



Legal Protection of the Authority for Parate Execution of Fiduciary Collateral for Collection Companies and Financial Services Business Actors

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Abstract

Background: The dynamic in the implementation fiduciary collateral in Indonesia after Constitutional Court Decisions Number 18/PUU-XVII/2019 and Constitutional Court Decision Number 2/PUU-XIX/2021. The influence of the Constitutional Court ruling has shifted the creditor-centric mechanisms for execution of fiduciary collateral as now it requires debtor consent or a court process. This change, in turn, has important implications for consumer protection in the financial services industry and about the responsibilities of third-party collection companies.

Objective: The purpose of this study is to analyze legal protection for financial services (PUJK) business actors and collection companies in connection with the implementation of fiduciary guarantee objects following several Constitutional Court verdicts, particularly POJK 22/2023 specifications.

Method: Normative juridical legal research method, with Law No. The study is concerned with fiduciary collateral, the authority of PUJK and collection companies and consumer protection regulations.

Results: The results of the research analyze legal developments through POJK 22/2023, which regulates fiduciary collateral execution and/or collection practice to provide a clearer line of guidance on the roles of PUJK and collection companies. Highlighting such initiatives are obligatory warning letters, official cooperation agreements as well as behavioral codes for collection activities.

Conclusion: POJK 22/2023 is a step to improve legal certainty for PUJK and collection companies, by balancing the rights of creditors with consumer protection. Path forward will depend on positive regulatory developments to establish principle-based accountability standards for collection companies as well as to, harmonize fiduciary collateral execution mechanisms.

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INTRODUCTION

The activities of bank credit disbursement and financing institutions contribute to increasing investment, expanding business activities, and encouraging community economic growth. In order to minimize the risks arising from lending, banking institutions and financing institutions generally have many requirements, one of which is requiring collateral as a form of certainty for debt repayment by the debtor (Febriyanti et al., 2024; Kiki, 2026). One type of

collateral widely used in financing practices is fiduciary collateral.

A fiduciary is an ownership transfer based on trust which requires that the ownership rights remain with the owner of the object (Febriyanti et al., 2024; Kiki, 2026) in accordance to Law Number 42 of 1999 concerning Fiduciary Collateral. So, in terms of its relation to collateral fiduciary, so that the debtor is still able to utilize an object of collateral externally namely it can keep on running a business activity and in term juridical the right put rights give creditors preferential position when debtor default (Haldum et al., 2025).

Debtors default or fail to perform their obligation in financing practices affiliated with fiduciary collateral (Firmansyah & Adjie, 2025; Ismiati et al., 2026). Under such circumstances, the creditor is basically entitled to exercise right of execution rights on the collateral object/chartered object as a form of debt repayment. In practice, this execution is commonly followed by the parate execution method; i.e., collateral object execution without going for prior court judgment as allowed under fiduciary collateral agreements (Febriyanti et al., 2024; Kiki, 2026).

The implementation of collection and withdrawal of fiduciary collateral objects by creditors may involve collection companies (debt collectors) as third parties appointed by financial services business actors (Haldum et al., 2025). However, the practice of collecting and taking fiduciary collateral objects in the field often gives rise to various legal problems, especially when carried out unilaterally by the creditor or the collector without the debtor's consent. That state of affairs frequently initiates disputes between creditors and debtors and also heightens public attention with respect to consumer protection in the financial services industry.

There are several fundamental changes to fiduciary collateral execution mechanism after the Constitutional Court Decision Number 18/PUU-XVII/2019 and then reaffirmed in the Constitutional Court Decision Number 2/PUU-XIX/2021 (Febriyanti et al., 2024; Kiki, 2026; Prastyanti et al., 2026). This decision made by the Constitutional Court states that fiduciary collateral only has an execution method in the form of direct seizing of object after there is an agreement about default and willfully releasing fiduciary object by debtors to creditors. In contrast, where the debtor does not accept the existence of default or refuses to surrender voluntarily the object of collateral, execution must be done in a way involving the Court mechanism (Febriyanti et al., 2024; Kiki, 2026).

Multiple earlier studies have focused on the enactment of legal protection for those in execution enforcement relationships and financing. One of them is the research by Junaedi et al. (2022) "Legal Protection against Debtors in the Case of Withdrawal of Fiduciary Collateral Objects through Parate Execution."

This study demonstrates how the legal protection of debtors in the execution of fiduciary collateral objects is strengthened following Constitutional Court Decision Number 18/PUUXVII/2019, which states that execution can only be carried out if it pertains to a default state, followed by an agreement between both parties where the debtor voluntarily hands over the object to its creditor. In the absence of such an arrangement or voluntary surrender, execution has to be obtained through court processes.

Furthermore, research conducted by entitled "Legal Protection Based on the Principle of Proportionality for Debtors and Creditors in the Execution of Fiduciary Collateral Objects (Case Study of Constitutional Court Decision Number 18/PUU-XVII/2019)" also examines the implications of implementing the execution of fiduciary collateral objects after the Constitutional Court decision. The results of this research show that juridically there are several implications, including an accumulation of norms regarding the executory title of the fiduciary certificate, a void of norms regarding the mechanism for implementing execution through the court, and a reduction in the specificity of fiduciary collateral which previously was known to have ease of execution. In addition, non-juridically, the decision also has the potential to impact financing practices, such as an increase in applications for execution through the court, increased time and costs in the execution process, and the potential for disruption to the financial stability of financing companies.

However, both of these studies remain on the limitation of legal protection for debtors and the application of judicially facing toward the Constitutional Court Decision on fiduciary pledge

execution. Research that specifically examines legal protection for the powers of creditors, especially perfunctory fiduciary collateral agents and collection agencies performing parate execution in accordance with consumer protection regulations in the financial services sector is still fairly scarce. In addition, after the promulgation of Regulation of the Financial Services Authority Number 22 Year 2023 regarding Consumer and Community Protection in the Financial Services Sector, it is necessary to evaluate how to strengthen consumer protection regulations for debt Collection and carry out fiduciary collateral objects.

Hence this research is intended to study the legal protection of the authority of financial services business actors and collection companies in executing fiduciary collateral objects with parate execution, especially regarding consumer protection regulations from Financial Services Authority regulations. This study uses a normative juridical research method; this is by analyzing the legal provisions in the form of laws and regulations, court decisions, and review literature on legal relations between fiduciary pawn enforcement (practical/personal) by collectors as creditors against consumers/debtors in the legal.

METHOD

This research is an empiric qualitative with normative juridical type legal sewakanto study that examines qualitatively fears over the legality of fiduciary collateral objects parate execution performed by PUJK and collection companies as well as counter measures in preventive litigation against these acts. The method as chosen by this research is the study will indirectly and or formally described the contents of laws and regulations, court decisions and related legal doctrines that Cover as a Whole the Object of Law which are holistic guidelines for relevant exploration against applicable law.

This research is a statutory approach and conceptual approach methodology. Statutory Approach: On the one hand, this approach relates to the establishment of regulations to place fiduciary collateral and consumer protection in the financial services sector based on market law (free market) through: Law Number 42 of 1999 concerning Fiduciary Collateral; Financial Services Authority Regulation Number 22 of 2023 concerning Consumer and Community Protection in the Financial Services Sector; as well as several decisions from the Constitutional Court, namely Decision No. The conceptual framework itself is implemented through an analysis of social concepts in the literature, for example the concept of parate execution regarding legal protection and the legal relationship between creditor, debtor and third party in collection efforts.

The types of legal materials that will be used in this study are primary, secondary and tertiary legal materials. Types of primary legal materials that have binding legal force include laws and regulations and decisions of the courts. Secondary material law includes legal literature, scientific journals, previous research results and opinions of experts related to the subject of the research. On the other hand, tertiary legal materials include legal dictionaries, encyclopedias and distinct sources that are analytically descriptive of primary and secondary legal materials.

Library research in this case is done by taking an inventory of the type, list and examine the legal materials. In addition, the methods used to analyze this legal material are in the form of descriptive qualitative analysis by interpreting and reconstructing legal norms that already exist so that they can answer the research problems. The analysis performs systematically by interconnecting laws and regulations, legal concepts, and the practices that occurred in the field to some comprehensive conclusions concerning about legal protection over the implementation of parate execution of fiduciary collateral objects conducted by PUJK authorities and collection companies.

RESULTS AND DISCUSSION

The Position of Parate Execution in Fiduciary Collateral Post-Constitutional Court Decision

The concept of parate execution essentially grants authority to creditors to execute collateral objects without going through a court process. According to Subekti (1990), parate execution is the exercise of rights by the collateral holder to obtain repayment of their receivables directly without the assistance of the District Court, but through the auction mechanism of the State Auction Office (KLN) (Suparno & Jalil, 2022). This concept provides convenience for

creditors to obtain repayment if the debtor defaults. By comparison, in the Netherlands (as the origin of *parate executie*), execution of collateral is conducted through notarial deeds with judicial oversight under Article 3:268 of the Dutch Civil Code (*Burgerlijk Wetboek*), providing stronger procedural guarantees than the Indonesian model. In Malaysia, fiduciary security enforcement under the Hire-Purchase Act 1967 requires a court order for repossession when a debtor contests default, which is closer to the post-Constitutional Court Indonesian approach. This comparative perspective underscores that Indonesia's post-2019 *parate execution* framework represents a convergence toward internationally recognized standards of due process in collateral enforcement.

The mechanism is accommodated in the Indonesian legal system within Law No. 42 of 1999 on Fiduciary Security (Farochah et al., 2026). According to Article 29 Paragraph (1) of this law, later if the debtor defaults then an execution for fiduciary collateral object could be conducted by performing the executory title, selling the fiduciary collateral object with authoritative power of fiduciary recipient through a public auction; or a sale under hand which is based on agreement between parties (Febriyanti et al., 2024; Kiki, 2026). Moreover, Article 15 Paragraph (1) together with Paragraph (2) of the Fiduciary Collateral Law establishes that the fiduciary collateral certificate reads "FOR THE SAKE OF JUSTICE BASED ON THE BELIEF IN THE ONE AND ONLY GOD", meaning that the fiduciary collateral certificate has the same executory power as a court decision that already has permanent legal force (Haldum et al., 2025).

Nevertheless, in practice it does not normally represent problems, but the vulnerability of the debtor during *parate execution*—especially if this refers to withdrawal of the collateral object carried out exclusively or by third parties (eg. collection companies). This condition led to a constitutional examination of fiduciary certificate executory power provisions In Constitutional Court Decision Number 18/PUU-XVII/2019, the Constitutional Court stated that the execution of fiduciary collateral cannot be carried out unilaterally in the absence of an agreement between the parties regarding the occurrence of default or where on-demand deliverables; (Haldum et al., 2025). This affirmation was subsequently confirmed again through Constitutional Court Decision Number 2/PUU-XIX/2021 whereby in this case the creditor can file an application for execution to the district court as a second step (Febriyanti et al., 2024; Kiki, 2026).

Nevertheless, the regulation regarding the implementation of *parate execution* post-Constitutional Court decision still leaves potential uncertainty in practice, especially when the collection process involves a collection company as a third party. On one hand, restrictions on the implementation of *parate execution* are intended to strengthen debtor protection. But on the other hand, this condition has the potential to create obstacles for creditors in recovering receivables quickly and efficiently as the original purpose of the *parate execution* concept. Therefore, clarity is needed regarding the limits of authority between PUJK, collection companies, and debtors so that the collection mechanism can continue to run effectively without ignoring the principle of legal protection for the parties. Analytically, the Constitutional Court's decisions represent a doctrinal shift from a creditor-centric to a balance-of-interests paradigm. The requirement of "voluntary surrender" as a prerequisite for unilateral execution effectively transforms *parate execution* from an absolute right into a conditional procedural option. This has significant implications for the efficiency of credit markets, as creditors must now incur higher transaction costs both temporal and financial when debtors contest default, potentially increasing the cost of credit for future borrowers.

Regulation of Collection by Financial Services Business Actors and Collection Companies in POJK 22/2023

Regulation on collection in the financial services sector is a crucial aspect of consumer protection that aims to strike a balance between the interests of practitioners/business actors in the financial services sector and consumer protection. One of the purposes of Financial Services Authority Regulation Number 22 Year 2023 concerning Consumer and Society Protection in Sector Financial Service (POJK 22/2023) to strengthen aspects consumer protection, among other things in collection and takeover or withdrawal of collateral in product credit / finance (Febriyanti et al., 2024; Kiki, 2026) M. We are concerned in this section with the main question: how far does

the law, POJK 22/2023 sufficiently define a complete and legal basis for PUJK and collection companies to execute parate execution power. In principle, if there is room to uphold these contracts on the acts of their third parties who work for them?

This regulation explains that Financial Services Business Actors (PUJK) are financial services institutions and/or parties that engage in the business activities of collecting funds, distributing funds, and/or managing funds in the financial services sector as well as other financial services business actors who provide conventional or sharia-based business activities based on the provisions of laws and regulations in the financial services sector (Febriyanti et al., 2024; Kiki, 2026). The PUJK are the primary actors who have control in charge of implementing collection efforts economic against consumers that use credit products or you financing. Comparative Insights: Before POJK 22/2023, the Indonesian debt collection process was controlled mainly through OJK Regulation No. 1/POJK. 07/2013- on Consumer Protection in the Financial Services Sector and 07/2014 -Draft Guidelines on Collection Conduct Standards and Third-party Engagement. Under the pre-2023 regime, there were no explicit prohibitions on threatening conduct or time-of-day restrictions, leaving significant room for abusive collection practices. POJK 22/2023 marks a paradigm shift by (1) introducing explicit behavioral prohibitions (Article 62), (2) requiring formalized written cooperation agreements with collection companies (Article 61), and (3) mandating prior warning letters before collection actions commence (Article 60). This represents a substantial improvement in procedural safeguards, though the enforcement mechanism for third-party violations remains insufficiently articulated.

POJK 22/2023 specifically regulates collection activities against consumers in credit or financing products as stated in Articles 60 to 66. These provisions accommodate PUJK to conduct the collection process in an orderly manner, while still being subject to the principles of consumer protection.

With regard to the collection process, one provision regulated in Article 60 paragraph (1) is that in the event that a consumer is in default in the consumer's use of credit or financing products, PUJK must first send a warning letter to the consumer within the period stipulated in the agreement (Febriyanti et al., 2024; Kiki, 2026). Such a clause means that the recovery process cannot be done at the doorstep without the prior information or intimation of the consumer.

Not only carrying out collections directly, PUJK is also permitted to cooperate with other parties to perform the collection function. These are regulated in Article 61 paragraph (1) of POJK 22/2023 which states that PUJK may cooperate with third parties in implementing the credit or financing collection function for consumers, where the cooperation must be stated in a written agreement with adequate stamp duty as regulated in Article 61 paragraph (2). This clause shows that the engagement to collection companies can not be performed by the PUJK unilaterally but it must rely on on an obvious lawful partnership between pujk and third get together. This written agreement leads to an understanding on the respective roles and ceilings of authority of each party on how to carry out collection activities, thus reducing the room for abuse in the field in the practice of collections.

In addition to regulating cooperation with third parties, POJK 22/2023 also regulates standards of conduct in collection activities. Article 62 paragraph (1) emphasizes that PUJK must ensure that credit or financing collection activities against consumers are carried out in accordance with applicable norms in society and the provisions of laws and regulations (Febriyanti et al., 2024; Kiki, 2026). In its implementation, Article 62 paragraph (2) establishes several limits in the collection process, including a prohibition on using threats, violence, or acts that humiliate the consumer, a prohibition on exerting physical or verbal pressure, and a prohibition on collecting from parties other than the consumer concerned (Junaedi et al., 2022). Furthermore, collection may not be carried out continuously in a disruptive manner and can only be carried out at the collection address or consumer's domicile from Monday to Saturday excluding national holidays from 08:00 to 20:00 local time (Chemerinsky, 2023). Collection outside these places and times can only be carried out if there is prior consent or agreement with the consumer as regulated in Article 62 paragraph (3) of POJK 22/2023.

These various regulations ultimately show that POJK 22/2023 not only regulates

consumer protection in collection activities but also provides a legal protection framework for PUJK in carrying out the collection function in an orderly manner, including when involving collection companies as third parties. The legal implication of this dual-protection architecture is significant: PUJK that operate in full compliance with POJK 22/2023 including issuing mandatory warning letters, formalizing cooperation agreements, and adhering to conduct standards are effectively shielded from tortious liability claims arising from their collection activities. Conversely, PUJK that delegate collection functions to third parties without adequate contractual controls may face vicarious liability exposure. The effectiveness of this framework, however, depends critically on OJK's supervisory capacity and the deterrent strength of administrative sanctions under Article 88 of POJK 22/2023.

Legal Protection for the Authority of PUJK and Collection Companies in Implementing Parate Execution

Financial Services Business Actors (PUJK) essentially also obtain legal protection in carrying out their business activities, including in the collection process and execution of consumer obligations (Dwi, 2026; Hasan & La Ode, 2026; Sihombing, 2024). This protection is explicitly recognized in Article 6 of Financial Services Authority Regulation Number 22 of 2023 concerning Consumer and Community Protection in the Financial Services Sector, which states that PUJK have the right to obtain legal protection from acts of consumers who act in bad faith. This norm explains that the consumer protection regime in the financial services sector does not merely position consumers as a party that must be protected, but also guarantees legal protection for PUJK against consumer actions that harm them, such as providing misleading information, manipulation of data, or improper attempts to avoid payment obligations. Therefore, this clause as a normative basis which gives legitimacy to PUJK to take legal action against the PTR.

Beyond that, even though POJK 22/2023 recognizes the rights of PUJK to be legally protected, POJK 22/2023 together with Law Number 42 of 1999 concerning Fiduciary Security also regulates procedural rules that must be fulfilled in collection activities and execution. The requirement to issue a warning letter before the completion of the collection process as provided for in Article 60 of POJK 22/2023 and the requirement to formalize cooperation with the collector in a written agreement as referred to in Article 61 paragraph (2) are an administrative mechanism to provide transparency and accountability in the collection activities. In terms of the legal protection function, the presence of these mechanism also serves as an evidence if in the future there is a polemic between the PUJK, collection company and the consumer.

Then, in the scope of fiduciary security, this proves strength is reinforced again by the existence of fiduciary security certificate if the fiduciary security law article 15 paragraph (2) has an executorial power equal to the power of a court decision that an appeal period or cassation or cassation has been implemented. The said executory power thereby grants a firm and definite legal posture on the part of the creditor when it comes to pursuing to enforce his or her receivables through the sale of the fiduciary collateral object. Therefore, the fiduciary collateral certificate and also the collection cooperation agreement with a third party can serve as legal evidence that the collection efforts carried out by the PUJK / collection company have a legal basis, legal basis, this can be beneficial if later there is a dispute or the debtor has protested against the PUJK/ collection company sooner or later.

In addition, Article 62 creates standards of conduct in collection activities under POJK 22/2023 as well. All these provisions, regulating all collection activities must, of course, be in accordance with applicable norms in society and the provisions of laws and regulations, including prohibitions against using threats, violence, physical or verbal pressure and restrictions on time and place of collection. The organizational rules of these codes of conduct not only function to protect consumers from violations of collection practices, but also to provide legal certainty to PUJK and collecting companies regarding how far the limits of actions must be carried out in the collection process. As long as collection activities are carried out in accordance with these provisions, the collection actions are in principle the exercise of legally valid authority and cannot automatically be qualified as unlawful acts.

The involvement of third parties in the collection process also has a legal basis in civil law.

Articles 1792 to 1819 of the Indonesian Civil Code (KUH Perdata) regulate the concept of granting power of attorney (*lastgeving*), which is a legal relationship in which a person grants authority to another party to perform a legal act on behalf of and for the benefit of the grantor (Natagaul, 2025; Sari et al., 2026). In this relationship, the recipient of the power of attorney acts as a legal representative of the grantor as long as the actions taken remain within the limits of the authority granted. These provisions regarding the granting of power of attorney provide a legal basis for companies, including financing companies or Financial Services Business Actors, to appoint third parties as representatives in carrying out certain actions, including collection activities against debtors.

Nevertheless, the implementation of execution authority over fiduciary collateral objects has also evolved following the Constitutional Court Decision Number 18/PUU-XVII/2019, which was subsequently reinforced by Constitutional Court Decision Number 2/PUU-XIX/2021. On the basis of this decision, the Constitutional Court emphasized that the parate execution could not be done unilaterally if the parties in default have no agreement or the debtor does not voluntarily liberate the object of collateral. In these conditions, creditor have to make an application for execution to the district court as an admission of respect for due process of law (Jhonatan et al. 2026; Junaedi et al., 2022; Kadek et al., 2022; Tobing et al., 2025; Orth, 2003; Sepalia, 2020)

The right to execute the fiduciary collateral object is essentially still recognized, even though based on the Constitutional Court decision the parate execution cannot be executed unilaterally. The will of fiduciary collateral certificate still exist as a basis for executing on that basis, but the implementation need to be carried out in a legal mechanisms which appropriate to the specific concrete of the creditor and debtor legal relation. It is also possible to execute parate even if the debtor himself has voluntarily surrendered the object of fiduciary collateral. Otherwise, if the debtor refuses, execution must be through judicial means. Thus, parate execution no longer has absolute power but is alternative in nature, because it can only be carried out as long as it meets the element of "voluntariness" from the debtor in surrendering the collateral object, as well as proof of default through a statement of default letter. Therefore, the Constitutional Court decision essentially seeks to balance the protection of creditor rights and the protection of debtors, without eliminating the creditor's legal position in executing fiduciary collateral objects.

In the context of implementing parate execution of fiduciary collateral objects, the existence of these regulations is important to provide legal certainty for PUJK and collection companies in carrying out collection or collateral takeover actions. As long as collection activities are carried out based on a valid cooperation agreement, comply with the provisions of laws and regulations, and are implemented in accordance with the standards of conduct regulated in POJK 22/2023, these actions are in principle part of the exercise of creditor rights in efforts to recover receivables. As such, this arrangement in POJK 22/2023 works not only as consumer protection but also as a normative framework that regulates the PUJK and the collection company issued laws of implementation that assure the rightful legitimacy and legal certainty to perform on the collection authority and the right to parate execution of fiduciary collateral objects.

CONCLUSION

Reflecting the substance above, OJK regulations on business activities of PUJK in the collection of debts as well as in collection company are comprehensively regulated in OJK Regulation Number 22 of 2023 concerning Consumer and Community Protection in the Financial Services Sector. The regulation sets a legal framework relating to collection practices, a requirement for sending warning letters to consumers, provisions for third party handling, and collection practices standards. These regulations provide that not only the collection activities must be conducted based on a valid legal relationship between the PUJK and the collection company, but also collection activities must be carried out in compliance with norms and the provisions of laws and regulations.

In the frame of reference for legal protection, POJK 22/2023 fundamentally not only behaves as an consumer protection instrument, but also a legal legitimacy and certainty for PUJK and collection company to carry out their collection authority and implementation on execution yield of fiduciary collateral object. In principle, the implementation of the collection activities, as

long as based on a valid cooperation agreement, complying with laws and regulations, and conducted in accordance with the conduct standard of a collection, are part of the exercise of creditor rights in connection to the efforts of receivables recovery. In the context of PUJK and collection companies, therefore, the legal protection for PUJK and collection companies in carrying out parate execution is to conform to the rules of law governing collection activities in the financial services sector. That is where the provisions on parate execution and collection activities should be implemented by PUJK and collection companies by taking into account the balance of creditor protection and the need for legal certainty in the financial services sector as the ultimate goal. Future regulatory development should focus on: (1) establishing a specific liability standard for collection companies that exceed their delegated authority under cooperation agreements; (2) creating a mandatory certification or licensing regime for debt collection companies operating in the financial services sector; and (3) harmonizing the parate execution framework under Law No. 42/1999 with the procedural requirements introduced by Constitutional Court Decision No. 18/PUU-XVII/2019 through legislative amendment, to eliminate the current normative inconsistency between the two legal instruments.

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The study were collected and analysed by Sonny Alfian Blegoer Laoemoerys, under the supervision of Nyoman Satyayudha Dananjaya. The interpretation of results and critical revision of the manuscript was contributed by author 3. All authors were involved in writing the manuscript and have agreed on the final version for submission.

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