

Application of Criminal Sanctions Law Against *Debt Collectors* Withdrawing Fiduciary Guarantee Objects

Rafika Nur¹, Rongki Ali Gobel², Sumiyati³, Zilfinaz Abbas⁴

¹ Master of Law, Universitas Ichsan Gorontalo, Indonesia, E-mail: rafikanur2985@gmail.com

² Postgraduate of Universitas Ichsan Gorontalo, E-mail: rongki.ali.gobel@gmail.com

³ Postgraduate of Universitas Ichsan Gorontalo, E-mail: sumiyatiumi677@gmail.com

⁴ Fakulti Undang-Undang, Universiti Teknologi MARA (UITM) Shah Alam, Malaysia, E-mail: zilfinaz.abbas@agc.gov.my

Article Info

Article History

Received: Jun 7, 2023;

Reviewed: Dec 23, 2023;

Accepted: Oct 31, 2024.

Keywords:

Fiduciary; Guarantee
Object; Debt Collector;
Criminal.

Corresponding Author:

Name : Rongki Ali Gobel

Email:

rongki.ali.gobel@gmail.com

How to cite [Chicago Manual of Style 17th edition (full note)]:

Rafika Nur, Rongki Ali Gobel, Sumiyati, Zilfinaz Abbas "Application Of Criminal Sanctions Law Against Debt Collectors Who Withdraw Fiduciary Guarantee Objects" *Jurnal Legalitas* 17, No. 2 (2024): 202-214.

DOI :

10.33756/jelta.v17i1.20295

Abstract

This study examines the application of criminal sanctions to debt collectors involved in withdrawing fiduciary guarantee objects, focusing on their actions in executing such guarantees under Financial Services Authority Regulation No. 35 of 2018. Employing empirical legal research and field data, the study identifies that debt collectors who use excessive methods in seizing fiduciary objects may be liable for criminal acts, particularly under Article 368(1) of the Criminal Code, which covers extortion. The novelty of this research lies in its detailed analysis of the legal implications surrounding debt collector behaviour during fiduciary executions. The findings clarify the legal boundaries and potential sanctions for violations, underscoring the need for stricter enforcement of laws governing debt collection practices. The study recommends stronger legal oversight and the implementation of clearer regulations to ensure debt collectors act within legal and ethical boundaries. Furthermore, the research calls for enhanced public awareness of legal protections for debtors and more rigorous oversight to prevent abusive debt collection practices.

Keywords: Fiduciary; Guarantee Object; Debt Collector; Criminal



1. Introduction

A debt collector is a third party employed by a financial institution or creditor to collect debts from debtors in arrears with certain criteria.¹ In the practice of financing institutions such as leasing, there are often cases where debtors are in arrears in payment of motorcycle loans for up to several months, which results in the forcible collection of fiduciary objects by debt collectors.² This often has a negative impact in the form of protests or resistance in the field, so the National Police issued the National Police Chief Regulation No. 8 of 2011 to regulate the implementation of the execution of fiduciary guarantees in a safe and orderly manner. The regulation issuance aims to protect the safety of fiduciary guarantor recipients, fiduciary guarantors, and the public from acts that can cause property losses and/or life safety. A similar case occurred in Gorontalo City, where the debtor reported the debt collector to the Gorontalo City Police. However, the police investigation process took a long time. This shows the need for further analysis of the criminal punishment against debt collectors who withdraw the object of fiduciary guarantees, as well as the obstacles faced in the application of criminal law to the case.

Currently, in financing institutions (*leasing*), there are often cases where debtors are in arrears in payment of motorcycle loans for up to several months. It is not uncommon for debt collectors to forcibly collect *fiduciary* objects following such arrears.³ Therefore, the Police will clean up debt *collectors* who confiscate Fiduciary object credit vehicles on the streets to provide legal protection for the community according to the mandate of the 1945 Constitution, Article 27, paragraph 1:

"All citizens have the same position in the law and government and are obliged to uphold the law and government without exception".⁴

The assessment from the police is that the act of forcibly withdrawing a car or motorcycle on the street by a debt collector has no legal basis and can threaten the community. This is based on the legal rules governing the executing of fiduciary guarantees. In Indonesia, the process of executing fiduciary guarantees is regulated in the Financial Services Authority Regulation (POJK) No. 35 of 2018. According to the POJK, the process of executing fiduciary guarantees must be carried out according to the provisions stipulated, including respecting the rights and

¹ Zulkhairi Zulkhairi, "Penyelesaian Kredit Bermasalah Pada Perjanjian Pembiayaan Kendaraan Bermotor Roda Empat Di BCA Finance Cabang Pekanbaru" (other, Universitas Islam Riau, 2020), <https://repository.uir.ac.id/13926/>.

² Imaculata Sherly Mayasari and Nynda Fatmawati Octarina, "Kedudukan Hukum Pidana Atas Pengambilan Kendaraan Paksa Debitur Oleh Debt Collector Lembaga Pembiayaan," *JURNAL RECHTENS* 9, no. 2 (December 30, 2020): 141–52, <https://doi.org/10.36835/rechtens.v9i2.788>.

³ Hengky Setiawan Kaendo, "Perampasan Oleh Penagih Hutang Terhadap Kendaraan Sebagai Objek Jaminan Fidusia," *LEX ET SOCIETATIS* 7, no. 4 (July 30, 2019), <https://doi.org/10.35796/les.v7i4.24700>.

⁴ 1945 Constitution Article 27, paragraph 1

obligations of the debtor and the principle of prudence. The execution process must be carried out regularly and based on established legal procedures, including providing adequate notice to the debtor before the execution.⁵ The police consider that the act of forcibly withdrawing a car or motorcycle credit on the street carried out by debt collectors without following the procedures set by POJK No. 35 of 2018 is a violation of the law. This kind of action can be considered a violation of consumer rights, creating fear and tension in society and triggering social conflicts. This statement from the police shows their commitment to protecting the community and enforcing the law, as well as raising awareness of the importance of law enforcement in the practice of executing fiduciary guarantees. Thus, the different views in society towards the haphazard actions of debt collectors reflect a better understanding of consumer rights and legal protections provided by the state.

In the context of the withdrawal of cars by finance companies from the hands of debtors, such actions often occur in financial practices.⁶ However, because forcible car withdrawals often cause negative impacts, such as protests or even resistance in the field, the National Police issued the National Police Chief Regulation No. 8 of 2011. This regulation aims to maintain the implementation of the execution of fiduciary guarantees so that they take place safely, orderly, and accountably. In addition, the regulation is also intended to protect the safety of fiduciary guarantee recipients, fiduciary guarantors, and the public from actions that can endanger property and life safety. Efforts to protect consumers in car recall align with Article 1 Number 1 of Law Number 8 of 1999 concerning Consumer Protection. Consumer protection ensures legal certainty to protect consumers.

Facts on the ground show that financing institutions in Gorontalo often use the services of third parties, namely debt collectors, to execute fiduciary guarantees.⁷ However, the use of debt collectors often poses legal risks or unlawful actions, such as the use of violence, which can endanger the property and safety of the parties involved.⁸ Alternatively, the finance company can report debtors who embezzle the object of fiduciary guarantees to the police.⁹ This act of embezzlement is regulated in Article 372 of the Criminal Code, where the holder of an unauthorised fiduciary guarantee object can be subject to a maximum prison sentence of four years. In

⁵ Wuri Widyasti, "Pelaksanaan Lelang Eksekusi Objek Hak Tanggungan oleh Kantor Pelayanan Kekayaan Negara dan Lelang," *Jurnal Suara Keadilan* 25, no. 1 (August 30, 2024): 10–25, <https://doi.org/10.24176/sk.v25i1.13380>.

⁶ Nazia Tunisa, "Peran Otoritas Jasa Keuangan terhadap Pengawasan Pendaftaran Jaminan Fidusia," *Jurnal Cita Hukum* 2, no. 2 (2015): 40845, <https://doi.org/10.15408/jch.v2i2.2325>.

⁷ Ismiyati Usman, "Criminal Liability Committed By Debt Collectors Due To Violence In Arrears," *Estudiante Law Journal* 1, no. 2 (May 19, 2019): 583–95, <https://doi.org/10.33756/eslaj.v1i2.13001>.

⁸ Kifah Akifah, "Eksekusi Jaminan Fidusia Pada Perjanjian Pembiayaan Kendaraan Bermotor Pasca Putusan Mahkamah Konstitusi Nomor 2/Puu-Xix/2021" (masters, Lampung, UNIVERSITAS LAMPUNG, 2022), <http://digilib.unila.ac.id/67604/>.

⁹ Sufirman Rahman and Abdul Agis, "The Essence of Law Enforcement of The Crime of Embezzlement of Goods That Are Still Bound by Credit as Fiduciary Guarantees," *IOSR Journal Of Humanities And Social Science* 26, no. 11 (2021): 29–34, <https://doi.org/10.9790/0837-2611052934>.

addition, the holder of the fiduciary guarantee object who commits an act of malicious assistance can also be suspected under Article 480 of the Criminal Code, which threatens with a maximum prison sentence of four years or a maximum fine of nine hundred rupiahs. Thus, improvements in the practice of fiduciary guarantee execution and fair law enforcement can provide better consumer protection and ensure that the execution process takes place according to the principles of fairness and compliance with applicable laws.¹⁰

One of the cases of execution of fiduciary guarantees by a third party (*debt collector*), acting under a power of attorney from a finance company, has led to complex and risky legal consequences. This includes cases of carrying and possessing sharp weapons without a permit as regulated in Emergency Law No. 12 of 1951 concerning Amending the "Ordonnantie Tijdelijke Bijzondere Strafbepalingen" (Stbl. 1948 No.17) and the Law of the Republic of Indonesia Formerly Nr 8 of 1948 and unpleasant acts as stipulated in Article 335 of the Criminal Code; moreover, there has been a Constitutional Court Decision No. 18/Puu-XVII/2019 of 2009 which states that the Leasing party cannot withdraw the Fiduciary Guarantee Object as long as the Consumer does not submit voluntarily.¹¹

In criminal law, the actions of a third party (such as a debt collector) can be classified as criminal offences under certain provisions of the Criminal Code. Article 335 of the Criminal Code highlights situations where someone unlawfully forces another person to act, refrain from acting, or permit something by using violence or threats of violence against them or others. Such behaviour is considered a criminal act. In addition, Article 170 of the Criminal Code is also relevant in this context, stipulating that any person who commits violence against people or goods in public can be punished with imprisonment for a maximum of five years and six months.

A similar case in Gorontalo City shows that the issue of debt collectors withdrawing the object of a fiduciary guarantee is also a concern. Based on data on the handling of the case by the Gorontalo Legal Education and Assistance Foundation in 2022, it was found that the debtor had reported the debt collector's actions to the Gorontalo City Police. The case has entered the investigation process, and the police have determined a suspect. However, the process of determining this suspect took a long time from the police.

The importance of handling similar cases in Gorontalo City shows that the actions of debt collectors who violate the law occur sporadically and may become a wider problem and cause serious impacts on the community. Therefore, appropriate

¹⁰ Rianda Dirkareshza, Ratna Sumirat, and Risa Gia Anjani, "Optimization of the Law against Customer Financing That Performs Default in Leasing Agreements Legal Optimization of Customer Financing That Performs Default in Leasing Agreements in Indonesia," *International Journal of Social Science and Human Research* 04, no. 09 (April 30, 2021): 2575–84, <https://doi.org/10.47191/ijsshr/v4-i9-43>.

¹¹ See the Constitutional Court Decision No. 18/PUU-XVII/2019 of 2009



and efficient law enforcement measures must be taken to ensure justice for all parties involved in such cases.

2. Method

The research method used in this study is the empirical method. This method was chosen to describe data based on variables and phenomena that occurred during the study.¹² The researcher presents data based on the reality found in the field, including legal norms contained in laws, regulations, and court decisions, as well as legal norms that apply in society.¹³ With an empirical approach, researchers can collect data directly from existing situations or circumstances, making it possible to understand the phenomenon being studied more deeply.

3. Analysis or Discussion

3.1. Legal Basis for Collection by Debt Collector According to Laws and Regulations

In the context of withdrawing the object of fiduciary guarantee, *debt collectors* who act outside legal procedures can be subject to criminal sanctions.¹⁴ Based on Law No. 42 of 1999 concerning Fiduciary Guarantees, the act of withdrawing the object of guarantee can only be carried out if there is a valid Fiduciary Guarantee Certificate and based on a court execution order or a peace agreement with the debtor. Violations of these procedures, including violence or forcible expropriation, can result in criminal prosecution. In the Criminal Code, articles related to threats, extortion, or persecution can also be applied if there is an act of violence or intimidation. This is intended to protect the rights of debtors and ensure that the withdrawal of collateral is carried out in an orderly manner, according to fiduciary regulations.¹⁵

In addition, there is also an obligation for finance companies and *debt collectors* to understand the legal boundaries so as not to violate the debtor's rights, especially in situations where the debtor has not yet had a valid late payment according to the agreement. Law enforcement against these violations must ensure that the collection process runs according to applicable procedures and that the debtors' rights are protected.¹⁶ Most debt collectors are considered as individuals often violating legal norms and provisions, including using physical and

¹² Aikaterini Argyrou, "Making the Case for Case Studies in Empirical Legal Research," *Utrecht Law Review* 13, no. 3 (2017): 95–113.

¹³ Simon Halliday and Patrick Schmidt, *Conducting Law and Society Research: Reflections on Methods and Practices* (Cambridge: Cambridge University Press, 2009). 2

¹⁴ Neil L. Sobol, "Charging the Poor: Criminal Justice Debt and Modern-Day Debtors' Prisons," *Maryland Law Review* 75 (2016): 486.

¹⁵ Joni Alizon, "Rekonstruksi Pelaksanaan Eksekusi Jaminan Fidusia Pasca Putusan Mahkamah Konstitusi Nomor 18/Puu-Xvii/2019," *EKSEKUSI* 2, no. 1 (May 30, 2020): 58–82, <https://doi.org/10.24014/je.v2i1.9741>.

¹⁶ Aimee Constantineau, "Fair for Whom - Why Debt-Collection Lawsuits in St. Louis Violate the Procedural Due Process Rights of Low-Income Communities," *American University Law Review* 66 (2017 2016): 479.

psychological violence, making threats and intimidation.¹⁷ One example of a debt collector's action, which is an unlawful act, is forcibly taking a motorcycle or items in the house. Of course, methods like this are very inappropriate for leasing companies.¹⁸

The action of creditors and debt collectors who forcibly take or confiscate the debtor's goods is a violation of the law that can be indicated as a criminal act of theft or illegally taking goods that partially or wholly belong to another person (Article 362 of the Criminal Code). In addition to being charged with theft, debt collector behaviour is punishable under an article of unpleasant acts if the collection involves fury and vandalism, such as breaking the table and kicking the door. The existence of debt collectors is protected by rules, specifically the Civil Code Articles 1792-1819, stating that with a power of attorney, debt collector services can represent creditors to collect debts to debtors. However, in practice, there are often violations of the law that can certainly be held criminally responsible.

The case of collection by *debt collectors* in Gorontalo shows that many collectors do not understand or violate the law. Collections by *debt collectors* must be based on applicable regulations to ensure legal certainty. According to the concept of causality in Indonesian criminal law, every legal action carries consequences that must be accepted. Law enforcement aims to improve order and legal certainty in society. Law enforcement officials, such as police, prosecutors, judges, and lawyers, have an important role in ensuring the implementation of rules according to procedures. In the case of fiduciary guarantees, Law No. 42 of 1999 stipulates that a fiduciary guarantee is the transfer of property ownership rights based on trust, but the property remains in the control of the original owner. In the collection process by *the debt collector*, who represents the creditor, the execution of collecting debts must follow the rules, be without violence, and be carried out at the place of domicile of the registered debtor.

Every action always has consequences because the law embraced by the Indonesian state adheres to the doctrine of causality that every enforcement process does. Ahmad Sofian, in his book entitled *The Doctrine of Causality in Criminal Law*, explained that this causality doctrine is, in principle, used to reveal why a criminal act can occur and what consequences of the criminal act may arise.¹⁹

Every legal act must be followed by its concrete implementation in people's lives.²⁰ This is what law enforcement means. In Indonesian, it is often also known by several terms outside of law enforcement, such as "application of law." Before law enforcement from the competent law enforcement officials. The State of law is inseparable from how law enforcement is implemented. Law enforcement is aimed at improving order and legal certainty in society. This is done, among other things,

¹⁷ Yogabakti Adipradana Setiawan, Anis Mashdurohatun, and Abdul Halim Baraktullah, "Legal Reconstruction of Debt Collection by Debt Collector Services to Default Debtor Based on Justice Values," *International Journal of Business, Economics and Law*, 28, no. 3 (2023): 197–206.

¹⁸ Vera Rimbawani Sushanty, "Tinjauan Yuridis Terhadap Debt Collector Dan Leasing Pasca Putusan Mahkamah Konstitusi Nomor 18/Puu-Xvii/2019," *Gorontalo Law Review* 3, no. 1 (April 30, 2020): 59, <https://doi.org/10.32662/golrev.v3i1.896>.

¹⁹ Ahmad Sofian, *Ajaran Kausalitas Hukum Pidana* (Jakarta: Prenada Media Group, 2018). 3

²⁰ Dadang Hartanto, "Sociology Review of Social Phenomenon, Social Rules and Social Technology," *Budapest International Research and Critics Institute (BIRCI-Journal): Humanities and Social Sciences* 3, no. 2 (May 8, 2020): 1175–84, <https://doi.org/10.33258/birci.v3i2.958>.

by ordering the functions, duties and authorities of the institutions in charge of enforcing the duties according to the proportion of their respective scopes, based on a good cooperation system and supporting the goals to be achieved.²¹

Law enforcement officials' role and the community's legal awareness are needed to implement these rules. This interaction will greatly affect the operation of the rules and law enforcement. Law enforcement is inseparable from law enforcement officials, including the police, prosecutors, judges, and lawyers.²² One aspect of law enforcement pertains to disputes in the civil domain, often involving claims of unlawful actions. A common subject of such disputes is the fiduciary guarantee. As defined in Law No. 42 of 1999 concerning Fiduciary Guarantees (hereinafter referred to as the Fiduciary Guarantee Law), fiduciary refers to the transfer of ownership rights of an object based on trust, with the condition that the object remains under the control of its original owner.²³ Meanwhile, a fiduciary guarantee is interpreted as a guarantee for an object.²⁴

In the context of the dispute being discussed, there is a collection by the *debt collector* who represents the financing party for the debt owned by the debtor²⁵. In the Law on Fiduciary Guarantees, creditors or finance companies are referred to as persons or entities that have receivables, while debtors are persons or entities with debts. The parties (creditors and debtors) bind themselves in a contract related to the fiduciary guarantee itself.²⁶ The above formulation clearly emphasises that creditors must strictly adhere to standard procedures in any debt collection process. This includes refraining from using physical force or verbal intimidation and ensuring that collections take place only at the debtor's registered domicile. These provisions underscore the importance of conducting collections respectfully and in compliance with the law.

²¹ Sanyoto, "Penegakan Hukum Di Indonesia," *Jurnal Dinamika Hukum* 3, no. 8 (2008). H. 200

²² Ratnawati et al., "Law Enforcement in Indonesia: A Review from Legal Apparatus Roles," *Journal of Law, Policy and Globalization* 58 (2017): 57.

²³ See Article 1 Number 1 of the Fiduciary Guarantee Law.

²⁴ See Article 1 Number 2 of the Fiduciary Guarantee Law.

²⁵ Kuddah, M. N. Out-of-court execution of the object of fiduciary guarantee by the financing company (Study of the Gorontalo District Court Decision Number 60/PDT. G/2019/PN. GTO and the decision of the District Court Source Number 25/PDT. G/2020/PN. SBR). *Indonesian Notary* 3 no. 4 (2021): 4.

²⁶ Tuna, F. S., Kasim, N. M., & Imran, S. Y. Protection of consumer rights to forced recall of vehicles. *Bureaucracy: JOURNAL OF LAW AND STATE ADMINISTRATION*, 1 no. 3 (2023): 105-120.

3.2. Law Enforcement Process for Criminal Acts Committed by Debt Collectors

Several countries have examples of cases related to the law enforcement process against criminal acts committed by *debt collectors*.²⁷ One of the in-depth studies was conducted in Missouri, United States, which examined the results of negotiations between consumers and debt collectors after the plaintiff (the *debt collector*) sued the consumer in civil court to collect non-mortgage debts before the court ruling was issued. The study focuses on Missouri because it has a centralised database of civil court cases, with some counties appointing judges randomly for civil cases. The plaintiff in this case is generally a lawyer who represents the original creditor or purchaser of the debt and aims to obtain a court decision to certify the debt collected.

The following Table presents a workflow in the form of a matrix for the analysis of law enforcement cases against debt collectors withdrawing fiduciary guarantee objects:

Process Stage	Action	Analysis Detail
1. Problem Analysis	Discussing the main problems faced in law enforcement against debt collectors who withdraw fiduciary guarantee objects	<ul style="list-style-type: none"> ▪ Analysis of the negative impact of the forcible withdrawal of fiduciary guarantee objects by debt collectors. Evaluation of the need for more in-depth research related to this issue
2. Previous Research	Discussing the results of previous research and legal theories relevant to this case	<ul style="list-style-type: none"> ▪ Review of the results of previous research related to the actions of debt collectors in withdrawing fiduciary guarantee objects; Strengthening the argument with legal theories that support the analysis in this case
3. Criminal Sanctions Perspective	Analysing the perspective of criminal sanctions against illegal debt collector actions	<ul style="list-style-type: none"> ▪ Evaluation of the relevance and comprehensiveness of the analysis of criminal sanctions in the context of this case. Synchronisation of analysis with

²⁷ Ing-Haw Cheng, Felipe Severino, and Richard R Townsend, "How Do Consumers Fare When Dealing with Debt Collectors? Evidence from Out-of-Court Settlements," ed. Stijn Van Nieuwerburgh, *The Review of Financial Studies* 34, no. 4 (March 24, 2021): 1617–60, <https://doi.org/10.1093/rfs/hhaa085>.

Process Stage	Action	Analysis Detail
		the title and formulation of the research problem
4. Emphasis on Novelty	Highlighting the novelty or uniqueness of this research	<ul style="list-style-type: none"> Identifying and emphasising new or unique aspects of this study different from previous studies
5. Analysis of Legal Materials	Discussing relevant legal materials and previous research results	<ul style="list-style-type: none"> Review and evaluation of legal materials used as the basis for law enforcement against debt collectors. Discussion on the implications of previous research results on the analysis of this case
6. Law Enforcement Process	Analysing the law enforcement process carried out by the authorities	<ul style="list-style-type: none"> Review of the role and authority of the police in law enforcement against debt collectors. Evaluation of the ongoing law enforcement process related to this case
7. Legal Consequences for Cases	Concluding the legal consequences of the analysis of this case	<ul style="list-style-type: none"> Explanation of the legal implications of the analysis results of the debt collector's actions in withdrawing the fiduciary guarantee object. Evaluation of the position and legal consequences of such actions, as well as recommendations for further actions

Legal actions will have an impact on the consequences that the perpetrator must bear.²⁸ Causality is the key to explaining why a person can be subject to criminal sanctions for his actions in criminal law.²⁹ In the case of inappropriate collection by the debt collector, the act can be considered a criminal offence, as admitted by the police. Recognising that each action must meet the elements of a criminal offence before it can be considered a violation of the law, it is important to

²⁸ Eliezer Lederman, "Criminal Law, Perpetrator and Corporation: Rethinking a Complex Triangle," *Journal of Criminal Law and Criminology* 76 (1985): 285.

²⁹ Per-Olof H. Wikström, "Crime as Alternative: Towards a Cross-Level Situational Action Theory of Crime Causation," in *Beyond Empiricism* (Oxfordshire: Routledge, 2004). 37



understand that any legal relationship between a creditor and a debtor is governed by the agreement they are bound to. In some cases, a clause in the agreement gives the creditor the authority to withdraw the fiduciary guarantee in kind.

While the actions taken by the leasing party may not be entirely appropriate, it is important to remember that the debtor's unfulfilled obligations can also have a negative impact on the financing company.³⁰ However, previous research shows that if the debtor does not fulfil its obligations, the agreement can be declared void, so the act of withdrawing goods by the finance party is considered legal. However, whether the debt collector's actions in this case can be considered a criminal offence needs to be carefully considered. Before discussing the legal status and consequences of their actions, understanding the role of law enforcement, especially the police, is essential.

As a law enforcement agency, the police have a vital role in maintaining a fair and equitable law enforcement process for all. Through its authority, the police receive reports, resolve disputes, prevent crimes, and provide security assistance, among other duties. By understanding the role of the police and the legal consequences of inappropriate debt collector actions, it can be expected that the law enforcement process will run better and provide proper protection for the community.

4. Conclusion

Debt collectors who exceed the limit to deprive the debtor of the object of fiduciary guarantee can be categorised as a criminal offence as long as the act meets the necessary elements in Article 368, paragraph (1) of the Criminal Code. This article regulates embezzlement, which includes unlawful acts of a person who deliberately owns another person's property. Thus, if a debt collector commits an act that exceeds his authority and uses violence or threats of violence to deprive the debtor of the object of fiduciary guarantee, it can be considered a criminal act of embezzlement. This shows the importance of strict law enforcement to protect the rights and security of the community and prevent abuse of power, as well as increase regulatory awareness so that the collection process runs according to legal and ethical standards.

References

Akifah, Kifah. "Eksekusi Jaminan Fidusia Pada Perjanjian Pembiayaan Kendaraan Bermotor Pasca Putusan Mahkamah Konstitusi Nomor 2/Puu-Xix/2021." Masters, UNIVERSITAS LAMPUNG, 2022. <http://digilib.unila.ac.id/67604/>.

³⁰ Miftakhul Huda, "Aspek Hukum Dalam Likuidasi Bank," *El-Faqih : Jurnal Pemikiran Dan Hukum Islam* 7, no. 2 (October 27, 2021): 92-110, <https://doi.org/10.29062/faqih.v7i2.433>.



- Alhasni, Mohamad Rizky, and Dkk. "Menakar Peran Kepolisian Dalam Mencegah Tindak Pidana Pencabulan Terhadap Anak Dibawah Umur." *Jurnal Legalitas* 12, no. 2 (2020).
- Alizon, Joni. "Rekonstruksi Pelaksanaan Eksekusi Jaminan Fidusia Pasca Putusan Mahkamah Konstitusi Nomor 18/Puu-Xvii/2019." *EKSEKUSI* 2, no. 1 (May 30, 2020): 58–82. <https://doi.org/10.24014/je.v2i1.9741>.
- Argyrou, Aikaterini. "Making the Case for Case Studies in Empirical Legal Research." *Utrecht Law Review* 13, no. 3 (2017): 95–113.
- Cheng, Ing-Haw, Felipe Severino, and Richard R Townsend. "How Do Consumers Fare When Dealing with Debt Collectors? Evidence from Out-of-Court Settlements." Edited by Stijn Van Nieuwerburgh. *The Review of Financial Studies* 34, no. 4 (March 24, 2021): 1617–60. <https://doi.org/10.1093/rfs/hhaa085>.
- Constantineau, Aimee. "Fair for Whom - Why Debt-Collection Lawsuits in St. Louis Violate the Procedural Due Process Rights of Low-Income Communities." *American University Law Review* 66 (2017 2016): 479.
- Dirkareshza, Rianda, Ratna Sumirat, and Risa Gia Anjani. "Optimization of the Law against Customer Financing That Performs Default in Leasing Agreements Legal Optimization of Customer Financing That Performs Default in Leasing Agreements in Indonesia." *International Journal of Social Science and Human Research* 04, no. 09 (April 30, 2021): 2575–84. <https://doi.org/10.47191/ijsshr/v4-i9-43>.
- Halliday, Simon, and Patrick Schmidt. *Conducting Law and Society Research: Reflections on Methods and Practices*. Cambridge: Cambridge University Press, 2009.
- Hartanto, Dadang. "Sociology Review of Social Phenomenon, Social Rules and Social Technology." *Budapest International Research and Critics Institute (BIRCI-Journal): Humanities and Social Sciences* 3, no. 2 (May 8, 2020): 1175–84. <https://doi.org/10.33258/birci.v3i2.958>.
- Huda, Miftakhul. "Aspek Hukum Dalam Likuidasi Bank." *El-Faqih : Jurnal Pemikiran Dan Hukum Islam* 7, no. 2 (October 27, 2021): 92–110. <https://doi.org/10.29062/faqih.v7i2.433>.
- Kaendo, Hengky Setiawan. "Perampasan Oleh Penagih Hutang Terhadap Kendaraan Sebagai Objek Jaminan Fidusia." *LEX ET SOCIETATIS* 7, no. 4 (July 30, 2019). <https://doi.org/10.35796/les.v7i4.24700>.
- Kuddah, M. N. Out-of-court execution of the object of fiduciary guarantee by the financing company (Study of the Gorontalo District Court Decision Number 60/PDT. G/2019/PN. GTO and the decision of the District Court Source Number 25/PDT. G/2020/PN. SBR). *Indonesian Notary* 3 no. 4 (2021)
- Lederman, Eliezer. "Criminal Law, Perpetrator and Corporation: Rethinking a Complex Triangle." *Journal of Criminal Law and Criminology* 76 (1985): 285.



- Mayasari, Imaculata Sherly, and Nynda Fatmawati Octarina. "Kedudukan Hukum Pidana Atas Pengambilan Kendaraan Paksa Debitur Oleh Debt Collector Lembaga Pembiayaan." *JURNAL RECHTENS* 9, no. 2 (2020).
- . "Kedudukan Hukum Pidana Atas Pengambilan Kendaraan Paksa Debitur Oleh Debt Collector Lembaga Pembiayaan." *JURNAL RECHTENS* 9, no. 2 (December 30, 2020): 141–52. <https://doi.org/10.36835/rechtens.v9i2.788>.
- Rahman, Sufirman, and Abdul Agis. "The Essence of Law Enforcement of The Crime of Embezzlement of Goods That Are Still Bound by Credit as Fiduciary Guarantees." *IOSR Journal Of Humanities And Social Science* 26, no. 11 (2021): 29–34. <https://doi.org/10.9790/0837-2611052934>.
- Ratnawati, Sukarno Aburacra, M. Said Karim, and Hasbir Paserangi. "Law Enforcement in Indonesia: A Review from Legal Apparatus Roles." *Journal of Law, Policy and Globalization* 58 (2017): 57.
- Sanyoto. "Penegakan Hukum Di Indonesia." *Jurnal Dinamika Hukum* 3, no. 8 (2008).
- Setiawan, Yogabakti Adipradana, Anis Mashdurohatun, and Abdul Halim Baraktullah. "Legal Reconstruction of Debt Collection by Debt Collector Services to Default Debtor Based on Justice Values." *International Journal of Business, Economics and Law*, 28, no. 3 (2023): 197–206.
- Sobol, Neil L. "Charging the Poor: Criminal Justice Debt and Modern-Day Debtors' Prisons." *Maryland Law Review* 75 (2016): 486.
- Sofian, Ahmad. *Ajaran Kausalitas Hukum Pidana*. Jakarta: Prenada Media Group, 2018.
- Sushanty, Vera Rimbawani. "Tinjauan Yuridis Terhadap Debt Collector Dan Leasing Pasca Putusan Mahkamah Konstitusi Nomor 18/Puu-Xvii/2019." *Gorontalo Law Review* 3, no. 1 (April 30, 2020): 59. <https://doi.org/10.32662/golrev.v3i1.896>.
- Tuna, F. S., Kasim, N. M., & Imran, S. Y. "Protection of consumer rights to forced recall of vehicles." *Bureaucracy: JOURNAL OF LAW AND STATE ADMINISTRATION* 1, no. 3 (2023)
- Tunisa, Nazia. "Peran Otoritas Jasa Keuangan terhadap Pengawasan Pendaftaran Jaminan Fidusia." *Jurnal Cita Hukum* 2, no. 2 (2015): 40845. <https://doi.org/10.15408/jch.v2i2.2325>.
- Usman, Ismiyati. "Criminal Liability Committed By Debt Collectors Due To Violence In Arrears." *Estudiante Law Journal* 1, no. 2 (May 19, 2019): 583–95. <https://doi.org/10.33756/eslaj.v1i2.13001>.
- Widyasti, Wuri. "Pelaksanaan Lelang Eksekusi Objek Hak Tanggungan oleh Kantor Pelayanan Kekayaan Negara dan Lelang." *Jurnal Suara Keadilan* 25, no. 1 (August 30, 2024): 10–25. <https://doi.org/10.24176/sk.v25i1.13380>.



Wikström, Per-Olof H. "Crime as Alternative: Towards a Cross-Level Situational Action Theory of Crime Causation." In *Beyond Empiricism*. Oxfordshire: Routledge, 2004.

Zulkhairi, Zulkhairi. "Penyelesaian Kredit Bermasalah Pada Perjanjian Pembiayaan Kendaraan Bermotor Roda Empat Di BCA Finance Cabang Pekanbaru." Other, Universitas Islam Riau, 2020. <https://repository.uir.ac.id/13926/>.

Conflict of Interest Statement: The author(s) declares that the research was conducted in the absence of any commercial or financial relationship that could be construed as a potential conflict of interest.

Copyright: ©JELTA UNG. This is an open access article distributed under the terms of the Creative Commons Attribution-Non Commercial 4.0 International License, which permits copy and redistribute the material in any medium or format, remix, transform, and build upon the material, provided you must give appropriate credit, provide a link to the license, and indicate if changes were made. You may do so in any reasonable manner, but not in any way that suggests the licensor endorses you or your use and you may not use the material for commercial purposes.

Jurnal Legalitas (J.Legalitas – JELTA) is an open access and peer-reviewed journal published by Faculty of Law, Gorontalo State University. The contents of the articles and advertisements published in the Jurnal Legalitas (JELTA) are sole and exclusive responsibility of their respective authors and advertisers.

