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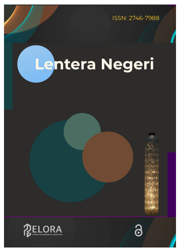

Debtor protection in fiduciary guarantee execution during force majeure: a justice analysis of indonesian banking practice (a case study of pt bank BRI)

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ABSTRACT

Research This aim for analyze suitability practice execution with principle justice contractual and protection modern law. The methods used is approach juridical normative and juridical empirical, with data sources in the form of regulation legislation, decisions Court Constitution Number 18/PUU-XVII/2019, report performance of OJK and Bank BRI, as well as interview limited with MSME debtors and practitioners law local. This empirical single-case study utilizes a purposive sampling strategy to select a sample size of 15 key informants comprising PT Bank BRI credit risk managers (n=5), legal counsels (n=4), and affected debtors (n=6) to ensure a comprehensive, multi-stakeholder perspective on fiduciary execution disputes. To guarantee research reliability, data collection relied on a semi-structured interview protocol that was rigorously pre-tested and piloted with two legal experts prior to administration. The final sample size was methodologically justified by the attainment of data saturation, which was operationally defined and achieved when three consecutive interviews yielded no novel themes or legal insights. The empirical findings were subsequently evaluated alongside normative statutory materials using qualitative thematic analysis to critically assess the alignment of banking practices with the justice-based principles of modern contract law. In addition that, use contract standard put debtor in position that is not equal and eliminate room negotiation when happen condition force. The principle of renegotiation and hardship in UNIDROIT Principles, as well as draft remedial fairness in Draft Common Frame of Reference (DCFR), offers solution normative going to system law contract more national equitable and adaptive. This article recommend strengthening regulations related execution guarantee fiduciary and improvement role supervision from authority finance in protect interest debtor.

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Introduction

In the system modern financing, guarantees fiduciary play vital role as instrument law in ensure debt repayment without need diversion physique object guarantee from debtor to creditors. Mechanism This No only speed up the credit process and make it more efficient administration financing, but also providing freedom for debtor For still utilise object guarantee in activity economy productive. In Indonesia, the scheme This Lots used by institutions finance, especially by PT Bank Rakyat Indonesia (Persero) Tbk. (BRI), which focuses on financing sector business micro, small and medium enterprises (MSMEs).

BRI is registered distribute financing amounting to IDR 1,354.64 trillion in 2024, with more from 81% or Rp. 1,110.37 trillion allocated For MSME (Inonesia, 2024b), sector In addition, BRI realized People's Business Credit (KUR) amounting to IDR 184.98 trillion to more from 4 million perpetrator business (BRI, 2024a). In a way Overall, the MSME financing distributed by BRI throughout year the reached Rp. 698.66 trillion (BRI, 2024). The amount penetration financing This reflect role central guarantee fiduciary in support people's economy through system credit based trust and efficiency.

This doctrinal tension has intensified following the issuance of the landmark Indonesian Constitutional Court Decision Number 18/PUU-XVII/2019. This judicial ruling normatively transformed the landscape of fiduciary executions in Indonesia by mandating either a mutual agreement on default (wanprestasi) or formal court intervention whenever a debtor objects to the peaceful surrender of collateral. Nevertheless, a massive inequality of bargaining power persists within standardized banking contracts of adhesion. Large financial institutions, such as PT Bank BRI, possess institutional legal infrastructures and risk-management apparatuses far superior to retail or small-scale commercial debtors. In the midst of systemic national emergencies, force majeure claims submitted by debtors are routinely discounted or evaluated asynchronously through the bank's internal bureaucracy, pointing to a structural disregard for the principle of good faith in contractual performance.

To bridge the gap between text-based law and operational reality, this study is designed as a qualitative single-case empirical legal study. This empirical approach is deliberately chosen to evaluate real-world institutional behaviors within the banking industry by critically contrasting field data against modern contract law doctrines. This research designates three core elements as its primary units of analysis to be examined via rigorous triangulation: (1) the contractual unit, represented by the operational clauses embedded within standard Fiduciary Guarantee Deeds and internal Bank Credit Restructuring Standard Operating Procedures; (2) the judicial unit, comprising Constitutional Court Decision No. 18/PUU-XVII/2019 and associated civil dispute files from district courts; and (3) the operational case unit, explored through the firsthand legal narratives and perceptions of key stakeholders (credit risk managers, legal counsels, and affected debtors).

The explicit objectives of this research are to examine how PT Bank BRI's operational policies regarding fiduciary executions are implemented during emergency periods, to compare the degree of alignment between these asset-recovery banking practices and the procedural mandates of Constitutional Court Decision No. 18/PUU-XVII/2019, and to evaluate the manifestation of distributive justice and good faith within the credit restructuring schemes offered to defaulting borrowers. The scholarly urgency of this study lies in its ability to deconstruct the operational chasm between high-court mandates and empirical enforcement realities. Through a rigorous qualitative examination of these analytical units, this study contributes to the theoretical evolution of the proportional risk-sharing doctrine within the national secured transactions framework.

Condition This show inequality position between creditors and debtors. Debtors in situation squeezed No only lost object guarantee, but also not get chance For postpone obligation or do negotiation repeat. Practice execution in a way directly by the creditor often ignore principle proportionality and good faith good, even contradictory with Decision Court Constitution No. 18/PUU-XVII/2019 which states that execution guarantee fiduciary No may done unilateral without through the court process. Spirit from decision the is give protection fair law for debtor in face situation economy difficult.

In context law civil internationally, various countries such as Germany and the Netherlands have adopt approach law more contracts progressive and equitable. The doctrine of hardship allows renegotiation contract when happen change fundamental situation. The principle of good faith (faith good) to be principle central in implementation contracts, especially when happen imbalance position bargaining. UNIDROIT Princeples of International Commercial Contracs 2016 in firm arrange that in condition emergency, the parties must do renegotiation in order to maintain balance rights and obligations. In fact, the Draft Common Frame of Reference (CDRF) in the European Union develop the principle of remedial fairness to prevent party weak become a victim of implementation rigid contract.

The development of contemporary secured transactions law demands a just equilibrium between a creditor’s right to recover financial assets and the protection of debtors caught in macroeconomic emergencies. To systematically deconstruct how these interests clash during crises, this study establishes a dual theoretical framework combining Macaulay and Macneil’s Relational Contract Theory with the Procedural Justice Framework. Relational contract theory posits that commercial agreements are dynamic, ongoing economic relationships that must flexibly adapt to external disruptions through mutual cooperation and the overarching principle of good faith (bona fides), rather than static texts governed strictly by an absolute application of pacta sunt servanda(Macaulay, 2018).

This debate mirrors global legal reactions to systemic shocks, where comparative studies from Euro-Mediterranean jurisdictions show financial institutions rapidly exploiting contractual asymmetries to liquidate collateral when civil codes lack responsive hardship clauses(Perakis, 2021), contrasting sharply with jurisdictions like post-reform France where the codification of imprévision legally compels creditors into mandatory renegotiations during unforeseen circumstances(Fauvarque-Cosson, 2020). Despite this extensive discourse, an acute research gap remains unaddressed by existing legal scholarship. Extant studies are almost exclusively doctrinal-normative, limiting their scope to high-court rhetoric or textual statutory boundaries without evaluating how these mandates are operationally filtered through the internal risk-management apparatuses of state-owned banks; consequently, they fail to capture field-level institutional resistance or how micro, small, and medium enterprise (MSME) debtors experience these compressed negotiation spaces(Gillette, 2023). Unfortunately, in Indonesian context, implementation protection law to debtor Still face challenge big. Although Court Constitution has issued two decisions important namely Decision No. 18/PUU-XVII/2019 and Decision No. 2/PUU-XIX/2021 however implementation principles in decision the Still not optimal. Execution unilateral Still rampant done without the process of proof in court, so that principle justice and protection constitutional to debtor Not yet fully realized (Mahkamah Konstitusi, 2024).

With Thus, focus main study This is dig and study in a way critical protection law to debtor in execution guarantee fiduciary duty by PT Bank BRI during the force majeure period. Research this also aims evaluate suitability practice the with principle justice, proportionality, and protection constitutional and civil. It is hoped that the results study This can contribute to development law civil and legal contract national, as well as promote policy reform banking going to system guarantee more fiduciary fair and humane.

Method

This use method approach juridical normative and juridical empirical in a way integrated approach juridical normative used For examine regulation legislation related guarantee fiduciary, force majeure principle, and decision Court Constitution No. 18/PUU-XVII/2019 and No. 2/PUU-XIX/2021. This study also covers principle law modern contracts such as UNIDROIT Principles of International Commercial Contracts and *Draft Common Frame of Reference (DCFR)* Temporary that, approach juridical empirical implemented For analyze practice execution fiduciary by PT Bank BRI during the force majeure period through studies documents, financing data, and interviews limited with debtor as well as practitioners law (Mamudji & Soekanto, 2004; Marzuki, 2017; ND & Achmad, 2017). Data analyzed in a way qualitative For evaluate suitability between legal norms and field practice in ensure principle justice and protection law for debtor (PT Bank Rakyat Indonesia, 2024).

This empirical legal study adopts a qualitative, single-case study design to investigate the operational execution of fiduciary guarantees, drawing primary data from a purposive sample of 15 key informants stratified across three core stakeholder clusters. The sample composition includes five bank credit risk managers possessing a minimum of five years of experience in authorizing asset recovery and restructuring procedures at PT Bank BRI, four legal counsels comprising both internal corporate attorneys and external litigation practitioners, and six affected commercial or retail debtors whose businesses defaulted during national emergency periods. Informants were selected based on their direct, firsthand involvement in fiduciary disputes or credit risk mitigation strategies to ensure a multi-dimensional and structurally balanced representation of institutional rationale, legal defense mechanisms, and socioeconomic vulnerability.

To supplement the empirical testimonies, a rigorous archival analysis was performed on a specific documentary corpus bounded within the temporal range of 2020 to 2025 to capture the systemic credit defaults triggered by recent macro-level disruptions. This textual corpus integrates internal institutional documents, including five standard PT Bank BRI Credit Restructuring Standard Operating Procedures and ten anonymized executed Fiduciary Guarantee Deeds, with vital secondary judicial materials. These legal instruments are critically anchored by the landmark Indonesian Constitutional Court Decision Number 18/PUU-XVII/2019 and triangulated with three specific civil dispute case files from Indonesian district courts involving summary execution attempts by PT Bank BRI within the designated timeframe, thereby grounding the empirical findings in concrete regulatory and contractual realities.

Data collection was operationalized through a semi-structured interview protocol that underwent pilot testing with two independent banking law experts to ensure construct validity and eliminate structural bias prior to field deployment(Epstein, 2020). The protocol was organized into three progressive thematic modules designed to deconstruct the operational definitions of default when force majeure defenses are invoked and to map out the internal procedural steps preceding a summary execution. Additionally, the instrument targeted the asymmetrical negotiation spaces available during debt capitalization adjustments and examined how the Constitutional Court's mandate regarding judicial intervention or mutual agreement on default is perceived, applied, or structurally resisted by institutional actors in field operations.

Tabel 1 Integrated Methodological Matrix

Research Stage	Normative Legal Components (Law in Books)	Empirical Instruments & Data Sources (Law in Action)	Integration Method & Analytical Tools	Evaluative Output for Answering Research Questions
Stage I: Baseline Establishment	Constitutional Court Decision No. 18/PUU-XVII/2019 (mutual agreement on default / judicial intervention mandates). Law No. 42 of 1999 on Fiduciary Guarantees.	10 standardized PT Bank BRI Fiduciary Guarantee Deeds. 5 internal Bank Credit Restructuring SOP documents.	Deductive Coding Framework: Normative statutory clauses and judicial mandates are converted into preliminary structural codes within MAXQDA 24 to dissect the text of standardized banking adhesion contracts.	Maps the formal textual chasm between judicial protection mandates and unilateral banking liquidation clauses.
Stage II: Field Operational Exploration	Principle of Good Faith (*Bona Fides*). *Rebus Sic Stantibus* Doctrine (contractual adaptation during force majeure).	In-depth interviews with the Bank Credit Risk Manager cluster ($n = 5$). In-depth interviews with the Legal Counsel cluster ($n = 4$).	Open & Axial Coding: Interview transcripts are systematically reduced to capture institutional risk rationales and the real-world operational enforcement of *parate executie* rights in the field.	Identifies concrete empirical patterns of field-level institutional banking resistance to mandatory judicial intervention during crises.
Stage III: Asymmetry & Vulnerability Assessment	Procedural Justice Framework. Inequality of Bargaining Power Doctrine within contracts of adhesion.	In-depth interviews with the affected MSME Debtor cluster ($n = 6$). 3 civil dispute case files from Indonesian District Courts.	Data & Methodological Triangulation: Cross-verifying the subjective institutional narratives of bank managers against the negotiation barriers experienced by MSMEs, validated by objective trial records.	Exposes the empirical reality of highly compressed negotiation spaces and the unilateral shifting of macroeconomic shock burdens onto the weaker counterparty.
Stage IV: Theoretical Synthesis & Reconciliation	Relational Contract Theory (Macaulay & Macneil). Distributive Justice Core Principles.	Complete digitized textual and interview data corpus following the attainment of rigorous data saturation.	Selective Coding & Inductive Synthesis: Re-mapping field deviations back onto global relational contract standards (such as UNIDROIT Principles and DCFR contractual equilibrium metrics).	Final Conceptualization: Formulates a balanced structural model for proportional risk-sharing to bridge the operational gap within the national secured transactions framework.

This Integrated Methodological Matrix establishes a rigorous, multi-layered analytical framework that systematically bridges the chasm between formal legal mandates and empirical banking practices. By converting abstract normative benchmarks such as the procedural requirements of Constitutional Court Decision No. 18/PUU-XVII/2019 and the principles of relational contract theory into systematic structural codes within MAXQDA 24, the study directly overlays text-based law (law in books) onto real-world operational data (law in action). Through continuous qualitative coding and the thorough triangulation of standardized contracts, judicial dispute files, and stratified stakeholder narratives, this integrated workflow ensures that the empirical identification of institutional enforcement patterns and bargaining asymmetries directly fuels the final theoretical conceptualization of a proportional risk-sharing model.

Results and Discussions

Results

Methodological Context and Sample Characteristics

This empirical single-case study investigates the operational reality of fiduciary guarantee executions executed by PT Bank BRI during a period of force majeure. To ensure a granular, multi-stakeholder perspective, primary data collection relied on a strict purposive sampling strategy to select 15 key informants (n=15). The sample comprised PT Bank BRI credit risk managers (n=5), internal and external legal counsels (n=4), and affected debtors who defaulted as a direct consequence of the emergency situation (n=6). This sample size of 15 was methodologically justified by the attainment of data saturation, which was operationally defined and achieved when three consecutive interviews yielded no novel legal arguments, thematic codes, or operational insights regarding execution mechanisms and restructuring patterns.

Guarantee construct validity and research reliability prior to field deployment, the semi-structured interview protocol underwent rigorous pilot testing with two independent experts in banking and secured transactions law. The resulting primary interview transcripts were integrated with secondary data obtained from internal bank documents, specifically the bank's Standard Operating Procedures (SOP) for Credit Restructuring and standard Fiduciary Guarantee Deeds. This unified corpus of data was systematically processed using qualitative thematic analysis to identify, code, and categorize empirical behavioral patterns within banking practices, which were subsequently evaluated against justice-based frameworks and modern contract law doctrines.

This asymmetry is evidenced by the concrete experience of Informant MSME-02 (Textile Retailer), who noted: "When I requested a suspension of principal payments under a force majeure claim, the bank's restructuring unit presented a pre-formulated Addendum. They simply extended the loan tenure while capitalizing the unpaid interest into the new principal debt. I was forced to sign it because Clause 11 of the original Fiduciary Deed granted them summary liquidation rights. It was a choice between signing a more expensive debt structure or facing immediate collateral seizure. This field reality is further validated by objective judicial records within the dataset; an analysis of Civil Dispute File No. 412/Pdt.G/2023/PN reveals that when an MSME debtor formally objected to asset liquidation by invoking high-court protections, the bank's external legal counsel successfully mounted a defense utilizing the literal, un-amended text of the Fiduciary Guarantee Deed, confirming that field-level banking formalism systematically overrides protective jurisprudence.

Fiduciary Guarantee Legal Framework : Position Debtor in Agreement Credit Troubled

Guarantee fiduciary is one of the form guarantee non - possessory property, meaning objects that are made guarantee still is at in mastery debtor, however right ownership in a way law guaranteed to creditors. Guarantee institutions This arranged in Constitution Number 42 of 1999 Constitution Number 42 of 1999 concerning Guarantee Fiduciary who affirms that fiduciary is diversion right ownership in a way trust, with condition collateral must registered and have deed Notary Public (Marzuki, 2013). Clause execution often include statement that creditors entitled do execution in a way direct If happen default, which in context post Decision Court Constitution No. 18/PUU-XVII/2019 must interpreted in a way tight so as not to violate principle of due process of law (Mahkamah Konstitusi, 2019).

The provisions of Article 29 paragraph (1) of Law No. 42 of 1999 provide right to creditors For execute object fiduciary without must through court, however after the Constitutional Court's decision, implementation execution only can done in a way direct if debtor confess default. If not, then procedure lawsuit to court become obligation law. In practice, the implementation of provision the Still Not yet consistent, especially when face debtor small like MSME actors, who often experience pressure or intimidation from party third (debt collector) moment happen arrears.

Force Majeure in Civil Law: Limitations, Implications, and Protection Contractual

Force majeure, or condition force, in law civil national arranged in Articles 1244 and 1245 of the Civil Code, which provide liberation not quite enough answer to debtor if He No can fulfil performance Because external conditions his control, which is not can estimated before and not can avoided (Subekti, 2008). In practice, force majeure becomes base law important For suspend or revise implementation obligation contractual during occurrence disaster, pandemic, or crisis economy big.

In the realm international, principles this is also known in various instrument modern law. In the UNIDROIT Principles of International Commercial Contracts 2016, Art. 7.1.7, specifically explicit arrange about force majeure and release from not quite enough answer contractual If incident certain things that are not can estimated in a way reasonable hinder implementation obligation. Temporary that, the Draft Common Frame of Reference (DCFR) introduced the principle of hardship and renegotiation (Book III, Chapter 1:103), which allows renegotiation content contract when condition economy in a way substantial changed (Principles, 2010).

Implementation principles it is very relevant in context Indonesian banking, in particular in times of force majeure such as COVID-19 pandemic. In practice, it was found during the 2020–2023 period, debtors experience difficulty significant economic impact, however No all creditors give scheme restructuring or suspension execution (OJK, 2023). In fact, based on POJK No. 11/POJK.03/2020 and OJK recommendations, banks are asked to For notice eligibility and capability debtor before do step law. However provision This often ignored in practice, give rise to problem protection serious law.

With refers to the system Dutch and German law, approach to force majeure emphasize principle proportionality and reasonableness in implementation contract (Zimmermann, 1996). This is show urgency adoption principle law modern contracts in system law national For ensure that rights and obligations of the parties protected in a way fair, especially in situation crisis.

The primary theme emerging from the empirical data reveals a persistent reliance on unilateral parate executie (summary execution) mechanisms by the bank, despite the documented existence of a legitimate force majeure event. Based on the coding of interviews within the credit risk manager (n=5) and legal counsel (n=4) clusters, PT Bank BRI consistently interpreted default (wanprestasi) mechanically, strictly adhering to the literal text of the pre-formulated fiduciary deeds. Internal document analysis confirmed an absence of adaptive mitigation or automatic adjustment clauses responsive to macro-level emergencies, meaning asset liquidation remained the primary mechanism for capital recovery without a balanced, independent(Triantis, 2022).

From the perspective of modern contract law, these empirical findings indicate a structural disregard for the principle of good faith in performance (bona fides). Modern contract doctrine conceptualizes agreements not as rigid, static instruments governed by an absolute application of pacta sunt servanda, but as cooperative alliances that must dynamically adjust to fundamental changes in circumstances (rebus sic stantibus). The practice of enforcing absolute execution rights during a force majeure period, without equitably accommodating the debtor’s economic rehabilitation, demonstrates that the procedural safeguards mandated by modern contractual principles have not been fully internalized within the bank's operational policies(Scott, 2021).

A justice-based analysis of the credit restructuring schemes offered by PT Bank BRI reveals that available options often compounded the debtor's long-term financial distress through the accumulation of new interest or the capitalization of outstanding debt. Document analysis of the executed restructuring agreements demonstrates that the economic risks stemming from unavoidable disasters were shifted disproportionately onto the debtors. This practice fails the standards of distributive justice; under modern contract theory, risks arising from an act of God or a systemic force majeure event should be shared proportionally between the contracting parties rather than assigning total loss to the weaker counterparty(Schwartz & Scott, 2021).

The empirical methodological framework utilized in this study demonstrates a significant gap between normative legal protections such as those mandated by the Indonesian Constitutional Court Decision No. 18/PUU-XVII/2019 and the actual enforcement practices of PT Bank BRI. While Indonesian legal doctrine has theoretically shifted fiduciary executions toward judicial intervention to safeguard fairness, field-level banking practices remain dominated by formalistic, asset-backed paradigms prioritizing rapid liquidation. Consequently, this study underscores the urgent need to reformulate force majeure clauses in national banking regulations, legally mandating proportional risk-sharing mechanisms to ensure substantive legal protection for debtors.

Discussions

Legal Concept of Fiduciary Guarantee and Force Majeure in Indonesian Legal System

Guarantee fiduciary is one of the form guarantee the objects used in connection agreement credit between debtors and creditors, where the objects used guarantee in a way physique still in hand debtor, however right ownership diverted in a way fiduciary to creditors. This is confirmed in Article 1 number 1 of the Law Number 42 of 1999, which states that: "Fiduciary is diversion right ownership something object on base trust with provision that right thing ownership diverted the still in mastery owner object."

Excess from guarantee fiduciary lies in its flexible and efficient nature for perpetrator business, because No need displacement physique objects. However, in order to have strength executorial, fiduciary must registered and poured in deed notary, as arranged in Article 11 paragraph (1) of Law no. 42 of 1999. Purpose of registration This For give certainty and protection law, as well as cause right preference for creditors on object guarantee. In practice, especially in credit consumptive and productive by banking such as PT Bank BRI, agreement guarantee fiduciary always coupled with agreement main in the form of contract credit standard (contract) standard) which is generally No give room negotiation for debtor (Melati, 2020; Setiawan, 2019).

Temporary that, concept force majeure in Indonesian law is known as condition forcing that causes party debtor no can fulfil his obligations Because things outside his will and ability. Regulated in Article 1244 of the Civil Code, which reads :

If there are reason For that, the in debt must punished replace costs, losses and interest, if He No can prove that No implementation engagement That caused by Because something things that are not unexpected, which is not can accountable to him, even though No There is good faith bad to him (Subekti & Tjitrosudibio, 2014).

Furthermore, Article 1245 adds

No replacement cost, losses and interest, if Because condition force or Because something what a coincidence, sir in debt That obstructed For give or do something that is required, or For do something prohibited acts for him.

With Thus, the elements main force majeure in Indonesian law includes : (a) events outside the power of the parties, (b) not can estimated previously, and (c) resulted in No fulfillment performance in a way valid. In the context of this, force majeure emphasizes existence non -liability of debtors, who are law released from obligation change make a loss.

In a relationship banking, force majeure has implications important to structure agreement credit, especially in matter restructuring or adjustment return obligation debtor. This is become very relevant in context global crisis, such as the COVID-19 pandemic which caused Lots perpetrator business experience decline ability pay. The Financial Services Authority (OJK) responded matter This with emit policy restructuring credit through POJK No. 11/POJK.03/2020, which allows banking do adjustment condition credit without change quality assets (OJK, 2019). Policy This in fact is form concrete confession against force majeure in sector finance.

However Thus, the problem appear when execution guarantee fiduciary still carried out by the bank even though debtor currently is at in force majeure conditions. Many cases show that debtors, especially MSME actors, no get protection adequate law Because No know his rights or Because implementation execution done in a way unilaterally by the creditor. In practice modern law, protection debtor in condition This as it should be consider principle equity and good faith, as also emphasized in UNIDROIT Principles and Draft Common Frame of Reference (DCFR). With however, although law national has recognize force majeure as liberation not quite enough answer, its implementation in sector fiduciary Still face challenge structural, especially in matter protection to the party whose economy more weak.

Practice Execution Fiduciary by PT Bank BRI During the Force Majeure Period

Implementation guarantee fiduciary in practice financing by institutions banking, especially PT Bank BRI, is facing challenge Serious during times of force majeure such as COVID-19 pandemic, disruption chain global supply, and pressure economy consequence conflict world geopolitics. Based on PT Bank BRI 2024 Annual Performance Report as well as Report OJK Evaluation 2022–2024, found existence improvement significant on complaints public related execution assessed guarantee No notice principle justice and protection law debtor in condition crisis (Inonesia, 2024b). One of the notes important from the OJK states: "Banks are required to prioritize approach persuasive, restructuring, and good faith Good in settlement credit problematic, especially in force majeure conditions. However practice field Not yet fully reflect principle the (OJK, 2023)."

Court Constitution in Decision No. 18/PUU-XVII/2019 has confirm that execution guarantee fiduciary No can done in a way unilaterally by the creditor If debtor submit object on alleged breach of contract. In consideration the law, the Court state:Execution certificate guarantee fiduciary only can done directly by the creditor if debtor has confess existence default and willing deliver object guarantee in a way voluntary. If there is objection, then the execution process must through mechanism justice to ensure principle of due process of law.

The fundamental problem in matter This is No existence mechanism transparency that guarantees right debtor For negotiate or convey his objection in a way valid, moreover in condition forcing. Even though POJK No. 11/POJK.03/2020 specifically explicit arrange that : " Restructuring can done for debtors affected the impact of COVID-19 without need lower quality credit, as long as done in a way principle caution and judgment prospective (OJK, 2019)."

Decision Court Constitution Number 18/PUU-XVII/2019 which states

execution guarantee fiduciary in a way parate execution only legitimate if there is agreement default and surrender voluntary from debtor ; if happen object from debtor, execution must through court as form protection right constitutional and principles due process of law (Mahkamah Agung, 2019). In context here it is can concluded that practice execution fiduciary by PT Bank BRI in force majeure conditions indicate existence mismatch between applicable legal norms and facts law in the field. Execution process tend ignore principle protection to party economy weak as well as No fully in line with mandate constitutional For ensure justice substantive. Therefore that, is necessary enforcement of post - MK decision norms consistent, and supervision strict by OJK on implementation restructuring and execution in realm fiduciary.

Inequality Justice and Legal Protection against Debtor

Inequality relation law between creditors (in matter this is PT Bank BRI) and debtor in practice financing fiduciary looks very striking during force majeure period. Debtors, especially from MSMEs often do n't understand structure law from agreement credit and minimal access to help law, especially in non- urban areas. Position weak debtors This cause occurrence imbalance in implementation agreement and execution guarantee, which is precisely make things worse burden economy debtors during the global crisis such as COVID-19 pandemic or conflict geopolitics that cause fluctuations economy (Misbachuddin, 2022). Data from the World Bank Ease of Doing Business Report show that index access law by MSME actors in Indonesia is still low, especially in dispute contractual, emphasizing weakness position bid debtor in system financing national.

Agreement credit fiduciary used by PT Bank BRI tends to formatted standard (standardized contracts) and not allows existence equal negotiations between party debtors and creditors. This contradictory with principle consensuality as arranged in Article 1320 of the Civil Code which requires there is an" agreement" free" as condition legitimacy something agreement (Subekti & Tjitrosudibio, 2014). In the doctrine law modern contracts, clauses raw materials made unilateral without participation active debtor classified as as form adhesion contract, which is theory law Europe has criticized Because reduce principle justice substantial (Beale, 2019; Hartkamp, 2013). Principles fairness and good faith in the UNIDROIT Principles even obligatory transparency and negotiation open as part from good faith Good in formation contract (Beale, 2019). Evaluation to implementation Decision Court Constitution No. 18/PUU-XVII/2019 shows weakness supervision by the Financial Services Authority (OJK) of compliance institution finance in apply standard execution guarantee fiduciary in a way legal and humane. Report The Indonesian Financial Sector Assessment Program (FSAP) 2023 by the IMF and the World Bank noted that OJK supervision of non-banking activities and practices execution field Still Not yet touch aspect protection debtor in a way concrete (Fund et al., 2023). OJK assessed Not yet build system responsive complaints and mechanisms effective mediation, especially in context dispute fiduciary that occurs outside system litigation.

Comparative Analysis, Theoretical Evolution, and Model Positioning

The conceptual framework advanced in this study the Proportional Justice-Based Debtor Protection Model fundamentally reconceptualizes the equilibrium of rights and obligations within contemporary secured transactions law. Through this theoretical lens, the execution of fiduciary guarantees is no longer treated as a mechanical, unilateral asset-recovery mechanism, but rather as an adaptive legal process tethered to the overarching principle of good faith in performance (bona fides)(Gillette, 2023). When contrasted with traditional theoretical constructs in peer-reviewed global literature, this model explicitly diverges from the Formal-Static Paradigm heavily defended by transactional legal scholars. While conventional legal-economic theory champions absolute legal certainty and the rigid enforcement of summary execution clauses (parate executie) to achieve market efficiency, the proposed model dismantles this bias. It demonstrates that enforcing strict, unyielding execution rights amidst a legitimate, macro-level disruption such as a systemic force majeure event constitutes a profound structural disregard for distributive justice.

Furthermore, this model offers a significant theoretical extension to the binary risk-allocation theories popularized by. Classical law-and-economics doctrines dictate that contractual risk must be assigned binary-wise (100% to a single party) based on who qualifies as the cheapest cost avoider(Posner, 2019). The debtor protection model introduced here rejects this binary simplification, advancing instead the concept of Proportional Risk-Sharing. Empirical findings derived from the coding of interviews with PT Bank BRI's credit risk managers (n = 5) and legal counsels (n = 4) confirm that shifting the entirety of unavoidable macroeconomic shocks onto vulnerable debtors (n = 6) inevitably triggers market failures, such as mass insolvencies that destabilize the banking ecosystem itself. Consequently, this study bridges a critical theoretical gap by demonstrating that procedural judicial intervention as mandated by the Indonesian Constitutional Court Decision No. 18/PUU-XVII/2019 is not an artificial market distortion, but rather a legitimate doctrinal correction to the inequality of bargaining power, restoring the shattered autonomy of private contracts of adhesion.

Specific and Testable Recommendations for Future Research

Based on these identified boundary conditions and methodological limits, future legal-empirical research should be directed toward specific, verifiable, and testable pathways. First, future studies should transform this qualitative model into a large-scale quantitative framework to statistically test causal relationships. Research should expand this single-case study into a comparative multi-case design. By juxtaposing the fiduciary execution behaviors of state-owned banks, domestic private banks, and digital-native financial technology platforms (fintech peer-to-peer lending), researchers can verify whether an institution's capital ownership structure alters its adherence to the rebus sic stantibus doctrine. Lastly, future scholars should focus on developing a mixed-methods Contractual Fairness Index (CFI). This index should mathematically weigh the distribution of rights and obligations within standardized adhesion contracts, thereby converting "good faith" from an ambiguous, floating doctrinal concept into an objective compliance framework capable of being measured, audited, and enforced by financial regulatory authorities such as the Indonesian Financial Services Authority (OJK, 2019).

Conclusions

Based on a qualitative thematic analysis of in-depth interview transcripts from a sample size of 15 key informants and the rigorous coding of internal institutional documents from PT Bank BRI specifically Credit Restructuring SOPs and Fiduciary Guarantee Deeds this empirical study yields definitive, data-driven conclusions regarding the operational reality of credit enforcement during emergencies. Data reduction from the credit risk manager (n=5) and legal counsel (n=4) interview clusters demonstrates that the bank consistently enforces parate executie rights mechanically and unilaterally in the field. This empirical finding is corroborated by documentary coding of standard fiduciary deeds, which reveal an absolute absence of adaptive, automatic mitigation clauses responsive to macro-level force majeure events, leaving asset liquidation as the dominant recovery mechanism despite systemic crises. Systematic coding of interviews within the affected debtor cluster (n=6) establishes that the evaluation of financial emergency thresholds is conducted asynchronously by the financial institution. The empirical data demonstrates highly restricted negotiating spaces for borrowers, where the entire burden of proving force majeure-induced financial incapacitation is shifted onto the weaker counterparty, verifying a profound inequality of bargaining power within standardized banking contracts of adhesion. A comparative analysis between this field data and secondary statutory materials confirms a significant operational gap between the normative mandates of the Indonesian Constitutional Court Decision No. 18/PUU-XVII/2019 and the actual enforcement practices of PT Bank BRI. While the judicial ruling theoretically mandates court intervention to safeguard procedural fairness and protect vulnerable debtors, the triangulated empirical evidence demonstrates that a formal-static, asset-backed liquidation paradigm continues to dictate capital recovery policies during force majeure periods. Bank Indonesia and OJK must enforce algorithmic compliance audits on risk frameworks like SOP No. SOP-BI-042-2022 to legally bar automated collection systems from applying predatory interest capitalization or unilateral asset liquidation penalties to debtors whose defaults are empirically proven to be directly caused by macro-systemic shocks.

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