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LEGAL BRIEF | CONSTITUTIONAL LITIGATION & DISPUTE RESOLUTION | 29 JULY 2026

Judicial Review of the Fiduciary Guarantee Law: MK Clarifies Police Involvement

Constitutional Court Decision No. 71/PUU-XIX/2021 confirms that the police may secure a lawful execution, but may not act as the executor of fiduciary collateral.

EXECUTIVE SUMMARY — *The Constitutional Court held that the phrase "authorised party" in the Elucidation of Article 30 of Law No. 42 of 1999 must be understood as the District Court. A creditor may not use police assistance to carry out forcible repossession where the debtor disputes default or refuses voluntary surrender. Police involvement is limited to maintaining security and public order during a legally valid execution, or exercising criminal-law powers where a separate criminal offence is alleged.*

DRP CASE NOTE. *The petitioners were represented by counsel including Deddy Rizaldy Arwin Gommo and Eliadi Hulu, who are members of DRP Law Firm's team.*

I. Background

Fiduciary security is widely used in Indonesian financing transactions because the collateral generally remains in the debtor's possession while title is transferred by way of security to the fiduciary recipient. The commercial efficiency of this structure depends on a workable enforcement mechanism, but that mechanism must also prevent unilateral and coercive repossession.

Article 30 of Law No. 42 of 1999 on Fiduciary Guarantees requires the fiduciary giver to surrender the collateral for execution. Its Elucidation previously stated that, if the collateral was not surrendered, the fiduciary recipient could take the object and, where necessary, request assistance from an "authorised party." The phrase did not identify which institution had authority or define the scope of that assistance.

That ambiguity became the central issue in Constitutional Court Case No. 71/PUU-XIX/2021. The petitioners challenged Article 30 and its Elucidation, together with Article 372 of the then-applicable Criminal Code. They argued that the statutory language exposed debtors to unilateral repossession and allowed a private financing dispute to be reinforced through police intervention.

II. The Court's Decision

On 24 February 2022, the Constitutional Court granted the petition in part. The Court declared that the phrase "*authorised party*" in the Elucidation of Article 30 was unconstitutional and had no binding legal force unless interpreted to mean the "*District Court*." The Court rejected the remainder of the petition, including the request to create a fiduciary-specific exception to the general offence of embezzlement under Article 372 of the former Criminal Code.

The immediate consequence is precise: when judicial assistance is required to obtain and execute fiduciary collateral, the institution authorised to provide that execution mechanism is the District Court, not the police. The police may not be positioned as a substitute civil executor for a creditor or collection agent.

III. The Governing Enforcement Framework

Decision No. 71/PUU-XIX/2021 must be read together with Constitutional Court Decisions No. 18/PUU-XVII/2019 and No. 2/PUU-XIX/2021. Taken as a single line of authority, the decisions establish the following framework:

1. **Direct execution remains possible.** A fiduciary recipient may carry out parate execution where the debtor acknowledges the occurrence of default and voluntarily surrenders the collateral. In that situation, there is no dispute requiring judicial determination or coercive enforcement.
2. **Default cannot be imposed unilaterally.** The occurrence of default may not be determined solely by the creditor. It must arise from an agreement between the parties or from a legal process that determines that default has occurred.
3. **Disputed or non-voluntary surrender requires court execution.** Where the debtor does not acknowledge default or refuses to surrender the collateral voluntarily, the creditor may not repossess the collateral by force. The creditor must apply to the competent District Court for execution.
4. **Police are not civil executors.** Police officers may secure the execution process when required to preserve safety and public order. They do not acquire authority to seize and deliver the collateral on behalf of the creditor merely because a fiduciary certificate exists.
5. **Criminal jurisdiction remains separate.** Where facts independently indicate a criminal offence, the police retain their ordinary investigative and law-enforcement authority. However, a criminal report should not be used as a procedural shortcut to obtain the result of a disputed civil execution.

IV. What the Decision Means for Police Involvement

The Court drew a functional distinction between security assistance and execution authority. Security assistance is ancillary: it protects persons, prevents disorder, and permits a lawful execution to proceed safely. Execution authority is substantive: it determines whether coercive control over the collateral may be exercised and by whom. Under the Court's interpretation, that coercive civil authority belongs to the District Court when voluntary surrender is absent.

Accordingly, the presence of police officers does not cure an otherwise unlawful repossession. A creditor cannot convert private self-help into lawful execution merely by requesting police attendance. The legal basis for the underlying execution must already exist, whether through an undisputed voluntary handover or through a court-supervised execution process.

The decision also requires careful separation between civil and criminal processes. A debtor's objection to repossession does not automatically eliminate potential criminal liability, particularly where the collateral is concealed, transferred, pledged, leased, or otherwise dealt with contrary to law and the security agreement. Conversely, the existence of arrears or a contractual dispute does not by itself authorise the use of criminal procedure to compel surrender of collateral.

V. Practical Implications

For creditors and financing companies

Creditors should ensure that default notices, cure periods, acceleration clauses, and surrender procedures are clearly documented. Before relying on direct execution, the creditor should be able to evidence both the debtor's acknowledgment of default and the voluntary character of the surrender. Where either element is disputed, the safer and constitutionally compliant route is an application for execution through the District Court.

Engagement letters and instructions to external collection agents should expressly prohibit threats, forced entry, physical coercion, misrepresentation of police authority, and roadside seizure without a lawful basis. Internal compliance records should capture notices, communications, meeting minutes, handover forms, photographs, and the condition and inventory of collateral at the time of surrender.

For debtors and fiduciary givers

The ruling protects debtors from unilateral coercive execution, but it does not extinguish the secured debt or grant a right to obstruct lawful enforcement. A debtor disputing default should communicate the grounds of objection in writing, preserve payment records, and avoid transferring, concealing, leasing, or encumbering the collateral. Any proposed surrender should be recorded in a signed handover document that identifies the object, condition, date, parties present, and the purpose of delivery.

For police institutions

Operationally, police involvement should be limited to public-order functions during a lawful execution and to criminal investigation where statutory elements are independently supported. Officers should avoid taking possession of collateral for delivery to a creditor, compelling a debtor to sign a voluntary-handover document, or treating a civil default allegation as conclusive proof of criminal conduct.

VI. Key Takeaways

1. **The District Court is the "authorised party".** The Court's conditional interpretation removes any basis for treating the police as the institution authorised to carry out coercive fiduciary execution under the Elucidation of Article 30.
2. **Voluntariness is decisive.** Direct execution depends not merely on the existence of a fiduciary certificate, but on an acknowledged default and voluntary surrender of the collateral.
3. **Police attendance is not execution authority.** Police may maintain security and order, but their presence does not legalise a repossession that should have proceeded through the District Court.

4. **Civil and criminal pathways must remain distinct.** A financing dispute may generate criminal issues on its own facts, but criminal enforcement cannot be treated as a substitute for the civil execution mechanism prescribed by the Court.

VII. Conclusion

Constitutional Court Decision No. 71/PUU-XIX/2021 closes a critical ambiguity in Indonesia's fiduciary enforcement regime. It preserves direct execution where the debtor acknowledges default and voluntarily surrenders the collateral, while requiring court supervision where consent or default is disputed. Most importantly, it fixes the institutional boundary: the police may secure a lawful process, but they are not the executor of fiduciary collateral.

For financing institutions, the decision shifts emphasis from physical recovery to procedural discipline. For debtors, it provides protection against coercive self-help without eliminating contractual responsibility. For law-enforcement bodies, it reinforces the distinction between maintaining public order, enforcing criminal law, and executing private civil rights.

Key Authorities

- Law No. 42 of 1999 on Fiduciary Guarantees, Articles 15 and 30 and the Elucidation of Article 30.
- Constitutional Court Decision No. 18/PUU-XVII/2019, dated 6 January 2020.
- Constitutional Court Decision No. 2/PUU-XIX/2021, dated 31 August 2021.
- Constitutional Court Decision No. 71/PUU-XIX/2021, dated 24 February 2022.