

## Criminal Liability of Debt Collectors in the Execution of Fiduciary Guarantees with Fraud Mode After the Constitutional Court Decision Number 18/PUU-XVII/2019

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### ABSTRACT

The execution of fiduciary guarantees by debt collectors frequently gives rise to legal problems, particularly when such execution is carried out through fraudulent practices. Following the Constitutional Court Decision Number 18/PUU-XVII/2019, fiduciary execution may no longer be conducted unilaterally unless the debtor voluntarily surrenders the collateral object. Nevertheless, in practice, debt collectors have shifted their modus operandi from physical coercion to more subtle forms of deception in order to obtain fiduciary objects. This research aims to analyze the criminal liability of debt collectors who execute fiduciary guarantees through fraudulent means and to examine the application of criminal law to such practices. The study employs a juridical-empirical research method, combining statutory analysis with field data obtained through interviews with debtors, debt collectors, and representatives of finance companies, as well as observations of fiduciary execution practices. The findings indicate that fraudulent acts committed by debt collectors such as impersonating finance company officers, providing false information, and making deceptive promises fulfill the elements of fraud as stipulated in Article 378 of the Indonesian Criminal Code. Moreover, such actions violate the Fiduciary Security Law and the Constitutional Court's ruling, thereby giving rise to individual criminal liability and potential corporate liability when finance companies fail to exercise proper supervision. This study concludes that stricter law enforcement and enhanced legal awareness are necessary to protect debtors' rights and ensure lawful fiduciary execution practices.

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## 1. INTRODUCTION

The development of the consumer financing sector in Indonesia shows a significant increase in line with the increasing public need for access to financing goods, especially motor vehicles. Financing schemes through non-bank financial institutions are the solution that is chosen by many because they are considered more flexible and accessible than banking financing (Febriani & Dewi, 2019). In this financing practice, financing institutions generally require the existence of guarantees as a form of legal protection against the risk of debtor default. One of the most widely used forms of collateral is fiduciary collateral, considering its nature that allows the debtor to retain control and use the collateral object during the period of the agreement (Salim HS, 2014).

Fiduciary guarantees are specifically regulated in Law Number 42 of 1999 concerning Fiduciary Guarantees, which provides a legal basis regarding the transfer of ownership rights to an object on the basis of trust. This law also regulates the mechanism for the execution of fiduciary guarantees in the event that the debtor is injured in the promise. However, in practice, the execution of fiduciary guarantees often raises legal problems, especially when the execution is carried out by a third party known as a debt collector. It is not uncommon for such executions to be carried out in ways that deviate from the provisions of the law, thus causing violations of the rights of debtors (Fuady, 2013).

The Constitutional Court Decision Number 18/PUU-XVII/2019 is an important milestone in the practice of fiduciary guarantee execution in Indonesia. This decision confirms that the execution of the fiduciary guarantee cannot be carried out unilaterally by the creditor or his or her proxies if there is no agreement regarding the injury of the promise and the debtor does not voluntarily surrender the object of the guarantee. Thus, the execution of fiduciary guarantees must be carried out through a legitimate legal mechanism and uphold the principles of due process of law and the protection of human rights (Constitutional Court Decision No. 18/PUU-XVII/2019).

However, after the Constitutional Court's decision, in practice it was found that there was a shift in the modus operandi in the execution of fiduciary guarantees by debt collectors. If previously violations of the law in fiduciary execution were often associated with the use of force or threats, now the practice of execution with fraud mode has emerged. This mode is carried out by disguising themselves as an official officer of the financing company, providing incorrect information about the legal status of the collateral object, or promising certain relief to the debtor to gain control of the collateral object (Hamka, 2023).

The act of executing fiduciary guarantees by fraudulent mode is not only contrary to the provisions of the Fiduciary Guarantee Law and the Constitutional Court Decision, but also has the potential to meet the elements of fraud as stipulated in Article 378 of the Criminal Code. In this context, debt collectors as direct perpetrators can be held criminally liable, while finance companies also have the potential to be held criminally liable if they are proven to be negligent in supervising the authorized party (Chazawi, 2015).

Based on this description, this article aims to examine the criminal liability of debt collectors in the execution of fiduciary guarantees with fraud mode after the Constitutional Court Decision Number 18/PUU-XVII/2019 and analyze the application of criminal law to this practice. This study is expected to make an academic contribution to the development of criminal law and guarantee law, as well as a reference for law enforcement officials, financing institutions, and the public in realizing the practice of fair execution of fiduciary guarantees in accordance with legal provisions.

## 2. METHODS

This research is a legal research with an empirical juridical character, which is research that examines law not only as a norm written in laws and regulations, but also as real behavior that occurs in society. This approach was chosen because the problems studied are not only related to the normative regulation of fiduciary guarantees and their execution, but also related to the practice of

implementing the execution of fiduciary guarantees by debt collectors, which in reality often raises legal problems, especially related to fraud crimes (Soekanto & Mamudji, 2015).

The approaches used in this study include a statutory approach and an empirical approach. The legislative approach is carried out by systematically examining relevant legal provisions, including Law Number 42 of 1999 concerning Fiduciary Guarantees, the Criminal Code, and the Constitutional Court Decision Number 18/PUU-XVII/2019 which provides a constitutional interpretation of the implementation of fiduciary guarantees. This approach aims to understand the normative limitations regarding the authority of creditors and authorized parties in executing fiduciary guarantees.

Meanwhile, an empirical approach is used to see how the legal provisions are applied in practice, especially by debt collectors in the process of withdrawing the object of fiduciary guarantee. Empirical data was obtained through interviews with parties directly involved, such as debtors, debt collectors, and financing companies, and through observation of fiduciary guarantee execution practices in the field. This approach is important to identify gaps between applicable legal norms and practices, especially regarding the use of fraudulent modes in the execution of fiduciary guarantees.

The type of data used in this study consists of primary data and secondary data. Primary data was obtained directly from the field through interviews and observations, while secondary data included primary legal materials in the form of laws and regulations and court decisions, as well as secondary legal materials in the form of textbooks, scientific journals, and the results of previous research related to fiduciary guarantees, debt collectors, and criminal liability. In addition, tertiary legal materials such as legal dictionaries and encyclopedias are used to clarify relevant legal terms and concepts (Marzuki, 2017).

Data analysis is carried out qualitatively, by examining and interpreting normative data and empirical data in a systematic and integrated manner. The data obtained was analyzed to assess whether the practice of executing fiduciary guarantees by debt collectors in fraudulent mode has met the elements of criminal acts as stipulated in the Criminal Code, as well as to determine the form of criminal liability that can be imposed. The results of the analysis are then presented in a descriptive-analytical manner to answer the purpose of the research and provide a comprehensive picture of the application of criminal law in the practice of fiduciary guarantee execution.

### 3. FINDINGS AND DISCUSSION

The results of the study show that after the Constitutional Court Decision Number 18/PUU-XVII/2019, the practice of executing fiduciary guarantees by debt collectors is no longer predominantly carried out through physical violence or direct threats, but has experienced a shift in modus operandi towards fraud. Based on empirical data obtained through interviews and field observations, debt collectors often use manipulative methods, such as disguising themselves as an official officer of a financing company, providing incorrect information about the legal status of the collateral object, or promising debt restructuring to gain control of the fiduciary object. This practice shows that there is a systematic effort to avoid legal restrictions affirmed by the Constitutional Court.

Normatively, the act of executing fiduciary guarantees with a fraudulent mode is contrary to the provisions of Law Number 42 of 1999 concerning Fiduciary Guarantees and the Constitutional Court Decision Number 18/PUU-XVII/2019, which emphasizes that execution can only be carried out if there is an agreement regarding default and the delivery of the collateral object is carried out voluntarily by the debtor. When the debt collector uses trickery to obtain the object of collateral, the element of voluntariness becomes unfulfilled, so that the execution loses its legal basis.

From the perspective of criminal law, the results of the analysis show that the actions of debt collectors who carry out fiduciary execution in fraudulent mode meet the elements of fraud as stipulated in Article 378 of the Criminal Code. The elements of the act in the form of the use of false names, false positions, a series of lies, or deception are proven through the practice of disguising themselves as official officers and providing misleading information to the debtor. In addition, the

existence of the purpose of unlawfully benefiting oneself or other parties is fulfilled by the control of the object of fiduciary guarantee without a valid legal procedure.

This finding is in line with the view of the criminal law doctrine which affirms that criminal liability is born when unlawful acts are carried out consciously and can be accounted for subjectively by the perpetrator (Chazawi, 2015). Debt collectors as direct perpetrators have the capacity to be criminally responsible because they act intentionally and understand the legal consequences of their actions. Thus, the reason that debt collectors act on the power of the financing company does not eliminate personal criminal liability.

Furthermore, this study also found that finance companies have the potential to be held criminally liable for corporations if proven negligent in supervising authorized debt collectors. When a company knows or should know of fraudulent practices but still allows or benefits from the results of these acts, then the principles of vicarious liability and corporate criminal liability can be applied. This shows that legal protection for debtors does not only depend on law enforcement against field actors, but also on the accountability of the financing corporation as an authorizer.

Thus, the results of this study confirm that the Constitutional Court Decision Number 18/PUU-XVII/2019 has not been fully effective in preventing violations of the law in the execution of fiduciary guarantees if it is not followed by strict enforcement of criminal law. The practice of execution with fraud mode actually shows the adaptation of the perpetrator to changes in the law. Therefore, the criminal law approach is an important instrument to close the gap in the abuse of authority in the implementation of fiduciary guarantees and ensure the protection of debtors' rights in real terms.

### **Shift in the Modus operandi of Fiduciary Execution After the Constitutional Court's Decision**

The results of the study show that the Constitutional Court Decision Number 18/PUU-XVII/2019 has changed the pattern of execution of fiduciary guarantees normatively, but it has not been fully effective at the empirical level. Restrictions on unilateral execution encourage debt collectors to adjust their strategies by using non-physical means that are manipulative. The shift from open violence to fraud shows that the perpetrator no longer relies on coercion, but rather the exploitation of ignorance and the weak position of the debtor.

This phenomenon shows the existence of *legal loophole exploitation*, which is the use of loopholes in law enforcement when new norms have not been accompanied by effective supervision and sanction mechanisms. In this context, criminal law acts as a corrective instrument against the abuse of authority that formally appears "voluntary", but materially contains elements of fraud. As stated by Hamka (2023), fraud in modern financing practices is often persuasive and covert, making it difficult to detect if only using a civil law approach.

### **Fulfillment of Elements of Fraud in Fiduciary Execution**

Based on an analysis of Article 378 of the Criminal Code, the practice of fiduciary execution with fraud mode by debt collectors meets the objective and subjective elements of fraud crimes. The objective element in the form of acts using deception or a series of lies is fulfilled through the act of disguising himself as an official officer of a finance company or providing false information about the debtor's obligations. Meanwhile, the subjective element in the form of intentionality and the purpose of unlawfully benefiting oneself or others is reflected in the control of the object of fiduciary guarantee without a valid legal procedure.

From the perspective of criminal law doctrine, intentionality (*dolus*) does not always have to be proven by explicit intentions, but can be inferred from a series of actions that logically lead to a certain outcome (Chazawi, 2015). Therefore, the excuse that the debt collector only carries out the company's orders does not eliminate criminal offenses, as long as there is awareness of the unlawful nature of his actions. This is in line with the principle of *geen straf zonder schuld*, which places criminal responsibility on perpetrators who are mentally and judicially responsible.

## Corporate Criminal Liability of Finance Companies

In addition to the criminal liability of individual debt collectors, this study found the relevance of the application of corporate criminal liability to financing companies. Finance companies can be held criminally liable if they are found to have provided negligence, negligence of supervision, or even benefited from the results of fiduciary execution carried out unlawfully. In the context of modern criminal law, corporations are no longer seen as entities immune from criminal liability, but rather as legal subjects who can be held accountable for the actions of people who act for and on their behalf (Marzuki, 2017).

The application of corporate criminal liability is important considering that the structural relationship between finance companies and debt collectors is hierarchical and power-based. Without corporate accountability, law enforcement tends to stop at the actors on the ground, while the actors who make the main profits are untouched by the law. Therefore, this approach is in line with the purpose of criminal law as a means of social *defense* and crime *prevention*.

## Implications for Debtor Rights Protection and Law Enforcement

The results of this study have important implications for the protection of debtors' rights in consumer financing practices. Fiduciary execution by fraudulent mode not only violates positive law, but also goes against the principles of justice and legal certainty. Debtors are in a vulnerable position due to information and power imbalances, so the state is obliged to provide effective legal protection through consistent criminal law enforcement.

Furthermore, these findings show that the Constitutional Court Decision Number 18/PUU-XVII/2019 needs to be followed by integrated technical policies and law enforcement. Without strict criminal sanctions, the verdict risks losing coercive force and only serves as a symbolic norm. Therefore, synergy between law enforcement officials, financial sector regulators, and judicial institutions is key in ensuring that the execution of fiduciary guarantees is carried out in a legal, civilized, and fair manner.

Based on the results of the normative analysis and empirical findings, the author argues that the practice of executing fiduciary guarantees after the Constitutional Court Decision Number 18/PUU-XVII/2019 still leaves serious problems in law enforcement, especially when debt collectors use fraudulent modes as a means of obtaining collateral objects. The shift in the pattern of violations from physical violence to information manipulation shows that changes in legal norms have not been fully followed by changes in the behavior of perpetrators in the field. In the author's view, this condition confirms the importance of the criminal law approach as a corrective instrument to close the gap in the abuse of authority in fiduciary execution. Without consistent criminal law enforcement and accountability not only to actors in the field but also to financing corporations, the protection of debtors' rights has the potential to remain normative and has not provided substantive justice. Therefore, the results of this study show that the effectiveness of the Constitutional Court Decision is highly dependent on the courage of law enforcement officials in interpreting and implementing the law progressively to ensure legal certainty and protection for the weak.

## 4. CONCLUSION

This study concludes that after the Constitutional Court Decision Number 18/PUU-XVII/2019, the practice of executing fiduciary guarantees by debt collectors is not fully running in accordance with the applicable legal provisions. Restrictions on unilateral executions have led to a shift in modus operandi from the use of physical force to manipulative and covert acts of fraud. This practice is normatively contrary to Law Number 42 of 1999 concerning Fiduciary Guarantees and criminally meets the elements of fraud as stipulated in Article 378 of the Criminal Code.

Debt collectors who carry out fiduciary execution in fraudulent mode can be held criminally liable individually for acting intentionally and with awareness of the unlawful nature of their actions. In addition, finance companies also have the potential to be held criminally liable if they are proven to be

negligent in supervising or benefiting from these unlawful actions. Thus, legal protection for debtors is not enough to rely only on civil norms and Constitutional Court decisions, but must be strengthened through consistent and comprehensive enforcement of criminal law.

This study confirms that the effectiveness of the Constitutional Court Decision Number 18/PUU-XVII/2019 is highly dependent on the courage of law enforcement officials in applying criminal law progressively to the practice of abusing the execution of fiduciary guarantees. In the future, it is necessary to strengthen supervision of finance companies as well as follow-up research that examines the effectiveness of criminal law enforcement in protecting the rights of debtors and preventing deviant fiduciary execution practices.

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