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Legal Responsibility of Dept Collectors Who Commit Unlawful Acts Regarding the Execution of Fiduciary Guarantees in Consumer Financing Agreements

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Abstract. *The development of consumer financing with fiduciary collateral raises legal issues in the practice of execution, particularly regarding forced withdrawal by debt collectors. This study aims to analyze the implementation of fiduciary collateral execution following Constitutional Court Decision Number 18/PUU-XVII/2019 and the legal accountability of debt collectors who commit unlawful acts. The method used is normative legal research with a statutory regulatory approach and conceptual analysis. The results show that after the decision, fiduciary collateral execution cannot be carried out unilaterally if there is a default dispute and the debtor refuses to hand over the collateral, but must go through a court mechanism. Forced withdrawal without the debtor's consent or without a court decision has the potential to give rise to civil liability under Article 1365 of the Civil Code and criminal liability under the provisions of the Criminal Code. In addition, the financing company as the principal can still be held accountable for the actions of debt collectors. Thus, the implementation of fiduciary collateral execution must comply with the principle of due process of law to ensure a balance of legal protection for creditors and debtors.*

Keywords*: Constitutional Court Decision Number 18/PUU-XVII/2019; Debt Collector; Default; Fiduciary Guarantee; Guarantee Execution; Legal Responsibility.*

1. Introduction

The development of consumer financing has become a crucial instrument in supporting economic activity. Through financing schemes, consumers can obtain goods and services more easily with installment payments. In practice, consumer financing agreements are generally complemented by fiduciary guarantees as a form of legal protection for creditors, as stipulated in Law Number 42 of 1999 concerning Fiduciary Guarantees. This law grants creditors the right of execution in the event of a debtor's default, including through the mechanisms stipulated in Article 29.[1]

However, in practice, the enforcement of fiduciary guarantees often generates controversy, particularly when third parties (debt collectors) are involved. It is not uncommon to find cases of forced seizure of collateral without proper legal procedures, accompanied by intimidation or violence. Such actions potentially violate civil provisions regarding unlawful acts (Article 1365 of the Civil Code) and can even result in criminal consequences.[2]

In response to the practice of unilateral execution, the Constitutional Court of the Republic of Indonesia, through Decision Number 18/PUU-XVII/2019, emphasized that the execution of fiduciary guarantees cannot be carried out unilaterally by creditors without the debtor's voluntary agreement or without a court decision. Furthermore, the government issued Minister of Finance Regulation Number 213/PMK.06/2020 to strengthen execution procedures to make them more accountable and transparent. Nevertheless, violations by debt collectors still frequently occur, raising questions about the effectiveness of regulations and the form of legal accountability for unlawful acts in the execution of fiduciary guarantees. Therefore, this study is important to analyze the applicable legal regulations and the civil and criminal liability of debt collectors who commit unlawful acts in the execution of fiduciary guarantees in consumer financing agreements.[3]

2. Research methods

The approach method used by the author in compiling this legal research is normative legal research, because in this research, law is conceptualized as normative legislation and as written norms created and promulgated by institutions or by authorized state officials, law is seen as an autonomous institution, independent of other institutions in society. Therefore, the study conducted is only "limited" to (written) legislation.

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[1]Maria I. Oktovia Deghe Ngewi, et al., "Criminal Liability of Financing Companies for the Execution of Fiduciary Guarantees by Debt Collectors," Proyuris Law Journal, Vol. 2, No. 1, 2019, p. 55,https://ejurnal.undana.ac.id/index.php/JP/article/view/1078. accessed on August 15, 2025, at 14.00 WIB

[2]Ni Kadek Riawati, et al., "Forced Seizure by Debt Collectors of Fiduciary Collateral Following Constitutional Court Decision Number 18/PUU-XVII/2019," Jurnal Analogi Hukum, Vol. 7, No. 1, 2025, p. 23,https://ejournal.warmadewa.ac.id/index.php/analogihukum/article/view/11758. accessed on August 15, 2025, at 14.00 WIB

[3]Farida, "Implementation of Constitutional Court Decision Number 18/PUU-XVII/2019 on the Execution of Fiduciary Guarantee Objects," Notarius, Vol. 17, No. 1, 2024, p. 76,https://ejournal.undip.ac.id/index.php/notarius/article/view/47253. accessed on August 15, 2025, at 14.00 WIB

3. Results and Discussion

3.1. Implementation of Fiduciary Guarantees in Consumer Financing Agreements Following the Issuance of Constitutional Court Decision Number 18/PUU-XVII/2019

Decision Number 18/PUU-XVII/2019, issued by the Constitutional Court of the Republic of Indonesia, brought fundamental changes to the practice of fiduciary guarantee execution in Indonesia. This decision is the result of a constitutional review of Article 15 paragraph (2) and paragraph (3) of Law Number 42 of 1999 concerning Fiduciary Guarantees, which previously granted executorial power to fiduciary guarantee certificates equivalent to a court decision with permanent legal force. In practice prior to this decision, this provision was often interpreted as meaning that creditors had the authority to execute parate unilaterally if the debtor was deemed to be in default, without the need for a court process. This condition gave rise to many problems, especially because the determination of default was often made unilaterally by the creditor and the execution was carried out through direct withdrawal of the collateral object by debt collectors, which was often accompanied by pressure or intimidation.[4]

In its consideration, the Constitutional Court did not revoke the executorial title in the fiduciary certificate, but rather provided a conditionally constitutional interpretation. The Court emphasized that the phrases "executory power" and "equal to a court decision with permanent legal force" remain constitutional as long as they are interpreted to mean that execution without going through a court can only be carried out if there is an agreement regarding the existence of a default and the debtor voluntarily surrenders the collateral object. If the debtor does not acknowledge the default or refuses to surrender the collateral object, the creditor is required to file an execution request through the District Court in accordance with civil procedural law mechanisms. Thus, the determination of default can no longer be made unilaterally by the creditor, but must be based on an agreement between the parties or through a judicial process.[5]

This change in interpretation shifts the paradigm of parate execution from an absolute right to a conditional right. While fiduciary guarantee certificates retain executorial power, their implementation is subject to the principle of due process of law and the rule of law. The court acts as a checkpoint to ensure that a breach of contract has occurred and that the execution does not violate the debtor's rights. The implication of this ruling is an increased role for the courts in resolving fiduciary guarantee disputes, particularly when the debtor objects.[6]

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[4]Anthoni, A., 2023, “Legal Review of Forced Vehicle Repossession by Debt Collectors Without a Repossession Order”, Jurnal Bevinding, Vol. 1 No. 8, p. 5

[5]Winarno & Jatmiko, 2020, “Legal Protection for Creditors in Fiduciary Guarantee Agreements,” Jurnal Independent, Vol. 1 No. 1, p. 48

[6]Prika Handayani & Teddy Asmara, 2020, “Criminal Liability of Debt Collectors Who Commit the Crime of Loan Confiscation in Problematic Loans,” Responsive Law Journal, Vol. 10 No. 2, p. 57

In practice, the ruling also impacts the use of debt collector services by financing companies. Forced debt collection without the debtor's consent and without a court decision can potentially be classified as an unlawful act under Article 1365 of the Civil Code and can even result in criminal charges if accompanied by threats or violence. Financing companies cannot absolve themselves of responsibility for the actions of authorized third parties, requiring adjustments to their standard operating procedures for handling problem loans.[7]

For finance companies, this ruling requires significant adjustments to contractual practices and credit risk management. The formulation of default clauses in financing agreements must be more detailed, explicit, and open to multiple interpretations, particularly regarding indicators of default, the timeframe for delay, notification mechanisms (summons), and settlement stages if the debtor fails to fulfill its obligations. Clarity in these clauses is crucial to avoid disputes over the existence of default, which ultimately determine the validity of the execution of fiduciary guarantees. With transparent and proportionately formulated contracts, the potential for conflict between creditors and debtors can be minimized from the outset.

Furthermore, financing companies need to prioritize a persuasive and good-faith approach before pursuing enforcement. Efforts such as credit restructuring, rescheduling, interest rate reductions, or negotiating installment payments are becoming more relevant as a form of consumer protection and a credit recovery strategy. This approach not only aligns with the prudential principle but also reflects the application of the principle of proportionality in contractual relationships between the parties. Therefore, enforcement is the ultimum remedium, the last resort, if amicable efforts fail to reach an agreement.

There are indeed concerns that the obligation to resort to court in the event of a default dispute could slow the resolution process and increase a company's operational costs. However, these consequences are part of the legal system, which upholds due process of law. This obligation provides procedural certainty, prevents potentially unlawful unilateral actions, and protects debtors' constitutional rights to ownership and security. Therefore, adjusting the internal systems of financing companies following this ruling is not merely an administrative burden, but rather an adaptation to legal protection standards that more balanced the interests of creditors and debtors.

Overall, Constitutional Court Decision No. 18/PUU-XVII/2019 does not eliminate creditors' execution rights, but rather places them within a more balanced constitutional framework. While the creditor's right to repayment remains protected, its implementation must not undermine the debtor's right to due process. This decision represents an important step in strengthening the principle of the rule of law, protecting human rights, and creating a balance in the legal

[7]Widjanarto, 2015, Banking Laws and Provisions in Indonesia, Grafiti, Jakarta, pp. 205–206.

relationship between creditors and debtors in fiduciary security practices in Indonesia.[8]

3.2. Legal Responsibility for Debt Collectors Who Commit Unlawful Acts in the Execution of Fiduciary Guarantees Constitutional Court Decision Number 18/PUU-XVIV/2015

A debt collector is essentially a third party authorized by a financing or leasing company to collect debts from debtors who are in arrears. In financing practice, debt collectors are understood as an extension of the creditor in resolving problem loans. Generally, there are several levels of collection: desk collectors who are tasked with reminders via telephone, debt collectors who conduct persuasive visits, and remedial collectors or field bailiffs who handle heavy arrears and have the potential to seize collateral. However, in practice, debt collectors often take actions that exceed their authority, such as forcibly repossessing vehicles, intimidation, threats, and even violence against debtors. This practice has given rise to serious legal issues, especially following the Constitutional Court's ruling.

Decision Number 18/PUU-XVII/2019, issued by the Constitutional Court of the Republic of Indonesia, confirms that the execution of fiduciary guarantees based on Law Number 42 of 1999 concerning Fiduciary Guarantees cannot be carried out unilaterally if there is a dispute regarding default and the debtor refuses to hand over the collateral object. The Court essentially reinterpreted the executorial power of the fiduciary guarantee certificate so that it is not interpreted as legitimacy to take unilateral action without a legal control mechanism. Execution can only be carried out without going through the courts if the debtor expressly acknowledges the breach of promise and voluntarily hands over the collateral object to the creditor. The elements of recognition and voluntariness are cumulative requirements that must be met.

If there is no agreement regarding the default or the debtor refuses to hand over the collateral, the creditor is required to pursue enforcement proceedings through the courts. This is intended to ensure an objective assessment of whether or not the default has occurred and to provide the debtor with a defense. Thus, the enforcement process is no longer solely based on the creditor's unilateral interpretation but is instead subject to the principle of due process of law, which ensures a balance between the parties.

The implication is that debt collectors, as authorized parties by financing companies, do not have absolute authority to forcibly repossess vehicles without a valid legal basis. Repossession can only be carried out if the conditions for acknowledgment of default and voluntary surrender have been met, or after a legally binding court decision has been issued. With this affirmation, the Constitutional Court clarified the boundary between creditors' executorial rights

[8]Y. Manoppo, 2020, "The Position of Collateral in Bank Credit Agreements According to the Indonesian Legal System," Lex Privatum, Vol. VIII, No. 2, pp. 95–102

and debtors' legal protection, thus depriving the practice of forced repossession that ignores legal procedures of legitimacy.

Administratively, the existence of debt collectors is recognized within the financing industry and subject to regulatory oversight, including provisions issued by the Financial Services Authority (OJK) that require financing companies to ensure that their collectors are certified and carry out their duties in accordance with consumer protection principles. This means that debt collectors are not independent entities, but rather part of the financing company's accountability system. However, this administrative recognition does not automatically grant them the authority to engage in repressive actions or violate criminal law.

If a debt collector forcibly repossesses a vehicle without the debtor's consent and without a court decision, their actions can be classified as a civil unlawful act under Article 1365 of the Civil Code. In this context, the debtor can sue for compensation for material and immaterial losses. In addition to civil liability, such actions also have the potential to fall under criminal law. Forcibly repossessing a vehicle that is still in the debtor's legal possession can fulfill the elements of theft as stipulated in Article 362 or Article 363 of the Criminal Code if carried out jointly or with aggravation. Moreover, if accompanied by threats or violence, such actions can be qualified as extortion as stipulated in Article 368 of the Criminal Code.[9]In principle, criminal law protects the legal physical possession of an asset. Even if the vehicle is not yet paid off and legally constitutes a fiduciary security, as long as it remains in the debtor's legal possession, forced seizure without legal procedure is still considered an unlawful act. The element of fault (mens rea) for a debt collector is generally met if the perpetrator knows that the action is being carried out without a court decision and still carries it out intentionally. There is no justification or excuse that can eliminate the crime, and the principle of ignorantia legis non excusat (ignorance of the law does not exempt from responsibility) remains valid.[10]

In addition to the individual responsibility of debt collectors, financing companies, acting as power of attorney, can also be held liable. Based on the principle of vicarious liability and the provisions regarding power of attorney in the Civil Code, employers are responsible for the actions of those under their orders or authority, as long as those actions are carried out in the course of carrying out their duties. Therefore, financing companies cannot excuse themselves by claiming that the actions were the debt collector's personal initiative.[11]

[9]M. Darwis, 2022, “The Function of Collateral in Credit Agreements: A Civil Law Perspective,” Scientific Journal of Law and Justice, Vol. 9, No. 1, pp. 15–27

[10]RW Latupono, 2021, “Legal Protection for Debtors in the Execution of Fiduciary Guarantees Following the Constitutional Court Decision,” Jurnal Rechtsvinding, Vol. 10, No. 1, pp. 67–82

[11]AS Wibowo, 2020, “Implications of Constitutional Court Decision Number 18/PUU-XVII/2019 on the Execution of Fiduciary Guarantees,” Constitutional Journal, Vol. 17, No. 3, pp. 601–620

Thus, following Constitutional Court Decision No. 18/PUU-XVII/2019, the execution of fiduciary guarantees must comply with the principle of due process of law. Debt collectors do not have the legal legitimacy to carry out forced repossessions without the debtor's consent or without a court decision. If they persist, such actions can give rise to civil and criminal liability, both for the perpetrator personally and for the financing company as the party granting the power of attorney. This emphasizes that the existence of debt collectors in financing practices must not conflict with the principles of the rule of law, the protection of human rights, and the principles of justice and legal certainty.

4. Conclusion

Decision Number 18/PUU-XVII/2019, issued by the Constitutional Court of the Republic of Indonesia, has significantly changed the practice of fiduciary guarantee enforcement in Indonesia. This decision confirms that the executorial power in fiduciary guarantee certificates under Law Number 42 of 1999 concerning Fiduciary Guarantees can no longer be exercised unilaterally by creditors in the event of a dispute regarding default. Parate execution remains possible, but only if the debtor acknowledges the breach of contract and voluntarily surrenders the collateral; otherwise, execution must be pursued through the courts. Thus, this decision places execution within the framework of due process of law and strengthens the principles of the rule of law and the protection of human rights. The creditor's right to repayment remains recognized, but its implementation must not ignore the debtor's right to a fair legal process. Therefore, Constitutional Court Decision No. 18/PUU-XVII/2019 creates a new balance in the legal relationship between creditors and debtors, while also limiting the practice of forced repossession by debt collectors that violates legal procedures. A debt collector is a third party authorized by a financing company to collect debt, but their authority is not absolute. Following Decision Number 18/PUU-XVII/2019 by the Constitutional Court of the Republic of Indonesia, the execution of fiduciary guarantees under Law Number 42 of 1999 concerning Fiduciary Guarantees cannot be carried out unilaterally if there is a dispute and the debtor refuses to hand over the collateral. Forced withdrawal without approval or a court decision can be classified as an unlawful act in civil or criminal law, such as theft or extortion. In addition to the personal responsibility of the debt collector, the financing company as the grantor of the power of attorney can also be held accountable. Therefore, the implementation of collection and execution must comply with the principles of due process of law, protection of human rights, and the principle of the rule of law.[12]

[12] H. Prasetyo, 2021, "The Responsibility of Financing Companies for Debt Collector Actions in the Execution of Fiduciary Guarantees," Jurnal Ius Quia Iustum, Vol. 28, No. 2, pp. 240–258

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