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## Legal Protection for Creditors over State Confiscation of Fiduciary Guarantee Objects

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### ABSTRACT

*Fiduciary guarantee is a recognized security institution in Indonesian law in which the collateral object remains in the possession of the fiduciary grantor. Although registration confers a right in rem on the fiduciary recipient, this continued possession exposes the object to confiscation by the state where the debtor uses it to commit a crime such as illegal logging. This study examines the legal protection available to a creditor as fiduciary recipient once the collateral object has been confiscated by the state under a court decision, using normative legal research with statute, conceptual, and case approaches centered on Decision Number 18/Pdt.G/2015/PN Ktp. The findings show that two attributes of the right in rem attached to fiduciary guarantee, the absolute right and the droit de suite principle, cannot be enforced once the object has been confiscated, since it passes into state ownership and may no longer be used by any party. Confiscation does not extinguish the principal debt, so the debtor remains obligated to settle it, but the creditor's standing is reduced from preferred to concurrent creditor. The creditor's remaining remedies are to demand a substitute guarantee from the debtor or, failing that, to file a civil claim grounded in unlawful conduct under Article 1365 of the Civil Code.*

**Keywords:** *Creditor Protection, Droit de Suite, Fiduciary Guarantee, Illegal Logging, State Confiscation*

## INTRODUCTION

The diversity of public needs, which frequently outpaces personal income, continues to drive individuals toward credit and financing facilities offered by banking and non-banking financial institutions.<sup>1</sup> Within such arrangements, the manner in which risk is allocated between creditor and debtor depends heavily on whether the financing is secured by collateral. Executing, channeling, and joint financing schemes between conventional commercial banks and rural banks illustrate this clearly, since each model distributes the risk of a debtor's default differently among the parties involved.<sup>2</sup> Where no collateral exists, a creditor is reduced to the weaker position of a concurrent creditor and bears the full risk of non-payment, a vulnerability that recent reform of information technology-based joint funding services in Indonesia has made explicit.<sup>3</sup> It is precisely this vulnerability that a guarantee, or *jaminan*, is designed to address, since a guarantee functions as a source of debt recovery should the debtor default and as the principal means by which a creditor secures its interest in an engagement.<sup>4</sup> Among the guarantee institutions recognized in Indonesia's law of secured transactions, fiduciary guarantee occupies a central place.

The term *fidusia* derives from the Latin *fides*, meaning trust, reflecting a legal relationship founded on confidence between the debtor, as fiduciary grantor, and the creditor, as fiduciary recipient.<sup>5</sup> This relationship is codified in Law Number 42 of 1999 concerning Fiduciary Guarantee (the Fiduciary Guarantee Law), which under Article 1(2) defines fiduciary guarantee as a security right over movable property, whether tangible or intangible, and over immovable property that cannot be encumbered with a Mortgage Right, which remains in the possession of the fiduciary grantor as collateral for the settlement of a specific debt and which grants a preferential position to the fiduciary recipient over other creditors.<sup>6</sup> For this right to arise, the agreement must be embodied in an authentic Fiduciary Guarantee Deed and subsequently registered with the Fiduciary Registration Office, a registration

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<sup>1</sup> Mohammed Sulemana, Moses Naiim Fuseini, and Ibrahim Abu Abdulai, "Effects of Microfinance and Small Loans Centre on Poverty Reduction in Wa West District, Ghana," *Heliyon* 9, no. 12 (December 2023): e22685, <https://doi.org/10.1016/j.heliyon.2023.e22685>.

<sup>2</sup> Trisadini Prasastinah Usanti and Anindya Prastiwi Setiawati, "THE COOPERATION BETWEEN CONVENTIONAL COMMERCIAL BANKS AND RURAL BANKS FOR FINANCIAL INCLUSIVENESS IMPROVEMENT OF SMALL, MEDIUM AND MICRO ENTERPRISES," *Journal of Law Theory and Law Enforcement*, April 6, 2022, 16–27, <https://doi.org/10.56943/jlte.v1i2.67>.

<sup>3</sup> Trisadini Prasastinah Usanti and Nurwahjuni, "PRECAUTIONARY PRINCIPLES IN INFORMATION TECHNOLOGY-BASED JOINT FUNDING SERVICES," *Journal of Law Theory and Law Enforcement* 2, no. 1 (March 9, 2023): 1–15, <https://doi.org/10.56943/jlte.v2i1.273>.

<sup>4</sup> Oey Hoey Tiong, *Fiducia Sebagai Jaminan Unsur-Unsur Perikatan* (Jakarta: Ghalia Indonesia, 1984).

<sup>5</sup> M. Jamil, "Fiduciary Security Arrangements and Issues in Indonesia," *Journal of Human Rights, Culture and Legal System* 1, no. 2 (July 31, 2021), <https://doi.org/10.53955/jhcls.v1i2.1>.

<sup>6</sup> Pemerintahan Republik Indonesia, "UU No. 42 Tahun 1999 Tentang Jaminan Fidusia," Sekretariat Negara § (1999).

requirement that gives the fiduciary recipient both publicity and a preferential, *droit de suite* character over the collateral object.

In practice, this instrument is used extensively by banks and financing companies in multipurpose financing, a financing type regulated under Financial Services Authority Regulation Number 35/POJK.05/2018, which is widely offered because it simplifies credit access for consumers.<sup>7</sup> Motor vehicles are a frequent object of such financing, typically structured through a purchase-by-installment scheme in which the financing company acts as creditor and the consumer as debtor, with the financed vehicle encumbered by a fiduciary guarantee to secure repayment.<sup>8</sup> The fact that the vehicle remains in the debtor's physical possession throughout the financing period, however, is also what exposes the creditor's preferential position to risk, since nothing prevents the debtor from using the object in a manner that invites legal jeopardy.

Existing scholarship on fiduciary guarantee has so far concentrated on two main areas. The first concerns the mechanics of fiduciary security itself, including its historical origin, formal requirements, and the contractual obligations it imposes on financing parties.<sup>9,10</sup> The second concerns creditor protection during default and execution, where studies have examined the legal safeguards available to creditors when debtors fail to perform or improperly transfer collateral.<sup>11</sup> A separate but related strand of literature has begun to examine what occurs when a fiduciary object becomes entangled with criminal proceedings, though this has so far been explored chiefly in the context of money laundering, where a vehicle pledged as fiduciary collateral is simultaneously treated as the proceeds of crime, rendering the underlying fiduciary agreement defective for lack of valid ownership on the debtor's part.<sup>12</sup> None of these studies, however, has examined the distinct situation in which a fiduciary collateral object is confiscated by the state as a consequence of an environmental crime, specifically illegal logging under the Forestry Law, nor have they analyzed how such confiscation affects the absolute right and *droit de suite*

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<sup>7</sup> Rahmat Wiguna, Benny Irawan, and Rena Yulia, "Penerapan Sanksi Pidana Terhadap Perbuatan Pengalihan Barang Jaminan Fidusia (Studi Kasus Pada Polres Serang Kota)," *Jurnal Hukum & Pembangunan* 51, no. 4 (December 30, 2021): 1123–39, <https://doi.org/10.21143/jhp.vol51.no4.3304>.

<sup>8</sup> T. Muhammad Ali Bahar et al., "Contractual Obligations in Financing with Fiduciary Security in Indonesia in the Context of Justice," *Lex Scientia Law Review* 7, no. 1 (June 1, 2023), <https://doi.org/10.15294/lesrev.v7i1.69318>.

<sup>9</sup> Jamil, "Fiduciary Security Arrangements and Issues in Indonesia."

<sup>10</sup> Bahar et al., "Contractual Obligations in Financing with Fiduciary Security in Indonesia in the Context of Justice."

<sup>11</sup> Fathan Elan Yuukhaa Mukhtarudin and Budi Santoso, "Analysis of Fiduciary Guarantee Arrangements and Legal Protection of Creditors in Fiduciary Agreements in Indonesia," *International Journal of Social Science Research and Review* 6, no. 8 (August 16, 2023): 183–90, <https://doi.org/10.47814/IJSSRR.V6I8.1442>.

<sup>12</sup> Eko Budhi Harto, Nahdiya Sabrina, and Hatarto Pakpahan, "Legal Analysis of the Status of Evidence Proceeds of Money Laundering Crimes Encumbered by Fiduciary Guarantee," *International Journal of Research in Social Science and Humanities* 07, no. 01 (2026): 292–302, <https://doi.org/10.47505/IJRSS.2026.1.22>.

ordinarily attached to the fiduciary recipient's position once that object passes into state ownership through a final and binding court decision. This gap is significant because illegal logging differs structurally from money laundering or corruption in that the collateral object itself, rather than funds traceable to it, is the direct instrument of the offense, which raises a distinct question as to whether the creditor's preferential right survives the confiscation at all.

A case experienced by PT. Adira Dinamika Multi Finance, Tbk. supplies a concrete setting in which to examine this gap. The dispute began when Wawan, a debtor of PT. Adira Dinamika Multi Finance, Tbk., entered into a financing agreement secured by a fiduciary guarantee over a Mitsubishi truck bearing police registration number D-8174-YQ, registered in his own name. Before the financing was fully repaid, the truck was used to transport timber forest products unaccompanied by valid documentation of lawful origin. Article 78(15) of the Forestry Law provides that "all forest products resulting from a crime or an offense, and/or any instruments, including means of transport, used to commit the crime or offense referred to in this article, shall be confiscated by the State." Pursuant to this provision, the truck was confiscated through the Ketapang District Court at the request of the Ketapang District Prosecutor's Office, leaving PT. Adira Dinamika Multi Finance, Tbk., as fiduciary recipient, without control over the collateral object securing its receivable.

This case demonstrates that the property rights embedded in the Fiduciary Guarantee Law cannot always be enforced against the state, and it exposes the precise question that the literature reviewed above has not yet addressed. Accordingly, this article examines what legal protection is available to a creditor over a fiduciary guarantee object confiscated by the state pursuant to a court decision arising from a debtor's environmental crime.

## RESEARCH METHODOLOGY

This study employs normative legal research, a method directed at examining the application of legal norms and rules through an analysis of formal legal sources, namely statutes and regulations, together with legal literature containing the theoretical concepts relevant to the problem under discussion.<sup>13</sup> Normative legal research of this kind remains the dominant paradigm in Indonesian legal scholarship precisely because it treats law as a coherent system of norms whose meaning is to be found through systematic interpretation rather than through field observation of social behavior, a distinction that has itself become an object of methodological reflection in recent Indonesian legal writing.<sup>14</sup>

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<sup>13</sup> Peter Mahmud Marzuki, *Penelitian Hukum*, Revision Edition (KENCANA, 2021).

<sup>14</sup> Tunggal Ansari and Setia Negara, "Normative Legal Research in Indonesia: Its Origin and Approaches," *Audito Comparative Law Journal (ACLJ)* 4, no. 1 (February 2, 2023): 1–9, <https://doi.org/10.22219/ACLJ.V4I1.24855>.

The legal materials used in this study are classified into primary and secondary legal materials. Primary legal materials consist of binding legal instruments directly relevant to the issue under examination, namely Law Number 42 of 1999 concerning Fiduciary Guarantee, Law Number 19 of 2004 concerning Forestry, the Indonesian Criminal Code, the Indonesian Criminal Procedure Code, Financial Services Authority Regulation Number 35/POJK.05/2018, and the relevant court decisions, in particular Decision Number 18/Pdt.G/2015/PN Ktp, Decision Number 95/Pid.Sus/2015/PN Ketapang, and Constitutional Court Decision Number 021/PUU-III/2005.<sup>15</sup> Secondary legal materials consist of legal literature that explains and analyzes the primary legal materials, including textbooks, scholarly journal articles, and legal doctrines bearing on fiduciary guarantee, property rights, and legal protection.

Three approaches are applied in analyzing these materials. The statute approach is used to examine the statutes and regulations connected to the legal issue under examination, principally the Fiduciary Guarantee Law and the Forestry Law, in order to identify the norms governing the rights of a fiduciary recipient and the circumstances under which a collateral object may be confiscated by the state. The conceptual approach draws on the views and doctrines developed within legal scholarship, particularly those concerning property rights, the *droit de suite* principle, and legal protection theory, to provide the conceptual framework through which the legal issue is examined. The case approach is used to examine judicial decisions bearing on the issue at hand, with particular reference to Decision Number 18/Pdt.G/2015/PN Ktp, which has obtained final and binding legal force and which serves as the empirical basis for constructing the argument advanced in this study.<sup>16</sup>

Legal materials were collected through library-based research, namely the systematic identification and review of statutes, regulations, court decisions, and secondary legal literature relevant to the issue under examination. The materials so collected were then analyzed qualitatively using a prescriptive method of legal analysis, in which the norms drawn from the statute approach, the doctrines drawn from the conceptual approach, and the legal reasoning drawn from the case approach are systematically connected to formulate an argument capable of answering the legal problem identified in the introduction.

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<sup>15</sup> Pemerintahan Republik Indonesia, "UU No. 19 Tahun 2004 Tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 1 Tahun 2004 Tentang Perubahan Atas Undang-Undang Nomor 41 Tahun 1999 Tentang Kehutanan Menjadi Undang-Undang," Sekretariat Negara, 2004.

<sup>16</sup> Marzuki, *Penelitian Hukum*.

## RESULT AND DISCUSSION

### The Character of Fiduciary Guarantee as a Right in Rem

The law of guarantee in Indonesia encompasses both general and specific guarantee. Specific guarantee is divided into guarantee over property and guarantee over persons. Guarantee over property is further divided into movable and immovable property, with pledge and fiduciary guarantee falling within the former category and mortgage right, fiduciary guarantee over buildings, and hypothec over ships and aircraft falling within the latter, while guarantee over persons is known as borgtocht, or suretyship.<sup>17</sup> A guarantee, broadly understood, functions as security covering all obligations arising from an engagement.

As a guarantee over property, fiduciary guarantee carries several characteristics under the Fiduciary Guarantee Law. It is accessory in nature under Article 4, meaning that it cannot stand independently but follows a principal agreement, namely a loan agreement. It constitutes a right in rem, reflected in three attributes: the *droit de suite* principle under Article 20, which does not apply to inventory objects, the *droit de preference* principle under Article 1(2), under which the fiduciary recipient holds the position of a preferred creditor, and the priority principle under Article 27(1) in conjunction with Article 28. It may secure an existing debt, a future debt, or a debt whose amount can be determined at the time of execution based on the principal agreement, as provided in Article 7, and it may secure more than one debt, as provided in Article 8, with its execution governed by Article 15 in conjunction with Article 29.<sup>18</sup>

A right in rem is an absolute right over an object, maintainable against any person, and a right in rem arising from a property agreement carries a stronger character than a personal right arising from a credit agreement, which is precisely why creditors tend to request specific collateral from debtors before extending a loan.<sup>19</sup> This stronger character can be traced through four attributes. First, a right in rem is absolute: its holder may enforce the right against any party that interferes with the object, not solely against the counterparty to the original agreement, whereas a personal right arising from a credit agreement is governed by Book III of the Civil Code and binds only the contracting parties, a consequence of Article 1315 in conjunction with Article 1340 of the Civil Code and the privity of contract principle.<sup>20</sup> Second, a right in rem carries the *droit de suite* principle, meaning that the right attaches to the object wherever it is found, even where the object has changed hands or come under the actual control of a third party, who is

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<sup>17</sup> Sri Soedewi Masjchoen Sofwan, *Hukum Jaminan Di Indonesia Pokok-Pokok Hukum Jaminan Dan Jaminan Perorangan* (Yogyakarta: Liberty, 1980).

<sup>18</sup> Tan Kamello, *Hukum Jaminan Fidusia Suatu Kebutuhan Yang Didambakan* (Alumni, 2022).

<sup>19</sup> Samantha Hepburn and Pieter Badenhorst, "Bridging the Divide between Rights In Personam and Rights In Rem in Land Transactions: A Comparative Perspective of Australian and South African Law," *African Journal of International and Comparative Law* 32, no. 1 (February 2024): 90–111, <https://doi.org/10.3366/ajicl.2024.0475>.

<sup>20</sup> Rachmadi Usman, *Hukum Kebendaan* (DKI Jakarta: Sinar Grafika, 2011).

obliged to respect that right.<sup>21</sup> Third, a right in rem carries a priority principle, under which a right created earlier takes precedence over one created later, reflecting the fact that an object may be encumbered repeatedly, with the earliest creditor entitled to repayment ahead of subsequent creditors; the ranking of creditors can be determined from the date on which each right in rem arose, ordinarily once the principle of publicity has been satisfied through registration in a public register, except for pledge, where publicity is satisfied instead by physical transfer of the object to the creditor or to a mutually agreed third party.<sup>18</sup> Fourth, a right in rem carries the *droit de preference* principle, granting its holder priority in the satisfaction of a claim ahead of unsecured, or concurrent, creditors, so that where a conflict arises between a preferred creditor and a concurrent creditor, the preferred creditor is satisfied first.<sup>22</sup> Within banking practice, this *droit de preference* attribute is often treated as the most significant of the four, since it secures the bank's position in recovering credit extended to the public, even though all four attributes are, in truth, inseparable from one another.<sup>23</sup> Beyond these attributes, a right in rem also entitles its holder to a range of remedies where the right is disturbed, including an action for recovery, an action to remove interference, an action for restitution, and an action for damages, in a manner analogous to the revindication right held by an owner under Article 574 of the Civil Code.<sup>24</sup>

### **Legal Consequences and Legal Protection for the Creditor When a Fiduciary Guarantee Object Is Confiscated by the State**

The accessory character of a fiduciary agreement means that it cannot stand on its own but follows the principal loan agreement, with the consequence that if the principal agreement is void, the fiduciary guarantee agreement becomes void as well.<sup>25</sup> This accessory status carries further consequences: an accessory agreement depends on the principal agreement both for its existence and its termination, it becomes void if the principal agreement is void, it transfers together with any transfer of the principal agreement, and where the principal debt is transferred through cession or subrogation, the accessory agreement transfers along with it without any separate act of delivery.<sup>26</sup>

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<sup>21</sup> Puguh Triwibowo, "Reconstruction of Creditor Rights: A Juridical Analysis of the Implications of Non-Registration of Fiduciary Guarantees on Preferential Rights and Execution of Collateral," *Journal of Social Research* 5, no. 2 (January 9, 2026): 586–95, <https://doi.org/10.55324/josr.v5i2.3004>.

<sup>22</sup> Usman, *Hukum Kebendaan*.

<sup>23</sup> Usman.

<sup>24</sup> Sofwan, *Hukum Jaminan Di Indonesia Pokok-Pokok Hukum Jaminan Dan Jaminan Perorangan*.

<sup>25</sup> Elisabeth Nurhaini Butarbutar, "Constitutional Issue of the Executional Power of Fiduciary Certificates as Equal to Court Decision," *Jurnal Konstitusi* 19, no. 3 (August 30, 2022): 606–22, <https://doi.org/10.31078/jk1935>.

<sup>26</sup> Nur Hidayah, Moch. Bukhori Muslim, and Abdul AA Azis, "Jaminan Fidusia Dalam Pembiayaan Murabahah: Antara Jual Beli Dan Hutang Piutang," *Al-Manahij: Jurnal Kajian Hukum Islam* 15, no. 2 (December 1, 2021): 187–200, <https://doi.org/10.24090/mnh.v15i2.5243>.

Fiduciary guarantee secures a right over movable property, whether tangible or intangible. Article 1(4) of the Fiduciary Guarantee Law defines an object as everything capable of being owned and transferred, whether tangible or intangible, registered or unregistered, movable or immovable, that cannot be encumbered with a mortgage right or hypothec. The *droit de suite* principle under Article 20 ensures that this right follows the object wherever it is found, while the priority principle ensures that the creditor who registers first is repaid ahead of subsequent creditors; *droit de suite* further protects the fiduciary recipient against the risk that the object might pass to a third party, since the primary right remains with the creditor regardless of any subsequent transfer.<sup>27</sup> This preferred position, found in Article 1(2) and Article 27, means that the fiduciary recipient is entitled to repayment ahead of other creditors.

Legal certainty for the creditor is secured by executing a notarial Fiduciary Guarantee Deed and registering it electronically with the Fiduciary Registration Office under Government Regulation Number 21 of 2015 concerning the Procedure for the Registration of Fiduciary Guarantee and the Cost of Making a Fiduciary Guarantee Deed. Registration entitles the creditor to a Fiduciary Guarantee Certificate bearing the phrase "For Justice Based on the One Supreme God," which carries executorial force and grants the right of execution under Article 29, including direct execution, or *parate executie*, which carries the same legal force as a court decision.

The fact that the debtor retains possession of the collateral object, however, creates the possibility that the object will be used to commit a crime such as illegal logging, exposing it to confiscation by the state and causing the creditor material loss as a result of the debtor's conduct. Regulation of the Minister of Law and Human Rights Number 16 of 2014 concerning the Procedure for the Management of State Seized Objects and State Confiscated Goods defines confiscated state property in Article 1(4) as seized property declared confiscated for the state under a court decision that has obtained final and binding legal force, and a similar definition appears in Article 1(16) of Regulation of the Minister of Finance Number 145/PMK.06/2021 concerning State Property Originating from Confiscated Goods and Gratification Goods. These provisions establish that confiscation must be based on a final and binding court decision, preceded by seizure. The objects subject to seizure are set out in Article 123(1) of Law Number 20 of 2025 concerning the Criminal Procedure Code, namely objects or claims suspected to derive wholly or partly from a criminal act, objects used to commit or prepare a criminal act, objects used to obstruct an investigation, objects specifically made or intended for committing a criminal act, objects created from

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<sup>27</sup> Kamello, *Hukum Jaminan Fidusia Suatu Kebutuhan Yang Didambakan*.

a criminal act, and objects suspected to be proceeds of crime whose owner is unknown.<sup>28</sup>

Confiscating a fiduciary guarantee object used by a debtor to commit illegal logging causes material loss for the creditor, since the object, once confiscated under a final and binding decision, can no longer be executed in the event of the debtor's default, and the creditor loses its right in rem altogether once the object passes into state ownership, a position reinforced by Article 130(4) of the Criminal Procedure Code, which prohibits the use of seized objects by any person except for the examination of a case. Although Article 25(1) of the Fiduciary Guarantee Law does not expressly list confiscation as a ground for termination, identifying instead the discharge of the secured debt, release of the right by the fiduciary recipient, or destruction of the object, confiscation nonetheless produces a comparable practical effect. It does not, however, extinguish the underlying debt, since the fiduciary guarantee remains accessory in nature, and the debtor remains obligated to settle that debt. Where the debtor cannot meet this obligation upon maturity, the creditor cannot execute the object, since it is no longer in the debtor's possession; the debtor must instead bear responsibility for settling the debt by providing a substitute guarantee equal to or greater in value than the object previously confiscated.<sup>29</sup> Where the debtor fails to provide such a substitute, the confiscation reduces the creditor's position to that of a concurrent creditor, secured only by the general guarantee under Article 1131 of the Civil Code, which provides that all of a debtor's movable and immovable property, present or future, serves as security for that debtor's personal obligations.

Law exists within society as a means of establishing order, safeguarding the interests that arise among its members, and is, in essence, the protection of human interests expressed through norms that are general because they apply to everyone and normative because they determine what may and may not be done.<sup>30</sup> Law aims to secure order so that human interests are protected, rights and obligations are properly allocated, and legal certainty is maintained.<sup>31</sup> Several definitions of legal protection illustrate this purpose: legal protection has been described as an act of protecting legal subjects through legislation whose implementation may be enforced by sanction,<sup>32</sup> as the fulfilment of rights and provision of assistance to

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<sup>28</sup> Pemerintahan Republik Indonesia, "UU No. 20 Tahun 2025 Tentang Kitab Undang-Undang Hukum Acara Pidana," Sekretariat Negara § (2025), <https://peraturan.bpk.go.id/Details/337302/uu-no-20-tahun-2025>.

<sup>29</sup> Harto, Sabrina, and Pakpahan, "Legal Analysis of the Status of Evidence Proceeds of Money Laundering Crimes Encumbered by Fiduciary Guarantee."

<sup>30</sup> Sudikno Mertokusumo, *Mengenal Hukum: Suatu Pengantar*, Fifth Edition (Yogyakarta: Cahaya Atma Pusaka, 2016).

<sup>31</sup> David Leslie et al., "Artificial Intelligence, Human Rights, Democracy, and the Rule of Law: A Primer," April 2, 2021, <https://doi.org/10.5281/zenodo.4639743>.

<sup>32</sup> Arifin Maruf, "Legal Aspects of Environment in Indonesia: An Efforts to Prevent Environmental Damage and Pollution," *Journal of Human Rights, Culture and Legal System* 1, no. 1 (March 30, 2021), <https://doi.org/10.53955/jhcls.v1i1.4>.

give victims or witnesses a sense of security, including through restitution, compensation, medical services, and legal aid,<sup>33</sup> and as the provision of protection for human rights harmed by another party so that society may enjoy the rights granted by law.<sup>34</sup> Legal certainty, in turn, is a guarantee that the law can be properly implemented, allowing individuals to conduct their affairs with confidence. Legal protection for legal subjects takes two forms: preventive protection, granted by the state through the opportunity to raise objections before a government decision becomes definitive, and repressive protection, provided through judicial bodies as a forum for resolving disputes.<sup>35</sup>

For the creditor as fiduciary recipient, preventive legal protection arises once the parties have executed a Fiduciary Guarantee Deed and registered it, resulting in a Fiduciary Guarantee Certificate that carries executorial force equal to a final court decision under Article 15(2). Legal protection for the creditor is further found in Article 20, which provides that fiduciary guarantee continues to follow the object in the hands of whomever it may be found, except for the transfer of inventory objects, reflecting the *droit de suite* principle. That principle, however, cannot be enforced once the object has been confiscated by the state due to a criminal act, leaving the creditor in an unfavorable position once the object is no longer within the debtor's control. A fiduciary guarantee agreement also obliges the debtor to maintain the collateral object in sound condition and to replace it if damaged, lost, or transferred, and this responsibility extends to circumstances in which the debtor's unlawful conduct results in confiscation by law enforcement authorities.<sup>36</sup> The debtor therefore bears full responsibility for the object, including its confiscation by the state as a consequence of illegal logging, and this constitutes repressive legal protection, since the creditor may bring an action against the debtor before the District Court of the debtor's domicile, with the possibility of appeal to the High Court and cassation before the Supreme Court.

The confiscation in the present case was carried out pursuant to the ruling in Decision Number 18/Pdt.G/2015/PN Ktp, the confiscation of the truck constituting one of the additional punishments under Article 10(b)(2) of the Criminal Code, causing the legal status of the object to be extinguished as it passed to the state. The creditor bears no responsibility for the debtor's acts or

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<sup>33</sup> Edi Yunara and Taufik Kemas, "The Role of Victimology in the Protection of Crime Victims in Indonesian Criminal Justice System," *Mahadi: Indonesia Journal of Law* 3, no. 01 (February 28, 2024): 63–78, <https://doi.org/10.32734/mah.v3i01.15379>.

<sup>34</sup> Zahara Nampewo, Jennifer Heaven Mike, and Jonathan Wolff, "Respecting, Protecting and Fulfilling the Human Right to Health," *International Journal for Equity in Health* 21, no. 1 (December 15, 2022): 36, <https://doi.org/10.1186/s12939-022-01634-3>.

<sup>35</sup> Philipus M Hajon, *Perlindungan Hukum Bagi Rakyat Di Indonesia* (Surabaya: Bina Ilmu, 1987).

<sup>36</sup> Daniel P Simangunsong, Joko Setiono, and Albertus Wahyu Rudhanto, "Legal Protection for Creditors as Holders of Fiduciary Rights Against Unlawful Transfer of Motor Vehicles by Debtors in Financing Agreements," *Jurnal Greenation Sosial Dan Politik* 3, no. 3 (August 22, 2025): 465–73, <https://doi.org/10.38035/jgsp.v3i3.428>.

omissions arising from an unlawful act in connection with the object, in accordance with Article 24 of the Fiduciary Guarantee Law, which provides that the fiduciary recipient does not bear responsibility for the consequences of the fiduciary grantor's acts or omissions, whether arising from a contractual relationship or an unlawful act connected with the use or transfer of the collateral object. The debtor bears full responsibility for the act that resulted in the transfer of the object to the state through confiscation, consistent with Article 1365 of the Civil Code, under which a person who commits an unlawful act causing loss to another is obliged to compensate that loss.

### **Analysis of Court Decision Number 18/Pdt.G/2015/PN Ktp**

Decision Number 18/Pdt.G/2015/PN Ktp, rendered on 24 June 2015, concerned a dispute between PT. Adira Dinamika Multi Finance, Tbk. as plaintiff and the Government of the Republic of Indonesia, represented through the Attorney General's Office, the High Prosecutor's Office of West Kalimantan, and the Ketapang District Prosecutor's Office, as defendant, with Wawan as first co-defendant and Hendi Heriyadi bin Mat Jeman as second co-defendant. The dispute arose from a financing agreement under which the plaintiff transferred ownership by way of fiducia to Wawan, as debtor, over a yellow Mitsubishi truck bearing chassis number MHNFE74P4DQQ066051 and police registration number D-8174-YQ, formalized in Fiduciary Guarantee Deed Number 124 of 15 April 2013 before a notary in Bandung, and registered with the Regional Office of the Ministry of Law and Human Rights of West Java, resulting in Fiduciary Guarantee Certificate Number W11.089693.AH.05.01 of 2013, dated 25 April 2013. The financing facility extended to Wawan amounted to Rp 220,400,000, at an interest rate of 15.28 percent, with monthly installments of Rp 6,632,000 over a 34-month term.

Wawan initially met his installment obligations without difficulty. Shortly before full repayment was due, however, Hendi Heriyadi was apprehended and prosecuted for transporting timber forest products unaccompanied by valid documentation of lawful origin, using the same truck that constituted the fiduciary guarantee object. Article 78(15) of the Forestry Law, providing that all forest products resulting from a crime, and any instruments including means of transport used to commit it, shall be confiscated by the state, accordingly became applicable, and Decision Number 95/Pid.Sus/2015/PN. Ketapang of 15 June 2015 ordered the truck confiscated for the state, a ruling that caused loss to PT. Adira Dinamika Multi Finance, Tbk. as the preferred creditor under its agreement with Wawan. The company filed a civil action against the Ketapang District Prosecutor's Office, culminating in Decision Number 18/Pdt.G/2015/PN. Ktp, in which the court rejected the plaintiff's claim to be recognized as the lawful owner of the truck and affirmed that the vehicle, although originally the fiduciary

guarantee object, was confiscated for the state as a consequence of the illegal logging.

In reaching this decision, the panel relied on Constitutional Court Decision Number 021/PUU-III/2005 of 1 March 2006, issued in response to a judicial review petition filed by PT. Astra Sedaya Finance concerning the constitutionality of Article 78(15) of the Forestry Law. That decision held that ownership arising from a fiduciary agreement is merely accessory to the principal financing agreement, with ownership of the fiduciary object passing to the debtor only once the debtor discharges its final obligation, so that any default may be addressed by seizing the object and granting the creditor the right to sell it and apply the proceeds toward the debt, returning any surplus to the debtor, rather than entitling the fiduciary recipient to treat the object as its own outright property.<sup>37</sup> Drawing on this reasoning, the panel held that the ownership asserted by the plaintiff did not equate to the inherent relationship between an owner and the object of ownership, so that legal protection could not be afforded on the same footing, and that although the creditor bore no responsibility for Hendi Heriyadi's criminal act, the debtor's retention of possession of the vehicle necessarily exposed it to the risks of its use, with the protection of public interest taking precedence over the arrangements constructed under the fiduciary guarantee agreement. The panel nonetheless held that, provided the confiscation followed due process, the residual right to repayment held by PT. Adira Dinamika Multi Finance, Tbk. as creditor remained protected notwithstanding the confiscation.

PT. Adira Dinamika Multi Finance, Tbk. appealed, but Decision Number 67/PDT/2016/PT.PTK affirmed the reasoning of the court of first instance, and the company's subsequent cassation appeal was rejected by Decision Number 1046 K/Pdt/2017, leaving the company unsuccessful at every level of the proceedings.

## CONCLUSION

This study finds that the absolute right and the *droit de suite* principle, both attributes of the right in rem that the Fiduciary Guarantee Law confers on a fiduciary recipient, cannot be enforced once the fiduciary guarantee object has been confiscated by the state as a consequence of the debtor's illegal logging. Confiscation under a final and binding court decision strips the creditor of the capacity to execute the object, since the object passes into state ownership and may no longer be used by any party, including the creditor, notwithstanding that the underlying debt remains unaffected. The confiscation does not extinguish the principal obligation, and the debtor remains bound to settle the debt, but the creditor's position changes in substance from that of a preferred creditor to that of

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<sup>37</sup> Mahkamah Konstitusi RI, "Putusan Nomor 021/PUU-III/2005" (2005).

a concurrent creditor, secured only by the general guarantee available against the debtor's remaining assets.

This outcome reveals a structural gap in the protection that property rights are assumed to provide within secured lending. The Fiduciary Guarantee Law was designed to give the fiduciary recipient a preferential and trackable claim over the collateral object, yet that design presupposes a private dispute between creditor and debtor rather than a confrontation between the creditor's civil right and the state's punitive authority over an object used in a crime. Where a debtor's criminal conduct triggers confiscation, the public interest embedded in the criminal law takes precedence over the private property arrangement, leaving the creditor without effective recourse to the object itself. The available remedy, accordingly, is no longer rooted in property law but in the law of obligations and tort, namely a demand on the debtor for a substitute guarantee of equal or greater value, and, where that demand goes unmet, a civil claim grounded in unlawful conduct against the debtor whose actions caused the loss.

Given this gap, the Fiduciary Guarantee Law would benefit from express provision addressing the status of a fiduciary recipient's claim once the collateral object has been confiscated by the state, rather than leaving this situation to be inferred from general principles of accessory obligation and tort. Financing institutions, for their part, should treat the risk of state confiscation as a distinct category of credit risk separate from ordinary default, and should consider contractual or insurance-based mechanisms that anticipate this scenario rather than relying solely on the fiduciary guarantee certificate's executorial force. Future research could usefully extend this inquiry by comparing how other jurisdictions allocate the loss between a secured creditor and the state when collateral is confiscated as an instrument of crime, which would help clarify whether Indonesia's current approach is consistent with broader principles of secured transactions law.

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