JURNAL MAGISTER HUKUM UDAYANA
(UDAYANA MASTER LAW JOURNAL)
Vol. 11 No. 2 Juli 2022
E-ISSN: 2502-3101 P-ISSN: 2302-528X
http://ojs.unud.ac.id/index.php/jmhu

Guarantee of Legal Assurance and Justice for the Implementation of Consumer Financing

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Article Info
Received:10th December 2021
Accepted: 15th July 2022
Published: 20th July 2022

Keywords:
Legal assurance, Justice, Consumer Financing

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DOI:
10.24843/JMHU.2022.v11.i02.p03.

Abstract
This study aims to determine how to guarantee legal certainty and justice for the implementation of consumer financing. This study was conducted at the Christian University of Indonesia in 2021 for four months, starting from March – June 2021. The research method used was normative legal research, focusing mainly on fiduciary guarantee legislation and the theory of legislation, justice, and legal certainty. The findings of this study are that if the debtor/consumer of consumer financing is in default, based on Constitutional Court Number 18/PUU-XVII / 2019, creditors of consumer finance companies cannot carry out direct execution of the object of collateral. It must refer to the provisions of Article 15 paragraph (2) of the UUJF, namely through fiat execution as the implementation of court decisions that have permanent legal force.

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I. Introduction

In reality, the consumer finance business is not without risk. Financing has a risk in the form of jammed instalment payments by consumers. Therefore, to guarantee the payment of instalments on the financing that the consumer finance company has carried out, the financed object must be burdened with material guarantees in the form of fiduciary guarantees as regulated in Law no. 42 of 1999 concerning Fiduciary Guarantees (from now on referred to as UUJF). The "fiduciary is the transfer of ownership rights to an object based on trust provided that the object whose ownership rights are transferred remains in the control of the owner of the object, while the definition of fiduciary security based on Article 1 point 2 is a guarantee right over movable objects, both tangible and intangible and immovable objects."[1] Especially "buildings that cannot be encumbered with mortgage rights as referred to in Law

[1] T Febri Ramadhan, Teuku Ahmad Yani, and Suhaimi Suhaimi, "Transfer of Fiduciary Guarantee Object Under the Hands of the Debtor without the Creditor's Consent in the Consumer Financing Agreement (Study at PT Adira Dinamika Multifinance TBK Banda Aceh)," *International Journal of Multicultural and Multireligious Understanding* 8, no. 6 (2021): 455–68.

Number 4 of 1996 concerning Mortgages that remain in the control of the Fiduciary Giver as collateral for the repayment of certain debts that prioritise the Fiduciary Recipient over other creditors."[2]

The object of financing will be the principal collateral guaranteed by the consumer finance company fiduciary because the object of the financing is movable objects. The provision of this "fiduciary guarantee is carried out in an *accessoir* agreement after signing the main agreement in the form of a consumer financing agreement."[3] After signing the notarial fiduciary guarantee deed, Law No. 42 of 1999 Article 11 requires a fiduciary guarantee registration to fulfil the publicity and specialisation principle. According to Article 14 Paragraph (3), registration is a condition for the birth of a fiduciary guarantee. Article 12 stipulates that the fiduciary guarantees must be carried out at the Fiduciary Registration Office in the Regional Office of the Ministry of Law and Human Rights. This registration is essential to ensure legal certainty over creditors' preference rights and prevent re-fiduciary. Although Law No. 42 of 1999 requires registration of fiduciary guarantees, the law does not regulate the period of registration.

The absence of regulation of the period in Law No. 42 of 1999 led to several irregularities in daily practice. One of these deviations is "that many consumer finance companies, including banking institutions, use the power of attorney instruments to charge fiduciary guarantees to delay registration of fiduciary guarantees."[4] A power of attorney imposing a fiduciary guarantee is used when the debtor is unable to sign the fiduciary deed before a notary so that the debtor authorises the creditor to represent himself in signing the fiduciary deed. However, in practice, a power of attorney imposing fiduciary guarantees is used with a distorted purpose. The instrument of power of attorney imposing a fiduciary guarantee is commonly used in financing or providing micro-scale credit with a value of between 50-100 million.[5] In financing or providing micro-scale credit, the Non-tax revenue registration burden is often considered too burdensome for debtors and reduces the competitiveness of banking or financing products. Therefore, "the instrument of power of attorney imposing a fiduciary guarantee is often used by finance companies or banks as an instrument to delay fiduciary registration until the debtor shows an indication of default."[6] When the debtor indicates default, "the creditor can use a power of attorney to impose a fiduciary guarantee to register the fiduciary guarantee."[7] However, if the debtor can pay off the instalments on time, the fiduciary guarantee will not be registered for the

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[2] Achmad Busro, Dewi Sulistianingsih, and Yuli Prasetyo Adhi, "Quo Vadis Copyright As Fiduciary Guarantee In Indonesian Legal Arrangement," *Journal of Legal, Ethical and Regulatory Issues* 21, no. 2 (2018): 1–11.

[3] Ahmad Yani Kosali, "Improving the Object of Fiduciary Guarantee According to Law Number 42 of 1999 on Fiduciary Guarantee," *Journal of Sustainable Development Science* 2, no. 1 (2020): 30–39.

[4] Tamar T Frankel, *Fiduciary Law* (Oxford university press, 2010).

[5] Jay K Rosengard∗ et al., "The Promise and the Peril of Microfinance Institutions in Indonesia," *Bulletin of Indonesian Economical Studies* 43, no. 1 (2007): 87–112.

[6] William P Davies, "Nursing Home Abuse of Agents: Creditor Misuse of New York's Revised Durable Power of Attorney," *Alb. L. Rev.* 79 (2015): 1433..

[7] Nelly Azwarni Sinaga et al., "Executorial Strength In Execution Of Warranty Object Of Debitor's Debt In Fidusian Agreements In The Era Of Covid-19," *INTERNATIONAL JOURNAL OF SOCIAL, POLICY AND LAW* 2, no. 1 (2021): 72–78.

financing or credit. By using a power of attorney instrument to impose a fiduciary guarantee, the financing or credit burden borne by the debtor can be minimised and increase the competitiveness of financing and banking products.

Such practice is detrimental to the interests and does not guarantee legal certainty for creditors. Using "a power of attorney instrument to impose a fiduciary guarantee has not yet given birth to a juridical fiduciary material guarantee."[8] This power of attorney does not guarantee the creditor's preference rights because there is a possibility that the object of the guarantee is re-guaranteed by the debtor. Legal uncertainty in the registration of fiduciary guarantees can occur because there is no regulation on the registration period in Law No. 42 of 1999. To overcome this legal uncertainty and reduce the level of disputes between creditors and debtors, in 2012, the "Minister of Finance issued Regulation of the Minister of Finance No. 130/PMK.010/2012 concerning Registration of Fiduciary Guarantees for Financing Companies Conducting Consumer Financing for Motorized Vehicles with Fiduciary Security Charges (referred to as Minister of Finance Regulation No. 130/PMK.010/2012)." [9] The Ministerial Regulation regulates the obligation to register a fiduciary guarantee within a certain period. This obligation is only born by consumer finance companies that carry out motor vehicle financing.

With the obligation to register fiduciary guarantees within 30 working days, the Minister of Finance Regulation prohibits using a power of attorney to impose fiduciary guarantees by finance companies to delay the registration of fiduciary guarantees with the threat of administrative sanctions. This registration obligation arrangement is suitable for guaranteeing creditors' preference rights and guaranteeing legal certainty for third parties.[10] However, this prohibition only applies to finance companies. This practice is not only carried out by finance companies but also by banking institutions. Many banking institutions that channel credit and use the power of attorney instruments impose fiduciary guarantees to delay the registration of fiduciary guarantees. Because of Permenkeu No.130/PMK.010/2012 does not apply to banking institutions. Using "a power of attorney to impose fiduciary guarantees perverted by banking institutions is continuing in practice."[11]

Law No. 42 of 1999, which is generally applicable to banking institutions, does not regulate the registration period for fiduciary guarantees so that there is no strict prohibition for banking institutions to use the power of attorney instruments to impose fiduciary guarantees. It shows a lack of uniformity in the regulation regarding the prohibition on using a power of attorney instrument imposing fiduciary guarantees

[8]Recky Rizkiryanto Permana, "Legal Certainty on Fiduciary Guarantee Deed Based on Power of Attention Under The Leasing Agreement," *International Journal of Latin Notary* 2, no. 1 (2021): 19–30..

[9] Bias Lintang Dialog et al., "Fiduciary Security Registration of Vehicles by Financing Companies According to Finance Ministerial Regulation Number 130/Pmk. 010/2012," in *UNISET 2020: Proceedings of the 1st Universitas Kuningan International Conference on Social Science, Environment and Technology, UNiSET 2020, 12 December 2020, Kuningan, West Java, Indonesia* (European Alliance for Innovation, 2021), 181.

[10] Thobby Wakarmamu, "Legal Protection for Creditors in Credit Bank Agreement with Guarantee on the Liability Rights That Have Not Been Officially Registered," *JL Pol'y & Globalization* 44 (2015): 126.

[11] Karen E Boxx, "The Durable Power of Attorney's Place in the Family of Fiduciary Relationships," *Ga. L. Rev.* 36 (2001): 1.

used defiantly to delay registration of fiduciary guarantees. This non-uniformity does not guarantee legal certainty and is discriminatory, especially for financial institutions, because violations of these obligations are threatened with administrative sanctions.[12] In addition, the non-uniform arrangement is discriminatory because it impacts the competitiveness of finance companies in offering financing schemes competitively with banking institutions that also offer similar products in the form of credit. With the existence of a fiduciary registration obligation at a finance company, the cost burden that the debtor must bear will undoubtedly be much higher than the cost burden borne by the debtor when using banking credit products that are not bound by fiduciary registration obligations.

In a legal state, there are legal objectives that should and should be implemented by the state. The law rules a state that places law as the state power basis, and the exercise of that power in all its forms is carried out under the law rule.[13] The purpose of the rule of law is the existence of legal certainty, legal justice and legal benefits. The legal goal that is close to reality is legal certainty. "The teaching of legal certainty originates from the Juridical-Dogmatic teaching, which is based on the positivist school of thought in the legal world, which tends to see the law as an autonomous, independent one because, for adherents of this thought, the law is nothing but a rule."[14] Laws that "contain general rules serve as guidelines for individuals to behave in society, both concerning fellow individuals and society. Those rules are a limitation for society in burdening or taking action against individuals. The existence of these rules and the implementation of these rules give rise to legal certainty. The general nature of the rule of law proves that the law does not aim to achieve justice or benefit but solely for certainty."[15]

The agreement or contract has a critical urgency that connects the rights and obligations of each party to create legal certainty in achieving its business goals. Contracts/agreements as legal instruments to facilitate the exchange of rights and obligations are expected to be fair, definite and efficient following the agreement of the parties making the contract/agreement.[16] For this reason, understanding contract law is essential to frame the pattern of the parties' legal relationship, where the community holds legal relationships and agreements based on the will. From these agreements arise legal consequences that bind both parties.

Almost all business activities are related and related to agreements or contracts because business activities are always a relationship that is at least between two people or two

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[12] Roberta Romano, "For Diversity in the International Regulation of Financial Institutions: Critiquing and Recalibrating the Basel Architecture," *Yale J. on Reg.* 31 (2014): 1.

[13] Colin Scott, "Regulation in the Age of Governance: The Rise of the Post-Regulatory State," *The Politics of Regulation: Institutions and Regulatory Reforms for the Age of Governance*, 2004, 145–74.

[14] Yogi Prasetya Sinambela, "Disparity of Death Penalthy Decision against People Criminal Acts of Dark Circular Narcotics," *Asian Social Science and Humanities Research Journal (ASHREJ)* 2, no. 1 (2020): 9–19.

[15] Ferdian Togi Sinurat, Markoni Markoni, and Wasis Susetio, "Criminal Procedures on Online Application During Covid-19 Pandemic," *Journal of Multidisciplinary Academic* 5, no. 2 (2021): 161–68.

[16] Ebrahim Rahbari and Ali Seyedin, "Enforcement Instruments Against Competition-Distorting Collusion and Unilateral Conduct Within the Intellectual Property Realm: A Study of the Approaches in Iranian Law," *IIC-International Review of Intellectual Property and Competition Law* 50, no. 3 (2019): 305–30.

parties who promise each other to carry out something.[17] In an agreement, "the relationship between two or more people is a legal relationship where the rights and obligations between the parties are guaranteed by law. Muhammad Syaifuddin said that in order for the rights and obligations in the contract to be appropriately distributed proportionally, the contract must provide legal certainty."[18] An agreement as a legal figure must contain legal certainty. This legal certainty is revealed in the binding agreement power, a law for those who make it. This principle is known as binding force (pacta sun servanda) as stipulated in Article 1338 paragraph (1) of the Civil Code.

In contract law/agreement, "several principles are known, namely the principles of contract law, namely freedom of contract, consensual, pacta sunt servanda, the principle of good faith and the principle of personality."[19] The principles of "contract law are not separate from one another but compliment and complement each other in many ways. In other words, each principle does not stand alone in isolation but complements the existence of a contract."[20] There should be no inconsistent or contradictory contractual legal norms (between article and article, between article and concept, between concept and article, even between principles and values to be realised in the contract) to guarantee the legal certainty of the contract. If the contract contains inconsistent and ambiguous legal norms (articles), then the said contract cannot create legal certainty. The parties hope that their contracts can create legal certainty, which is necessary for realising the required efficiency in obtaining economic benefits (benefits) in business activities.[21]

Financing is a necessity in society. Financing in commercial practice may include productive financings, such as investment, working capital, or other business-related matters. Financing can be provided by financial institutions, both banks and non-bank financial institutions. There are many financial institutions today. Whatever the form of the institution that provides financing, the agreement containing the financing conditions are stated in an agreement to provide financing facilities. The agreement becomes the legal basis between the parties in their position as creditors and debtors. The financing agreement, in principle, is a debt agreement. The financing agreement is also the basis for debts and receivables in the financing provided by the Financing Institution, which in this study focuses on the Financing Institution in the form of Consumer Financing. Article 1 Presidential Regulation No. 9 of 2009 concerning Financing Institutions (referred to as Presidential Decree No. 9 of 2009) states that Financing Institutions are business entities that carry out financing activities in providing funds or capital goods.

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[17] Wesley Cragg, "Human Rights and Business Ethics: Fashioning a New Social Contract," *New England Journal of Public Policy* 16, no. 2 (2001): 8.

[18] Salahuddin Gaffar et al., "The Concept of Procedural Law Regarding the Implementation of Collective Agreements with Legal Certainty in Termination of Employment in Indonesia," *Heliyon* 7, no. 4 (2021): e06690.

[19] Mayuri Miranda Pillay, "The Impact of Pacta Sunt Servanda in the Law of Contract" (University of Pretoria, 2015).

[20] Yadong Luo, "Contract, Cooperation, and Performance in International Joint Ventures," *Strategic Management Journal* 23, no. 10 (2002): 903–19.

[21] Barrie Needham, *Planning, Law and Economics: The Rules We Make for Using Land* (Routledge, 2006).

From these provisions, Consumer Financing and leasing are one of the business activities of the Financing Institution. Consumer financing is a form of financing for the provision of consumer goods which in practice there is often confusion, namely in the daily practice of Consumer Financing Institutions whose form of business is to provide funds for consumers to procure certain goods such as electronic goods and motor vehicles, often referred to as leasing. At the same time, the type of financing for the needs of the procurement of consumer goods is a type of consumer financing. In principle, there are many differences between leasing or called leasing and consumer finance, especially in terms of objectives and benefits.[22]

Consumer finance law institutions are used as a translation of the term Consumer Finance. Consumer financing is a type of consumer credit. It is just that consumer financing is carried out by finance companies, while consumer credit is provided by banks. Consumer financing transactions are carried out based on the parties' will only, namely between consumer and consumer financing companies stated in an agreement. The "consumer financing as a form of business financing comes from various legal provisions, both agreements and legislation. Agreements are the primary legal source of consumer financing from a civil perspective, while legislation is the primary legal source of consumer financing from a public perspective."[23] In civil law, the source of law for consumer financing is the provisions regarding the consumable borrowing agreement and conditional sale and purchase agreement as regulated in the Civil Code.

The parties involved in consumer financing transactions are a) Consumer finance companies (Creditors), namely parties that provide or provide financing funds for the interests of consumers; b) Consumers (debtors), namely parties who need financing funds, individuals or companies; c) Supplier, which is a provider of goods needed by consumers, for motor vehicles, usually dealers. Consumer Financing Agreement - In the Civil Code, it can be classified in borrowing and use agreement as stipulated in Article 1754-1773 of the Civil Code and a conditional sale and purchase agreement regulated in the Civil Code, Articles 1457 – 1518 of the Civil Code consisting of[24]: Borrow-Use Out Agreement and Conditional Sale and Purchase Agreement.

Fiduciary Guarantees - The purpose of debt guarantees is to provide confidence and certainty to creditors (debt parties) for payment of debts that have been given to debtors (debtors) that occur either by law or issued from an *accessoir* agreement (follow-up agreement) to the main agreement in the form of an agreement that issues debts and receivables. Both in the form of material guarantees and individual guarantees, where if material guarantees generally provide the right to pay the debts taken from the proceeds of the sale of the debt collateral goods, so that if the debtor

[22] Theodore Eisenberg and Geoffrey P Miller, "The Flight to New York: An Empirical Study of Choice of Law and Choice of Forum Clauses in Publicly-Held Companies' Contracts," *Cardozo L. Rev.* 30 (2008): 1475.

[23]Imran Umer Chhapra et al., "Consumer's Preference and Awareness: Comparative Analysis between Conventional and Islamic Ijarah Auto Financing in Pakistan," *Al-Iqtishad: Jurnal Ilmu Ekonomi Syariah* 10, no. 2 (2018): 389–402..

[24] Heddy Kandou and Aartje Tehupeiory, "Force Majeure Covid-19 in the Implementation of the Consumer Financing Agreement," *International Journal of Law* 7, no. 4 (2021): 163–72.

fails to pay his debt, and execution of the guarantee will be carried out, where the sales value will be used to pay off all debtor obligations.[25]

The concept of a legal guarantee clause in an agreement, including a financing agreement, is to protect the creditor's interests if the debtor does not fulfil his obligations voluntarily. This guarantee is based on the general guarantee provisions provided by the provisions of the law, Article 113 of the Civil Code. All debtor property, both now and in the future, will be used as collateral for the debt. A good debt guarantee is a guarantee that can place the creditor's position as a party who can take payment of all his bills easily and freely without any interference from other creditors.

Such guarantees in the law of guarantees can only be obtained from unique guarantees in the form of material guarantees. One of the material guarantees, especially movable property is the fiduciary guarantee regulated in Law no. 42 of 1999 concerning Fiduciary Guarantees. According to Article 1 paragraph (1), Fiduciary UUJF is the transfer of ownership rights to an object based on trust provided that the object whose ownership rights are held remains in the control of the owner of the object. Fiduciary was born not because the rule of law has regulated it beforehand, but because of the need for practice in business traffic which then forced to create a guarantee institution for movable objects that can bear a debt (credit), but the object of collateral does not need to be handed over to the owner.

In Roman times, fiduciary has already known by 2 (two) terms: "Fiducia cum creditors and Fiducia cum Amico, which arose from an agreement called *pactum fiduciae* followed by the surrender of *haka tau in iure cession*."[26] The term fiduciary comes from the Dutch language, namely *fiducie*, English fiduciary of ownership, which means trust, commonly known as *Eigendom Overdract* (FEO), the transfer of property rights based on trust. Fiduciary as "a method of transferring property rights from the owner (the debtor), based on the main agreement (debt agreement) to the creditor, but only the rights are handed over in a *juridische-levering* manner and are only owned by the creditor. by the creditor in trust only (as collateral for the debtor's debt), while the debtor still controls the goods, but no longer as *eigenaar* or *bezitter*, but only as *detentor* or *bonder* and on behalf of *iaeditor-eigenaar*".[27]

The "transfer of ownership rights to the object is intended only as collateral for the settlement of certain debts, prioritising the Fiduciary Recipient (the creditor) over other creditors."[28] According to Article 1 paragraph (2) of UUJF, Fiduciary guarantee is "a guarantee right on movable objects, both tangible and intangible and immovable objects, especially buildings that cannot be encumbered with Mortgage Rights as referred to in Law Number 4 of 1996 concerning Mortgage Rights. It is which remains in the control of the Fiduciary Giver, as collateral for the repayment of certain debts

[25] Ni Luh Putu Geney Sri Kusuma, Putu Eka Trisna Dewi, and Ni Putu Riyani Kartika Sari, "Regulation of Copyright Certificate as a Material Guarantee and Bankrupt Estate/Beodel in Indonesia," *ADI Journal on Recent Innovation* 2, no. 2 (2021): 186–200.

[26] Rusdianto Sesung and S H Rina, "Legal Consequence for Notary Regard to Late Fiduciary Registration by Online," *JL Pol'y & Globalization* 69 (2018): 222.

[27] Trisadini Prasastinah Usanti, "Execution Rights Model on Trademark as Guarantee Object to Credit Bank," *Research, Society and Development* 9, no. 4 (2020): e199942755–e199942755.

[28] Siti Malikhatun Badriyah et al., "Juridical Implications of Bankruptcy on Debtor's Property as a Business Entity CV.," *Systematic Reviews in Pharmacy* 11, no. 12 (2020).

which give priority to the Fiduciary Recipient over other creditors". Referring to the meaning of Article 1 paragraphs (2) and (4) of the UUJF, objects that can be used as Fiduciary Security are any object that is owned, and the ownership rights can be transferred. The object in question can be in the form of tangible or intangible objects, registered or unregistered, or immovable.

Meanwhile, the parties who are subject to the Fiduciary Guarantee are bound by the Fiduciary Guarantee Agreement consisting of the Fiduciary Guarantee Provider and the Fiduciary Guarantee Recipient. The fiduciary guarantee provider can be an individual or a legal entity that owns the object that is the object of the fiduciary guarantee. Thus, the Fiduciary Guarantee provider does not have to be the debtor himself; it can be another party, in this case, as a third-party guarantor, namely those who are the owners of the Fiduciary Guarantee who submit their property to be used as Fiduciary Guarantee. At the same time, the Fiduciary Guarantee Recipients can also be individuals or legal entities with receivables whose payments are guaranteed by Fiduciary Guarantees. It is the background for writing this study, with the title "Guarantee of Legal Assurance and Justice for the Implementation of Consumer Financing". The problem of this study is: "how to guarantee legal certainty and justice for implementing consumer financing?" and this study is aimed at investigating the quarrantee of legal assurance and justice for the implementation of consumer financing.

2. Research Method

The type of research is normative legal research with the main focus on fiduciary guarantee legislation and the theory of legislation, justice, and legal certainty. This research was not carried out solely on statutory regulations but also on secondary legal materials to examine whether the regulation of fiduciary registration obligations for motor vehicle financing companies in Permenkeu No. 130/PMK.010/2012 follows Law No. 42 1999 and has guaranteed the principles of justice and legal certainty. Data sources in this normative legal research are primary legal source and secondary legal source, consisting of primary legal materials and secondary legal materials. This normative legal research and analysis of primary legal materials and secondary legal materials were carried out. After analysing each primary legal material and secondary legal material, the analysis results of the two legal materials will be compared. In the last stage, deductive conclusions will be drawn, concluding general matters to specific problems.

3. Result and Discussion

The consumer financing transaction mechanism is the application stage, the stage of checking and field inspection, the stage of making a customer profile, the stage of submitting a proposal to the credit committee, the credit decision stage of the committee, the acute stage, the stage of ordering consumer goods, the stage of payment to suppliers, the billing/monitoring stage, stage of taking a letter of guarantee. Through this mechanism, consumer financing has created 3 (three) legal relationships, namely: a) Legal relationships between Consumer and Consumer Financing Companies; b) The legal relationship between the Consumer Finance Company and the

supplier; c) Legal relationship between Consumer and Supplier (Supplier). To get the goods they need, "consumers will contact consumer finance companies to obtain financing in the form of funds (credit) and contact suppliers as sellers or providers of goods."[29] Thus, in consumer financing transactions, there are 2 (two) contractual relationships, namely: a) consumer financing agreements between consumer finance companies and consumers; b) Sale and purchase agreement between the supplier (supplier) and the consumer.

The legal relationship between consumers and suppliers (suppliers) occurs because of a sale and purchase agreement, a conditional sale and purchase agreement. In a conditional sale and purchase, the supplier (supplier) stipulates the condition that the payment of the sale and purchase price will be made by a third party, namely a consumer finance company. Thus, if for any reason a third party, in this case, a consumer finance company, defaults, namely not making cash payments to the supplier (supplier), then the sale and purchase between the supplier (supplier) and the consumer will be cancelled (voidable). Because the legal relationship between suppliers (suppliers) and consumers occurs based on buying and selling, all provisions regarding buying and selling apply in consumer financing as long as they are relevant or not specified otherwise.

The making of consumer financing agreements is based on the principle of freedom of contract because consumer financing agreements are not known in Book III of the Civil Code, so they are part of the Innominate engagement/agreement. Based on the provisions of Civil Code Article 1338, everyone is free and open to enter into any legal relationship as long as it does not conflict with the terms of the agreement's validity. An open system means that the parties are free to enter into a contract with anyone, determine the terms, implementation, and the contract form verbally and in writing. An open system adopted by treaty law gives the community the broadest possible freedom to enter into agreements containing anything, as long as it does not violate public order and morality.[30] The form of consumer financing agreements is usually written in writing, thereby making it easier for the parties to purchase and guarantee legal certainty and providing clarity on what are the rights and obligations of the parties, such as the procedures for loan payments, loan duration, sanctions imposed given in the event of default, delivery of guarantee, legal domicile and termination of the agreement. Consumer financing agreements made with specific clauses are expected to provide security for the consumer financing company because the funds issued by the company must be protected. They must also be able to protect consumers as debtors who, to a certain extent, are often in a weak position when dealing with finance companies consumers as creditors.[31] Therefore, the relevant clauses must be included in the agreement, including the Force majeure clause.

However, with this open system, consumer finance companies apply a form of consumer financing agreement in the form of a standard agreement or also called a standard contract (standard segment), the clauses of which have been previously prepared by the finance company and the consumer as a prospective debtor only has a

[29] John McMillan and Christopher Woodruff, "Interfirm Relationships and Informal Credit in Vietnam," *The Quarterly Journal of Economics* 114, no. 4 (1999): 1285–1320.

[30] Eric A Posner, *The Twilight of Human Rights Law* (Inalienable Rights, 2014).

[31] Richard Hynes and Eric A Posner, "The Law and Economics of Consumer Finance," *American Law and Economics Review* 4, no. 1 (2002): 168–207.

choice between accepting the entire content or clause of the agreement or rejecting it. A standard agreement as "a written agreement, the form and content of which have been prepared in advance, containing standard conditions, which one party then proposes to the other party for approval".[32] A standard agreement is an agreement whose contents are standardised and outlined in the form of a formula in such conditions, the principle of justice is not applied because consumers often do not understand, and because of the need factor, they have clashed with the choice of accepting or not accepting these clauses. Among the standard forms prepared by the financing company, a power of attorney formula often authorises the financing company to take actions relating to the settlement of debtor debt for objects of fiduciary guarantees if the debtor defaults. It is not understood because the fiduciary guarantee should be registered in order to obtain repayment, and then in case of default, execution will be carried out.

Therefore, considering the purpose of the law is justice, then the consumer financing agreement should be able to provide justice to the parties. According to an adequate justice theory, it must be established with a contract approach, where the principles of justice that are chosen together must genuinely be the result of a mutual agreement with both parties without anyone being harmed in a standard agreement, and is a mutual agreement of all free persons rational and equal.[33] Only through a contract approach can a theory of justice guarantee the implementation of rights and at the same time distribute obligations fairly to everyone.

3.1. Fiduciary Guarantee as a Collateral in Consumer Financing that Provides Legal Assurance of Debt Repayment

As a form of business from a financial institution, consumer financing does not emphasise the collateral aspect. However, considering the nature of the financing agreement, it contains a principal engagement in the form of accounts payable, where payment is made in instalments and is not sterile from risk. In general, consumer financing services also require an adequate (collateral) guarantee for the funds issued to finance consumers in the agreement.

In principle, "no credit does not contain collateral because the law, namely Article 1131 of the Civil Code, has determined that every object belonging to the debtor, both movable and immovable. Whether existing or will be in the future becomes dependent on his debts. This provision contains an allegation that there is no credit (receivable) that does not contain collateral." [34] A guarantee covers all assets belonging to the debtor and applies to all creditors who have the same position are called general guarantees. In granting credit/financing, it is always necessary to have a guarantee whose value is adequate to guarantee the debtor's debts so that one day the debtor is unable to pay (breach of promise). The guarantee will be used as repayment of the debtor's debts, in which case the creditor does not hesitate to reluctant to take action to execute debt guarantees when the borrower's prospects are uncertain. A good debt guarantee is a guarantee that can place the creditor's position as a party who can take

[32] Randy E Barnett, "Consenting to Form Contracts," *Fordham L. Rev.* 71 (2002): 627.
[33] Peter Linzer, "Rough Justice: A Theory of Restitution and Reliance, Contracts and Torts," *Wis. L. Rev.*, 2001, 695.
[34] Wahyu Hidayat and Aditya Subur Purwana, "Judicial Review of Customs Billing in Bankrupt Debtor," *Customs Research and Applications Journal* 1, no. 1 (2019): 78–97.

payment of all his bills easily and freely without any interference from other creditors. "The criteria for a good guarantee are, among others, if it meets several requirements, including a) Easy and fast in the process of binding the guarantee; b) Debt guarantees do not place creditors in dispute; c) The price of the collateral is easy to assess; d) The value of the guarantee may increase or at least be stable; e) Debt guarantees do not impose certain obligations on creditors, for example, the obligation to maintain and repair goods, pay taxes; f) When the loan is wrong, the debt guarantee is easy to execute with an accessible execution mode, low cost, and does not require debtor assistance, meaning that a debt guarantee must always be close to cash."[35]

The guarantees in consumer financing are in principle the same as guarantees on bank loans, especially consumer loans, namely the main guarantee, principal guarantee, and additional guarantees.[36] Of the three types/forms of guarantee, the guarantee used in the consumer financing agreement is the Fiduciary Guarantee, a material guarantee. Material guarantees are guaranteed in the form of absolute rights to an object, which has the characteristics of having a direct relationship to particular objects, can be defended against anyone, always follow the object and can be transferred. While immaterial (individual) guarantees cause a direct relationship to specific individuals, they can only be defended against certain debtors against the debtor's assets in general. In the legal system of guarantees, "there are two types of guarantees, namelya) Material guarantees (material guarantees): guarantees that have material characteristics in the sense of giving advance rights over particular objects and have inherent characteristics. Follow the object in question; and b) Immaterial guarantees (individual guarantees): guarantees that do not give precedence over particular objects but are only guaranteed by one's assets through the person who guarantees the fulfilment of the engagement concerned."[37]

As a form of material security, Fiduciary guarantees are regulated in Law no. 42 of 1999 concerning Fiduciary Guarantees (UUJF). The term fiduciary comes from the Dutch language, namely *fiducie*, English fiduciary of ownership, which means trust, commonly known as Eigendom Overdract (FEO), the transfer of property rights based on trust. The transfer of ownership rights to the object is intended only as collateral to repay certain debts, prioritising the Fiduciary Recipient (the creditor) over other creditors. According to Article 1 paragraph (1), Fiduciary UUJF is the transfer of ownership rights to an object based on trust provided that the object whose ownership rights are held remains in the control of the owner of the object. Transfer of ownership rights is the transfer of ownership rights from the fiduciary giver to the fiduciary recipient based on trust, provided that the object that is the object of the guarantee remains in the hands of the fiduciary giver. According to Article 1 paragraph (2) of UUJF, "Fiduciary guarantees are security rights to movable objects, both tangible and intangible and immovable objects, especially buildings that cannot be encumbered with Mortgage Rights as referred to in Law Number 4 of 1996 concerning Mortgage

[35] Marcus Miller and Lei Zhang, "Creditor Panic, Asset Bubbles and Sharks: Three Views of the Asian Crisis," *Private Capital Flows in the Age of Globalisation, Edward Elgar: MA, USA*, 2000.

[36] Roeland F Bertrams, *Bank Guarantees in International Trade: The Law and Practice of Independent (First Demand) Guarantees and Standby Letters of Credit in Civil Law and Common Law Jurisdictions* (Kluwer Law International BV, 2013).

[37] Erma Defiana Putriyanti, "Legal Status of Credit Bank Guarantee in Indonesia's Legal Guarantee," *Sriwijaya Law Review* 1, no. 2 (2017): 128–41.

Rights that remain in place. In the control of the Fiduciary Giver, as collateral for the repayment of certain debts, prioritise the Fiduciary Recipient over other creditors."[38]

As a material guarantee, fiduciary gives the guarantee holder the right to take precedence over concurrent creditors to repay the debtor's collateral object. These privileges include, among others, the right to sell on one's power (*parate execution*) and the right to carry out gross execution of the deed using the executorial title "For Justice Based on the One Godhead", which is stated in the material guarantee through fiat execution. So if the debtor defaults, "then in the material guarantee, the creditor has the right to take precedence in fulfilling his receivables among other creditors from the sale of the debtor's property."[39]

In a fiduciary guarantee, the object that can be used as a fiduciary guarantee is any object that is owned, and the ownership rights can be transferred. The object in question can be in the form of tangible or intangible objects, registered or unregistered, or immovable. In a broad sense, the objects of the Fiduciary Guarantee include: a) tangible movable objects; b) an intangible movable object; and c) registered movable objects; d) unregistered movable objects; and e) immovable property, which cannot be encumbered with a Mortgage or Mortgage provided that the object must be owned and transferred.

A fiduciary guarantee in consumer financing is an *accessoir* agreement from the consumer financing agreement. Therefore, fiduciary guarantees in consumer financing agreements are born based on providing consumer financing by financing companies to consumers to purchase an item. The object of a fiduciary guarantee in a consumer financing agreement is an object whose procurement is financed by the financier, where the object is then handed back his ownership by the consumer to the financier to be charged as a debt guarantee. The encumbrance of objects with Fiduciary guarantees is made in writing in the form of a Notary Deed in Indonesian called the Fiduciary Guarantee Deed, which at least contains: a) the identity of the Fiduciary Giver and Fiduciary Receiver; b) Fiduciary guaranteed principal agreement data; c) a description of the object that becomes the Fiduciary Guarantee; d) Guarantee value; and e) the value of the object that becomes the Fiduciary Guarantee.

The deed must also specify the debt whose repayment is guaranteed by fiduciary. Debts whose repayment is guaranteed by Fiduciary Guarantees include: a) existing debts; b) debt that will arise in the future which has been agreed in a certain amount; or c) debt, the amount of which can be determined at the time of execution based on the principal agreement which creates an obligation to fulfil an achievement; d) Fiduciary guarantees can be given to more than one fiduciary recipient or a proxy or representative of the fiduciary recipient; e) Fiduciary guarantees can be given to one or more units or types of objects, including receivables, both those that already existed at the time the guarantee was given or those obtained later, do not need to be carried out with a separate guarantee agreement.

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[38] Yuli Prasetyo Adhi, "Characteristics and Problems of Online Fiduciary in the Imposition of Fiduciary Guarantee in Indonesia," *South East Asian Journal of Contemporary Business Economics and Law* 4, no. 3 (2014).

[39] Sofyan Wimbo Agung Pradnyawan et al., "Execution of Fiduciary Collateral Based on the Decision of the Constitutional Court Number 18/PUU-XVII/2019," *Indonesian Journal of Law and Policy Studies* 1, no. 2 (2020): 142–51.

Following the obligatory principle, the Fiduciary Guarantee agreement has just been agreed in an agreement regarding the provision of guarantees. Because it is still a promise, the recipient of the Fiduciary guarantee cannot maintain the object submitted as collateral in this Fiduciary agreement to everyone outside of the giver guarantee. For the Fiduciary guarantee agreement to provide a promise to maintain the object of the guarantee and take repayment of the object, it must be registered and registered. The registration is to comply with the principle of publicity. The provisions of Article 11 paragraph (1) UUJF state that objects burdened with Fiduciary Guarantees must be registered. This registration obligation guarantees legal certainty because it is possible that the Fiduciary Guarantee Giver again guarantees the object that has been burdened with Fiduciary to another party without the knowledge of the first Fiduciary Recipient. Based on these. The "objectives of the Fiduciary Guarantee registration system are: a) To provide legal certainty to interested parties, especially to other creditors regarding objects that have been burdened with Fiduciary Guarantees; b) Creating Fiduciary Guarantee bonds for creditors of Fiduciary Recipients; c) Giving priority rights (preference) to the creditor of the Fiduciary Recipient over other creditors since the Fiduciary Giver still controls the object that is the object of the Fiduciary Guarantee based on trust; and d) Comply with the principle of publicity."[40]

Registration of Fiduciary Guarantees is carried out at the Fiduciary Registration Office, which is within the scope of duties of the Ministry of Law and Human Rights. The registration obligation according to Article 11 paragraph (2) of the UUJF also applies to objects that are burdened with Fiduciary Guarantees outside the Republic of Indonesia territory. The procedure for applying for a fiduciary registration is as follows[41]: a) the fiduciary recipient himself or his proxies or his representative submits an application to the fiduciary registration office by attaching a fiduciary registration statement, and b) Fiduciary Registration Office.

Fiduciary guarantee as material security is born when the Fiduciary guarantee is recorded in the Fiduciary Register Book as stipulated in Article 14 paragraph (3) of the UUJF, which reads, "the Fiduciary Guarantee is born on the same date as the date the fiduciary guarantee is recorded in the fiduciary register book." So that before the Fiduciary Guarantee is recorded, it is considered not yet born and does not give advance rights. With registration, the status of the object of the guarantee becomes clear and provides legal protection considering that the object of the fiduciary guarantee is in the hands of the fiduciary giver.

Regarding the abolition of the Fiduciary Guarantee in the consumer financing agreement, it refers that the fiduciary guarantee is an *accessoir* agreement of the Consumer Financing Agreement, of course, the abolition of the fiduciary guarantee agreement due to the abolition of the principal debt, namely the abolition of the consumer financing agreement. The fiduciary guarantee will end if the principal debt

[40] Lilawati Ginting et al., "Building Without Accompanied By Land Right As Fiduciary Collateral Object," *PalArch's Journal of Archaeology of Egypt/Egyptology* 17, no. 4 (2020): 1729–43..

[41] Agnes Maria Janni Widyawati, "Importance of Fiduciary Guarantee Registration for Parties Based on Law No. 42 of 1999 on Fiduciary Guarantee," in *International Conference on Law, Economics and Health (ICLEH 2020)* (Atlantis Press, 2020), 16–19.

guaranteed by the fiduciary guarantee ends.[42] According to the provisions of Article 25, UUJF mentions things that result in the abolition of the fiduciary guarantee, namely: a) The debt guaranteed abolition by the fiduciary. It is following the nature of the *accessoir* of the Fiduciary Guarantee. Therefore, whether a Fiduciary Guarantee depends on the existence of receivables that are guaranteed to be paid off if the receivable is written off due to the write-off of the debt, then the Fiduciary Guarantee will automatically be deleted; b) Release of rights to Fiduciary Security by Fiduciary recipients; and c) The destruction of objects that are the object of the Fiduciary Guarantee. However, the destruction of the Fiduciary Guarantee object does not cancel the insurance claim. The abolition of the fiduciary guarantee because the principal agreement occurs automatically without the need for any legal action except for the deletion in the Fiduciary Register Book. It is clarified by the explanatory provisions of Article 25 paragraph (1) of the UUJF, which says, "Following the accompanying nature of the Fiduciary Guarantee, the existence of a Fiduciary Guarantee depends on the existence of a receivable whose repayment is guaranteed. The fiduciary guarantee in question is automatically nullified. What is meant by the write-off of debts is, among others, due to settlement and write-off evidence of debts in the statements made form by creditors."

According to Article 25 paragraph (3) of the UUJF, the Fiduciary recipient will notify the Fiduciary Registration Office regarding the cancellation of the Fiduciary Guarantee by attaching a statement regarding the cancellation of debt, relinquishment of rights or the destruction of objects that are the object of the Fiduciary Guarantee. With the receipt of the notification letter, the Fiduciary Registration Office will: 1) at the same time cross out the Fiduciary Guarantee from the Fiduciary Register book; 2) on the same date as the date of deletion of the Fiduciary Guarantee from the Fiduciary Register book, the Fiduciary Registration Office issues a Certificate stating "The Fiduciary Guarantee Certificate concerned is no longer valid".

3.2. Legal Consequences for Payment Failure in the Implementation of Consumer Financing Agreements Due to Covid-19

Covid-19 has disrupted economic activities and has also resulted in a relatively high level of layoffs that affect the ability to pay debtors in fulfilling their debt obligations. The impact of Covid-19 has resulted in delays in the implementation of agreements in various business fields, including the implementation of consumer financing agreements. Covid-19 has caused one of the parties to be unable to fulfil their obligations which of course will have legal consequences, namely the failure to fulfil the consumer financing agreement to pay instalments or instalments, which is a condition of default or breach of contract which can be in the form of a) not doing what is agreed to did; b) carry out what was agreed, but not as agreed; c) carry out what was promised but late; d) do something that according to the agreement is not allowed to do.

A fiduciary guarantee guarantees the consumer financing agreement carried out to ensure the fulfilment of the promised performance. The obligation that the debtor or

[42] Inri Januar et al., "Comparison of Procedural Laws of Executive Power Certificate of Fiduciary Guarantee and Guarantee of Mortgage Based on The Decision of The Constitutional Court," 2021.

fiduciary giver must carry out is to fulfil achievements. So that if the debtor/fiduciary provider is negligent or breaks his promise to fulfil the agreed performance, namely paying off the debt guaranteed by the fiduciary guarantee, the fiduciary recipient/creditor can execute the object of the fiduciary guarantee.

Article 195 HIR states, "execution is carrying out the judge's decision by the court. A fiduciary Guarantee Certificate is a gross deed that has the same power as a court decision. Execution is the effort of the party won in the decision to get what is rightfully theirs with the help of general forces (police, military) in order to force the defeated party to carry out the verdict."[43] Fiduciary guarantee is a material guarantee whose Fiduciary Certificate has an executive title as stipulated in Article 15, which reads "For the sake of Justice Based on the One Supreme Godhead," wherewith that executorial title, the Fiduciary Guarantee Certificate has the same power as a court decision that has obtained the power of permanent attorney law. So that if the debtor/fiduciary giver breaks his promise, the fiduciary recipient has the right to sell the object that is the object of the fiduciary guarantee. Therefore, in this case, the consumer finance company has the right to obtain a repayment with its power to sell the object of the fiduciary guarantee.

According to Article 29 of the UUJF, the execution of the Fiduciary Guarantee can be carried out by a) the implementation of the executorial title as referred to in Article 15 paragraph (2) by the Fiduciary Recipient; b) the sale of objects that are the object of the Fiduciary Guarantee on the authority of the Fiduciary Recipient himself through a public auction and take the settlement of his receivables from the proceeds of the sale; c) underhand sales made based on an agreement between the giver and the Fiduciary Recipient if in this way the highest price can be obtained that benefits the parties.

3.3. Legal Certainty and Justice against Forced Efforts in Withdrawing Fiduciary Guarantees

If the debtor/consumer is in default, then by referring to the methods of execution of the fiduciary guarantee of Article 29 of the UUJF, namely through the mechanism as regulated in Article 15 paragraph (2) and paragraph (3) of the UUJF, namely through the execution *parate* or through fiat execution. Referring to the method of execution of fiduciary guarantees as stipulated in Article 29 UUJF, the principle is that the sale of objects of fiduciary guarantees must go through a public auction because, in this way, it is hoped that the highest price can be obtained. However, suppose sales through public auctions are not expected to produce the highest price that is profitable for both the Fiduciary Giver or the Fiduciary recipient. In that case, it is possible to sell under the hands as long as the Fiduciary Giver and Fiduciary Recipient agree upon this, and the period terms of sale execution are met. However, although the provisions of Article 29 of the UUJF have determined the method of execution of fiduciary guarantees, the provisions of Article 30 of the UUJF provide provisions that require the fiduciary giver to submit objects that are the object of the fiduciary guarantee in the context of implementing the execution of the fiduciary guarantee. In this case, the fiduciary giver does not hand over the object that is the object of the fiduciary guarantee at the time the execution is carried out, the fiduciary recipient and, if

[43] Markum Markum, Hanif Nur Widhiyanti, and Aan Eko Widiarto, "Legal Consequences of Fiduciary Guarantee Execution Post Decision of Indonesian Constitutional Court," *International Journal of Multicultural and Multireligious Understanding* 8, no. 8 (2021): 218–30.

necessary, can ask for help from the authorities. Finance companies often misuse this provision by hiring debt collectors to take the object of fiduciary guarantees forcibly. In practice, financial institutions are still found in carrying out their business activities if the debtor fails to make a promise before a summons is not made so that the debtor performs his achievements but immediately executes using the services of a debt collector.

Finance companies often do not meet the stages that must be carried out following the provisions of the law; namely, consumer finance companies do not register Fiduciary guarantees with the Fiduciary Registration Office for economic reasons, reducing costs. In this case, the creditor/fiduciary guarantee company adheres to the contents of the fiduciary agreement, that the fiduciary transfer of property rights takes effect from the date the fiduciary agreement is signed. So that starting from that date, the consumer is no longer the owner of the goods but the user.

Therefore, when the debtor/consumer defaults, the finance company forcibly withdraws the object of the fiduciary guarantee. By not registering a fiduciary agreement for issuing a Fiduciary Guarantee Certificate, the fiduciary property rights are not valid and do not give the creditor/financing company a position as a preferred creditor. The provisions of Article 2 of the Regulation of the Minister of Finance No. 130/PMK.010/2012 concerning Registration of Fiduciary Guarantees for Motor Vehicle Consumer Financing Companies with the Imposition of Fiduciary Guarantees explicitly. "It stipulates that finance companies must register fiduciary guarantees at the Fiduciary Registration Office no later than 30 (thirty) calendar days from the date of consumer financing, and Article 3 stipulates that finance companies are prohibited from withdrawing fiduciary collateral objects. Suppose the fiduciary registration office has not issued a fiduciary guarantee certificate and submits it to the financing company."[44] The withdrawal of the object of collateral, for example, in the form of a motor vehicle, by a finance company must meet the terms and conditions stipulated in the law concerning fiduciary guarantees and have been agreed upon by the parties in the consumer financing agreement. Companies that violate will be subject to witness warnings, freeze business activities or revocation of business licenses.

The Constitutional Court Number 18/PUU-XVII/2019 has provided further legal certainty, where based on the decision, fiduciary guarantees where there is no agreement on breach of contract (default), and debtors object to voluntarily submitting objects that are fiduciary guarantees. All the legal mechanisms and procedures in the execution of the Fiduciary Guarantee Certificate must be carried out and apply the same as the execution of court decisions that have permanent legal force", namely as stipulated in Article 15 paragraph (2) letter (a) implementation of the executive title. On the fiduciary certificate, there is the "For Justice Based on the One Supreme God" that has the same executive power as a court decision whicthat permanent legal force. Therefore, it must go through fiat execution and cannot sell on its power (*parate* execution), which in practice is an execution financing institution on the company's side using the services of a Debt Collector.

[44] Soleh Hasan Wahid and Harum Mudrikah Mahsun, "Implication Juridical Decision of The Constitutional Court No. 18/PUU-XVII/2019 Concerning Wanprestasi In the Fiducia Agreement," *International Journal of Law and Politics Studies* 3, no. 1 (2021): 12–21.

According to the decision of the Constitutional Court, a sale with its power (*parate* execution) can only be carried out if in the breach of contract clause there is an initial agreement between the debtor and the creditor, the finance company can carry out the execution itself without going through a court. So that after the decision of the Constitutional Court, creditors can no longer carry out unilateral executions of the object of fiduciary guarantees must go through the District Court, unless there is a default agreement between the debtor and the creditor and the debtor voluntarily submits the object of the fiduciary guarantee to the creditor.

Referring to the decision of the Constitutional Court, namely: "First, the protection of contract legal subjects (persons and legal entities) from the arbitrariness of other contract law subjects. Belief in legal certainty that should be related to contract law subjects concerning what other contract law subjects expect other contract law subjects to do; Second, the fact that the subject of contract law must be able to assess the legal consequences of his actions, both as a result of actions and mistakes/omissions. Legal certainty in this contract guarantees the predictability and fulfilment of the contract and can demand legal responsibility for implementing the contract."[45]

Thus, it can be summarised that Constitutional Court Decision has provided justice and legal certainties, such as justice mentioned by Aristotle as distributive justice concerning the determination of rights and a fair distribution of rights in the relationship between the community and the state, in the sense of what the state should provide to its citizens and protection. Law, wherewith the decision of the Constitutional Court, consumer finance companies cannot carry out direct executions (forced take) against the object of fiduciary guarantees because they must go through fiat execution efforts through the courts. Therefore, if consumer finance companies continue to make coercive efforts, the balance as in the Roescoe Pound theory cannot work

4. Conclusion

The guarantee of legal certainty and justice for the implementation of consumer financing due to Covid -19 refers to the Constitutional Court's decision, especially on the execution of guarantees, is that if the debtor/consumer of consumer financing defaults, based on the decision of the Constitutional Court Number 18/PUU-XVII/2019. The creditor of the financing company consumers cannot carry out direct execution of the object of guarantee but must refer to the provisions of Article 15 paragraph (2) UUJF, namely through fiat execution as the implementation of court decisions that have permanent legal force. However, to do this, the finance company as the recipient of the fiduciary guarantee must register for the fiduciary guarantee at the registration office. Considering that the Covid-19 pandemic continues to increase and it is unclear when it will end, it is up to the government as a stakeholder to determine the Covid-19 pandemic as a state of coercion so that it can protect consumers from coercive efforts from financing companies due to default (default) from the implementation of the agreement—consumer finance. OJK must provide sanctions and effectively apply these sanctions to consumer finance companies that continue to carry out the method of forcibly withdrawing fiduciary objects in violation of the law.

[45] Jon Stern and Stuart Holder, "Regulatory Governance: Criteria for Assessing the Performance of Regulatory Systems: An Application to Infrastructure Industries in the Developing Countries of Asia," *Utilities Policy* 8, no. 1 (1999): 33–50.

Acknowledgments

We would love to say thank you very much Universitas Kristen Indonesia, for a very great support to all of the lecturers and specially to us, for helping us in carrying out this research by facilitating to complete this research.

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