

Economic Analysis of the Law on Execution of Fiduciary Guarantees After the Constitutional Court Decision

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Abstract

Under Article 29(1) of Law No. 42 of 1999 on Fiduciary Guarantees (UUJF), the execution of fiduciary collateral objects may only proceed through an executorial title. Creditors, as holders of fiduciary collateral certificates, possess the right to directly execute the collateral if the debtor defaults, as stipulated in Article 15 paragraphs 2 and 3 of the UUJF. This provision formed the basis for a debtor's petition to the Constitutional Court, resulting in Decision No. 18/PUU-XVII/2019, which favored the debtor by mandating that creditors must execute collateral through the court rather than directly. Subsequently, creditors appealed, leading to Decision No. 2/PUU-XIX/2021, which allowed execution through the District Court as an alternative. This research explores the economic analysis of these legal changes, addressing two primary questions: (1) How does economic analysis of law apply to the execution of fiduciary collateral post-Constitutional Court rulings? (2) Can fiduciary collateral execution be effectively carried out under the Constitutional Court's decisions? Utilizing Richard A. Posner's economic analysis of law framework, this empirical normative study employs qualitative methods to assess statutory and case law. The findings indicate that Decision No. 2/PUU-XIX/2021 aligns more closely with economic efficiency compared to Decision No. 18/PUU-XVII/2019. However, the inconsistency between these rulings increases costs and legal uncertainty, adversely affecting the broader economy by complicating credit facilities for businesses.

Keywords: Economic Analysis of Law, Execution of Fiduciary Guarantees, Constitutional Court Decision.

Introduction

A robust economy necessitates diverse financing services from both bank and non-bank financial institutions. These institutions distribute funds to meet community and investment needs, with fiduciary guarantees serving as an alternative for investors and those requiring capital or goods. Law No. 42 of 1999 on Fiduciary Guarantees (UUJF) was enacted to provide legal certainty and protection for debtors and creditors, allowing business actors to use assets as collateral for bank credit.



The UUJF regulates the execution of fiduciary guarantees, granting creditors the right to execute collateral upon debtor default through executorial titles, public auctions, or agreed sales. Article 15 paragraphs 2 and 3 empower creditors to sell collateral directly, establishing fiduciary guarantees as enforceable as court decisions with permanent legal force. However, practical challenges arise when collateral ownership transfers to third parties without bank approval, complicating execution processes.

The Constitutional Court's Decision No. 18/PUU-XVII/2019 challenged these provisions, ruling that direct execution by creditors is unconstitutional unless agreed upon by both parties or determined through legal processes. This led to Decision No. 2/PUU-XIX/2021, which permits execution through the District Court as an alternative, aiming to balance economic efficiency with legal safeguards.

This study investigates the economic implications of these rulings, employing Richard A. Posner's economic analysis of law to assess their alignment with economic efficiency and their impact on legal certainty and business operations.

This research aims to: Analyze how economic analysis of law applies to fiduciary collateral execution following the Constitutional Court's rulings and Determine the feasibility and effectiveness of fiduciary collateral execution under the Constitutional Court's decisions.

Method

This study employs an empirical normative juridical approach, integrating non-doctrinal, conceptual, legislative, and case law analyses. Primary and secondary data sources are utilized, with qualitative methods guiding the analysis. Richard A. Posner's economic analysis of law framework serves as the theoretical foundation, facilitating the harmonization of UUJF provisions with Constitutional Court decisions.

Economic Analysis of Law Applied to Fiduciary Guarantees Post-Constitutional Court Rulings

Economic Analysis of Law Framework

Richard A. Posner's economic analysis of law emphasizes the application of economic principles to legal issues, focusing on value, utility, and efficiency. This approach assesses legal rules based on their cost-benefit ratios, human behavior influenced by economic incentives, and the role of market mechanisms in promoting efficiency.

Application to Fiduciary Guarantees

Fiduciary guarantees under UUJF provide security for movable and immovable assets, allowing creditors to execute collateral upon debtor default. Execution can occur via executorial titles, public auctions, or agreed sales, aiming to minimize costs and maximize benefits for both parties.



Impact of Constitutional Court Decisions

1. Decision No. 18/PUU-XVII/2019: Mandates that creditors must execute collateral through court processes, increasing legal costs and uncertainty.
2. Decision No. 2/PUU-XIX/2021: Permits execution through the District Court as an alternative, enhancing flexibility and potential economic efficiency.

Economic Efficiency Analysis

Decision No. 2/PUU-XIX/2021 aligns more closely with economic efficiency by reducing transaction costs and providing a streamlined process for execution. Conversely, Decision No. 18/PUU-XVII/2019 imposes additional legal procedures, escalating costs and uncertainty, thereby diminishing overall economic efficiency.

Legal Uncertainty and Economic Impact

The inconsistency between the two decisions creates legal ambiguity, increasing transaction costs and discouraging credit accessibility. Businesses may face higher interest rates or reduced loan amounts due to heightened execution risks, adversely affecting economic growth and stability.

Feasibility of Fiduciary Collateral Execution Under Constitutional Court Decisions

Respecting Constitutional Court Decisions

The Constitutional Court's decisions are binding and possess erga omnes effect, meaning they apply universally and must be adhered to by all state institutions and the public.

Decision No. 2/PUU-XIX/2021 in Practice

This decision allows creditors to execute collateral directly if mutually agreed upon or through the District Court, provided default conditions are met. This flexibility supports economic efficiency by facilitating quicker resolution of defaults, reducing reliance on prolonged court processes.

Mitigating Legal Uncertainty

To enhance legal certainty, it is imperative to streamline execution procedures and establish clear guidelines that align UUJF with Constitutional Court rulings. This includes setting deadlines for execution applications and ensuring mutual agreements between debtors and creditors to prevent misuse of collateral.

Economic Implications

Consistent and clear legal frameworks reduce transaction costs and promote market confidence, fostering an environment conducive to economic growth. Aligning UUJF with



Constitutional Court decisions ensures that fiduciary guarantees serve their intended economic purpose without undue legal barriers.

Posner's Perspective on Legal Consistency

Posner argues that consistent laws reduce social costs by minimizing uncertainty and transaction expenses. The conflicting rulings undermine market efficiency, highlighting the necessity for coherent legal standards that support efficient resource allocation and economic stability.

Conclusion

Applying Richard A. Posner's economic analysis of law, Decision No. 2/PUU-XIX/2021 emerges as more aligned with economic efficiency by facilitating direct execution and reducing legal costs compared to Decision No. 18/PUU-XVII/2019. However, the inconsistency between these rulings introduces legal uncertainty, increasing costs and complicating credit access for businesses, thereby negatively impacting the broader economy.

Economic analysis underscores the importance of harmonizing UUF provisions with Constitutional Court decisions to enhance legal certainty and economic efficiency. Future legal frameworks should strive for consistency to ensure that fiduciary guarantees effectively support economic and social objectives without imposing excessive legal burdens.

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