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Humanistic Fiduciary Guarantee Execution Model Based on Fiqh Muamalah, Progressive Law, and Maqāṣid Al-Syarī'Ah

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Abstract

Disputes over default and voluntary surrender of the object of collateral in the execution of fiduciary guarantees raise issues regarding the legality of the execution act, the validity of the debtor's agreement, and contractual fairness. This study aims to analyze the legal construction of voluntary surrender and formulate a model of fiduciary execution that guarantees legal certainty and protection of the parties. The research uses normative legal methods with legislative, case, and conceptual approaches, which are complemented by interviews in Cirebon as empirical illustrations. The results of the study show that voluntary surrender does not necessarily remove the obligation of the financing company to ensure the validity of approvals, process transparency, and accountability of debt settlement. The main findings of the study resulted in a seven-stage fiduciary execution model, namely verification of defaults and documents, notification to debtors, negotiations, selection of execution paths, valuation and sale of objects, settlement of accounts, and evaluation. This model integrates progressive legal principles and Maqāṣid al-Syarī'ah through the protection of rights, free consent, proportionality, and utility. The research also confirms that the return of surplus sales proceeds should be legally distinguished from debt reduction, indemnity, and voluntary assistance. Therefore, finance companies are recommended to adopt the model as an operational guideline for transparent, measurable, and equitable fiduciary execution.

Keywords: *Default; Fiduciary Guarantees; Voluntary Assignments; Execution; Progressive Law; Maqāṣid Al-Sharī'Ah.*

Abstrak

Sengketa wanprestasi dan penyerahan sukarela objek jaminan dalam eksekusi jaminan fidusia menimbulkan persoalan mengenai legalitas tindakan eksekusi, keabsahan persetujuan debitur, dan keadilan kontraktual. Penelitian ini bertujuan menganalisis konstruksi hukum penyerahan sukarela serta merumuskan model eksekusi fidusia yang menjamin kepastian hukum dan perlindungan para pihak. Penelitian menggunakan metode hukum normatif dengan pendekatan perundang-undangan, kasus, dan konseptual, yang dilengkapi keterangan wawancara di Cirebon sebagai ilustrasi

empiris. Hasil penelitian menunjukkan bahwa penyerahan sukarela tidak serta-merta menghapus kewajiban perusahaan pembiayaan untuk memastikan keabsahan persetujuan, transparansi proses, dan akuntabilitas penyelesaian utang. Temuan utama penelitian menghasilkan model eksekusi fidusia tujuh tahap, yaitu verifikasi wanprestasi dan dokumen, pemberitahuan kepada debitur, negosiasi, pemilihan jalur eksekusi, penilaian dan penjualan objek, penyelesaian rekening, serta evaluasi. Model ini mengintegrasikan prinsip hukum progresif dan Maqāṣid al-Syarī'ah melalui perlindungan hak, persetujuan bebas, proporsionalitas, dan kemanfaatan. Penelitian juga menegaskan bahwa pengembalian surplus hasil penjualan harus dibedakan secara hukum dari pengurangan utang, ganti rugi, dan bantuan sukarela. Oleh karena itu, perusahaan pembiayaan direkomendasikan mengadopsi model tersebut sebagai pedoman operasional eksekusi fidusia yang transparan, terukur, dan berkeadilan.
Kata Kunci: Wanprestasi; Jaminan Fidusia; Penyerahan Sukarela; Eksekusi; Hukum Progresif; Maqāṣid Al-Syarī'Ah.

INTRODUCTION

Fiduciary guarantees allow vehicles and other movable objects to guarantee debt repayment while remaining within the control of the fiduciary. Cross-jurisdictional research links the expansion of collateral types, the registration of movable objects, and the development of financial institutions with access to financing and selection of collateral. The findings provide an economic context for the collateral function, while the execution limit in Indonesia is determined by Law Number 42 of 1999 and the Constitutional Court's interpretation of Article 15.[1]

Difficulties arise when creditors and debtors differ in opinion regarding arrears, the amount of liability, or the assignment of objects. Constitutional Court Decision Number 18/PUU-XVII/2019 limits unilateral default and regulates the conditions for the exercise of executory power. Constitutional Court Decision Number 2/PUU-XIX/2021 clarifies the position of the district court route. From the perspective of jurisprudence, the dispute is related to debts that must be repaid, mandates in the exercise of rights, and the prohibition of taking

[1] Indonesia. Undang-Undang Nomor 42 Tahun 1999 tentang Jaminan Fidusia. Lembaran Negara Republik Indonesia Tahun 1999 Nomor 168; Campello, Murillo, dan Mauricio Larrain. "Enlarging the Contracting Space: Collateral Menus, Access to Credit, and Economic Activity." Review of Financial Studies 29, no. 2 (2016): 349–383. https://doi.org/10.1093/rfs/hhv069; Love, Inessa, María Soledad Martínez Pería, dan Sandeep Singh. "Collateral Registries for Movable Assets: Does Their Introduction Spur Firms' Access to Bank Financing?" Journal of Financial Services Research 49, no. 1 (2016): 1–37; Liberti, José M., dan Atif R. Mian. "Collateral Spread and Financial Development." Journal of Finance 65, no. 1 (2010): 147–177. https://doi.org/10.1111/j.1540-6261.2009.01526.x.

property illegally. Creditors have an interest in obtaining repayment, while debtors are entitled to due process and economic value to which according to law is their right.[2]

Alizon examines the reconstruction of execution after the Constitutional Court Decision Number 18/PUU-XVII/2019, while Naini and colleagues examine alternatives to the implementation of execution after the Constitutional Court Decision Number 2/PUU-XIX/2021. Kusnia has brought together progressive law and maqāṣid in the study of debtor protection against execution pararates. This article develops the direction of the study by linking the limits of independent execution, consent in jurisprudence, and the distribution of sales proceeds into a series of documents that can be documented. The novelty lies in the separation of legal obligations and the strengthening of ethics at each stage, including when determining the execution path and classifying post-execution payments.[3]

The research tries to answer two questions. First, what are the limits of fiduciary execution legitimacy and contractual justice standards for creditors and debtors according to positive law and muamalah fiqh? Second, how can progressive law and Maqāṣid al-Syarī'ah be integrated into an operational execution model? Information about PT Reksa Finance Cirebon Branch is used to identify the point of application and information needed when the model is tested in a case.

RESEARCH METHODS

This study uses normative legal methods with the support of interview information and qualitative analysis. The statutory approach is

[2] Mahkamah Konstitusi Republik Indonesia. Putusan Nomor 18/PUU-XVII/2019, 6 Januari 2020. https://mkri.id/public/content/persidangan/putusan/putusan_mkri_6694.pdf; Mahkamah Konstitusi Republik Indonesia. Putusan Nomor 2/PUU-XIX/2021, 31 Agustus 2021. https://s.mkri.id/public/content/persidangan/putusan/putusan_mkri_8060.pdf; Al-Qur'an, Q.S. al-Baqarah [2]: 280, 282–283, Q.S. al-Nisā' [4]: 29 dan 58, serta Q.S. al-Isrā' [17]: 70.

[3] Alizon, Joni. "Rekonstruksi Pelaksanaan Eksekusi Jaminan Fidusia Pasca Putusan Mahkamah Konstitusi Nomor 18/PUU-XVII/2019." Eksekusi 2, no. 1 (2020): 58–82; Naini, Romlatust, Fadhilah Atika Suri, Pradita Putri Rachmawati, dan Aldi Indra Setiawan. "Model Alternatif Pelaksanaan Eksekusi Objek Jaminan Fidusia Pasca Putusan Mahkamah Konstitusi Nomor 2/PUU-XIX/2021." Gorontalo Law Review 5, no. 1 (2022): 288–299; Kusnia, Binti. "Perlindungan Hukum terhadap Debitur atas Parate Eksekusi Jaminan Fidusia Pasca Putusan Mahkamah Konstitusi No. 18/PUU-XVII/2019 Perspektif Hukum Progresif dan Maqāṣidu al-Syarī'ah." Tesis, Universitas Islam Negeri Maulana Malik Ibrahim Malang, 2023.

used to examine the Fiduciary Guarantee Law and relevant OJK provisions. The case approach is used to read the amar and legal considerations of the two decisions of the Constitutional Court. The conceptual approach is used to compare fiduciary with rahn and develop the parameters of justice from fiqh muamalah, progressive law, and Maqāṣid al-Syarī'ah.

Primary legal materials consist of regulations and rulings analyzed through document studies. The Qur'an and hadith are used as primary sources for sharia arguments. Secondary materials include jurisprudence, maqāṣid literature and progressive law, as well as research on collateral and procedural justice. Supporting data comes from the interview transcripts of Safrudin and Dian Hendriana which are listed in the materials regarding practices at PT Reksa Finance Cirebon Branch. The source manuscript has not documented the date, method of selection of informants, interview protocols, or complete transcripts. Attribution is limited to the role and context recorded.

The analysis begins with the identification of the problem of default, control of the object, and the distribution of sales proceeds. The provisions of the law are then read together with the warning and consideration of the verdict, then linked to the parameters of trust, willingness, prevention of harm, and substantive justice. The interview information is sorted according to the issues of billing, voluntariness, assessment, and final payment, then compared with normative parameters to determine aspects that still need verification. The results are synthesized into stages, decisions, and documentation indicators. Comparison with norms tests the analytical relevance of the information, while proof of events requires documents and cross-examination that are not yet available. The resulting model is a conceptual proposal to be further tested.

RESULTS AND DISCUSSION

The Limits of Execution Legitimacy in Positive Law

The fiduciary guarantee was born on the date of its registration in the Fiduciary Register Book. The certificate provides an executory basis with constitutional limits, while the right of precedence protects the repayment of receivables from the results of execution. Article 29 paragraph (1) distinguishes between the execution of an executory title, a sale through a public auction by the fiduciary beneficiary, and a sale under the hand. The choice of means of sale must be separated from the question of who is authorized to acquire control of the object. A clause

that gives the creditor the right to own the object due to injury of a null and void promise.[4]

Constitutional Court Decision Number 18/PUU-XVII/2019 gives conditional meaning to Article 15 paragraph (2) and paragraph (3). Promise injury is determined through the agreement of the parties or the legal remedy that determines it. Creditors must not conclude for themselves that an arrears have fulfilled the basis for execution when it is disputed. Constitutional Court Decision Number 2/PUU-XIX/2021 rejects the test application and affirms that the district court is an alternative route when an agreement on default and voluntary surrender is not reached. This model uses two cumulative conditions for the independent route, namely the existence of an agreed basis for default and actual voluntary surrender. When one of the conditions is not met, the officer stops the independent withdrawal. If the default is disputed, the creditor takes a valid settlement to obtain a determination. If the debtor refuses to hand over the object, forcible possession is pursued through the execution mechanism of the district court according to the available legal basis. An application for execution of a certificate needs to be distinguished from a lawsuit that may be necessary to resolve a dispute regarding rights or defaults.[5]

For financial services business actors, POJK Number 22 of 2023 regulates billing procedures, internal guidelines, collateral withdrawal requirements, and sales. This provision prohibits threats, violence, humiliating acts, and physical and verbal pressure. Article 64 requires proof of default, warning letters, and relevant guarantee certificates. The provision also requires minutes and explanations of information related to obligations and sales mechanisms. The use of third parties does not transfer the company's responsibility for collection.[6]

Article 29 paragraph (1) c and paragraph (2) of the Fiduciary Guarantee Law requires an agreement for an under-hand sale that results

[4] Indonesia. Undang-Undang Nomor 42 Tahun 1999 tentang Jaminan Fidusia. Lembaran Negara Republik Indonesia Tahun 1999 Nomor 168.

[5] Mahkamah Konstitusi Republik Indonesia. Putusan Nomor 18/PUU-XVII/2019, 6 Januari 2020. https://mkri.id/public/content/persidangan/putusan/putusan_mkri_6694.pdf; Mahkamah Konstitusi Republik Indonesia. Putusan Nomor 2/PUU-XIX/2021, 31 Agustus 2021. https://s.mkri.id/public/content/persidangan/putusan/putusan_mkri_8060.pdf.

[6] Otoritas Jasa Keuangan. Peraturan Otoritas Jasa Keuangan Nomor 22 Tahun 2023 tentang Pelindungan Konsumen dan Masyarakat di Sektor Jasa Keuangan, pasal 62–66.

in the highest price that benefits the parties. The sale is made after one month has passed since the written notice to the interested party and after the announcement in at least two newspapers circulating in the area concerned. Article 32 negates the force of an execution agreement that is contrary to the provisions of the law. Article 34 requires the return of excess execution proceeds and maintains the debtor's liability for the lack of repayment.[7]

Debt Guarantee and Contractual Justice in Fiqh Muamalah

Rahn and fiduciary both strengthen the fulfillment of debts through an object. The Qur'an discusses the documentation of debts and collateral in Q.S. al-Baqarah [2]: 282–283. The narration of the Prophet pledged his armor to a Jew shows the ability of collateral for a temporal transaction. In rahn, the principal ownership of the goods is in the rāhin, while the murtahin acquires the right of guarantee. The possession or qabḍ and the use of the goods are discussed in different details between sects. The DSN-MUI fatwa on rahn affirms that the goods and their benefits remain the property of the rāhin, while the storage and maintenance are essentially the obligations of the rāhin and can be carried out by the apostate. Fiduciaries have a different construction. The right of ownership is transferred on the basis of trust as collateral, while the object remains in the possession of the fiduciary. Maintenance during the possession follows the agreement and applicable provisions. This comparison explains the function of the guarantee and the benefit limit for creditors without equalizing the terms of the possession and the method of execution.[8]

The obligation to pay debts and the obligation to exercise rights in trust are reciprocal. Q.S. al-Baqarah [2]: 280 directs the granting of grace to people who experience difficulties. The hadith about the delay of payment by a person who is able to place the delay as tyranny. Both are the basis for distinguishing the difficulty of payment that can be documented from deliberate delay by the able party. The company can

[7] Indonesia. Undang-Undang Nomor 42 Tahun 1999 tentang Jaminan Fidusia. Lembaran Negara Republik Indonesia Tahun 1999 Nomor 168

[8] Al-Qur'an, Q.S. al-Baqarah [2]: 280, 282–283, Q.S. al-Nisā' [4]: 29 dan 58, serta Q.S. al-Isrā' [17]: 70; Al-Bukhārī, Muḥammad ibn Ismā'īl. Ṣaḥīḥ al-Bukhārī, hadis no. 2387 dan 2400; Ibn Qudāmah, 'Abd Allāh ibn Aḥmad. Al-Mughnī. Kairo: Maktabat al-Qāhirah, 1968. Kitāb al-Rahn; Dewan Syariah Nasional Majelis Ulama Indonesia. Fatwa Nomor 25/DSN-MUI/III/2002 tentang Rahn; Indonesia. Undang-Undang Nomor 42 Tahun 1999 tentang Jaminan Fidusia. Lembaran Negara Republik Indonesia Tahun 1999 Nomor 168.

assess the payment history, explanation of the debtor, changes in relevant income, and the feasibility of the payment proposal by maintaining the confidentiality of the data. The grace or restructuring here is a proposal for the application of proportionality outlined in the agreement. Creditors can still collect and take the legitimate route when settlement is not reached.[9]

Tarāḍin in Q.S. al-Nisā' [4]:29 associates voluntariness with the prohibition of taking property illegally. The prohibition of tadlīs requires that material information such as the amount of the debt, the state of the object, and the calculation of the proceeds of sale be not obscured. The prohibition of ikrāh means that threats or coercion undermine the basis of the agreement. Therefore, the agreement on the initial contract, the agreement on default, the voluntary surrender, and the agreement to sell under the hand must be examined according to their respective functions. The minutes provide documentary evidence, but the signature alone does not explain whether the debtor was given adequate information and the opportunity to raise objections.[10]

Evaluation of Evidence on Practice in Cirebon

Safrudin attributes the persuasive approach, negotiation, explanation of obligations, and payments called compensation to the protection of property and willingness. His description provides a perspective to assess the practices reported at PT Reksa Finance Cirebon Branch. Dian Hendriana, who is referred to as the debtor's attorney in the source manuscript, explained that the way her client's case is handled maintains the client's honor. The information is related to the experience reported by the lawyer in the context of a particular case. The available research materials do not include the date of the second interview or Safrudin's formal position.[11]

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[9] Al-Qur'an, Q.S. al-Baqarah [2]: 280, 282–283, Q.S. al-Nisā' [4]: 29 dan 58, serta Q.S. al-Isrā' [17]: 70; Al-Bukhārī, Muḥammad ibn Ismā'īl. Ṣaḥīḥ al-Bukhārī, hadis no. 2387 dan 2400.

[10] Al-Qur'an, Q.S. al-Baqarah [2]: 280, 282–283, Q.S. al-Nisā' [4]: 29 dan 58, serta Q.S. al-Isrā' [17]: 70; Ibn Qudāmah, 'Abd Allāh ibn Aḥmad. Al-Mughnī. Kairo: Maktabat al-Qāhirah, 1968. Kitāb al-Rahn; Lind, E. Allan, Ruth Kanfer, dan P. Christopher Earley. "Voice, Control, and Procedural Justice: Instrumental and Noninstrumental Concerns in Fairness Judgments." Journal of Personality and Social Psychology 59, no. 5 (1990): 952–959. https://doi.org/10.1037/0022-3514.59.5.952.

[11] Safrudin, keterangan wawancara mengenai Maqāṣid al-Syarī'ah dan praktik eksekusi fidusia di PT Reksa Finance Cabang Cirebon. Tanggal dan kedudukan formal informan belum tercantum dalam bahan penelitian; Dian Hendriana, kuasa hukum debitur, keterangan wawancara mengenai penanganan perkara klien pada PT Reksa

The stages that appear in the source description include communication regarding arrears, deliberations, explanation of value or liability, and economic settlement after withdrawal. To assess the notice, a warning letter, billing details, and a debtor's response are required. To test voluntariness, the minutes of the event, the communication chronology, and the statement of the party who handed over the goods are required. To test the reasonableness of the assessment, the identity and condition of the vehicle, the price comparison or valuation report, the sales results, and proof of account settlement are required. The source description does not include the documents that allow the test, so the status of the submission, the basis for the assessment, and the final payment cannot be independently ascertained.

The interests of the parties also determine what each source can explain. The company is interested in receivables recovery and efficiency, the debtor in the opportunity to respond to bills and asset protection, while the lawyer speaks from the client's mentoring experience. The information available illustrates the decision points in the model. An assessment of how often the approach is used or its impact on livelihoods and psychological conditions requires direct information from the debtor as well as cross-examination company documents.

The term compensation needs to be sorted according to the basis of payment. First, the return of the surplus is a legal obligation when the result of execution exceeds the value of the guarantee as stipulated in Article 34 paragraph (1). Second, the reduction or exemption of debt changes the amount of the obligation based on a legal basis or a valid agreement. Third, compensation requires a basis for liability, for example, losses due to unlawful acts that can be proved. Fourth, the company's voluntary assistance is an additional policy and must be recorded separately from the surplus. Without details of sales, receivables, chargeable fees, and proof of payment, the so-called informant payment cannot be placed definitively in one of those categories.[12]

Maqāṣid al-Syarī'ah Parameters for Execution Evaluation

Finance Cabang Cirebon. Tanggal wawancara belum tercantum dalam bahan penelitian.

[12] Indonesia. Undang-Undang Nomor 42 Tahun 1999 tentang Jaminan Fidusia. Lembaran Negara Republik Indonesia Tahun 1999 Nomor 168; Indonesia. Kitab Undang-Undang Hukum Perdata, pasal 1365; Otoritas Jasa Keuangan. Peraturan Otoritas Jasa Keuangan Nomor 22 Tahun 2023 tentang Pelindungan Konsumen dan Masyarakat di Sektor Jasa Keuangan, pasal 62–66.

Property protection or ḥifẓ al-māl includes the debtor's interest in the remaining economic value as well as the creditor's interest in the legitimate repayment. Al-Ghazālī places the protection of property among the basic necessities, while al-Shayṭibī's discussion of the maintenance of benefits provides a basis for assessing the manner in which a right is exercised and its consequences. In practice, valuation can be examined through relevant price comparisons, expense explanations, recording of sales proceeds, and proof of surplus returns. The use of vehicles to earn a living is considered in assessing the feasibility of alternative payments. The position of productive assets does not in itself preclude legitimate execution. Research on home takeovers in the United States shows that the realization of collateral can have economic consequences beyond credit accounts. These findings provide reason to examine impacts, while keeping in mind the differences in asset types and legal systems.[13]

The protection of the soul or ḥifẓ al-nafs is directed at the safety and avoidance of physical harm and psychological distress arising from threats. Karāmah al-insān, based on Q.S. al-Isrā' [17]: 70, explains a different dimension, namely the honor inherent in human beings. Spreading information about debts or humiliating debtors in front of others can degrade one's dignity even if there is no physical contact. Parameters that can be examined include the identity and authority of the officer, the way of communication, the confidentiality of information, and the follow-up of complaints. The rule of prohibition of causing harm underlies the prevention of threats before withdrawal takes place.[14]

The protection of reason or ḥifẓ al-'aql relates to the debtor's ability to understand the basis of the action, calculate his or her obligations, and weigh the consequences of the agreement or objection. The testable explanation contains the basis of the default, the remaining principal, the

[13] Al-Ghazālī, Abū Ḥāmid Muḥammad. Al-Mustaṣfā min ‘Ilm al-Uṣūl. Disunting oleh Muḥammad ‘Abd al-Salām ‘Abd al-Shāfī. Beirut: Dār al-Kutub al-‘Ilmiyyah, 1993, 174; Al-Syāṭibī, Abū Isḥāq Ibrāhīm. Al-Muwāfaqāt. Disunting oleh Abū ‘Ubaydah Mashhūr ibn Ḥasan Āl Salmān. Al-Khubar: Dār Ibn ‘Affān, 1997. Kitāb al-Maqāṣid; Mian, Atif, Amir Sufi, dan Francesco Trebbi. “Foreclosures, House Prices, and the Real Economy.” Journal of Finance 70, no. 6 (2015): 2587–2634. https://doi.org/10.1111/jofi.12310.

[14] Al-Qur’an, Q.S. al-Baqarah [2]: 280, 282–283, Q.S. al-Nisā’ [4]: 29 dan 58, serta Q.S. al-Isrā’ [17]: 70; Ibn Mājah, Muḥammad ibn Yazīd. Sunan Ibn Mājah, Kitāb al-Aḥkām, hadis no. 2340; Otoritas Jasa Keuangan. Peraturan Otoritas Jasa Keuangan Nomor 22 Tahun 2023 tentang Pelindungan Konsumen dan Masyarakat di Sektor Jasa Keuangan, pasal 62–66.

cost component, the settlement option, and the consequences of the sale. The opportunity to ask for explanations, correct numbers, and obtain assistance supports free will. The procedural justice literature distinguishes between the opportunity to convey views, the quality of the explanation, and the way one is treated. The distinction helps translate the tarāḍin and the prohibition of tadlīs into evaluable indicators.[15]

Integration of Progressive Law and Maqāṣid al-Syarī'ah

Progressive law gives an orientation to substantive justice by assessing how procedures are applied to the person affected by the consequences. In financing relationships, this orientation encourages scrutiny of the effectiveness of the notice, the cost of settlement, and the options that are still available before execution. Maqāṣid al-Syarī'ah provides a basis for assessing the benefits and harms of a lawful choice, while muamalah jurisprudence clarifies the obligation to pay debts, limits of willingness, and the right to the proceeds of the sale. The three are linked through a sequence of tests. First, the legality test determines the authority, default status, and procedures available. Second, the procedural fairness test determines whether the party understands the action, can respond to it, and is treated with respect. Third, the proportionality test assesses the feasibility of alternatives and the distribution of the results of execution.[16]

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[15] Al-Ghazālī, Abū Ḥāmid Muḥammad. Al-Mustaṣfā min ‘Ilm al-Uṣūl. Disunting oleh Muḥammad ‘Abd al-Salām ‘Abd al-Shāfī. Beirut: Dār al-Kutub al-‘Ilmiyyah, 1993, 174; Auda, Jasser. Maqasid al-Shariah as Philosophy of Islamic Law: A Systems Approach. London: International Institute of Islamic Thought, 2008; Lind, E. Allan, Ruth Kanfer, dan P. Christopher Earley. “Voice, Control, and Procedural Justice: Instrumental and Noninstrumental Concerns in Fairness Judgments.” Journal of Personality and Social Psychology 59, no. 5 (1990): 952–959. https://doi.org/10.1037/0022-3514.59.5.952; Colquitt, Jason A. “On the Dimensionality of Organizational Justice: A Construct Validation of a Measure.” Journal of Applied Psychology 86, no. 3 (2001): 386–400. https://doi.org/10.1037/0021-9010.86.3.386; Colquitt, Jason A., Donald E. Conlon, Michael J. Wesson, Christopher O. L. H. Porter, dan K. Yee Ng. “Justice at the Millennium: A Meta-Analytic Review of 25 Years of Organizational Justice Research.” Journal of Applied Psychology 86, no. 3 (2001): 425–445. https://doi.org/10.1037/0021-9010.86.3.425.

[16] Rahardjo, Satjipto. Hukum Progresif: Sebuah Sintesa Hukum Indonesia. Yogyakarta: Genta Publishing, 2009; Al-Ghazālī, Abū Ḥāmid Muḥammad. Al-Mustaṣfā min ‘Ilm al-Uṣūl. Disunting oleh Muḥammad ‘Abd al-Salām ‘Abd al-Shāfī. Beirut: Dār al-Kutub al-‘Ilmiyyah, 1993, 174; Al-Syāṭibī, Abū Isḥāq Ibrāhīm. Al-Muwāfaqāt. Disunting oleh Abū ‘Ubaydah Mashhūr ibn Ḥasan Āl Salmān. Al-Khubar: Dār Ibn ‘Affān, 1997. Kitāb al-Maqāṣid; Auda, Jasser. Maqasid al-Shariah as

Legality serves as a condition of the decision. Lack of certificates, default disputes, or objections to surrendering objects cannot be overcome by the provision of assistance or a persuasive approach. Among legitimate actions, the principle of benefit directs choices to actions that still allow the recovery of receivables with less harm. Research on justice and credit shows that the effectiveness of enforcement is related to financing decisions. The implication for this model is the importance of providing a clear dispute resolution pathway, so that debtor protection goes hand in hand with the certainty of creditors' claims rights.[17]

Humanistic Fiduciary Guarantee Execution Operational Model

The following model is a synthesis of the limits of positive law and the parameters of fiqh muamalah, progressive law, and Maqāṣid al-Syarī'ah. Each stage lists the decisions that need to be taken and the evidence that can be examined. Legal obligations refer to the applicable provisions, while strengthening procedures is a proposal that can be applied in the company's internal guidelines.

Table 1. Stages of the Humanistic Fiduciary Guarantee Execution Model

Stages	Legal Obligations or Decisions	Strengthening of Procedures and Evidence
1. Verification	Check certificates, billing policies, and proof of default.	Match contracts, payment history, obligation details, and corrections to differences.

Philosophy of Islamic Law: A Systems Approach. London: International Institute of Islamic Thought, 2008.

[17] Jappelli, Tullio, Marco Pagano, dan Magda Bianco. "Courts and Banks: Effects of Judicial Enforcement on Credit Markets." Journal of Money, Credit and Banking 37, no. 2 (2005): 223–244; Ponticelli, Jacopo, dan Leonardo S. Alencar. "Court Enforcement, Bank Loans, and Firm Investment: Evidence from a Bankruptcy Reform in Brazil." Quarterly Journal of Economics 131, no. 3 (2016): 1365–1413. https://doi.org/10.1093/qje/qjw015; Djankov, Simeon, Caralee McLiesh, dan Andrei Shleifer. "Private Credit in 129 Countries." Journal of Financial Economics 84, no. 2 (2007): 299–329. https://doi.org/10.1016/j.jfineco.2006.03.004.

Stages	Legal Obligations or Decisions	Strengthening of Procedures and Evidence
2. Notice	Convey the warning letter and required information. Avoid threats and pressure.	Use clear language. Record the debtor's receipts, responses, and objections.
3. Negotiation	Document contract changes when the parties reach an agreement.	Value the difficulty of payment and the feasibility of the restructuring. Note the reasons for the decision.
4. Execution path	Self-withdrawal requires a valid basis for default and voluntary surrender. If the conditions are not met, stop the self-withdrawal and pursue appropriate legal mechanisms.	Separate the document about the default from the minutes of submission. Record the rejection and follow-up.
5. Valuation and sales	Conduct sales according to legal channels and terms.	Record the condition of the goods and price comparisons. Consider an independent appraiser if the value is disputed.
6. Account settlement	Return the surplus and explain the lack of repayment in accordance with Article 34.	Submit details of the results, valid fees, calculated amounts, and proof of payment. Separate voluntary assistance.
7. Evaluation	Follow up on complaints in accordance with consumer protection provisions.	Check for late returns of surpluses, complaints of stress, and impact on livelihoods if data is available.

The order allows for corrections before the dispute develops. If the details of the bill are corrected, the decision on the status of the default is reassessed. If the surrender is denied, the officer does not proceed with the self-withdrawal. If the company chooses to sell under hand, the agreement and the terms of notice and announcement must be met. For example, when the debtor acknowledges arrears but refuses to hand over the vehicle used for work, the acknowledgment has not opened up a path to self-withdrawal. The company can assess the feasibility of rescheduling or pursue an execution procedure through the district court if the conditions are met.[18]

CONCLUSION

This study concludes that contractual fairness in the implementation of fiduciary guarantee execution cannot be interpreted solely as the fulfillment of creditors' right to obtain repayment of receivables, but must be placed within the framework of the balance of rights and obligations of the parties. The debtor is still obliged to fulfill the achievement of debt repayment, while the creditor has the right to execute based on the applicable legal mechanism while still paying attention to the certainty of the determination of default, the voluntariness of the delivery of the collateral object in the self-execution mechanism, and the protection of the debtor's safety, property, and dignity. Thus, the legitimacy of fiduciary execution is not only determined by the fulfillment of formal procedural aspects, but also by the proportionality of the action, the quality of the parties' consent, and the fulfillment of the obligation to return excess proceeds from the sale of collateral (surplus proceeds). These findings affirm that legal protection in fiduciary enforcement must be reciprocal, so that the interest in repayment of receivables cannot be used as a justification for collection or withdrawal actions that ignore the principle of substantive justice.

The main contribution of this research is the formulation of a seven-stage fiduciary guarantee execution model that integrates progressive legal perspectives, Maqāṣid al-Syarī'ah, and jurisprudence

[18] Indonesia. Undang-Undang Nomor 42 Tahun 1999 tentang Jaminan Fidusia. Lembaran Negara Republik Indonesia Tahun 1999 Nomor 168; Mahkamah Konstitusi Republik Indonesia. Putusan Nomor 18/PUU-XVII/2019, 6 Januari 2020. https://mkri.id/public/content/persidangan/putusan/putusan_mkri_6694.pdf; Mahkamah Konstitusi Republik Indonesia. Putusan Nomor 2/PUU-XIX/2021, 31 Agustus 2021. https://s.mkri.id/public/content/persidangan/putusan/putusan_mkri_8060.pdf.

muamalah. The model places substantive justice as the main orientation, the protection of property (ḥifẓ al-māl), the soul (ḥifẓ al-nafs), reason (ḥifẓ al-'aql), and human dignity as the evaluation parameters, as well as the principles of trust and tarāḍin as the ethical foundation of contractual relationships. Operationally, this model provides an evaluation framework to test the legality of the execution act, the validity and voluntariness of the debtor's consent, the proportionality of the withdrawal of the collateral object, the transparency of the sales process, and the accountability of the distribution of the execution proceeds. The information on the practice at the Cirebon Branch shows the relevance of the need for the evaluation in the institutional context of the financing company, but it cannot be used to conclude the level of compliance and effectiveness of the application of the model due to limited empirical evidence. Therefore, this seven-stage model is a conceptual and normative contribution that can be developed as an assessment instrument for more equitable fiduciary execution practices.

Based on these findings, the study recommends that finance companies integrate the seven-stage model into the standard operating procedures for collection and execution, particularly through documentation of default determinations, verification of approval of the delivery of collateral objects, recording of withdrawal and sale processes, and transparent mechanisms for returning surpluses to debtors. Regulators need to strengthen supervision based on documentary and substantive compliance indicators, including ensuring that there is no abuse of authority in the withdrawal of collateral objects. Meanwhile, law enforcement officials need to affirm the normative boundaries between voluntary surrender of collateral objects and executions that require judicial mechanisms when there is a dispute over default or object surrender. To strengthen the validity and application of the model, further research is recommended using an empirical approach through the analysis of documents of withdrawal and sale of collateral objects, evidence of account settlement and return of surpluses, as well as in-depth interviews with debtors, financing companies, regulators, and legal representatives in several research areas. Such cross-site testing is needed to assess the consistency of model application, identify gaps between norms and practices, and measure its contribution to strengthening legal protection and contractual fairness in the execution of fiduciary guarantees.

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