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**THE DECONSTRUCTION OF LEGAL PROTECTION OF COMPANIES IS  
VIEWED FROM THE ECONOMIC JUSTICE OF FIDUCIARY RIGHTS  
ASSOCIATED WITH THE LEGAL CERTAINTY OF CREDITOR TAKEOVERS**

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Article	Abstract
<p>Received: Des 02, 2025; Reviewed: Jan 07, 2026; Accepted: Feb 09, 2026; Published: Feb 26, 2026</p>	<p><i>This fiduciary guarantee is different from other tangible collateral, the fiduciary institution is the only institution in which the debtor controls the movable collateral and money from the credit agreement. Fiduciary guarantees are carried out by means of constitutum possessorium, which is an object that has been handed over to the creditor but is still physically controlled by the fiduciary for the benefit of the fiduciary. With the formulation of the problem of how to reform legal protection for companies in the development of the theory of economic prosperity that is certain and how the reform of legal protection for limited companies in the certainty of creditor takeover of fair fiduciary rights in economic development. The approach method used to base the answer to the formulation of the problem is to use the main basis of the legislative approach (Statue Approach) and the conceptual approach (conceptual approach). The Statue Approach is used because what will be used are various legal rules that are the focus as well as the central theme of a research. In the data source, the materials used in writing this thesis include secondary legal materials obtained through literature and document studies related to this researcher.</i></p> <p><b>Keywords:</b> <i>Fiduciary Guarantee, Economic Justice, Corporate</i></p>

## 1. INTRODUCTION

Fiduciary guarantees are a form of collateral for material assets or tangible jams (*zakelijke zekerheid, security right in rem*). The construction of a fiduciary guarantee is the transfer of property rights in trust, over the debtor's tangible or movable property to the creditor with physical control of the goods remaining with the debtor. With the provision that if the debtor pays off his debt according to the set time, then the creditor is obliged to return the title to the property or goods to the debtor. In the treasures of legal science, this kind of material surrender is called "*Constitutum Possessorium*."

A fiduciary agreement is an agreement of creditors receivables to debtors that involves collateral. The guarantee is still in the possession of the guarantor owner. However, to ensure legal certainty for creditors, a deed is made by a notary and registered with the fiduciary registration office. There are at least two people who show us all that a covenant cannot be made alone. Thus any action taken by an individual for his own benefit does not fall under the category of agreement. The next statement states that "the act gives birth to an alliance between the parties who made the promise. The release of the right to fiduciary guarantees by the fiduciary results in the removal of the fiduciary guarantee, this can happen because it solely depends on the fiduciary party. Usually the release leads to the fiduciary's subjective reasons, for example, the debtor in paying the debt is always on time, and in good faith to avoid default

## 2. MATERIALS AND METHODS

Methodology comes from the words "*metodos*" and "*logos*" which means "the way to". Research methods are scientific ways to obtain data/information as it is and not as it should be, with specific purposes and uses. There are four keywords that need to be considered, namely scientific methods, data, goals, and certain uses. According to Soerjono Soekanto, legal research is a scientific activity, which is based on certain methods, systematics and thinking, which aims to study a certain legal phenomenon, by analyzing it. Regarding the implementation of legal research, the essence of legal research is to describe how a legal research should be conducted. The approach method used to base the answer to the formulation of the problem is to use the main basis of the legislative approach (*Statue Approach*) and the conceptual approach. *The Conceptual Approach* is carried out when the researcher does not move from the existing legal rules. This is done because there is no legal rule for the problems faced. It allows for the precise determination of the meaning of words and to use them in the thought process. Meanwhile, using the *conceptual approach* method, it starts from views and doctrines in law where researchers will find ideas that give birth to legal understandings, legal concepts, and legal principles that are relevant to the issues at hand. Normative *law research* uses normative case studies in the form of legal behavior products, for example, studying laws. The subject of study is a law that is conceptualized as a norm or rule that prevails in society and becomes a reference for everyone's behavior. So that normative legal research focuses on the inventory of positive law, legal principles and doctrines, legal discoveries in cases in concreto, legal systematic, level of synchronization, comparative law and legal history. The analysis technique for this research data will be carried out using a normative qualitative approach, namely giving meaning and interpreting each data that has been processed and then described comprehensively and in-depth in the form of systematic sentence descriptions to then draw conclusions. This normative qualitative method aims not to seek the truth alone, but also to understand the substance of the truth it contains.

## 3. RESULT AND DISCUSSION

The results of the analysis show that there is a deconstruction in the concept of legal protection of fiduciary rights, especially after the Constitutional Court (MK) Decision No. 18/PUU-XVII/2019 and other related decisions. This deconstruction can be seen from the shift in understanding the power of the executory title of the fiduciary guarantee certificate.

1. Prior to the Constitutional Court Decision No. 18/PUU-XVII/2019: Article 15 paragraphs (2) and (3) of Law No. 42 of 1999 concerning Fiduciary Guarantees provides strong executory power, almost equivalent to a court decision with permanent legal force, allowing creditors (fiduciaries) to execute directly (parate execution) if the debtor (fiduciary) defaults. This provides high legal certainty for the company's creditors in the takeover of collateral assets.
2. After the Constitutional Court's Decision No. 18/PUU-XVII/2019: This Constitutional Court decision interprets that the phrase "executory power" does not mean that the creditor can carry out unilateral forced execution if there is a refusal from the debtor. Execution must still go through a court process, unless the debtor voluntarily surrenders the fiduciary object or has agreed upon a clear default condition in the agreement.
3. Impact: This ruling breaks the absolute legal certainty previously enjoyed by creditors and introduces an element of procedural justice for debtors. This is a form of legal deconstruction to balance protections that previously tended to be very pro-creditors.

There is a tension between the principle of economic justice for both parties and legal certainty in creditor acquisitions.

#### a. Legal Certainty of Creditor Takeover

The aspect of legal certainty is essential for creditor companies, especially financing and banking institutions, to maintain business stability and credit risk management.

1. Fiduciary Registration as a Condition of Certainty: Registration of fiduciary guarantees at the Fiduciary Registration Office is a crucial preventive step that gives preferential rights (priority) to creditors and binds third parties. Without registration, creditors cannot enjoy the benefits of the Fiduciary Guarantee Act.
2. Execution Constraints: Post-deconstruction by the Constitutional Court, creditors face significant obstacles when the object of the guarantee is not found or controlled by another party, forcing them to take the time-consuming and costly court route, contrary to the expected principles of simple, fast, and efficient execution. This reduces legal certainty in the takeover process.

#### b. Economic Justice Fiduciary Rights

The principle of economic justice demands a balance of rights and obligations between creditors and debtors.

1. Debtor Protection (Small Companies/MSMEs): The Constitutional Court Decision No. 18/PUU-XVII/2019 can be seen as an effort to achieve economic justice by protecting debtors from unilateral execution actions that have the potential to be arbitrary or without fair legal process. The debtor has the right to defend himself if he feels that he is not in default or if there is a dispute regarding the amount of debt.
2. Economic Impact on Creditors (Large Companies): On the other hand, delays in execution through court proceedings can be economically detrimental to creditors.

Creditors bear the risk of financial losses due to prolonged credit delinquency (bad loans), which can ultimately affect the liquidity and stability of the overall financial system.

#### 4. CONCLUSION

The deconstruction of the legal protection of fiduciary rights after the Constitutional Court Decision No. 18/PUU-XVII/2019 creates a dilemma between economic justice and legal certainty. Although the judgment strikes a balance of legal protection for debtors by limiting unilateral execution, it simultaneously reduces legal certainty and efficiency for creditor companies in collateral takeovers. Harmonization of collateral enforcement regulations in the future is necessary to realize a fair, fast, cheap, and efficient process for both parties.

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