

## A Legal Reform Agenda for Greater Certainty and Commercial Effectiveness in Collateral Execution Mechanisms in Indonesia

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### ABSTRACT

*In Indonesia, the uniformity of its collateral implementation system is reflected in three instruments that are used: mortgage right, fiduciary security and pledge. Instruments have native insolvency law as part of the secured transaction system. Thus, this research aims to answer how much the system's capacity can provide the certainty of legal norms that are claimed, especially by recent decisions of the Constitutional Court that restored judicial control over fiduciary execution. This study thus takes on a doctrinal approach to analyze the acts, decisions, and legal theories based on the three dimensions: legal certainty, efficiency, and justice. The study findings indicated that the implementation of fiduciary security institutions is not an isolated issue, but a structural one, in which each failure of the system is interdependent. Unnecessary costs arose from Jurisdictional overlaps among some incumbent courts, auction offices, and land agencies. Additionally, both ambiguous statutory language and court interpretations of pledges do not permit the creditor or the debtor to plan transactions based on the expected degree of surety or compliance with expectations about legal structure. Seizing digital and intangible collateral is not an obvious process. Currently, a lack of legal protection for the creditor and debtor means that neither party can anticipate the level of coverage. These are not just problems that can be addressed through incremental tweak. In this environment, reform should be harmonized, more efficient procedurally and responsive to the economics driving the secured transactions system. It has equity regarding the vulnerable borrowers based on paradigms on embedded models in relevant submarket jurisdictions. TO meet the legal requirements and support a stable and scalable credit market, it is necessary to strengthen the collateral execution framework.*

**Keywords:** Collateral execution, Fiduciary security, Legal certainty, Regulatory harmonization, Secured transactions.

## I. INTRODUCTION

Collateral execution is an exercise of a security interest through statutory legal rights and implementation of the legitimate transfer of collateral (Rozi & Qomariyah, 2025). This notion is particularly relevant to Indonesia And its approach in implementing credit collateralization. It affects who has access to credit, the terms available and collateral arrangements that underlie bank-based financing. This legal architecture is all the more crucial in light of secured transactions where they are relevant on a wide scale. This may be because there are more than six million fiduciary security registrations recorded every year based on data from the Ministry of Law and Human Rights. These are mostly related to consumer financing and funding for micro, small, and medium-sized enterprises (MSMEs) (Constitutional Court Decision No. 18/PUU-XVII/2019). The government has recognized the severity of the problem with respect to the UU PPSK 2023 by launching initiatives to enhance system performance, as well as bolster risk prevention and consumer protection. Nevertheless, these take the form of multiple mechanisms: mortgage rights over land and buildings, fiduciary security over all kinds of movable goods that are still in possession of the debtor; and pledges for goods that is possessed by the creditor (Hirsanuddin & Sudiarto, 2021). Collectively these mechanisms constitute secured lending systems. In summary, the framework is based on legal principles and sound business practices. It clarifies how creditors can avoid procedures that take a lot of time and resources using the mechanism of preferential status to enable them to keep or control property belonging to the firm, for instance through an operating lease (Liono, 2021). On the surface, a pledge would be more straightforward as the creditor takes possession of the asset followed by automatic sale in case of default according to statutory procedures. Yet, the actual execution of these arrangements is much more

complex (Gunawan et al., 2025). Nowhere in the discrepancy between how the law was intended to work and how it operates in practice so stark as in the fiduciary regime.

Judicial review that was incorporated into an otherwise straightforward process of self-help execution originated from Constitutional Court Decision No. 18/PUU-XVII/2019, and further substantiated through the Decision No. 2/PUU-XIX/2021. The rulings addressed due process concerns practitioners had been raising for years. But as a group they have done exactly that: pushed creditors back toward the courts. This is because fiduciary security was designed to reduce judicial involvement, which creates a mismatch between the way the security arrangement is formally constructed and how it works in practice. This structural tension gives rise to legal risks, as pointed out by Liono (2021), as the creditor's behavior can be deemed tortious acts (*Perbuatan Melanggar Hukum*) if they try to avoid relying on the courts and are due to repo property unilaterally as referred to in Article 1365 of the Civil Code. In practice, however, this may lead to coercive enforcement methods (*premanisme*) in the course of the execution arising from problems that arise around pledges. Despite the existence of pledged assets, procedural hurdles making enforcement inefficient and legally uncertain undermine rights and practice (Rahmat et al., 2025; Setiawan et al., 2025; Wiwoho et al., 2026). This makes the allegedly simple "default, then sale" process often far more involved and complicated. Their asset values can fluctuate, and the fact that no single party is willing to take ownership of the process causes practical friction in how the market mechanisms are utilized. The challenges are not due to poor organizational processes. Instead, the recurring inconsistencies between both Mortgage Law and PMK No. 213/PMK.06/2020, impeding the execution of mortgage management and causing the administrative steps to take many years

too. The actual issue is not so much awareness of creditors, but rather the absence of institutional mechanisms that would actively support and enforce the registration process. This emphasizes the basic point that law does require (the institution) to be effective. The fragility of fiduciary security law is particularly evident at the enforcement stage (Bahar et al., 2023). Despite *parate executie* being an acknowledged execution mode, its reduced practicality—together with the fact that judicial proceedings are still preferred—exhibits that *parate executie* is limited in nature. *Parate executie* is also a symptom of fragmented policy, overlapping provide, and diminished inter-agency coordination. These challenges impact law enforcement negatively (Fadhil, 2020). This is consistent with the difference between *das sollen* and *das sein* in legal scholarship (Setyabudi & Mashdurohatun, 2022). Legal certainty is when the law can be reasonably expected to incorporate a measure of predictability in its application and has some degree of enforceable standard that guides citizens relating their behavior. Modern legal theory expands this concept to not only require certainty in law application, but also consistency of any specific legal practice with the formal rules. Contemporary legal theory has some characteristics such as consistency in the practice of law, and consistency in applying law (Hermawan & Surya Kusuma, 2022; Silalahi et al., 2024). The resolution to this issue lies in transaction costs from a law-and-economics standpoint. Procedure fragments inefficiently, imposes duplication of effort on stakeholders, and generates an uneven distribution of those costs. The ineffective process in the collateral system will practically eliminate MSMEs from accessing the formal credit market (Putri Rusadi & Benuf, 2020). Also, would complicate this answer is the principle of justice. Ceding debtor procedural rights in the name of protecting creditor interests is not always an optimal tradeoff. In this respect, the tradeoffs are determined by the structure

of legal ordering and commentators treat how an appropriate balance out to be achieved.

The law has not directly spoken on digital wallets or more so licensing portfolios but certain outsource financial agreements have included crypto assets and IP. The recent issuance of POJK No. 27 of 2024 and POJK No. 23 of 2025 have begun to lend some clarity around digital assets. However, they have yet to develop a methodology of how the use and processing of intangible assets during transactions ought to be complete. Thus, this is the reason why parties lean on improvisational or makeshift techniques where it has inadequate specificities in law (Mulyani et al., 2023). The challenge is further compounded for Islamic financial institutions, who are facing not only compliance with the current enforcement practices but also Sharia requirements. Among them, the most notable are of *'adl* (justice), *maslahah* (public interest), and *idahah* (transparency). To fulfill those principles, a more extensive and comprehensive framework for collateral execution (Samsudin et al., 2023; Wulandari et al., 2024).

In-house counsel must turn these theoretical concepts regarding collateral execution into something tangible. The lack of certainty about execution duration and the challenges in estimating execution costs using actuarial methods make it difficult to accurately value risk. Another critical space is between de jure rights and de facto rights—especially where creditors depend upon collateral and predicate their expectation of enforcement on an assumption that they will be available. This mismatch has an impact on the financing decision and make sectors that have limited options for other funding alternatives worse off (Rozi & Qomariyah, 2025). If there is doubt, the essence of what makes a legal instrument into an effective tool to bring about the desired outcome diminishes.

All of these conditions indicate the weaknesses at the property security functions in Indonesia. Poor institutional coordination can create barriers to enforcement mechanisms, legal interpretation remains inconsistent, and efficiency of collateral in statutory certainty and economic stability (Hidayat, 2024). With the economy having experience level of complexity, a more coordinated, efficient and agile collateral execution system is needed.

This study will analyze a mismatch between the execution rules in Indonesia and the institutional mechanisms that are necessary to carry out the concept after it has been promulgated based on a description from Constitutional Court rulings. This mismatch generates a ‘certainty gap,’ thus increasing transaction costs, which may even drive vulnerable borrowers completely out of the credit market. Prior research separately analyzed the legal instruments at play and how some of the Court’s decisions affected different areas. This means that a coherent and comprehensive normative concept to balance procedural fairness with the structural and economic efficiency required for credit market to work is still not in place. The central issue in this project is how to rethink the law of enforcement of security interests for insolvent debtors, balancing protections for procedural rights and effective enforcement at an appropriate efficiency level to address the needs of a modern and also, increasingly heterogeneous economy against improvements in certainty.

This normative juridical study aims to reformulate provisions as norms that need to be made getting mortgage rights, fiduciary security and pledges in a way that is able to combine legal certainty with practical operational needs. This is for the post-reform legal order that was reshaped by Constitutional Court Decision No. 18/PUU-XVII/2019 and Constitutional Court Decision No. 2/PUU-XIX/2021. This study also examines the actual economic and regulatory

trends such as of POJK No. 23/2025 and POJK No. 27/2024 concerning digital asset transactions and their cohabitation with Sharia-compliant principles. In general, the suggested reform intends to establish a more optimal equilibrium of fairness, efficiency and predictability in secured transactions.

This study makes a contribution in that it attempts to combine three strands of debate about the relationship between local and central governments that are normally considered separately within Indonesian legal scholarship: 1) a real-world problem of siloed bureaucracy and multi-layered processes, 2) where a regulatory gap arises when financing agreements include digital and intangible assets, and 3) requirements for the collateral execution process based on Sharia-compliant finance principles. The research adopts a comparative approach to enhance the analysis. It both identifies weaknesses in Indonesia's fragmented collateral system, and compares them to more integrated models based on Australia's *Personal Property Securities Act 2009* and Article 9 of the U.S. Uniform Commercial Code. We then evaluate each of these models against Indonesia's framework in order to determine its coherency, effectiveness and fitness for modern secured lending.

## II. STUDY METHOD

The method used in this study is a qualitative approach with doctrinal law. Method selection matters because it dictates what the study captures. The main question raises no more than the consistency of legal provisions within themselves, their implementation with legality and the extent to which these rules governing execution on collateral are able to fulfill in form—albeit not necessarily in result—what they set out to achieve. Therefore, the assessment requires careful engagement with the text, interpretation and application of law itself which is typically at the heart of doctrinal legal scholarship.

As outlined in the abstract, are three types of analyses featured in this study. The statutory approach consists of extensive research covering Indonesian Civil Code, Law No. 4 of 1996 on Mortgage and Law No. 42 of 1999 on Fiduciary Security. While each statute can be viewed on its own, a comparative analysis makes more easily visible and understandable structural tensions: groups of two statutes that are examined side by side. Second, the case approach looks at how the court have interpreted the laws. Constitutional Court Decision No. 18/PUU-XVII/2019 and Constitutional Court Decision No. 2/PUU-XIX/2021 are the main focus of the study. These decisions are our guide to interpreting how judicial reasoning evolved and how that evolution has implications for collateral execution. These cases are not merely examples, but rather the main legal precedents that identify what the statutory framework means, what will fall under judicial scrutiny and what rights or worries follow. Finally, on a conceptual level, the theoretical underpinnings are derived from the concept of legal certainty. This is to test if the legal framework has been designed in a manner that corresponds with—and therefore supports—the objectives underlying the rules.

The other important sources of the legal norms are the legislation and decisions of the Constitutional Court. This evaluation also invokes legal theory, which is found in the secondary source literature. Such secondary literature would include articles/books defining and analyzing the primary rules/standards. Furthermore, with the aid of legal dictionaries and encyclopedias to define clearly issues and important terminology. This analysis is broken up into three domains, whereas each domain offers another way of framing the legal theory that governs the execution of collateral. Coupled together, these domains offered an analytical framework for evaluating the

internal consistency, functionality and normative sufficiency of contemporary legal regime.

According to Radbruch (2006), legal certainty is eventually not equal with the legal validity alone. Legal certainty only has significance if the system is clearly structured and drafted, consistently applied, understandable and accessible to the public, enforceable in practice, and reliable (Radbruch, 2006). From this point, Posner (2014) adds another analysis through the law and economics perspective, providing an assessment of efficiency in legal rules. Here, the principal question is how much transaction costs decrease, market activation occurs and whether the rules bear uneven burdens upon each party (Posner, 2014). The third analytical lens is based on Rawls's (1971) theory of justice as fairness. This emphasizes the division of legal rights, entitlements and burdens between creditors and debtors and it provides a normative foundation for evaluating fairness of the collateral execution regime (Rawls, 1971).

### III. RESULTS AND DISCUSSION

#### A. Structure Failure in Enforcement: The Dynamics of a Mortgage Execution

Here is a crude example of how mortgage works—and where it fails—in the country or origin, Indonesia. Pursuant to the Mortgage Law (UUHT), a certificate issued by the State Auction Office (KPKNL) which states an executorial clause *“For the Sake of Justice Based on the Almighty God”* permits creditors to sell property subject to mortgage without a court order, via *parate executie*. This should, in principle, spell easy, efficient and automatic enforcement.

More to the point, however, courts continue to play an ordinary part in how the process gets interpreted and implemented. The specific of executing a *hypotheek* under the Mortgage Law—most particularly, the procedure requiring

the Head of District Court to issue *aanmaning* (formal warning) under Article 224 HIR—continue to be in force even if a Mortgage Certificate is executed. Consequently, judicial participation is not simply suggested; it is grounded in an ambiguous statutory directive. Nevertheless, the mismatch between its Article 6 delivery and underlying practice has been extensively documented (Febrianto & Ayunda, 2020). The deeper explanation for this mismatch haven relatively neglected, mainly because the issue is often viewed as something that results from the regulatory design itself. What has happened now is basically two different executors that are working on the same thing at the same time and may clash. *Parate executie* allows creditors to go straight to auction without going to court first. The other option is to obtain court approval for execution. This affords little clarity for creditors as to which mechanism will be used because in the end. The uncertainty is exacerbated by the fact that judicial review of objections to a defaulting debtor can occur multiple time points in time. This means that, ultimately, the dual system continues to chip away at the predictability of outcome which a secured transaction system requires. Through Radbruch's notion of *Rechtssicherheit*, a norm like this—that essentially creates uncertainty in its application—has not been promoted to the support position for legal order, security, efficiency or just results (Radbruch, 2006).

Administrative procedures worsen the situation. To execute *parate executie* via KPKNL, more paperwork needs to be fulfilled from mortgage certificate, APHT (*Akta Pemberian Hak Tanggungan*) account of default and other administrative paperwork. There are three institutional actors in this step: KPKNL, the Courts, and BPN. Consequently, the pertinent rules are not uniformly interpreted and enforced among these authorities. Regulations from Minister of Finance and circular letters issued by KPKNL, and the statutory regulations stipulated in mortgage law. Lack of explicit guidelines on

prioritization among various instruments leaves practitioners to “fill the gap” (Lesmana et al., 2025). Auctions are meant to be held within weeks, though in practice this can take months or even years. The value of collateral, however, is forced to remain stable while institutions battle for the long haul. One of the ongoing points of contention is related to PMK No. 213/PMK.06/2020 being issued. When both this regulation and the provisions of UUHT are applied together, regulatory conflicts arise due to systemic efforts to fulfill incompatible obligations.

This administrative stasis also explains the procedural barriers of state auctioneering process. Article 39 of PMK No. 213/PMK.06/2020 provides, in general terms for reasons of technical order or due to a lawsuit on ownership by a third party, to give collateral power for refusal/cancellation of auction before commencement itself. Under this lawyer-oriented mechanism, any debtor can use strategic lawsuit to potentially delay the strategic move (*parate executie*) for years. This occurs since the KPKNL have to wait until the court judgment reaches *inkracht* (final and executable). The reporting reveals a fundamental contradiction: while the Mortgage Law is intended to speed up transactions, it must instead be implemented under the administrative rules established by the Ministry of Finance, particularly PMK No. 213/PMK.06/2020.

Although the normative analysis of Article 6 strengthens the right of *parate executie* (Prihartanto, 2021), yet almost all enforcement on mortgage through court. The court must first decide if a default has occurred before an auction can go ahead. Therefore, in the absence of any objection from the debtor or a third party, the execution will be paused until resolution has been reached by the courts. Although the *parate executie* was conceived as a way to avoid judicial involvement, judicial oversight has actually become unavoidable in practice. The fact that this problem is detrimental for creditors in other jurisdictions as

well indicates a larger structural flaw in the performance/execution system. Rather, what the so-called “voluntary” nature of purported judicial oversight exposes is a glaring inconsistency in the regulatory design. The symptom is different in each case: deepest agreement is, however, the true diagnosis.

Some degree of judicial protection is still to be had. More aggressively, in some cases, creditors may pursue default claims and debtors ought to enjoy adequate procedural safeguards. But the real question, though, is whether making courts routine players in deciding defaults even fits within our favored institutional design—or if it is simply a sense of pound of procedural-rooted brandish. Comparative examples may help. The Australian PPSA 2009 and UCC Article 9 provide completing examples of how such balances can be struck between creditor and debtor interests while limiting court involvement to matters that are genuinely in dispute. The system is not able to differentiate between normal administrative execution cases and exceptional cases that genuinely need judicial intervention in Indonesia. Since this line is blurry, it can be difficult to determine when the judiciary should step in and technical execution might otherwise be put to misuse.

This calls for a multi-pronged reform approach. Special provisions relating to procedures should be incorporated into the Mortgage Law. It should specify when and how mortgage execution documentation is to be done, the maximum time allocated for completion of the execution and decided the standard over which cases must go before a judge. It should also specify in which cases *parate executie* can take place with least hurdles possible. Also, a more concise mix of regulations—ministerial orders or circulars from various agencies—should be merged into an all-in-one format. Finally, it should strengthen KPKNL capacity that the enforcement should not depend solely on adjudicating officers discretion when clear and consistent guidance is needed.

The reforms themselves do not necessitate novel concepts. The primary obstacles are political and institutional in nature. The lack of an institutional integration tradition, vague regulations that enable various (and conflicting) interests to continue availing themselves of procedural gaps, a divided regulatory framework and the perception of money rewarding multiple practices have all contributed to this. Seemingly able to embrace this problem, such problem are also associated with the cost of lenders being held accountable and in turn least amount earnings as for the whole credit market (Prihartanto, 2021).

#### **B. The Paradox of Fiduciary Execution After the Release of Constitutional Court Decision**

We design fiduciary security around the idea of a flexible approach to enforcement. Put differently, congruently when a debtor defaults, then a creditor can directly enforce the collateral in accordance with Law No. 42 of 1999. The adaptability is the heart of fiduciary security. In practice, after a default is reached, the creditor is free to execute the collateral by virtue of Law No. 42 of 1999. Moreover, since the certificate serves as an enforcement tool, the law also gives it a quasi-judgmental role. However, the issuance of the Constitutional Court Decision No. 18/PUU-XVII/2019 has put great reconsideration on how effective fiduciary security once viewed as sophisticated financing instrument in Indonesia (Kurniawan, 2023; Puspitasari et al., 2024; Tohar et al., 2022).

In its ruling, the Constitutional Court said that unilateral execution of fiduciary security can be conducted when both parties have agreed to declare a default and the debtor has voluntarily surrendered the collateral. If the debtor refuses, the execution must be judicial. This decision is based on the intention

to increase debtor protection and prevent arbitrary execution (Kosasih et al., 2022).

However, the decision places fiduciary certificates and their classification as executorial instruments in a precarious position from the viewpoint of legal certainty. Until this decision, fiduciary certificates were self-executing titles, enabling creditors to get around the court system. That is, whether the debtor complied and had proper conduct was also based on how it would react—which renders outcomes ever more unpredictable. This means that there is no longer an easy answer for creditors to assess whether enforcement will go directly or necessarily have to go through the courts. The system has become less rule based over time and more on discretion and situational aspects of the case (Arifah & Fidhayanti, 2022).

More inclusion of the judiciary results in higher transaction costs and lowers the probability of swift recovery of pledged assets. Quite frankly, much of the effectiveness that fiduciary safety was intended to give has just evaporated. The judicial enforcement of default by a debtor must therefore go through the District Court if she/he files a case where that fact is used to counter the implementation (or execution) of fiduciary securities derived from litigation settlement, as asserted in Constitutional Court Decision No. 2/PUU-XIX/2021, which in turn leads to an increase in the duration of enforcement and a decrease in the effectiveness of fiduciary collateral (Edytiawarman et al., 2025; Kurniawan, 2023). Indonesia also has a very court-oriented model (in contrast with the mostly creditor and self-help oriented approach in UCC Article 9), indicating a less efficient enforcement.

After structural changes, Law No. 4 of 2023 on the Development and Strengthening of the Financial Sector (UU PPSK) has been enacted as described in Law No. 4 of 2026. These Laws aim to respond to the jurisprudential rulings

of the courts through a broader regulatory framework that establishes consumer protection and market conduct rules (Law No. 4 of 2026; Law No. 4 of 2023). Based on the UU PPSK, the discussion is no longer limited to creditors but extends to financial service providers based on principles of equity and consumer protection (Law No. 4 of 2023). From this point of view, reconstructing the rules about the enforcement of collateral is no longer a merely theoretical exercise but rather concrete steps taken to minimize risks and enhance safety in the national financial system (Law No. 4 of 2023).

Thus, the Court intervention could also be justified as a ‘balancing of powers’ between creditors and debtors in pursuit of fairness. Creditors, third-party debt collectors, and forced repossession were associated with a high level of abuse and weak due process prior to these decisions (Badriyah et al., 2021). Reconceptualizing the system to reinstate procedural justice provides others ability for the debtor to genuinely challenge an execution, which makes it fairer, and increases the robustness of fiduciary security framework. But that also encroaches on the legal certainty and efficiency for the rights that are supposed to be protected. This exposes creditors to considerable liability due to enhanced risk factors, and particularly in cases involving extrajudicial forced repossession. Indonesian courts commonly consider disputes as torts (under Article 1365 of the Civil Code in cases of contested conduct (Liono, 2021). The risk even compounds with the threat of so-called ‘thug’ enforcement, which could be exposed to criminal liability under Article 368 of the Criminal Code. This self-perpetuating certainty gap hinders recovery and can convert what should be a commercial default into full litigation. This has repercussions with impact also on other creditors which are not only limited to the value of the collateral property (Liono, 2021; Constitutional Court Decisions No. 18/PUU-XVII/2019).

The fiduciary system is therefore in structural dysfunction, and that dysfunction exacerbates whatever limits on enforcement upon which the Constitutional Court has ruled. While there is some general framework for fiduciary law, the specific rules of how disagreements are enforceable if they occur are not specified (Puspitasari et al., 2024). The absence of deadlines results in courts saying differing things and uncertainties in practice.

The number of registrants complying with fiduciary registration requirements is also low. Especially motor vehicles, which are the bulk of fiduciary objects, is actually an outstanding practical problem. The creditor becomes legal position weaker and the certainty that fiduciary security should provide is reduced, because the collateral only obtain full enforceability with registration (Yani, 2020). This may not only prejudice the ‘publicity’ function of registration, but it also increases the danger that enforcement and asset are going to be vexed. Deteriorating governance and lack of supervision also provides space for debtors and creditors to interfere with enforcement rights and transfer ownership in assets subject to fiduciary security. Practically, these encumbered assets are often to be dealt with between debtors and creditors.

In Indonesia, the fiduciary system remains incompletely specified operationally relative to international norms. The UNCITRAL Legislative Guide on Secured Transactions stresses that in drafting legislation, law-makers should focus on developing predictable enforcement mechanisms and appropriate safeguards. The actual functioning of the system can only be assessed more deeply when we also take into account factors like how it is applied in practice, the vagueness of default rules, absence of standardization of objections and timing and structure of regulations.

The state of things subsequent to the Constitutional Court decision illustrates a paradox in the fiduciary security mechanism. External and internal

pressures have led to weak enforcement (Prihartanto, 2021). This urgently necessitates a remodeling of the regulation. The rules must specify the procedures and prerequisites for execution, set out the procedure for objections raised by debtors, provide firm stipulations on fiduciary registration, inclusion of third persons acting in good faith as party to the execution process—all under stringent supervision. In this respect, fiduciary security is more likely an instrument of legal certainty, efficiency and justice within the financing system in Indonesia. It also supports the development of Indonesian private law, where both regulatory and contractual frameworks sustain equilibrium in legal certainty and fairness but protect legitimate interests of commercial transactions (Shoimah, 2026).

### **C. The Effectiveness of Pledge as a Security Instrument: Deviation from Normative Simplicity and Practical Complexity**

When the creditor has possession of the asset and is empowered to sell it upon a default by the debtor, then a pledge can be executed more directly. The same intention can be seen in Articles 1150 and 1156 of the Indonesian Civil Code (Mulyani et al., 2023). The legal design for a pledge is often paragraphed as simple-pact to make it quick and spare process steps. But in practice, the enforcement can severely deteriorate and that thwarts the system (Wardoyo & Hapsari, 2023).

However, the tension between the superficially straightforward nature of the pledge and its complexity on the ground reveals a key flaw in the legal regime surrounding pledges. Instead of enforcement rules in the Civil Code are just generic and lack sufficient provisions that provide substantial degree of procedural detail resulting in legal certainty. Because of the broader nature of the provisions, it allows for variance in interpretation and application leaving its creditors a bit high and dry on de facto standard to work by. This will

inherently reduce creditors' reassurance with respect to the protection and enforcement of pledged collateral (Puspitasari et al., 2024). The pledged assets may lose value quickly, which will also undermine creditors' security for the pledge. This is the risk most pronounced for the fast-depreciating assets like electronics and vehicles. In such cases, the enforcement mechanisms to preserve or propagate the asset value should be effective enough (Mann, 2022). Also, if the net collateral value is below the amount remaining of the debt owed, pledge security could lose its use (Guevara & Riutort, 2024). As a result, enforcement is more sporadic and milder according to the asset type as it requires an adaptable assessment method to factor in the threat of devaluation. Then there is the more mundane issue of enforcement when assets that can be moved are easy to move out of reach. If the collateral or security is hidden or transferred to another place, other parties can act with backing from law enforcement (Adnan et al., 2023; Daniel & Wardani Rizkianti, 2024). All of these problems increase both the cost and time to deploy, rendering the pledge means that would allow parties to monitor the location of movable assets and enforce rights will not yet be fully developed. As compared to the United States, for instance, Article 9 of the UCC provides better built in structural support as it relates to enforcement capacity—of which Indonesia has none and is an important practical limitation.

Unless someone is challenging ownership or debtors are refusing to hand over a pledged asset, pledge enforcement does not come into play from the perspective of justice. Enforcement into those cases becomes complicated and intensely adversarial. Creditors must go through a lengthy, expensive process—even if the conflict originate from debtors or third parties. So that the pledge system rarely produces a truly fair result. Many permanent problems have also not been satisfactorily addressed, such as devaluation of collateral,

unwillingness to gage and general disputes regarding pledged assets under the Civil Code. That gap leads practitioners to apply the rules differently, and this inconsistency deadens the power of the pledge as a guide for legal action. Despite some existing practices and regulatory frameworks, the international standards—e.g. UNCITRAL Legislative Guide on Secured Transactions—suggest that registration obligation must be clear, enforcement of secured rights in movable assets must not raise barriers against creditors or debtors; extensive legal provisions are necessary for movable assets. But the reflect with Indonesia's pledge system is not sufficiently good (United Nations Commission on International Trade Law, 2010). The failures of the pledge security mechanism really reflect the weaknesses as the legal system itself in many respects. Expectations of what the legal structure is meant to be able to do against reality, that the system has failed to evolve with modern commerce and all its nuances. That said, reforms that better integrate pledges into a country's property security framework are still needed in many jurisdictions. In particular, for Indonesia, this suggests the need to provide additional guidance on implementation of enforcement mechanisms, particularly with respect to movable assets that pose a higher risk, and mechanisms for tackling disputes arising out of failed enforcement. It also includes building the institutional capacity to manage and price assets.

Creditors and debtors should also further understand the applicable laws and regulations, be aware of the risks and legal consequences behind their pledge agreements. What is needed instead is a more pragmatic fit between the legal rules and the messiness of enforcing them, so that it can rediscover its status as an effective and efficient mechanism for securing debt. Without reforming the legal system, that pledge might remain a substantively problematic instrument within Indonesia's overall regime of secured

transactions, because the framework will still not be well matched to its practical complexities.

#### **D. Mapping the Problems of Security Rights Execution in Indonesia**

National and international law enforcement of the right to security in possession is complicated, with procedural barriers evolving in concert with many other challenges. In summary, they reveal not only challenges with the secure transactions law but also the weaknesses in the entities that implement the way it works. This section addresses transversal issues relating to the three objects, mapping the key problem between mortgage rights, fiduciary security, and pledge arrangements. Legal principles, particularly justice, legal certainty, and efficiency, are used to examine the problems.

One of the basic problems with respect to legal certainty is that there is no standard approach for the enforcement of security rights. Although *parate executie* is recognized by the Mortgage Law (article 6), in practice it would be regulated through judicial interpretation and administrative practice. Likewise, the existence of fiduciary guarantees, as evidenced in Constitutional Court No. 18/PUU-XVII/2019, depends very much on how the debtor reacts. This is an indication of a systematic flaw: there is no definitive, deterministic and predictable way to enforce it. This means that in Indonesia there is no consolidated mechanism and reflects the ambiguity of why businesses need secured transactions system as well as the logic when down to its daily implementation. In contrast, Article 9 of the U.S. Uniform Commercial Code (UCC) and Australia's Personal Property Securities Act (PPSA) specify more clearly and more comprehensively the rules for regulation of security interests.

On efficiency, the main issues are the fragmented institutions and bureaucratic complexity, and lays that thwart enforcement in practice. One of the obvious examples of normative conflict is indeed between UUHT and

Minister of Finance Regulation No. 213/PMK.06/2020. Due to lawsuits where third party asserts ownership of assets, this legislation enables the cancellation of auctions. In practice, this provision generated both adverse effects on the administration and a delay in time because a coordination between three main parties, namely the courts, State Auction Office (KPKNL), and National Land Agency (BPN) are required as well (Yustiana, 2020). This overlap reduces the effectiveness of enforcement and increases the cost of transactions, ultimately resulting in less effective collateral. Enforcement delays are characterized as more structural in nature when compared to Indonesia, according to the Comparative Framework of the Legislative Guide on Secured Transactions (UNCITRAL, 2010).

These modern collateral methods further complicate matters. Examples of intangible assets include cryptocurrencies, copyrights and patents that are used for fiduciary security. Technical standards on the way fiduciary security for these assets should be structures do not yet exist, this gap leads to legal uncertainty and inadequate regulatory clarity (Mulyani et al., 2023). This ultimately means a decreased in operational risk for creditors seeking to obtain rights over these assets and indicates the framework has struggled to address recent changes in the economy and how transactions work. On the other hand, relatively recent regulations—particularly the implementation of POJK No. 27 of 2024, POJK No. 23 of 2025, and PP No. 49 of 2024—do indicate genuine progress towards a legal framework for trading digital assets. Yet these tools have not resulted in a fully realized execution system for the use of digital assets as collateral, leaving an unfilled “uncovered” space that reform will need to complete.

While POJK No 27/2024 and PP No 49/2024 create a primary venue for the OJK to supervise crypto-assets, they do not really alter what supervision should

look like at a micro-level in terms of mechanics, and are very strict with what cold and hot storage means and separation of consumer accounts. But they do not contain provisions specifying how a secured creditor (or enforcement officials for that matter) can perfect a security interest over a digital wallet or compel transfer of the private keys (POJK No. 27 of 2024; POJK No. 23 of 2025). This means that Indonesia's framework remains normatively sparse. Absent clear technical standards, practitioners will resort to tools that are unbounded and log-grade, particularly high-volume commerce in intangible receivables or judgment crypto-assets not forex pairing. More clarity was seen through the Australian PPSA 2009, which instituted more detailed control mechanisms (United Nations Commission on International Trade Law, 2010).

The same defect is also evident in pledge enforcement. Most controversies are brought before a court as some type of obstruction to be paid by the debtor himself or another one not directly related (Sepalia, 2020). It is because of this that pledges become an enormously convoluted and costly instrument. In practice, however, by the time enforcement has taken place it is already too late—the creditor will have to wait for a dispute to arise before they can act.

One big challenge: enforcement of security rights can be expensive or cumbersome. The costs participants are forced to incur in the judicial processes or processes of auctioning become higher than the underlying collateral itself for MSMEs. From a normative perspective, debtors (the losing parties) must comply with a judgment within eight days based on Article 196 HIR. But the concern about “proportionality” our practitioners note is in fact a question of procedural justice. Practitioners highlight that enforcement costs seem to be out of sync with the reality on the ground given conflict between what might be ideal per Article 196 of the UUHT and the civil procedural limits imposed by Article 26 of the UUHT. However, because MSMEs are usually inefficient and

do not consistently pursue enforcement actions, enforcement costs would realistically tend to exceed the expected value of the collateral. The enforcement burden subsequently undermines the role of collateral in a good method of security. Limited legal oversight and enforcement also hamper the enforcement, leading to worse outcomes. As reported by Badriyah et al. (2021), fiduciary default has been common in the case of MSME debtors literature. In the meantime, the absence of awareness has formed day-do-day legal practice in secured transactions (Siswanto et al., 2023). This underlying condition, not facilitated by effective sanctions or supervisory arrangements, is the crucial factor in understanding how enforceability of security rights generally functions.

The vulnerability of property rights is not a serendipitous phenomenon—it is the product of the relationship between normative ambiguity, institutional fragmentation, regulatory lacunae and socio-legal parameters. However, given the scope and scale of the issue, procedural tinkering alone is not sufficient to enhance the efficacy of reform measures in combating enforcement challenges. To illustrate the interrelated issues, **Table 1** below shows the listed areas of barriers and their impact on execution activities.

**Table 1. Challenges Property Security Rights Execution in Indonesia**

| Type of Barrier                                       | Brief Description                                                                                                                      | Effect on the Feasibility of Execution                                                                         |
|-------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------|
| Technical<br>Bureaucratic<br>Length and<br>Complexity | The lengthy process with complex inter-institutional coordination (courts, KPKNL, and BPN), in addition to compulsory friction between | Assets taking time to fully realize means creditors are less likely to pay and have faith in the legal system. |

|                           |                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                                                                                                                                                           |
|---------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                           | <p>UUHT and PMK No. 213/PMK.06/2020, causes administrative delays. In addition, it may likely rise the risk of auction cancellation when allegations of third-party ownership occur (Yustiana, 2020).</p>                                                                                                                                                                                                                                 |                                                                                                                                                                           |
| Legal Uncertainty         | <p>In accordance with Constitutional Court Decision No. 18/PUU-XVII/2019, the court intervene where debtors object. But Constitutional Court Decision No. 2/PUU-XIX/2021 stipulates that <i>parate executie</i> can validly be executed outside the court setting if the debtor acknowledges having defaulted and willingly handing over the collateral, so that uncontested cases could still fast-exit (Edytiawarman et al., 2025).</p> | <p>Change fiduciary certificates from being automatically enforceable to only conditionally enforceable and reduce predictability (especially in contested disputes).</p> |
| Modern Collateral Objects | <p>There are no ambiguous technical implementation mechanisms for cryptocurrencies, copyrights</p>                                                                                                                                                                                                                                                                                                                                        | <p>Imposes legal ambiguity and contributes to operational risk in the process of executing</p>                                                                            |

|                                      |                                                                                                                                                                                                                                                                                                |
|--------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                      | and patents as intangible assets collateral.<br>(Mulyani et al., 2023).                                                                                                                                                                                                                        |
| Complexity in Pledge Execution       | The majority of cases with pledges result in litigation because the debtor refuses the direct enforcement or third-party claims of ownership (Sepalia, 2020).<br>Turn a theoretically simple mechanism into one that is intricate and costly to solve.                                         |
| Disproportionate Execution Costs     | Article 224 HIR costs are perceived as disproportional to the amount of the claim and there is not, per se, a rule on cost proportionality under Article 196 HIR.<br>Imposes a financial burden on creditors, vis. MSMEs, discouraging execution.                                              |
| Weak Legal Awareness and Supervision | In practice, MSME debtors have little understanding of the fiduciary default consequences (Badriyah et al., 2021), which is made worse by ineffective supervisory sanctions.<br>Creates disincentives to not comply with the law and undermines the effectiveness of legal rights as security. |

Source: Author's analysis

This mapping shows reconstruction should be performed to address many issues in Indonesia. But beyond the systemic change, especially regarding regulatory convergence, union of institutions and the ability to adopt new classes of assets, security coming to protect property rights will remain ineffective. The reform options proposed are based on the challenged identified.

#### **E. The Direction of Reform in the Mechanism for Executing Security Rights: Normative and Practical Directions**

The structural gaps explored in the earlier sections are not closed with minor changes to procedure. The enforcement system has been ineffective due to fragmentation of the system, lack of clear rules and inflexible legal framework actuaries. Legal reform must restructure the system, making it less ambiguous, more efficient and fairer primarily by enabling the uniform enforcement of security rights. The most pressing need for clarification relates to uncertainty about the answer of *parate executie* and how enforcement would be in practice. This implies establishing the limits of temporal application for *parate executie* in which enforcement shall carry on and if so, with or without court involvement. The law that deals with the Mortgage and Fiduciary Security Law should provide for whether enforcement is with or without the court assistance. Related mechanisms already exist in Article 9 of the UCC and Australia's PPSA; both provide for clear enforcement processes that are extremely self-executing with minimal to no court involvement.

The next reform target is thus efficiency—brought about punctual procedures and integration. The enforcement of security rights is today not institutionally concentrated. This fragmentation makes it more expensive and time-consuming to execute. This could be achieved by enacting legal reforms that create an integrated digital system to bring together registration, verification and auction in a single synchronized work flow. There is evidence that a simple execution delivers better overall results (Febrianto & Ayunda, 2020), and such approach Follows the UNCITRAL Legislative Guide recommendations (United Nations Commission on International Trade Law, 2010). Lastly, reform should work to strengthen the regulation of existing laws. Statutes that overlap and provisions in PMK are currently generating

uncertainty around enforcement practices. Harmonization has to set common specifications for documentation, how and where things are implemented (the procedures), and objection protocols. This way there will be less fragmentation, more consistency and high efficiency in administrating.

Flexible legal frameworks to anchor new forms of collateral use, particularly intangible and digital ones is the fourth priority reform. However, specific technical rules for enforcing collateral interests in cryptocurrencies, intellectual property and digital receivables remain to be adopted. Due to this regulatory gap, there are some legal uncertainties while these assets are not used substantially (Mulyani et al., 2023). Reform should formulate unambiguous guidelines with respect to valuation, seizure and auction of such assets. Enforcement not correlated with any one technology will prepare a framework to adapt as economic conditions and markets evolve.

Our fifth reform priority is further the application of fair justice through adequate protection of the rights of both creditors and debtors. This makes execution more efficient with fewer traps for the unwary court intervention but still provides protection for arbitrary enforcement. This means that a formalized objection mechanism needs to be put in place so that enforcement cannot be hamstrung by use of sham objections against the debtor just for delay purposes. This mirrors Rawl's idea of proportionality and is intended to maintain an honest balance between the interests of creditors and debtors—the interest should not lean indiscriminately far either way (Rawls, 1971).

The sixth priority reform is the strengthening of supporting measures to the fiduciary registration system: establishing a sound and reliable infrastructure for fiduciary security. A robust registration system is extremely important to real compliance horizontally (across market participants) and vertically (between regulators and institutions). Due to this, regulatory

compliance and oversight in fiduciary registration is a vital feature as it protects every security interest (Yani, 2020). Finally, the better secured transactions are by knowing it helps prevent bad faith conduct and illicit as well as unlawful transfer of collateral.

The seventh reform priority consists of regulating costs for the validation of compliance as a part of making such regulation affordable and easily accessible, especially to MSMEs. The high costs of enforcing collateral often dissuade creditors from actually enforcing it, thus leaving secured debt without a practical way to mitigate risks. The law should therefore evolve cost structures including financial support mechanisms for smaller creditors. The suggested reforms, particularly through proportionality, support fairness in enforcement. These, however, are not based on an apparent obligation of cost proportionality under Article 196 HIR.

Islamic percepts of the framework are followed in the eighth reform. An Islamic financial institution should exercise justice, deliberation and transparency while enforcing. This does not need to be established by a new legal framework. It simply involves implementing existing enforcement mechanisms, in a manner that meets norms of fairness, accountability and due process. Last but not least, the prioritized reform is to develop an enforcement framework accommodating technological innovation. A digital auction system creates accountability during the execution process, reduces opportunities for manipulation, and increased trust, especially by using more reliable records and better transparency (Dewi, 2025). The reform of Indonesia's property security interest system, therefore, has to be holistic and comprehensive. The proposals are particularly designed to address three major challenges: the normative gap, fragmentation between institutions/of structures and pressures from a new economy. The design of the system should be based on a careful

interplay between creditor and debtor interests, so that security interests are preserved even as circumstances change rapidly. Most importantly, however, this regulatory model has been backed internationally by the UNCITRAL Legislative Guide on Secured Transactions. The model provides a uniform functional and structural framework designed to be implemented across different types of security instruments while also contributing to minimizing transactional costs (United Nations Commission on International Trade Law, 2010). The authors of the Guide argue that in order to balance the speed with accountability, a limited number of mandatory safeguards must be introduced to mitigate the risk of abuse. Therefore, in light of Indonesia's current enforcement practice, the goal of *Rechtssicherheit* (legal certainty) is only partially fulfilled and the gap between the uncertain level reached at reality by enforcement measures and international legal standards in statute design may get widened over time (United Nations Commission on International Trade Law, 2010).

#### **F. Uncertainty in the Execution of Property Security Rights to Legal Certainty and Business Climate**

The uncertainty of enforcing property security rights is not just a procedural legal matter; this also has implications for the confidence in the financing system. On the credit markets today, security rights are one of the leading risk-management tools. They allow creditors to seize specific assets in the event of a default. On the contrary, when execution becomes less certain or ineffective, the tension between creditor and debtor rights' obligations become disproportionate, in particular after an enforcement action fails (Christiani et al., 2022).

And, the degree of uncertainty here is widely correlated with the manner in which fiduciary enforcement has been construed by the Constitutional Court.

Through Constitutional Court Decisions No. 18/PUU-XVII/2019 and No. 2/PUU-XIX/2021, fiduciary enforceability has been conditionalized. This was meant as a means of safeguarding on debtors, but, in turn, has led to a decline in creditor's predictability, especially where the debtor contests that any default took place (Edytiawarman et al., 2025). In other words, the strength and enforceability of the fundamental execution process dictate how strong security instruments become.

Uncertainty increases financing risk and raises transaction costs from an efficiency perspective. In cases where enforcement is ambiguous, financial institutions amend their loan terms (for instance by raising interest rates, adjusting repayment conditions for fully or partially deferrable to 'none') or reduce the amount of financing. This impacts MSMEs disproportionately as they usually cannot afford to absorb the additional challenges created by the ineffectiveness in enforcement (Gultom, 2021). It is not only in such individual cases but also on a wider scale that the defects of enforcers may give rise to systemic flaws within contractual bilateral relationships as well as more generally across the economy. The enforcement system must adequately protect debtors with the appropriate level of no-fault protections for creditors. The In this case, unbalanced enforcement or overly creditor-friendly enforcement can lead to dysfunctional, even "lazy," enforcement. Conversely, if enforcement becomes too gentle on debtors—waiting six months to resolve each debt—it could cause undue delays. In general, the solution has to meet the needs of procedural fairness whilst allowing for legal certainty and effective enforcement of security interests. In addition, registration and other administrative requirements have an equally significant effect on enforceability of these rights. A creditor may even find itself completely losing those rights if their security interest is poorly registered. Besides, inadequate registration can

also weaken the creditor's rights against third parties (Sulastri et al., 2025). As a result, the efficiency and transparency of registration systems are fundamental tools to ensure legal certainty. Poor enforcement and registration systems in turn limit access to finance, and raise the costs of borrowing. That is why; to provide a stable and well-functioning typical business environment (legal as well as economical) better mechanisms of enforcement should be improved.

#### **G. Digitalizing the Execution Mechanism of Property Security Rights**

While some legal and administrative framework digitizing can be more of a long haul, others may be a quick win which will help enhance how security rights are enforced. Adding a digital component to legal processes enhances the transparency, management of the systems, and better aligns with financing needs in this age. One also observes that electronic registration systems like Indonesia's fiduciary registration make it easier to publicize security rights and not only but in addition to trace them (Dewi, 2025). Giving a major advantage of real-time verification for the status of collateral is one of the benefits digitalization has brought in. That may help slow down uncertainty around ownership or cases of collateral that overlaps or collides with other interests. While there has been much progress in most things, enforcement is largely still not digital coordinated. Registration systems, courts and auction authorities tend to operate independently of one another, and this bifurcation has important consequences for the place and efficiency with which execution proceeds (Zetsche et al., 2017). With regard to this situation, disjointed digital work is practically similar to not having digital system in any way. This method has been shown to work in practice (especially for countries with the combination of centrally hosted collateral registries and electronically supported auctions). With this integration, implementation typically improves,

enforcement costs may be reduced and accountability is increased because the process will draw upon recorded evidence. In addition, the use of blockchain can add value by safeguarding the integrity of transactions and minimizing manipulation potential. These benefits will only arise if there is sufficiently robust regulatory framework to be able to uphold the integrity of these both transactions and legal processes (Arner et al., 2015). In sum, digital frameworks are not literally simply an improved version of something—an upgrade—but rather a reset. Digital frameworks and regulations, therefore, have the potential to enhance legal certainty in security rights systems that previously operated on a siloed institutional basis—provided they are well integrated.

#### **H. Harmonization of Regulation to Execution of Collateral in Supporting Legal Certainty and Business Stability**

The central issue in the Indonesian legal system is an absence of harmonization among rules governing various security rights. The mortgage, the fiduciary security, and the pledge are separately regulated so that enforcement procedures would be different with different results (Sjahdeini, 2018).

This uncertainty troubles the practitioners and business actors. Enforcement is inherently made more complicated in practice by the need to navigate across multiple regulatory schemes—some of which overlap, and other conflict (Muslim et al., 2023). Such divergence between the letter of legal rules and actual practice comes very clearly into view as far as *parate executie* and fiduciary execution are concerned. This means that there is not real legal certainty (Prihartanto, 2021).

This lack of commonality creates redundant and overlapping processes in relevant institutions, extends the timelines for enforcement, and also increases costs. Consequently, it may make institutions that depend on collateral for

managing credit risk cautious in lending. That inhibits access to capital and slows total economic activity, particularly in financial institutions that rely heavily on credit.

Comparative legal experiences illustrate why reform is necessary. Examples of countries that use only one secured transactions regime—such as UCC Article 9 and Australia’s PPSA—show that the consolidated legal framework of a single security rights system can improve both certainty and efficiency. By consolidating the various rights under a single regime, inconsistency in enforcement can be minimized and complexity is mitigated.

Harmonization is also part of the justice pie, which strives for more balanced ens. A coherent framework is good for incapacity creditors and debtors alike because: to make sure the risk of a different treatment is about none, usually by providing clear and consistent rules, and confirm the principle according to which in cases of balancing of interests, one party should not be granted excessive protection (Marpi et al., 2023).

This calls for integrated and better regulated property security system in Indonesia. One possibility might be a unified secured transactions law adopting such norms; another would at least harmonize existing laws with uniform implementing regulations. This reform would enhance the force of collateral enforcement and bolsters the function of security rights as a means for predictability in economic life.

#### IV. CONCLUSION

In summary, this paper seeks to locate the possibility of reconstructing market based collateral execution law. The conditionality aims to strike a better balance between debtor protection mechanisms and the requirements of a more diversified economy. But this reform breaks only through a series of haphazard

procedural “workarounds.” It also requires a more systematic approach. The results demonstrate a significant disconnect between the design of these regimes—mortgage, fiduciary, and pledge—and their practice. In the Mortgage Law, for example, Article 6 is a kind of self-executing enforcement principle made subject to mandatory judicial “checkpoints.” It was sought to diminish the dependence on courts, but the fiduciary decisions adopted by the Constitutional Court turned out to be even more conditionalized. This work also appears to have treated the legal certainty, economic efficiency and justice concerns as part of one seamless framework rather than as separate objectives. In practice, rules applied consistently and in a predictable manner tend to matter more than the technical architecture or structure of secured transactions themselves. Thus, security, legal certainty and efficiency can be attained without sacrificing fair substance. This translates to concrete action for Indonesia: passing legislation and issuing regulations; consolidating, equalizing implementation procedures and exceptions; establishing a unified objection mechanism with deadlines as well to safeguard debtor rights. In accordance with the principles of Islamic finance and associated ethics, digital and intangible collateral should also be incorporated.

As for limitations, this study is about law in action and interpretation. The case is built by checking the timing and costs of execution, assessing the efficacy of new schemes with specific reforms, and in rare cases performing a deeper dive into technical back-end componentization. In the end, reform can reinvent collateral execution into its purest form: a tool for legal certainty that charts the course toward increasing business confidence and an inclusive economic growth.

## **BIBLIOGRAPHY**

Adnan, I. M., Syahfitri, T., & Ridwan, M. (2023). Tanggung Jawab Penjamin Pada Kredit Macet Dalam Sistem Borgtocht Di Masa Pandemi Covid-19. *Jurnal*

- Hukum Ius Quia Iustum*, 30(1), 159–177.  
<https://doi.org/10.20885/iustum.vol30.iss1.art8>
- Arifah, R. N., & Fidhayanti, D. (2022). Legal Position of Fiduciary Deeds in a Murabaha Contract Following the Indonesian Constitutional Court Decision Number 18/PUU-XVII/2019 on Default Agreement by Creditors and Debtors. *JURISDICTION*, 12(2), 211–227. <https://doi.org/10.18860/j.v12i2.12570>
- Arner, D. W., Barberis, J. N., & Buckley, R. P. (2015). The Evolution of Fintech: A New Post-Crisis Paradigm? *SSRN Electronic Journal*.  
<https://doi.org/10.2139/ssrn.2676553>
- Badriyah, S. M., Suharto, R., Marjo, Saraswati, R., & Wafi, M. S. (2021). Implementation of the Constitutional Court Decision Regarding the Execution of Fiduciary Guarantees and Inclusion of Default Clauses in Indonesia. *International Journal of Criminology and Sociology*, 10, 33–38.  
<https://doi.org/10.6000/1929-4409.2021.10.05>
- Bahar, T. M. A., Kamello, T., Suhadi, S., Saidin, S., & Trihasworo, R. H. B. (2023). Contractual Obligations in Financing with Fiduciary Security in Indonesia in the Context of Justice. *Lex Scientia Law Review*, 7(1).  
<https://doi.org/10.15294/lesrev.v7i1.69318>
- Christiani, A., Sundari, S., & Widianingsih, M. D. (2022). Legal Protection for Liability Right Holders in Liability Execution Claims. *Budapest International Research and Critics Institute-Journal (BIRCI-Journal)*, 5(3), 21996–22005.
- Daniel & Wardani Rizkianti. (2024). Eksekusi Hipotek Kapal Laut Sebagai Objek Jaminan Pelunasan Hutang Pada Perbankan. *Jurnal Interpretasi Hukum*, 5(1), 856–869. <https://doi.org/10.22225/juinhum.5.1.8455.856-869>
- Dewi, L. A. K. (2025). Digitalisasi Jaminan Fidusia: Analisis Efisiensi dan Keamanan dalam Pendaftaran Online. *Mahalini: Journal of Business Law*, 2(1), 39–55.  
<https://doi.org/10.31942/mjbl.v2i1.12653>
- Edytiawarman, Nurhani Fithriah, & Dimas Dwi Arso. (2025). Legal Issues in Implementing the Execution of Fiduciary Collateral Objects Post the Issuance of the Decision of the Constitutional Court of the Republic of Indonesia Number 2/PUU-XIX/2021. *Bengkoelen Justice: Jurnal Ilmu Hukum*, 15(1), 109–125. <https://doi.org/10.33369/jbengkoelenjust.v15i1.41032>
- Fadhil, Moh. (2020). The Urgency of the Harmonization of Interception Regulation in the Context of Law Enforcement. *Substantive Justice International Journal of Law*, 3(2), 125. <https://doi.org/10.33096/substantivejustice.v3i2.75>
- Febrianto, S., & Ayunda, S. D. (2020). The Implementation Of Execution Auction By Creditors On Debtor Rights Guarantee In The Office Of State Assets And Auction Services (KPKNL) In Indonesia. *International Journal of Innovation, Creativity and Change*, 10(5). <https://www.ijicc.net/index.php/volume-10-2019/139-vol-10-iss-5>

- Guevara, Ó. J., & Riutort, J. (2024). Strengthening secured creditors: Implications on debt financing and investment. *Journal of Corporate Finance*, 84, 102537. <https://doi.org/10.1016/j.jcorpfin.2023.102537>
- Gultom, H. T. (2021). Perlindungan Hukum Terhadap Kreditor Selaku Pemegang Jaminan Fidusia Dalam Perjanjian Pembiayaan Dikaitkan Dengan Putusan Mahkamah Konstitusi Nomor 18/PUU-XVII/2019. *Jurnal Hukum To-Ra: Hukum Untuk Mengatur Dan Melindungi Masyarakat*, 7(3), 355–385. <https://doi.org/10.55809/tora.v7i3.43>
- Gunawan, Rohman, H., & Lontoh, R. (2025). Kepastian Hukum Benda Jaminan Gadai yang Berasal dari Hasil Kejahatan dan Akibat Hukumnya bagi Perusahaan Gadai. *CENDEKIA: Jurnal Penelitian Dan Pengkajian Ilmiah*, 2(3), 430–443. <https://doi.org/10.62335/cendekia.v2i3.1048>
- Hermawan, S., & Surya Kusuma, F. I. (2022). NORMATIVITY IN LEGAL SOCIOLOGY: Methodological Reflection on Law and Regulation in Late Modernity. *Yustisia Jurnal Hukum*, 11(1), 73. <https://doi.org/10.20961/yustisia.v11i1.60982>
- Hidayat, M. F. (2024). Perlindungan Hukum bagi Pemegang Jaminan Fidusia atas Dirampasnya Objek Jaminan yang Digunakan Sebagai Alat Kejahatan. *Journal of Law and Islamic Law*, 2(2), 179–194.
- Hirsanuddin, H., & Sudiarto, S. (2021). Perlindungan Hukum Bagi Para Pihak (Kreditur Dan Debitur) Melalui Parate Executie Obyek Hak Tanggungan. *Jurnal IUS Kajian Hukum Dan Keadilan*, 9(1), 253–267. <https://doi.org/10.29303/ius.v9i1.890>
- Kosasih, J. I., Istri Agung, A. A., & Dewi, A. A. S. L. (2022). Parate Eksekusi Pasca Putusan Mahkamah Konstitusi (MK) NO. 18/PUU-XVII/2019 Dan No: 02/PUU-XIX/2021 Terhadap Eksekusi Jaminan Fidusia Atas Lembaga Pembiayaan Leasing. *Jurnal IUS Kajian Hukum Dan Keadilan*, 10(1), 114–135. <https://doi.org/10.29303/ius.v10i1.971>
- Kurniawan, M. (2023). Kepastian Hukum bagi Kreditur di dalam Eksekusi Fidusia Pasca Putusan Mahkamah Konstitusi No.18/PUU-XVII/2019. *Lex Aeterna Law Journal*, 1(1), 43–59. <https://doi.org/10.69780/lexaeternalawjournal.v1i1.11>
- Lesmana, C. T., Sulistiani, L., Putri, N. S., & De Bats, A. P. (2025). Beyond Legal Moralism: Reconstructing Rational Justice through Economic Analysis of Law in Indonesia's Criminal Policy. *Jambe Law Journal*, 8(2), 871–914. <https://doi.org/10.22437/se12ge88>
- Liono, C. E. F. (2021). Tinjauan Yuridis Terhadap Penarikan Barang Jaminan Fidusia Secara Paksa Oleh Leasing Melalui Debt Collector Yang Ditinjau Berdasarkan Undang-Undang Nomor 42 Tahun 1999 Tentang Jaminan Fidusia. *Lex Privatum*, 9(1), 71–78.
- Mann, R. J. (2022). Explaining the Pattern of Secured Credit. In *The Creation and Interpretation of Commercial Law*, 347–405.

- Marpi, Y., Pujiyono, P., & Purwadi, H. (2023). The Implementation of Actio Pauliana Creditor Law Bankruptcy Boedel Dispute Process to Achieve Substantive Justice. *Jurnal IUS Kajian Hukum Dan Keadilan*, 11(3), 528–538. <https://doi.org/10.29303/ius.v11i3.1305>
- Mulyani, S., Mariyam, S., & Trung Le, H. H. (2023). Legal Construction of Crypto Assets as Objects of Fiduciary Collateral. *LAW REFORM*, 19(1), 25–39. <https://doi.org/10.14710/lr.v19i1.52697>
- Muslim, S., Hadiyantina, S., Mundzir, H., & Ayub, Z. A. (2023). The meaning of "strength executive" in the Constitutional Court decision for the execution of fiduciary securities. *Legality: Jurnal Ilmiah Hukum*, 31(1), 1–20. <https://doi.org/10.22219/ljih.v31i1.23244>
- Naki, J. (2019). Subrogasi Sebagai Salah Satu Alasan Hapusnya Perikatan Menurut Kitab Undang-Undang Hukum Perdata (BW). *Lex Privatum*, 7(1), 31–38.
- Ningsih, A. S. (2021). The Legal Protection for Debtors in the Execution of Mortgage at the Semarang State Assets and Auction Service Office. *JURISDICTION*, 12(1), 86–103. <https://doi.org/10.18860/j.v12i1.12112>
- Posner, R. A. (2014). *Economic Analysis of Law* (9th ed.). Wolters Kluwer Law & Business.
- Prihartanto, M. D. (2021). Settlement of Auction Disputes over Land and Building Collateral Objects. *Journal of Law and Legal Reform*, 2(2), 197–210. <https://doi.org/10.15294/jllr.v2i2.46613>
- Puspitasari, D., Sahril, I., & Nessler, J. (2024). Kepastian Hukum Bagi Kreditur Sehubungan Pelaksanaan Eksekusi Jaminan Fidusia Pasca Putusan Mahkamah Konstitusi Nomor 18/PUU-XVII/2019 Yang Berdampak Kerugian Finansial. *Jurnal Hukum Legalita*, 6(2), 181–204. <https://doi.org/10.47637/legalita.v6i2.1470>
- Putri Rusadi, F. A. R., & Benuf, K. (2020). Fintech peer-to-peer lending as a financing alternative for the development of MSMEs in Indonesia. *Legality: Jurnal Ilmiah Hukum*, 28(2). <https://doi.org/10.22219/ljih.v28i2.12865>
- Radbruch, G. (2006). Five Minutes of Legal Philosophy (1945). *Oxford Journal of Legal Studies*, 26(1), 13–15. <https://doi.org/10.1093/ojls/gqi042>
- Rahman, A., & Muhammad, D. W. (2021). Legal Review of the Execution of Movable Objects Based on Fiduciary Guarantees Against Defaulting Debtors from the Perspective of Islamic Law. *Al-Risalah: Forum Kajian Hukum Dan Sosial Kemasyarakatan*, 21(2), 259–270. <https://doi.org/10.30631/alrisalah.v21i2.799>
- Rahmat, A. F., Astarudin, T., & Yusup, D. K. (2025). Problematika Eksekusi Jaminan Gadai terhadap Objek yang Tidak Berada dalam Penguasaan Kreditur menurut Hukum Perdata dan Hukum Islam (Studi Putusan MA Nomor: 600/PK/pdt/2021): Problematika Eksekusi Jaminan Gadai terhadap Objek yang Tidak Berada dalam Penguasaan Kreditur menurut Hukum Perdata dan

- Hukum Islam (Studi Putusan MA Nomor: 600/PK/pdt/2021). *JURNAL PENELITIAN SERAMBI HUKUM*, 18(02), 308–320.  
<https://doi.org/10.59582/sh.v18i02.1335>
- Rawls, J. (1971). *A Theory of Justice*. Harvard University Press.  
<https://doi.org/10.2307/j.ctvjf9z6v>
- Rozi, A. F., & Qomariyah, S. (2025). *Analisis Konsep, Prinsip, dan Implementasi Hukum Jaminan dalam Menjamin Kepastian dan Perlindungan Bagi Kreditur dan Debitur di Indonesia*. Zenodo. <https://doi.org/10.5281/ZENODO.14986182>
- Samsudin, Aziz, A., Syam, R. M., Hasbi, M. Z. N., & Prabuwo, A. S. (2023). Hajj Funds Management Based on Maqāṣid Al-Sharī'ah; A Proposal for the Indonesian Context. *AL-IHKAM: Jurnal Hukum & Pranata Sosial*, 18(2), 544–567.  
<https://doi.org/10.19105/al-lhkam.v18i2.7268>
- Sepalia, W. (2020). Perlindungan hukum yang berbasis asas proporsional terhadap debitur dan kreditur dalam eksekusi objek jaminan fidusia (studi kasus putusan mahkamah konstitusi nomor 18). *Lex LATA*, 2(3).  
<https://doi.org/10.28946/lexl.v2i3.821>
- Setiawan, H. A., Nasution, M. Y. F. H., Rasjidi, I. T., Raiwella, G. P., & Farhan, M. (2025). Tinjauan Yuridis Terhadap Penjualan Barang Gadai Oleh Penerima Gadai: Analisis Putusan Nomor 738/Pdt.G/2023/PN Medan. *Justicia Sains: Jurnal Ilmu Hukum*, 10(2), 1045–1056. <https://doi.org/10.24967/jcs.v10i2.4898>
- Setyabudi, B., & Mashdurohatun, A. (2022). Reconstruction of Legal Protection Regulations for Debtors and Third Parties in Credit Agreements with the Object of Fiduciary-Based Guarantee. *Scholars International Journal of Law, Crime and Justice*, 5(12), 520–526. <https://doi.org/10.36348/sijlcj.2022.v05i12.002>
- Shoimah, S. N. (2026). Freedom of Contract in the Digital Age: Perspectives on the Indonesian Civil Code and Fiqh Muamalah. *Trunojoyo Law Review*, 8(1), 59–94.  
<https://doi.org/10.21107/tlr.v8i1.32568>
- Silalahi, A. D., Mustansyir, R., Tjahyadi, S., & Maharani, S. D. (2024). Axiological Insights into Unveiling Independent Constitutional Judge Decisionism. *Yustisia Jurnal Hukum*, 13(3), 230. <https://doi.org/10.20961/yustisia.v13i3.85127>
- Siswanto, A., Tanjung, E., Sipayung, P. D., & Ramadhan, M. (2023). Penyelesaian Hukum Pengalihan Objek Jaminan Fidusia kepada Pihak Ketiga pada FIFGROUP Cabang Pematangsiantar. *Jurnal Hukum Bisnis*, 12(02), 74–90.  
<https://doi.org/10.47709/hukumbisnis.v12i02.2181>
- Sjahdeini, S. R. (2018). Legal Protection of Creditors in Collateral Execution. *Indonesia Law Review*, 8(2), 145–160. <https://doi.org/10.15742/ilrev.v8n2.456>
- Sulastri, S., Nugroho, A. A., & Surahmad, S. (2025). Legal Risk Transformation: Loss of Creditors' Enforcement Rights of Third-Party Fiduciary Guarantees Objects Due to Lack of Registration. *Bacarita Law Journal*, 6(1), 8–14.  
<https://doi.org/10.30598/bacarita.v6i1.21098>

- Tohar, H., Iriansyah, I., & Triana, Y. (2022). Jaminan fidusia sebagai hak jaminan kebendaan pasca putusan mahkamah konstitusi nomor: 18/PUU-XVII/2019 tentang jaminan fidusia. *EKSEKUSI*, 4(1), 1. <https://doi.org/10.24014/je.v4i1.13677>
- United Nations Commission on International Trade Law. (2010). *UNCITRAL Legislative Guide on Secured Transactions*. United Nations. [https://uncitral.un.org/en/texts/securityinterests/legislativeguides/secured\\_transactions](https://uncitral.un.org/en/texts/securityinterests/legislativeguides/secured_transactions)
- Wardoyo, Y. P., & Hapsari, D. R. I. (2023). Cryptocurrency assets as physical collateral in Indonesia. *Legality: Jurnal Ilmiah Hukum*, 31(1), 59–71. <https://doi.org/10.22219/ljih.v31i1.24190>
- Wiwoho, S. H., Rahmah, M., Kurniawan, F., Pamoro, G. J., & Nabil, M. (2026). Principle of Legal Certainty Toward Non-Conviction-Based Asset Forfeiture in Indonesia: A Socio-Legal Study. *PETITA: JURNAL KAJIAN ILMU HUKUM DAN SYARIAH*, 11(1). <https://doi.org/10.22373/petita.v11i1.999>
- Wulandari, R. A., Azheri, B., & Fauzi, W. (2024). Analysing Collateral Execution in Islamic Banks: A Perspective on Indonesian Law in Light of Islamic Finance Principles. *Manchester Journal of Transnational Islamic Law and Practice*, 20(1), 216–233. Scopus.
- Yani, S. (2020). Perlindungan Hukum Terhadap Debitur Pada Perjanjian Pembiayaan Konsumen Dengan Pembebanan Jaminan Fidusia. *UNES Law Review*, 2(3), 299–320. <https://doi.org/10.31933/unesrev.v2i3.124>
- Yustiana, Y. (2020). Eksekusi Hak Tanggungan terhadap Kredit Macet Bank. *Al-Ishlah: Jurnal Ilmiah Hukum*, 23(1), 77–97. <https://doi.org/10.56087/aijih.v23i1.38>
- Zetzsche, D. A., Buckley, R. P., Arner, D. W., & Barberis, J. N. (2017). From FinTech to TechFin: The Regulatory Challenges of Data-Driven Finance. *SSRN Electronic Journal*. <https://doi.org/10.2139/ssrn.2959925>