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# Legal Protection for Creditors in Unregistered Fiduciary Agreements: A Normative Review Based on the Fiduciary Guarantee Law

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**ABSTRACT**

Sustainable economic development requires significant funding, which is often obtained through borrowing between creditors and debtors. One of the guarantee instruments in the financial world is fiduciary guarantees, which are regulated in Law Number 42 of 1999 concerning Fiduciary Guarantees. Fiduciary guarantees provide legal protection for creditors, but if they are not registered in accordance with the provisions of the law, legal protection for creditors becomes limited. This study aims to analyze the legal position of creditors in unregistered fiduciary agreements, the legal consequences that arise for creditors, and the legal protection that can be provided. This study used a normative juridical approach with analytical descriptive analysis. Based on the results of the study, it can be concluded that unregistered fiduciary guarantees do not have executory power and preferential rights for creditors, so creditors lose the legal protection provided by the Fiduciary Guarantee Act. This makes it difficult for creditors to claim their rights in the event of a default. Therefore, it is important to ensure the registration of fiduciary guarantees so that creditors' rights are protected in accordance with applicable provisions.

## INTRODUCTION

A just and prosperous society based on *Pancasila* and the 1945 Constitution of the Republic of Indonesia can be achieved through economic development, for which large funds are needed for sustainable development carried out by both the government and individual communities or legal entities. The need for funding increases along with the increase in development. Funds are obtained through borrowing activities.

Financial institutions in the financial world act as institutions that provide financial services to their customers, where in general these institutions are regulated by financial regulations from the government (Mukhtarudin & Santoso, 2023). One type of financial institution is a non-bank financial institution. According to the Decree of the Minister of Finance No. KEP-38/MK/IV/1972, a non-bank financial institution, abbreviated as LKBB, is a body that carries out activities in financial matters both directly and indirectly, collects funds from the public by issuing securities, then distributes them to finance the investment of companies that need loans (Alfedo, 2021).

This non-bank financial institution has a very important role in the world of financing; the activities of this financing institution are carried out in the form of providing funds or capital

goods without withdrawing funds directly from the public in the form of current accounts, deposits, or savings.

Borrowing and lending activities that occur in the general public are usually on the condition that the borrower must hand over guarantees to the party who provides the loan. The debt guarantee can be in the form of goods or objects — tangible collateral — which is a guarantee that gives the creditor rights over the debtor's property, namely the right to use the object if the debtor defaults. Material guarantees include hypothec, mortgage, and fiduciary. According to Stein, as cited by J. Satrio, at the beginning of the Civil Code, hypothec and mortgage guarantee institutions were indeed sufficient to meet the needs of guarantee practices. At that time, credit traffic had not yet developed for pawned objects, especially in the form of art objects and jewelry.

Emphasizing the above opinion, J. Satrio said that the problem faced in the business world, which raises the need for another guarantee institution besides the pawn institution, is the need for a guarantee institution that allows the provision of movable objects as collateral, while the object remains in the possession of the owner and can still be used for the grantor's business (Tambunan et al., 2025).

The existence of fiduciary practices in Indonesia before the promulgation of Law Number 42 of 1999 concerning Fiduciary Guarantees was based on the rules of the Netherlands recognized by the *Hoge Raad* in the *Arrest* of January 25, 1929 (*Bierbrouwerij Arrest*). Meanwhile, in Indonesia, based on the *Arrest Hooggerechtshof* of 1932 (*BPM-Clignet Arrest*), the first jurisprudence on fiduciary was born. In the development of jurisprudence, the Fiduciary Institution in Indonesia for the first time received recognition in the decision of *HgH* dated August 18, 1932 in the case between B.P.M. and Clignet.

It is said that Title XX Book II of the Civil Code does regulate pawning, but it does not prevent the parties from entering into an agreement other than a pawn agreement if the pawn agreement is not suitable to regulate the legal relationship between them. A fiduciary agreement is considered to be a guarantee and is not intended as a pawn agreement.

The birth of fiduciary guarantees is purely based on the provisions of Article 1320 *jo.* 1338 of the Civil Code regarding freedom of contract. There is no standard for the formal terms of a fiduciary agreement, nor are there other characteristics that are generally found in a guarantee instrument. To meet the needs of the public regarding fiduciary guarantee arrangements as a means to assist business activities and to provide legal certainty to interested parties, the government stipulated Law Number 42 of 1999 concerning Fiduciary Guarantees on September 30, 1999, and Government Regulation Number 86 of 2000 concerning procedures for registration of fiduciary guarantees (Satory et al., 2024).

To move the wheels of the economy, large funds are needed. In people's lives, on the one hand there are groups that have more funds but are unable to make productive use of them; on the other hand, there are groups that have little or no funds at all but have the ability to do business. For this reason, an intermediary acting as a creditor is needed as a provider of funds for the debtor. Therefore, in society there exists a system of credit or debt-receivables agreements.

One of the activities in the world of banking and other financial institutions — as institutions that collect funds from the public — is the provision of credit, but this carries risks.

Therefore, for the security of providing credit, a guarantee institution is needed. The creditor has the right to claim receivables against the debtor's pledged assets if the debtor does not fulfill his obligations voluntarily, by selling the pledged objects and applying the proceeds toward the fulfillment of the debtor's debt. If the debtor defaults, it will be difficult for the creditor to obtain repayment from the debtor if there is no guarantee institution in the agreement. Banks as creditors prefer material guarantee agreements because they will provide preferential rights (*hak preferensi*).

The registration of fiduciary guarantees gives the fiduciary creditor the right of *droit de préférence* over other creditors. In addition, the registration of fiduciary guarantees is intended to provide legal certainty for the parties — both for the fiduciary grantor and for the fiduciary recipient — so that it can provide legal protection for creditors (fiduciary recipients) and other third parties (Maharani et al., 2024). Law Number 42 of 1999 concerning Fiduciary Guarantees was stipulated with the consideration that fiduciary guarantees are seen to provide facilities for the business world to develop further, because objects pledged through fiduciary can still be used by the owner of the property as business capital. Regarding this registration, it is also regulated in Article 1 paragraph (1) *jo.* Article 2 of the Regulation of the Minister of Finance Number 130/PMK.010/2012 concerning Registration of Fiduciary Guarantees for Finance Companies Conducting Consumer Financing for Motor Vehicles with the Imposition of Fiduciary Guarantees. Article 3 of the Minister of Finance Regulation No. 130/2012 states that finance companies are prohibited from withdrawing fiduciary collateral in the form of motor vehicles if the Fiduciary Registration Office has not issued a fiduciary guarantee certificate and submitted it to the financing company. However, in practice, there are still fiduciary guarantees that are not registered.

Fiduciary has benefits for both debtors and creditors. The benefit for the debtor is that it can assist the debtor's business without being overly burdensome; the debtor can also still control the collateral for business purposes because what is transferred is merely the legal title, while the object remains in the physical possession of the debtor (grantor). Meanwhile, the benefit for the creditor is that the fiduciary binding procedure is more practical because the creditor does not need to provide a special place for the storage of fiduciary collateral as is required in the pawn institution. Other advantages obtained by creditors according to the provisions of Article 27 of Law Number 42 of 1999 concerning Fiduciary Guarantees (hereinafter referred to as the Fiduciary Guarantee Law) are that the creditor or fiduciary recipient has preferential rights the position as a preferential creditor is intended so that the fiduciary recipient has the right to take repayment of receivables from the results of the execution of the object that is the subject of the fiduciary guarantee, rights that are not extinguished due to bankruptcy and/or liquidation of the debtor or fiduciary grantor.

The urgency of this research is underscored by the potentially devastating consequences for creditors who fail to register fiduciary guarantees. Without registration, creditors are stripped of all the special protections provided by the Fiduciary Guarantee Law. They lose their preferential status, their executory title, and their right to follow the collateral. In the event of debtor default, they are relegated to the status of concurrent creditors, forced to prove their claim in a civil lawsuit alongside other unsecured creditors, with no priority over the specific collateral object. This situation creates significant legal uncertainty, undermines the creditor's

business model, and can ultimately lead to substantial financial losses, potentially even bankruptcy. Understanding the full scope of these consequences is vital for legal practitioners, creditors, and policymakers. (Creditor of Fiduciary Facing Bankruptcy, Diponegoro Law Review, 2023)

Unregistered fiduciary guarantees are detrimental to creditors themselves, since the object of the guarantee provided is not legally binding. This is because the process of binding guarantees according to applicable law takes a great deal of time and incurs considerable costs. Binding that should serve as collateral aimed at protecting the creditor's capital can become a *buah simalakama* (catch-22 situation), because expensive binding fees can cause customers to be reluctant to take credit from the company, leading them to borrow from informal lenders without collateral.

Based on the above provisions, it means that there is protection of rights for the fiduciary recipient and/or creditor, based on the object of the fiduciary guarantee of a credit agreement entered into between the creditor and the debtor, against the possibility of default by the debtor (Winarno, 2013; Sanusi, 2017).

Thus, based on the above provisions, every fiduciary guarantee agreement must be made with a notarial deed and registered; accordingly, a fiduciary agreement made under private deed that is only known to both parties does not have the legal force of a fiduciary agreement. Muhtar mentioned that the fiduciary guarantee must be registered, as stipulated in Article 11 of the Fiduciary Guarantee Law. With this registration, the Fiduciary Guarantee Law fulfills the principle of publicity, which is one of the main principles of property guarantee law (Meyda et al., 2023). Based on this description, the researcher conducted a study entitled: "Legal Protection of Creditors in Fiduciary Agreements Without Registration: A Normative Review Based on the Fiduciary Guarantee Law."

Based on the above explanation, the author formulates several problems that are the main focus of this study, namely: first, how is the legal position of creditors in fiduciary agreements that are not registered according to Law Number 42 of 1999 concerning Fiduciary Guarantees; second, what are the legal consequences for creditors when fiduciary guarantees are not registered in accordance with the law; and third, how is the legal protection for creditors in unregistered fiduciary agreements provided.

The purpose of this research is to examine and analyze the legal position of creditors in fiduciary agreements that are not registered according to Law Number 42 of 1999 concerning Fiduciary Guarantees. In addition, this study aims to examine and analyze the legal consequences for creditors related to fiduciary guarantees that are not registered according to the provisions of the law. Finally, this study aims to examine and analyze the legal protections that can be provided to creditors in unregistered fiduciary agreements.

## METHOD

The method carried out in this study was normative juridical. The normative juridical approach is carried out by studying and studying legal principles and positive legal rules or norms derived from existing literature materials, from laws and regulations and legal provisions related to Legal Protection of Creditors in Fiduciary Agreements Without Registration of Normative Review Based on the Fiduciary Guarantee Law.

**Research Approach**

The type of research conducted is normative legal research using a statute approach and a comparative approach. After using normative legal research methods, to further get information and answers to the problems formulated by the author.

**Types of Legal Research Materials**

Normative legal research that focuses on literature research and is based on secondary and secondary data, namely data obtained from various laws, literature on research results in the form of journals and from other binding legal materials.

**Source of Legal Research Materials**

The sources of legal materials used in this study consist of primary legal materials, secondary legal materials and tertiary legal materials, which are described as follows:

1. Primary legal materials, namely binding legal materials, in the form of laws and regulations related to the problems to be studied, consist of:
    a) Civil Code (burgerlijk wetboek);
    b) Constitution 1945
    c) Law Number 42 of 1999 concerning Fiduciaries.
2. Secondary legal materials are legal materials obtained from textbooks, scientific journals, scholars' opinions, legal cases, and symposiums conducted by experts related to the object of this legal research study. Newspapers, weekly magazines, bulletins and the internet can also be material for this research as long as they contain information relevant to the object of this legal research study.
3. The necessary tertiary legal materials are used for various things in terms of explaining the meanings of words from secondary legal materials and primary legal materials, such as: a. Great Dictionary of the Indonesian Language; b. Black's Law Dictionary.

**Research Legal Materials Collection Techniques**

The collection of legal materials was obtained through literature studies. All existing legal materials are selected, elaborated and analyzed and then associated with laws and regulations and then formulated systematically in accordance with each subject.

**Techniques for Analyzing Legal Materials Research**

Data analysis is carried out in a descriptive manner which is used to examine normative or juridical aspects through an analytical descriptive method that describes the picture of the data obtained and relates them to each other to obtain a general conclusion.

## RESULT AND DISCUSSION

### Legal Protection of Creditors in Fiduciary Agreements Not Registered under Law Number 42 of 1999 concerning Fiduciary Guarantees

The agreement only has binding legal force between the parties (debtor and creditor) based on the principle of contract, but does not have material legal force. As a result, the creditor does not have preferential rights over the collateral object and cannot exercise droit de suite (the right to follow the collateral object) if the debtor transfers the object without consent, since the fiduciary object remains the debtor's property in the view of property law.

Creditors in terms of entering into agreements, especially agreements with fiduciary guarantees, have great risks, including losses that will be experienced in the event of a default

committed by the debtor. In the case of the agreement with fiduciary guarantees made between Agus Irawan, Drs. EC as the debtor and the Mitra Perdana Cooperative Capital Company as the creditor, the rights and obligations of creditors and debtors are not broadly explained in the Fiduciary Guarantee Law, only in the Fiduciary Guarantee Law briefly guarantees the rights of creditors in an effort to repay debts by the debtor in the executory rights of the object that is used as the object of fiduciary guarantee if the debtor commits the default and the right to prioritize the repayment of the debt based on the execution of the fiduciary guarantee at that time.

The rights and obligations of creditors have been explained extensively, namely the right to debt repayment by the debtor and the obligations described provide clear information about the amount of interest or the basic principles of the contents agreed with the debtor. The debtor's right is to obtain clear information from the creditor about the agreement made and the obligation in the form of paying/paying off the debt to the debtor.

In the legal protection provided to the Capital Company if there is an act of default and results in losses experienced, then the legal basis is in Article 1238 of the Civil Code which states that:

"*The debtor is declared negligent by a warrant or by a similar deed or by virtue of the bond itself, that is, if this agreement results in the debtor being negligent with the passage of the specified time*."

The actions of Agus Irawan, Drs. EC as a debtor in this case are said to be acts of default based on an agreement that has been made by both parties, namely between creditors and debtors, that the debtor must immediately pay off his debt before May 10, 2021, but until June 8, 2021 the debtor has no intention of paying off the debt or it can be said that the debtor is making excuses for not fulfilling the appropriate achievements on time. The definition of achievement is explained in Article 1234 of the Civil Code which explains that:

In the achievement referred to in this case, Rozikin as a debtor in entering into a credit agreement with the Mitra Perdana Cooperative Capital Company as a creditor was completely not carried out his obligation to pay off debts to creditors, resulting in making losses for the creditors at that time.

The amount of compensation demanded by the Private Capital Cooperative Mitra Perdana as a creditor to Agus Irawan, Drs. EC cannot be limited by the Law, as explained in Article 1248 of the Civil Code, namely:

"*If the non-fulfillment of the agreement is due to the creditor's deception, reimbursement, loss, and interest are merely in respect of the losses suffered by the creditor and the profits lost to him, consist only of what is the direct consequence of the non-fulfillment of the agreement."*

Based on the explanation of the article above, the profits that can be claimed by KSP Bina Sejahtera Utama Raya Private Capital against Rozikin again refer to the agreement that has been made, namely first, Rozikin must/must first pay the remaining unpaid debt payments and pay loan interest of 2.9% for each month.

In this case, the object or goods that the debtor pledged is not registered by the creditor and only it is a deed under hand. The deed under hand is a credit agreement with the fiduciary guarantee that is not charged with a notary deed, let alone registered at the Fiduciary

Registration Office at the Regional Office of the Ministry of Law and Human Rights of the Republic of Indonesia at the place of residence of the fiduciary, while the Fiduciary Guarantee Law has required that the object of fiduciary guarantee must be in accordance with what has been registered, This is in accordance with the explanation of Article 11 paragraph (1) of the Fiduciary Guarantee Law, which states that:

"*Objects encumbered with Fiduciary Guarantees must be registered*"

Based on the explanation of the article above, it does not mean that the fiduciary guarantee object that is not registered becomes invalid, it is just that with the registration of the fiduciary guarantee object, the rights of the creditor will be guaranteed or protected by the Fiduciary Guarantee Law. The legal protection can be seen in the explanation of Article 20 of the Fiduciary Guarantee Law which states that:

*"The Fiduciary Guarantee continues to follow the object that is the object of the Fiduciary Guarantee in the hands of whoever the object is, except for the transfer of the inventory object that is the object of the Fiduciary Guarantee."*

The provisions of the above article affirm that the Fiduciary Guarantee has a material nature and applies the principle of droit de suite, except for the transfer of the inventory that is the object of fiduciary guarantee, but on the other hand, the fiduciary guarantee that is not registered does not have the benefits guaranteed in the Fiduciary Guarantee Law, namely the existence of preferential rights or precedence rights, as explained in Article 27 of the Fiduciary Guarantee Law, which states that:

"1. The Fiduciary has rights that take precedence over other creditors,
2. The rights that take precedence as referred to in paragraph (1) are the rights of the Fiduciary,
3. To take the repayment of its receivables on the results of the execution of the Object that is the object of the Fiduciary Guarantee. The rights that prevail from the Fiduciary are not extinguished due to bankruptcy and/or liquidation of the Fiduciary."

The rights that take precedence in this article means that the Private Capital of the Mitra Perdana Cooperative has the right to prioritize the repayment of its receivables on the results of the execution of objects/goods that are the object of the Fiduciary Guarantee. The rights that precede are not deleted due to bankruptcy or liquidation of the debtor or fiduciary, in addition to other benefits are related to executory rights as referred to in an Article 29 of the Fiduciary Guarantee Law which states that:

"1. If the debtor or the Fiduciary is injured by the promise, the execution of the Object that is the object of the Fiduciary Guarantee can be carried out by:

a. The execution of the executory title as intended in article 15 paragraph (2) by the Fiduciary;
b. Sale of Objects that are the object of Fiduciary Guarantee on the power of the Fiduciary itself through a public auction and taking the repayment of its receivables from the proceeds of the sale;
c. An underhand sale made under the agreement of the Grantor and the Fiduciary if in such a way it can be obtained the highest price that benefits the parties.

2. The execution of the sale as intended in paragraph (1) c shall be carried out after 1 (one) month has passed since it has been notified in writing by the Grantor and/or Trustee to interested parties and announced in at least 2 (two) newspapers circulating in the relevant area."

Based on the explanation of the article mentioned above, execution can be carried out by means of the execution of the executory title by Private Capital of the Perdana Partner Cooperative, meaning that the execution can be carried out immediately, or through an execution parade institution where the sale of the object of the Fiduciary Guarantee on its own power through a public auction and also takes repayment from the proceeds of the sale of objects or goods. The benefits provided by the Fiduciary Guarantee Act become invalid because the Fiduciary Guarantee is not registered or the agreement entered into between the creditor and the debtor is only an agreement under hand. The Fiduciary Guarantee is only charged with a deed under hand, then the creditor as the Fiduciary recipient is an ordinary creditor, in the event of default by the debtor, the creditor must be able to prove first that there has been a debt-receivables agreement or debt recognition by the debtor. The debt-receivables agreement made by Agus Irawan, Drs. EC as a debtor can be proven by the Private Capital Company of the Mitra Perdana Cooperative as a creditor in the Credit Agreement No. 6575/PK/PKS-096/KMP/SBY/I/2018;, therefore, the legal protection provided to the Private Capital Company of the Mitra Perdana Cooperative as a creditor again refers to the protection provided by the Civil Code, namely by proving that the Fiduciary Guarantee agreement that starting with the credit agreement of both parties outlined in writing and agreed upon by both parties, and by proving that there has been an act of default by Agus Irawan, Drs. EC who then demanded that there be a matter of repayment of compensation.

**Legal Consequences for Creditors If Fiduciary Guarantees Are Not Registered According to Law Number 42 of 1999 concerning Fiduciary Guarantees**

Fiduciary guarantees are not registered, creditors lose material rights and preferential rights to the object of fiduciary guarantees, so they cannot carry out direct execution and potentially do not get debt repayment because their rights are only legally binding, not attached to the object of the guarantee. Unregistered fiduciary guarantees are also considered invalid or illegal according to the Fiduciary Guarantee Law (UUJF), making them ineligible for execution, even though registration is a mandatory requirement to create material rights and preferential rights for creditors.

In legal rules, both written and unwritten, which contain general rules, reference guidelines for the community, individuals who behave, and there are restrictions for the community in general, in burdening individuals with actions. The existence of this kind of rule in implementation becomes a legal certainty, so I can conclude that normative legal certainty is when a regulation is made and determined definitively to explain the rules clearly and logically, so as not to result in doubt, logic, and predictability. Legal certainty is a situation in which human behavior, whether individuals, groups, or organizations, is bound and within the corridor that has been outlined by the rule of law (Sari & Gunadi, 2025).

In 2013 the Ministry of Law and Human Rights launched the Electronic Fiduciary Guarantee Registration Administration System. This is evidenced by the issuance of the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 9 of 2013 concerning the Implementation of Electronic Registration of Fiduciary Guarantees and Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 10 of 2013 concerning Procedures for Electronic Registration of Fiduciary Guarantees in order to improve services to the public who need legal services in the field of Fiduciary Guarantees.

The purpose of the implementation of Electronic Fiduciary Guarantee Registration is to improve the service of Fiduciary Guarantee Registration legal services easily, quickly, cheaply and conveniently, so the application for Fiduciary Guarantee Registration is done electronically (Satory et al., 2024; Alfedo, 2021).

The Fiduciary Guarantee Law requires that the object encumbered by the Fiduciary Guarantee must be registered, for the Fiduciary Guarantee object that is not registered, it does not have the benefit of registration, including:

1. Having the right of precedence (preference) The position of preference is related to the results of execution, this is clear when connected with Article 1132 BW which basically the creditors share the results of the execution of the debtor's property, with the imposition of Fiduciary Guarantee, the creditor becomes a preference for the proceeds of the sale of the debtor's property.
2. Having executory power Execution of the Fiduciary Guarantee Object can be carried out based on the grossed of the Fiduciary Guarantee certificate in accordance with the provisions of Article 29 paragraph (1) sub a of the Fiduciary Guarantee Law or with the Executory Title of the Fiduciary Guarantee Certificate given in Article 15 paragraph (2) of the Fiduciary Guarantee Law. The Fiduciary Guarantee Certificate has the same executory power as a court decision that has obtained permanent legal force, so the execution of the Fiduciary Guarantee Object based on the gross Fiduciary Guarantee Certificate or with the Executorial Title of the Fiduciary Guarantee Certificate follows the implementation of a court decision (Fitri et al., 2025; Badriyah et al., 2021).

On the grounds that the Fiduciary Guarantee is not guaranteed because the cost of making the Fiduciary Guarantee Deed and Fiduciary Guarantee Registration requires a lot of money. In the preparation of the Fiduciary Guarantee Deed, the Mitra Perdana Cooperative Capital Company as creditors and debtors jointly bear all the costs of making the deed. However, in this case, not all debtors apply for financial credit, in other words, debtors include the lower middle-income group. The next reason is that the value of the loan and the debtor's guarantee is small, therefore the Private Capital Company of the Mitra Perdana Cooperative does not register the Fiduciary Guarantee.

Fiduciary Guarantee Registration does not always run smoothly, especially for short-term loans where in accordance with Article 13 paragraph (1) of the UUJF, creditors must register with the Fiduciary Registration office. It is not impossible that there will be delays in submitting Fiduciary Guarantee Registration because of the busyness of the registration party, queue problems at registration, as well as the problem of costs that are not small. With no small cost, many depend on the amount of collateral value in the Capital Company concerned. This registration fee is charged to the debtor and has been stipulated in the Government Regulation on Fiduciary Registration.

In a general explanation of the Government Regulation on Fiduciary Registration, it has been stated that the Fiduciary Registration office registers Fiduciary Guarantees manually, the implementation of which has several obstacles, namely not according to the target in the one-day service so that the incoming applications are very large and exceed the capabilities of human resources or existing facilities in the Fiduciary Guarantee Registration service. To

overcome this problem, it is necessary to create an Electronic Fiduciary Guarantee Registration service pattern (online system).

The beginning of this online registration arrangement was conveyed in the Circular Letter of the Directorate General of AHU No. AHU-06. OT.03.01 of 2013 concerning the Implementation of the Electronic Fiduciary Guarantee Registration Administration System (Online System) issued on March 5, 2013 by the Ministry of Law and Human Rights (*Kemenkumham*).

The object that is the object of fiduciary guarantee is partly owned by the debtor, some of which belongs to the creditor. If the execution is forcibly confiscated, namely through the services of a debt collector or a collector, this certainly becomes unlawful. The violation of the law can be categorized as an unlawful act as regulated in Article 1365 of the Civil Code, so that the debtor can file a lawsuit through the court to request compensation for the creditor's actions.

According to the author, actions taken by creditors through debt collectors or debt collectors can also be categorized as arbitrary that violate criminal law. Therefore, the act is categorized as an act that violates Article 368 of the Criminal Code which reads: Whoever, with the intention of unlawfully benefiting himself or others, forces a person by violence or threat of violence to give away something, which wholly or partially belongs to that person or another person, or in order to make a debt or write off receivables, threatened for extortion, with a maximum prison sentence of 9 years.

This indicates that most financial finance institutions have not understood and complied with the provisions stipulated in the UUJF. In fact, if you look closely at the existence of a fiduciary guarantee that is properly registered, it will provide legal protection for creditors (Dharma, 2024).

**Legal Protection for Creditors in Unregistered Fiduciary Agreements**

Legal protection for creditors of unregistered fiduciary agreements is minimal, as the agreement does not have the force of material (droit de suite) and preferential as should be attached to a fiduciary guarantee. As a result, creditors only have the right to default, but cannot sue the fiduciary object directly, and do not have the right of precedence if there are other creditors or the debtor's assets are confiscated.

The regulation of the fiduciary law regarding the execution of objects that are fiduciary guarantees after the Constitutional Court decision Number: 18/PUUXVII/2019 has undergone very significant changes. This change greatly affects the creditor in taking his right to execute the object of fiduciary guarantee when the debtor has been negligent in carrying out his obligations or in other words the debtor has committed a default (Fitri et al., 2025; Pradnyawan, 2020).

Certainty in the law must exist so that it does not become arbitrary, this arbitrary action can not only be carried out by the "government" but can also be carried out by individuals. The individual referred to here is a "human being" as a legal subject who is the holder of rights and obligations (*naturlike person*). When a person who is the subject of the law does not perform the obligations as ordered by the Law, then that person has committed an arbitrary act and it will certainly be detrimental to others.

This is further strengthened by the decision of the Constitutional Court Number: 18/PUU-XVII/2019 which ordered the lawmakers to amend 15 paragraph (2) of Law Number 42 of 1999 concerning Fiduciary Guarantees. With the amendment of Article 15 paragraph (2), the creditor can no longer execute the fiduciary guarantee object that is in the hands of the debtor if the debtor objects to hand over the fiduciary guarantee object to the creditor.

Article 30 of the Fiduciary Guarantee Law states that "The Fiduciary is obliged to hand over the Object that is the object of the Fiduciary Guarantee in the context of the execution of the Fiduciary Guarantee." It seems that the Panel of Judges who examined and decided the decision of the Constitutional Court Number: 18/PUU-XVII/2019 did not pay attention to Article 30 of the Fiduciary Guarantee Law. The clear stipulation in Article 30 of the Fiduciary Law forces the Fiduciary to hand over the object of the Fiduciary guarantee to the Creditor if the debtor has committed a default.

During the civil lawsuit, the control of the movable object remains with the Debtor, in addition, the Debtor can continue to use the object of fiduciary collateral to obtain profits without the need to pay to the Creditor so that during the trial process, which can normally take almost 2 years, the Debtor can enjoy the object of fiduciary collateral.

In this case, of course, it does not provide legal certainty to the Creditor, so that the creditor becomes overwhelmed in anticipating the taking of his own property rights, if other debtors also do the same thing, the Creditor will certainly suffer a lot of losses and can even end his business because he experiences business closure (bankruptcy) due to not being able to manage the finances that are in the object of the Fiduciary Guarantee.

Based on this, it is clear that the Constitutional Court Decision Number: 18/PUU-XVII/2019 has made the fiduciary law lose its role as a law establishing a fiduciary guarantee institution. The "*For the Sake of Justice Based on the One God"* contained in the Fiduciary Guarantee certificate has lost its identity because the executory power over the object of the Fiduciary Guarantee which is considered the same as the District Court's decision is no longer valid if the Debtor involuntarily hands over the object that is the object of fiduciary guarantee to the Creditor and then the Debtor denies that he has committed a breach of promise. Therefore, there is no longer any protection provided by law number 42 of 1999 concerning fiduciary guarantees to creditors.

Law Number 42 of 1999 concerning Fiduciary Guarantees remains in force but its enactment does not have the meaning of "Protect" as its role was originally formed, so new laws and regulations are needed that can protect the rights of creditors and debtors. The problem is not in the laws and regulations. The error lies in practice, so what needs to be considered is the implementation of the laws and regulations on the object of fiduciary guarantee so that there will be no deviation of legal principles (Muslim et al., 2023; Hamzah, 2022).

## CONCLUSION

Based on the research that has been carried out, the author concludes that as a result of the fiduciary guarantee law that is not registered according to Law Number 42 of 1999, it is stated that the fiduciary guarantee must be made with a Natariil Deed (Notary Deed) and registered with the Office of the Ministry of Law and Human Rights, in order to have executory power and the creditor will obtain preferential rights. If the fiduciary guarantee is not made

under hand and is not registered in accordance with the provisions of the laws that have been determined, it will not have executory power, and preferential rights and may become null and void (*Vernitigbarheid*). In the administrative system, the registration of fiduciary guarantees through online can be through the process or procedure of registering fiduciary guarantees and the issuance of a fiduciary guarantee certificate submitted by the applicant as a fiduciary guarantee registration through an electronic system owned by the Directorate General of General Legal Administration (Ditjen AHU). The legal source that is the basis for the formation and implementation of this system is the Circular Letter of the Directorate General of AHU No. AHU-06. OT.03.01 of 2013 concerning the Implementation of the Electronic Fiduciary Guarantee Registration Administration System (Online System).

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