of laws and regulations, secondary legal materials in the form of books and scientific journals, and tertiary legal materials as support. The analysis of legal materials is carried out qualitatively through legal interpretation and argumentation.

The results of the study show that the implementation of fiduciary guarantees in consumer financing agreements when the debtor is declared bankrupt places the creditors of the fiduciary guarantee holder as separatist creditors who have a preferential right to execute the object of the guarantee. However, in bankruptcy practice, the exercise of these rights often faces restrictions due to the suspension of execution and the curator's authority in the management of bankruptcy assets. This condition shows that there is an inconsistency between Law Number 42 of 1999 concerning Fiduciary Guarantees and Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations which creates legal uncertainty in practice. Therefore, it is necessary to reconstruct the legal framework through the harmonization of regulations between fiduciary guarantee law and bankruptcy law in order to create legal certainty and a balance of legal protection for creditors and debtors in the bankruptcy process.

**Keywords:** *Reconstruction, Legal, Framework, Execution, Fiduciary, Security, Consumer, Financing, Agreements, Debtor, Bankruptcy, Indonesia.*

## INTRODUCTION

### Background

The development of consumer financing activities in Indonesia has increased significantly in line with the growth of the financing sector and the public's need for fast and flexible access to credit. In practice, financing institutions generally use fiduciary guarantees as a legal instrument to guarantee the repayment of debtors' debts. Fiduciary guarantees give creditors preferential rights over movable objects that are used as collateral, so that creditors have a preferential position over other creditors. The regulation of fiduciary guarantees in Indonesia is specifically regulated in Law Number 42 of 1999 concerning Fiduciary Guarantees, which affirms that the ownership rights of the object of the guarantee are transferred in trust to the creditor while the physical control remains with the debtor. The existence of the fiduciary guarantee system is intended to provide legal certainty and protection for the parties to the financing agreement, especially for creditors as the party providing the financing facilities.<sup>1</sup>

However, the development of consumer financing practices shows that legal arrangements regarding fiduciary guarantees have not been fully able to answer the various legal issues that arise in practice, especially when debtors experience bankruptcy. In the context of bankruptcy law, all debtors' assets in principle become bankruptcy assets that are under the control of the curator as stipulated in Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations. This condition raises legal problems regarding the position and implementation of the right of execution of creditors holding fiduciary guarantees, because on the one hand the creditor has preferential rights as separatist creditors, but on the other hand there are certain restrictions in the bankruptcy process that can hinder the exercise of these rights.<sup>2</sup>

Normatively, the fiduciary guarantee law gives creditors the right to execute the object of the guarantee directly if the debtor defaults. A fiduciary guarantee certificate even has an

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<sup>1</sup> Munir Fuady, *Debt Guarantee Law* (Bandung: Citra Aditya Bakti, 2013), pp. 65–67.

<sup>2</sup> Sutan Remy Sjahdeini, *Bankruptcy Law: Understanding Law No. 37 of 2004 concerning Bankruptcy* (Jakarta: Pustaka Utama Grafiti, 2016), pp. 148–150.

executory power equivalent to a court decision that has permanent legal force. However, in bankruptcy practice, the exercise of these rights cannot always be carried out directly because of the provisions regarding the period of suspension of execution and the authority of the curator in managing the bankruptcy assets. This condition creates normative tension between fiduciary guarantee law and bankruptcy law, thus creating legal uncertainty regarding the mechanism of execution of fiduciary guarantees when the debtor is declared bankrupt.<sup>3</sup>

This problem is increasingly complex after the emergence of various court and Constitutional Court decisions that affect the mechanism for the execution of fiduciary guarantees, especially the Constitutional Court Decision Number 18/PUU-XVII/2019 which emphasizes that the implementation of fiduciary guarantee execution cannot be carried out unilaterally if there is a dispute regarding default. The ruling has significant implications for consumer financing practices because it requires an agreement on default or through a court mechanism before execution can take place. In the context of bankruptcy, this condition has the potential to prolong the debt settlement process and reduce the effectiveness of fiduciary guarantees as a protection instrument for creditors.<sup>4</sup>

Recent studies have also shown that the implementation of fiduciary guarantees in bankruptcy cases still faces various normative and practical obstacles. One of the main problems is the insynchronization between the provisions of the Fiduciary Guarantee Law and the Bankruptcy Law, especially related to the position of separatist creditors and the deadline for the execution of the collateral object. In practice, creditors are often unable to immediately execute the collateral object because they have to wait for certain processes in the bankruptcy mechanism, thus creating legal uncertainty and potential losses for creditors.<sup>5</sup>

In addition, in bankruptcy practice, various cases of overlapping ownership of fiduciary guarantee objects have also been found, including the phenomenon of re-fiduciary or double registration of the same object. This condition can occur due to the weak verification and

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<sup>3</sup> J. Satrio, *Guarantee Law, Property Guarantee Rights* (Bandung: Citra Aditya Bakti, 2002), pp. 312–315.

<sup>4</sup> Romlatust Nain, "Alternative Model for the Implementation of the Execution of Fiduciary Guarantee Objects After the Constitutional Court Decision," *Gorontalo Law Review* 5, no. 1 (2022): 288–290.

<sup>5</sup> Ayup Suran Ningsih, "Creditor of Fiduciary Facing Bankruptcy: What Should They Do?" *Diponegoro Law Review* 10, no. 1 (2025): 29–33.

supervision system in the registration of fiduciary guarantees, so that when the debtor is declared bankrupt, disputes arise regarding the ownership status and priority of the creditor's rights over the object of the guarantee. This problem shows that the existing legal system is not fully able to provide optimal legal protection for the parties to the consumer financing agreement.<sup>6</sup>

On the other hand, recent research also highlights that although creditors holding fiduciary guarantees are theoretically categorized as separatist creditors who can execute their guarantees as if there were no bankruptcy, in practice there are various procedural restrictions that prevent these rights from being effectively enforced. Provisions regarding the period of suspension of execution and the involvement of curators in the management of bankruptcy assets often slow down the execution process and create conflicts of interest between separatist creditors and other creditors. This condition shows that there is a gap between normative regulation and practical implementation in the guarantee legal system in Indonesia.<sup>7</sup>

Furthermore, the development of increasingly complex consumer financing practices also shows that the object of fiduciary guarantees is often in the form of movable goods of high economic value such as motor vehicles or company inventory items. When the debtor experiences bankruptcy, the object of the guarantee can become part of the bankruptcy bond, causing a conflict between the creditor's right of execution and the curator's authority in managing the bankruptcy property. This shows that the existing legal framework still needs adjustments in order to be able to provide legal certainty and maintain a balance between the interests of creditors, debtors, and other parties in the bankruptcy process.<sup>8</sup>

In addition, developments in legal practice show that various disputes related to the execution of fiduciary guarantees in bankruptcy often lead to lengthy litigation processes. This shows that the existing arrangements have not provided an effective and efficient settlement

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<sup>6</sup> Arviando Yosua S., "Legal Protection of Fiduciary Creditors in Bankruptcy," Master of Notary Thesis, Gadjah Mada University (2022), pp. 87–90.

<sup>7</sup> Selvia Oktaviana et al., "Legal Position of Creditors Holding Fiduciary Security Rights in Debtor Bankruptcy Processes," *International Journal of Multicultural and Multireligious Understanding* 11, no. 3 (2024): 422–424.

<sup>8</sup> Rachmadi Usman, *Civil Guarantee Law* (Jakarta: Sinar Grafika, 2017), pp. 201–203.

mechanism for the parties. Unclear execution procedures, differences in interpretations of laws and regulations, and weak coordination between the fiduciary registration system and bankruptcy mechanisms are factors that increase the potential for legal disputes in consumer financing practices in Indonesia.<sup>9</sup>

Based on these various problems, it can be concluded that there is a gap between the legal framework that governs fiduciary guarantees and the practice of its implementation in debtor bankruptcy cases in Indonesia. The insynchronization between the Fiduciary Guarantee Law and the Bankruptcy Law, the development of court decisions that affect the execution mechanism, and various administrative problems in the registration of fiduciary guarantees indicate that there is an urgent need to reconstruct the legal framework for the implementation of fiduciary guarantees in consumer financing agreements. The reconstruction is needed to create a more consistent legal system, provide legal certainty for the parties, and ensure fair legal protection in the settlement of debts and receivables when debtors experience bankruptcy.<sup>10</sup>

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<sup>9</sup> Faisal, "Execution of Fiduciary Guarantee Objects by Creditors in Debtor Bankruptcy," *Horizon Sarana Justice* 2024: 58–60.

<sup>10</sup> Mariam Darus Badruzaman, *Aneka Hukum Bisnis* (Bandung: Alumni, 2015), pp. 175–177.

### Research Question

1. How is the execution of fiduciary security regulated in consumer financing agreements when the debtor is declared bankrupt under Indonesian law?
2. How should the legal framework for the execution of fiduciary security be reconstructed to ensure legal certainty and fairness for creditors and debtors in bankruptcy proceedings?

### THEORETICAL FRAMEWORK

#### 1. Theory of Justice

The theory of justice is one of the fundamental theories in legal philosophy that is used to assess whether a legal system has provided fair treatment to the parties involved in the legal relationship. In the context of civil law and business law, justice is not only understood as equality of treatment, but also as a balance between the rights and obligations of the parties involved in a legal relationship. The application of justice theory is important in analyzing the implementation of fiduciary guarantees in consumer financing agreements when the debtor is declared bankrupt, because the legal relationship involves the interests of creditors as financiers, debtors as recipients of financing, and other parties who may have interests in the bankruptcy process. Thus, the theory of justice provides an analytical framework to assess whether the arrangement and implementation of fiduciary guarantees in the Indonesian legal system have provided proportionate protection and do not create inequality between the interests of creditors and debtors in bankruptcy situations.<sup>11</sup>

In John Rawls's perspective, justice is understood as a basic principle that must govern the structure of social institutions, including the legal system. Rawls emphasized the concept *of justice as fairness*, which is justice as fairness that demands a proportionate distribution of rights and obligations for each party. This principle emphasizes that every individual has an equal right to fundamental freedoms, and that social and economic inequalities can only be justified if they provide equitable benefits

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<sup>11</sup> John Rawls, *A Theory of Justice* (Cambridge: Harvard University Press, 1999), hlm. 3–6.

to all parties. In the context of the implementation of fiduciary guarantees in bankruptcy, the concept of justice requires that the legal system be able to provide protection for the interests of creditors as holders of material guarantees without ignoring the rights of debtors and other creditors in the bankruptcy process. Therefore, an analysis of the implementation of fiduciary guarantees must consider whether existing legal arrangements have reflected the balance of interests between the parties in the consumer financing relationship.<sup>12</sup>

In the material guarantee legal system, justice is also closely related to the protection of the preferential rights of the guarantor creditors. Fiduciary guarantees basically give a privileged position to creditors because they give the right to execute the object of the guarantee in the event of default. The preferential right is intended to create justice for creditors who have provided financing facilities with certain guarantees. However, in the context of debtor bankruptcy, the exercise of these rights often faces certain restrictions regulated in bankruptcy law, such as the period of suspension of execution and the curator's authority to manage the bankruptcy assets. This condition raises justice issues because these restrictions have the potential to reduce the rights of creditors who have been legally guaranteed through the material guarantee mechanism. Therefore, an analysis of the implementation of fiduciary guarantees in bankruptcy needs to be carried out using a justice perspective in order to assess whether the restriction is still within the limits of fairness or actually causes injustice for creditors.<sup>13</sup>

In addition, justice theory can also be used to assess the relationship between fiduciary guarantee law and bankruptcy law in the Indonesian legal system. The two legal regimes have different goals, but they are interrelated in practice. Fiduciary guarantee law aims to provide protection for creditors through the granting of security rights to certain objects, while bankruptcy law aims to regulate the equitable distribution of debtors' assets to all creditors. When a debtor is declared bankrupt, the

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<sup>12</sup> Brian H. Bix, *Jurisprudence: Theory and Context* (London: Sweet & Maxwell, 2015), hlm. 187–189.

<sup>13</sup> Munir Fuady, *Debt Guarantee Law* (Bandung: Citra Aditya Bakti, 2013), pp. 82–85.

two purposes often give rise to a conflict of interest, especially in terms of the exercise of the right of execution of the object of the guarantee. In this situation, the theory of justice serves as a normative basis for assessing how the balance between the rights of separatist creditors and the interests of other creditors can be realized in the bankruptcy process. Thus, the analysis of the implementation of fiduciary guarantees must take into account the principle of distributive justice which demands a proportionate distribution of rights in the bankruptcy system.<sup>14</sup>

Based on the perspective of this theory of justice, the implementation of fiduciary guarantees in consumer financing agreements when the debtor is declared bankrupt must be analyzed by considering the balance between the protection of creditors as guarantor holders and the protection of debtors and other creditors in the bankruptcy process. A fair legal system should be able to provide certainty regarding the position of creditors holding fiduciary guarantees as separatist creditors while ensuring that the bankruptcy process continues to run fairly for all interested parties. Thus, the theory of justice provides a conceptual basis for assessing whether the implementation of fiduciary guarantees in bankruptcy has reflected the principle of balance of rights and obligations in the Indonesian legal system and the extent to which existing legal arrangements have met the demands of justice in consumer financing practices.<sup>15</sup>

## 2. Legal Certainty Theory

The theory of legal certainty is one of the fundamental theories in law that emphasizes that the law must provide clear, consistent, and predictable rules so that every legal subject knows his rights and obligations definitively. Legal certainty is an important element in the modern legal system because without certainty, the law cannot function as a code of conduct for society or as an effective dispute resolution instrument. In the context of the implementation of fiduciary guarantees in

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<sup>14</sup> Rachmadi Usman, *Civil Guarantee Law* (Jakarta: Sinar Grafika, 2017), pp. 197–199.

<sup>15</sup> Hans Kelsen, *General Theory of Law and State* (Cambridge: Harvard University Press, 1945), hlm. 13–15.

bankruptcy proceedings, legal certainty is needed to ensure that the rights of creditors as holders of guarantees can be clearly exercised without creating a conflict of interpretation between the various regulations governing material guarantees and bankruptcy. Therefore, the theory of legal certainty is an important foundation in analyzing how the legal framework for the implementation of fiduciary guarantees needs to be reconstructed in order to provide certainty for the parties in the consumer financing relationship.<sup>16</sup>

From the perspective of legal theory, legal certainty is related to the existence of legal norms that are formulated expressly and do not give rise to different interpretations. Utrecht explained that legal certainty means that there are clear rules so that individuals know what actions are and are not allowed to be taken according to the law. In the context of fiduciary guarantee law, legal certainty is realized through a guarantee registration system that recognizes the creditor's rights to the object of the guarantee and provides a preferential position for the creditor in the payment of debts. However, in bankruptcy practice, legal certainty is often disrupted due to the difference in arrangement between the Fiduciary Guarantee Act and the Bankruptcy Act, which creates ambiguity regarding the mechanism for exercising the creditor's enforcement right against the object of the guarantee when the debtor is declared bankrupt.<sup>17</sup>

In the practice of the material guarantee system, legal certainty is also related to the principle of publicity and the principle of priority inherent in the right of guarantee. The principle of publicity requires that every fiduciary guarantee be registered so that it can be known by a third party, while the principle of priority gives priority to the creditor holding the guarantee over other creditors. These principles are intended to provide certainty about who has the right to the object of collateral and how the order of debt repayment should be if the debtor experiences financial difficulties or is even declared bankrupt. However, in bankruptcy practice, the implementation of this principle often faces obstacles due to the existence of a

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<sup>16</sup> Sudikno Mertokusumo, *Legal Discovery: An Introduction* (Yogyakarta: Liberty, 2009), pp. 99–102.

<sup>17</sup> E. Utrecht, *Introduction to Indonesian Law* (Jakarta: Ichtiar Baru, 1989), pp. 28–30.

mechanism for suspension of execution and the authority of the curator in managing bankruptcy assets which can limit the exercise of the rights of creditors holding fiduciary guarantees.<sup>18</sup>

Furthermore, legal certainty in the fiduciary guarantee system is also related to the effectiveness of the exercise of the right of execution against the object of the guarantee. A fiduciary guarantee certificate normatively has an executory power equivalent to a court decision that has permanent legal force, so that the creditor has the right to execute the object of the guarantee if the debtor defaults. However, the development of legal practice shows that the implementation of these rights does not always run effectively, especially after the emergence of various court decisions that affect the mechanism for the execution of fiduciary guarantees. This condition creates uncertainty for financing institutions because the right of execution that has been normatively guaranteed by law becomes difficult to implement directly in bankruptcy practice.<sup>19</sup>

In the context of legal reconstruction, the theory of legal certainty requires harmonization between various laws and regulations that regulate the same legal field. The inconsistency between fiduciary guarantee law and bankruptcy law can create uncertainty for the parties in the consumer financing relationship, especially related to the position of the creditor of the guarantee holder and the mechanism for the enforcement of his or her enforcement rights. Therefore, the reconstruction of the legal framework for the implementation of fiduciary guarantees needs to be directed at efforts to synchronize norms between the Fiduciary Guarantee Law and the Bankruptcy Law so that there are no regulatory conflicts that can harm the interests of the parties in the bankruptcy process.<sup>20</sup>

Based on the perspective of legal certainty theory, the reconstruction of the legal framework for the implementation of fiduciary guarantees in bankruptcy proceedings must be directed at the establishment of a more consistent, transparent,

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<sup>18</sup> Rudolf von Jhering, *Law as a Means to an End* (New York: Cosimo Classics, 2000), hlm. 289–292.

<sup>19</sup> Salim H.S., *The Development of Guarantee Law in Indonesia* (Jakarta: Rajawali Pers, 2016), pp. 176–179.

<sup>20</sup> Ridwan HR, *State Administrative Law* (Jakarta: Rajawali Pers, 2016), pp. 121–124.

and predictable legal system. The legal system must be able to provide clarity on the position of the creditor of the fiduciary guarantee holder as a separatist creditor, the mechanism for exercising the right of execution against the object of the guarantee, and the relationship between the process of execution of the guarantee and the mechanism for settling bankruptcy assets. Thus, the application of the theory of legal certainty can be a conceptual foundation in formulating a legal reconstruction model that not only provides protection for creditors, but also guarantees justice and legal certainty for debtors and other parties involved in the bankruptcy process.<sup>21</sup>

## RESEARCH METHODOLOGY

This research uses a normative legal research approach that focuses on the analysis of the legal norms that govern the implementation of fiduciary guarantees in consumer financing agreements when the debtor is declared bankrupt. Normative legal research is carried out by examining legal materials consisting of laws and regulations, legal doctrines, and court decisions related to the object of research. This approach was chosen because of the problems studied related to the disharmony of norms between Law Number 42 of 1999 concerning Fiduciary Guarantees and Law Number 37 of 2004 concerning Bankruptcy and Delay of Debt Payment Obligations. Through normative research, analysis can be directed to understand how the applicable legal norms govern the implementation of fiduciary guarantees in bankruptcy and how these norms need to be reconstructed to create legal certainty and justice for the parties.<sup>22</sup>

The research approaches used in this study include several legal approaches, namely the statute *approach*, the conceptual *approach*, and the *case approach*. The legislative approach is carried out by examining various regulations governing fiduciary and bankruptcy guarantees, including provisions on the position of separatist creditors and the mechanism for the execution of the object of collateral in the bankruptcy process. The conceptual approach

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<sup>21</sup> Lon L. Fuller, *The Morality of Law* (New Haven: Yale University Press, 1969), hlm. 63–66.

<sup>22</sup> Soerjono Soekanto and Sri Mamudji, *Normative Legal Research: A Brief Review* (Jakarta: Rajawali Pers, 2001), pp. 13–15.

is used to understand legal concepts related to the theory of material security, bankruptcy, as well as the principles of justice and legal certainty in the civil law system. Meanwhile, the case approach is carried out by analyzing court decisions related to disputes over the implementation of fiduciary guarantees in bankruptcy to see how these legal norms are applied in judicial practice.<sup>23</sup>

The types and sources of legal materials in this study consist of primary legal materials, secondary legal materials, and tertiary legal materials. Primary legal materials include laws and regulations related to fiduciary guarantees and bankruptcy, such as Law Number 42 of 1999 concerning Fiduciary Guarantees and Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations. Secondary legal materials include law textbooks, scientific journal articles, research results, and opinions of experts relevant to the research topic. Tertiary legal materials are used to provide additional explanations of certain legal terms or concepts, such as legal dictionaries and legal encyclopedias. The use of various sources of legal materials aims to obtain a comprehensive understanding of the legal framework for the implementation of fiduciary guarantees in bankruptcy.<sup>24</sup>

The technique of collecting legal materials in this study is carried out through library *research*, which is by tracing various legal sources that are relevant to the object of research. Literature studies are carried out by examining laws and regulations, legal literature, national and international journal articles, and court decisions related to the implementation of fiduciary guarantees in bankruptcy. This technique allows researchers to identify a wide range of legal concepts, doctrines, as well as developments in legal practice relevant to the research. Through the systematic collection of legal materials, this research can produce an in-depth analysis of the legal problems being studied.<sup>25</sup>

The analysis of legal materials in this study was carried out qualitatively using legal interpretation methods and legal argumentation. This method is used to interpret the legal norms contained in laws and regulations and examine the relationship between various legal

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<sup>23</sup> Peter Mahmud Marzuki, *Legal Research* (Jakarta: Kencana, 2017), pp. 133–136.

<sup>24</sup> Johnny Ibrahim, *Theory and Methodology of Normative Legal Research* (Malang: Bayumedia Publishing, 2006), pp. 295–297.

<sup>25</sup> M. Syamsudin, *Legal Research Methods* (Jakarta: RajaGrafindo Persada, 2007), pp. 81–84.

provisions that govern fiduciary guarantees and bankruptcy. The analysis is carried out systematically by connecting the applicable legal norms with the theory of justice and the theory of legal certainty as the conceptual basis of the research. Through this analysis, this study aims to formulate a reconstruction of the legal framework for the implementation of fiduciary guarantees in consumer financing agreements when debtors are declared bankrupt in order to be able to provide legal certainty and justice for the parties involved in the bankruptcy process.<sup>26</sup>

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<sup>26</sup> I Made Pasek Diantha, *Normative Legal Research Methodology in Justification of Legal Theory* (Jakarta: Kencana, 2016), pp. 152–155.

## RESEARCH RESULTS

### **The implementation of fiduciary guarantees is regulated in the consumer financing agreement when the debtor is declared bankrupt under Indonesian law**

The implementation of fiduciary guarantees in consumer financing agreements has an important role in ensuring the certainty of debt repayment for creditors. In the practice of consumer financing in Indonesia, financing institutions generally require a fiduciary guarantee for movable objects belonging to the debtor, such as motor vehicles or other consumptive goods financed through credit. Fiduciary guarantees give the creditor property rights to the object of the guarantee so that the creditor obtains a preferred position in the repayment of receivables. In the context of bankruptcy, the position of creditors holding fiduciary guarantees is legally categorized as a separatist creditor who has the right to execute the object of the guarantee separately from the bankruptcy settlement process. The arrangement shows that the Indonesian legal system seeks to provide legal protection for the interests of creditors who have obtained material guarantees through fiduciary mechanisms.<sup>27</sup>

Normatively, the implementation of fiduciary guarantees is regulated in Law Number 42 of 1999 concerning Fiduciary Guarantees which affirms that fiduciary guarantee certificates have the same executory power as court decisions that have permanent legal force. This provision gives the creditor the authority to execute the object of collateral if the debtor defaults without having to go through the lawsuit process first. In consumer financing practice, this mechanism is an effective instrument for finance companies to secure their financial interests. However, when the debtor is declared bankrupt by the court, the exercise of the right of execution is no longer fully in the hands of the creditor because it must take into account the provisions in the bankruptcy law that govern the management of bankruptcy assets by the curator.<sup>28</sup>

In the framework of bankruptcy law, all of the debtor's assets are in principle part of the bankruptcy estate which is under the control of the curator. This creates legal dynamics

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<sup>27</sup> Bambang Sugeng and Sujayadi, "Legal Protection for Creditors Holding Fiduciary Security in Consumer Financing Agreements," *Journal of Legal Dynamics* 20, no. 2 (2020): 268–270.

<sup>28</sup> Ferry Irawan Febriansyah, "Fiduciary Security Execution in Indonesian Consumer Financing Agreements," *Yuridika* 36, no. 1 (2021): 87–89.

related to the implementation of fiduciary guarantees because the object of the guarantee that is legally the preferred right of the creditor is also part of the debtor's assets managed in the bankruptcy process. The Bankruptcy Law recognizes the position of separatist creditors, but at the same time also imposes certain restrictions on the exercise of these rights, such as a period of suspension of execution during the verification and liquidation process of bankruptcy assets. This condition shows that the implementation of fiduciary guarantees in bankruptcy cannot be separated from the bankruptcy legal mechanism that aims to protect the interests of all creditors.<sup>29</sup>

In addition, the implementation of fiduciary guarantees in bankruptcy is also influenced by the provisions regarding the period of suspension of execution regulated in bankruptcy law. This provision provides a certain time for the curator to manage and inventory the bankruptcy assets before the separatist creditor can exercise his right of execution. The purpose of the arrangement is to provide an opportunity for the curator to manage the debtor's assets optimally for the benefit of all creditors. However, in practice, this period of suspension often creates uncertainty for creditors holding fiduciary guarantees because the right of execution that should have been directly exercised is delayed by the administrative process in bankruptcy.<sup>30</sup>

The development of legal practice also shows that the implementation of fiduciary guarantees in bankruptcy often faces various technical problems, such as disputes regarding the status of the object of the guarantee or objections from other creditors to the execution of the execution. In some cases, the object of the fiduciary guarantee has been transferred or used by the debtor prior to bankruptcy, thus creating difficulties in the execution process. These problems show that although normatively the law has provided protection for creditors holding fiduciary guarantees, the implementation of these rights in bankruptcy practice still faces various obstacles that require more comprehensive legal handling.<sup>31</sup>

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<sup>29</sup> Selvia Oktaviana, R. Rachmawati, dan F. Kurniawan, "Legal Position of Creditors Holding Fiduciary Security Rights in Debtor Bankruptcy Processes," *International Journal of Multicultural and Multireligious Understanding* 11, no. 3 (2024): 421–424.

<sup>30</sup> Hardianto Djanggih dan Nurul Qamar, "The Legal Protection of Secured Creditors in Bankruptcy Proceedings in Indonesia," *Hasanuddin Law Review* 7, no. 2 (2021): 148–151.

<sup>31</sup> Ayup Suran Ningsih, "Creditor of Fiduciary Facing Bankruptcy: What Should They Do?" *Diponegoro Law Review* 10, no. 1 (2025): 29–32.

In addition, the Constitutional Court's decision related to the mechanism for the execution of fiduciary guarantees also affects the practice of implementing fiduciary guarantees in bankruptcy. The decision affirms that the execution of fiduciary guarantees cannot be carried out unilaterally if there is a dispute regarding default between creditors and debtors. The implication of this ruling is that the execution of fiduciary guarantees must take into account the principles of justice and protection of the debtor, so that there are no adverse actions to either party. In the context of bankruptcy, this condition further strengthens the need for a clear legal mechanism regarding the exercise of the rights of creditors holding fiduciary guarantees.<sup>32</sup>

Based on the various legal provisions and judicial practices, it can be concluded that the implementation of fiduciary guarantees in consumer financing agreements when the debtor is declared bankrupt according to Indonesian law is within the framework of the relationship between property guarantee law and bankruptcy law. The position of the creditor holding fiduciary guarantee as a separatist creditor provides preferential rights in the settlement of receivables, but the implementation of this right must still pay attention to the mechanism for settling bankruptcy assets regulated in bankruptcy law. Thus, the implementation of fiduciary guarantees in bankruptcy is basically an effort to balance the protection of the interests of creditors with the collective interests of other creditors in the process of settling debts of debtors who have been declared bankrupt.<sup>33</sup>

The implementation of fiduciary guarantees in consumer financing agreements when the debtor is declared bankrupt is also related to the position of the creditor holding the guarantee as a separatist creditor who legally has the right to execute the object of the guarantee in order to obtain the repayment of his receivables. In the practice of bankruptcy in Indonesia, the position of separatist creditors is recognized in the legal system because they have material rights attached to the object of the guarantee. However, the exercise of these rights is not completely free because it must consider a bankruptcy mechanism that aims to protect the interests of all creditors. In certain situations, the trustee may take action against

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<sup>32</sup> Romlatust Nain, "An Alternative Model for the Implementation of the Execution of Fiduciary Guarantee Objects After the Constitutional Court Decision," *Gorontalo Law Review* 5, no. 1 (2022): 286–289.

<sup>33</sup> Teddy Anggoro, "Secured Creditors and Bankruptcy Law in Indonesia: Harmonizing Fiduciary Security and Insolvency Proceedings," *Indonesia Law Review* 12, no. 2 (2022): 214–217.

the object of the guarantee if it is deemed to provide greater benefit to the bankruptcy bank. This condition shows that the implementation of fiduciary guarantees in bankruptcy is not only related to the creditor's preferential rights, but also related to the principle of balance of interests in the process of settling bankruptcy assets, so careful legal interpretation is needed in determining the limits of the exercise of these rights.<sup>34</sup>

In addition, the development of legal practice also shows that the effectiveness of the implementation of fiduciary guarantees in bankruptcy is greatly influenced by the guarantee registration administration system and the transparency of information regarding the object of the guarantee used as collateral. When an object has been legally registered as a fiduciary guarantee, then legally the object grants preferential rights to the fiduciary holder's creditors. However, in bankruptcy practice, various problems are often found such as late registration, double registration, and unclear status of the collateral object that can cause disputes among creditors. Therefore, strengthening the registration system and supervision of fiduciary guarantees is an important factor in ensuring the effectiveness of the implementation of creditors' rights when the debtor is declared bankrupt, as well as ensuring that the bankruptcy mechanism continues to run transparently and fairly for all interested parties in the debtor's debt settlement process.<sup>35</sup>

### **The legal framework for the implementation of fiduciary guarantees must be reconstructed to ensure legal certainty and justice for creditors and debtors in the bankruptcy process**

The legal framework for the implementation of fiduciary guarantees in bankruptcy proceedings in Indonesia is basically built from two main legal regimes, namely material guarantee law and bankruptcy law. Law Number 42 of 1999 concerning Fiduciary Guarantees gives preferential rights to creditors holding fiduciary guarantees to execute the object of the guarantee to pay off debtors' receivables. However, in practice, when the debtor is declared bankrupt based on Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations, the implementation of these rights often faces various normative and

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<sup>34</sup> Andriani Siregar, "Legal Protection for Fiduciary Creditors in Bankruptcy Proceedings in Indonesia," *Jurnal Hukum IUS QUIA IUSTUM* 28, no. 3 (2021): 489–491.

<sup>35</sup> Rizky Amalia dan Budi Santoso, "The Effectiveness of Fiduciary Security Registration in Protecting Creditors' Rights in Bankruptcy Cases," *Yuridika* 38, no. 2 (2023): 265–268.

procedural obstacles. This condition indicates that there is an insynchronization between the fiduciary guarantee arrangement and the bankruptcy mechanism that can create legal uncertainty for the parties to the consumer financing agreement. Therefore, efforts are needed to reconstruct the legal framework so that the relationship between the two legal regimes can run harmoniously and provide balanced legal protection for creditors and debtors.<sup>36</sup>

The main problem in the implementation of fiduciary guarantees in bankruptcy lies in the limitation of the right of execution of separatist creditors through the provision of a suspension of execution period. Although in theory the creditor of the fiduciary guarantee holder has the right to execute the object of the guarantee as if there were no bankruptcy, in practice the right must be subject to various procedures regulated in bankruptcy law. These restrictions often create ambiguity regarding the limits of authority between the creditor holding the guarantee and the curator in charge of managing the bankruptcy assets. This ambiguity has the potential to cause a conflict of interest between separatist creditors and other creditors, so it is necessary to reconstruct a legal framework that is able to provide clarity on the mechanism for the implementation of fiduciary guarantee enforcement rights in bankruptcy proceedings.<sup>37</sup>

In addition to the problem of norm synchronization, the reconstruction of the legal framework is also needed to overcome various problems that arise in consumer financing practices. In many cases, the object of fiduciary collateral in the form of movable goods such as motor vehicles remains in the debtor's possession so that it has the potential to be transferred or hidden when the debtor experiences financial difficulties. This condition can make it difficult for the execution by creditors, especially when the debtor has been declared bankrupt and the management of the bankrupt assets is under the authority of the curator. Therefore, the reconstruction of the legal framework needs to consider strengthening the

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<sup>36</sup> Ayup Suran Ningsih, Ibi, 28-31

<sup>37</sup> Selvia Oktaviana, R. Rachmawati, dan F. Kurniawan, "Legal Position of Creditors Holding Fiduciary Security Rights in Debtor Bankruptcy Processes," *International Journal of Multicultural and Multireligious Understanding* 11, no. 3 (2024): 422–425.

supervision and protection system for the object of fiduciary guarantees so that creditors' rights can be effectively exercised without neglecting legal protection for debtors.<sup>38</sup>

The reconstruction of the legal framework must also pay attention to the principle of justice in the legal relationship between creditors and debtors. In the modern legal system, the protection of creditors should not ignore the rights of the debtor as a party in a weaker economic position. Therefore, the regulation regarding the implementation of fiduciary guarantees in bankruptcy must be able to create a balance between the interests of creditors in obtaining repayment of receivables and the interests of debtors in obtaining fair legal protection. This approach is important to ensure that the legal system not only serves as a tool for enforcing creditors' rights, but also as a protection mechanism for all parties involved in the financing relationship.<sup>39</sup>

On the other hand, the development of legal practice also shows that court and Constitutional Court rulings have had an influence on the mechanism for the execution of fiduciary guarantees. A ruling affirming the need for an agreement on default or a court mechanism prior to execution shows that Indonesia's legal system is beginning to lead to more balanced protection between creditors and debtors. However, these developments also pose new challenges for financing institutions as the previously simple execution mechanism becomes more complex. Therefore, the reconstruction of the legal framework needs to consider the development of jurisprudence in order to create a more consistent legal system and not create uncertainty in consumer financing practices.<sup>40</sup>

Furthermore, the reconstruction of the legal framework for the implementation of fiduciary guarantees in bankruptcy also needs to take into account the development of international legal practices regarding creditor protection in the property guarantee system. Many countries have developed legal systems that provide a balance between the interests of creditors and debtors through clearer arrangements regarding the position of creditors of the guarantor in bankruptcy proceedings. The experiences of these countries can be an important

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<sup>38</sup> Teddy Anggoro, "Secured Creditors and Bankruptcy Law in Indonesia: Harmonizing Fiduciary Security and Insolvency Proceedings," *Indonesia Law Review* 12, no. 2 (2022): 212–215.

<sup>39</sup> Hardianto Djanggih dan Nurul Qamar, "The Legal Protection of Secured Creditors in Bankruptcy Proceedings in Indonesia," *Hasanuddin Law Review* 7, no. 2 (2021): 146–149.

<sup>40</sup> Romlatust Nain, "An Alternative Model for the Implementation of the Execution of Fiduciary Guarantee Objects After the Constitutional Court Decision," *Gorontalo Law Review* 5, no. 1 (2022): 285–288.

reference for Indonesia in formulating a more effective and adaptive legal reconstruction model to the development of modern business practices, especially in the growing consumer finance sector.<sup>41</sup>

Thus, the reconstruction of the legal framework for the implementation of fiduciary guarantees in the bankruptcy process is an urgent need to create a legal system that provides legal certainty and justice for the parties. The reconstruction must be directed at harmonizing the fiduciary guarantee law and bankruptcy law, strengthening the protection of the collateral object, and affirming the mechanism for implementing the rights of creditors of the guarantor in the bankruptcy process. Through comprehensive reconstruction, the legal system is expected to be able to provide more effective protection for creditors while ensuring justice for debtors in debt settlement through bankruptcy mechanisms.<sup>42</sup>

The reconstruction of the legal framework for the implementation of fiduciary guarantees in bankruptcy proceedings also needs to be directed at the establishment of a regulatory system that is able to integrate the principles of protection of creditors with the protection of debtors in a balanced manner. In consumer financing practice, the existence of fiduciary guarantees is intended to provide certainty that creditors can obtain repayment of their receivables through the execution of the collateral object if the debtor does not fulfill his obligations. However, in the context of bankruptcy, the exercise of these rights often faces unclear mechanisms due to the overlap of arrangements between fiduciary guarantee law and bankruptcy law. Therefore, legal reconstruction needs to be carried out through the harmonization of regulations that more clearly affirm the relationship between the right of execution of separatist creditors and the authority of curators in managing bankruptcy estates. This harmonization is important to create a legal system that not only provides protection for the creditors of the guarantor but also maintains the principle of justice in the distribution of bankruptcy assets for all creditors who have an interest in the debtor's wealth.<sup>43</sup>

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<sup>41</sup> Jasper J. van den Berg, "Secured Transactions and Insolvency Law Reform in Emerging Economies," *International Insolvency Review* 30, no. 3 (2021): 356–359.

<sup>42</sup> I Made Pasek Diantha dan I Nyoman Putu Budiarta, "Reconstruction of Legal Framework for Secured Creditors in Bankruptcy Proceedings," *Sriwijaya Law Review* 7, no. 1 (2023): 78–81.

<sup>43</sup> Rika Ratna Permata dan Ariawan Gunadi, "Legal Certainty of Fiduciary Security Rights in Bankruptcy Proceedings in Indonesia," *Sriwijaya Law Review* 6, no. 2 (2022): 221–224.

In addition, the reconstruction of the legal framework also needs to pay attention to the development of increasingly complex consumer financing business practices and the dynamics of court decisions that affect the implementation of fiduciary guarantees. The reformulation of legal arrangements should be directed at the establishment of a more transparent and effective mechanism in the execution of the object of collateral, especially in the situation of debtor bankruptcy. This can be done through strengthening the fiduciary guarantee registration system, stricter regulations on deadlines and execution procedures by separatist creditors, and improving coordination between judicial institutions, curators, and financing institutions. With the comprehensive reconstruction of the legal framework, it is hoped that the implementation of fiduciary guarantees in the bankruptcy process can provide stronger legal certainty and create a balance of legal protection between creditors and debtors in the consumer financing legal system in Indonesia.<sup>44</sup>

## CONCLUSION

The results of the study show that:

1. The implementation of fiduciary guarantees in consumer financing agreements when the debtor is declared bankrupt under Indonesian law basically places the creditors holding the fiduciary guarantee as separatist creditors who have a preferential right to execute the object of the guarantee for the repayment of receivables. However, in bankruptcy practice, the exercise of these rights cannot be carried out directly because it must pay attention to the provisions in bankruptcy law, such as the period of suspension of execution and the authority of the curator in managing the bankruptcy assets. This condition shows that there is an inconsistency between the provisions in the Fiduciary Guarantee Law and the Bankruptcy Law which creates legal uncertainty in the implementation of fiduciary guarantees when the debtor is declared bankrupt.
2. The inconsistency between the provisions in the Fiduciary Guarantee Law and the Bankruptcy Law has caused various problems in practice, both related to the position

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<sup>44</sup> Agus Sardjono dan Rosa Agustina, "Reformulating Secured Transactions Law in Indonesia: Challenges for Fiduciary Security in Insolvency Context," *Journal of Indonesian Legal Studies* 8, no. 1 (2023): 95–98.

of the creditor holding the guarantee and the mechanism for exercising its enforcement rights. Therefore, the reconstruction of the legal framework needs to be directed at the harmonization of norms between the two legal regimes in order to create a more consistent legal system and provide legal certainty for the parties. The reconstruction must also consider the principle of justice by balancing the interests of creditors in obtaining repayment of receivables with the protection of debtors and other creditors in the bankruptcy process. With a more harmonious and integrated legal framework, the implementation of fiduciary guarantees in consumer financing agreements is expected to provide legal certainty while realizing justice for all parties involved in the bankruptcy process.

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