



Legal analysis of vehicle seizure by debt collectors based on constitutional court decision 18/PUU-XVII/2019

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ARTICLE INFO

Keywords:

Constitutional Court;
Debt Collector;
Execution;
Fiduciary Guarantee;
Legal Protection.

Article history:

Received Sep 17, 2025;
Revised Sep 25, 2025;
Accepted Oct 11, 2025;
Online Oct 30, 2025.

ABSTRACT

This study analyzes the legality of motor vehicle repossession by debt collectors under fiduciary agreements following Constitutional Court Decision No. 18/PUU-XVII/2019. Unilateral repossession practices by financing companies through third parties often result in violations of debtor rights, legal disputes, and social unrest. The research employs a normative juridical method with a statutory approach, court decision analysis, and legal literature review to evaluate its conformity with the principle of legal protection. The purpose of this study is to explain the legal implications of Constitutional Court Decision No. 18/PUU-XVII/2019 on the enforcement mechanism of fiduciary guarantees and to assess the extent to which debtor protection can be realized without neglecting creditors' rights. The findings show that repossession without debtor consent or court authorization contradicts Article 15 of the Fiduciary Guarantee Law and the principle of due process. Recommendations include regulatory strengthening, debt collector certification, and the implementation of responsive laws to prevent arbitrary repossession practices.

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1. Introduction

The growing demand for motorized vehicles in Indonesia continues to grow in line with high levels of mobility and economic activity. Vehicles are not only a means of transportation but also a productive asset that supports business activities (Patrik & Kashadi, 2009). This trend has driven the development of financing institutions offering motor vehicle credit facilities with installment payment schemes. This convenience makes it easier for people to own a vehicle, but on the other hand, it creates a significant risk of bad debts (Dalla & Andriyani, 2022). Creditors or financing companies often resort to forced vehicle repossession to minimize losses due to default. This practice is often carried out by third parties or debt collectors, popularly known as "eye eagles" (Ratag, 2021).

The phenomenon of vehicle repossession by debt collectors raises serious legal issues, particularly because it is often carried out unilaterally, without clear legal procedures, and even accompanied by intimidation and violence (Ginting & Nababan, 2025). Although fiduciary

guarantees are regulated by Law Number 42 of 1999, the application of the right of execution often creates an imbalance between creditors and debtors (Supramono, 2009). Fiduciary certificates, which have executorial power, give creditors the authority to execute directly without going through a court process (Kasmir, 2015). This provision is open to multiple interpretations and opens up room for abuse, thereby harming debtors' rights as consumers.

This issue reached a critical point with the issuance of Constitutional Court Decision No. 18/PUU-XVII/2019, which challenged the constitutionality of Article 15 paragraphs (2) and (3) of the Fiduciary Guarantee Law (Mondoringin, 2024). The decision affirmed that unilateral execution of fiduciary assets may only be carried out if the debtor acknowledges default and voluntarily surrenders the collateral (Rusyuandi et al., 2024). If the debtor objects, execution must be carried out through the courts. This decision marks a significant milestone in strengthening legal protection for debtors and correcting the practice of *parate* execution, which previously harmed consumers (Farida & Badriyah, 2024).

Previous studies have mostly focused on normative analyses of fiduciary guarantees in general, without providing an in-depth examination of the practical implications of Constitutional Court Decision No. 18/PUU-XVII/2019 on motor vehicle repossession by debt collectors and the liability of financing companies. This study addresses that gap by analyzing the legality of debt collectors' actions after the Constitutional Court ruling, evaluating the extent of legal protection for debtors, and offering regulatory recommendations such as strengthening OJK supervision, implementing debt collector certification, and developing more efficient dispute resolution mechanisms.

In practice, vehicle repossession by debt collectors still presents numerous legal challenges. On the one hand, financing companies are interested in recovering assets and maintaining cash flow, while on the other hand, debtors have the right to legal protection and fair execution procedures (Priadinata et al., 2025). Low public legal literacy and limited specific regulations regarding the debt collector profession exacerbate the situation, leading to social conflict and undermining public trust in financial institutions (Kaesmetan et al., 2025). Amidst these conditions, this research is crucial for analyzing the legality of vehicle repossession from the perspective of civil law, constitutional law, and fiduciary-related legislation.

The crucial legal issues that form the focus of this research include: (1) the legality of fiduciary guarantee execution by debt collectors after Constitutional Court Decision No. 18/PUU-XVII/2019, (2) legal protection for debtors facing unilateral repossession practices, (3) the responsibility of financing companies for the actions of debt collectors, and (4) the relevance of legal protection theory and justice theory in the creditor-debtor relationship

This study aims to explain the legal implications of Constitutional Court Decision No. 18/PUU-XVII/2019 on the practice of fiduciary guarantee enforcement, and to evaluate the extent to which legal protection for debtors can be realized without impeding creditors' rights. This study also examines the legal status of debt collectors as third-party authorized parties, the responsibility of financing companies for debt collection actions, and the relevance of legal protection theory and justice theory in the context of creditor-debtor relationships. With a normative juridical approach, this study is expected to provide constructive recommendations for creating a more transparent, fair, and constitutional collection mechanism.

2. Method

The method used in this study is normative juridical, which is a type of legal research that uses secondary data sources. This method involves the formation of a conceptual framework and the creation of provisions in laws and regulations that will be used as the basis for research. Normative legal research, as explained by Peter Mahmud Marzuki, is a method of resolving legal disputes by identifying applicable laws, principles, and doctrines (Muhaimin, 2020). The purpose of normative legal research is to provide a new framework for understanding and resolving actual legal problems (Marzuki, 2017).

The object of study focuses on the system of legal norms related to fiduciary guarantee enforcement. Analysis begins with identifying legal events, evaluating whether they conform to existing legal norms, and assessing how they should be regulated. The approaches applied include: a) Statutory approach, examining laws and regulations relevant to fiduciary guarantees; b) Conceptual approach, based on legal doctrines and theories; c) Case approach, analyzing Constitutional Court Decisions and relevant jurisprudence.

The research process consists of several stages: (1) data collection through literature studies, documentation, and archival research; (2) organization and classification of legal materials into primary, secondary, and tertiary sources; (3) case analysis focusing on fiduciary enforcement disputes, particularly vehicle repossession cases; and (4) qualitative normative juridical analysis to interpret findings within the framework of legal protection theory and justice theory.

It can be concluded that normative law research is a process to examine related legal norms, legal Rules, legal principles, legal doctrines, legal theories, and other legal literature materials to find solutions to the legal events being studied. In this study, the researcher focuses on the rule of law and its principles (Efendi & Ibrahim, 2018). Therefore, the researcher does not use empirical legal research methods. Researchers are more suitable to use normative legal research in this study because empirical legal research focuses on how the law is applied in society and the impact of the application of the law. The methodology of this research is descriptive analysis, which seeks to identify the rule of law by relating it to the legal theories being investigated (Sugiyono, 2015). The nature of this research is used to describe an event that is happening to reveal an event which is then analyzed based on legal theories and laws and regulations that are used and still in force.

The object of study of normative law research is to focus on the system of legal norms related to a legal event. By analyzing a legal event, as well as determining whether the legal event is correct or not and how the legal event should be (Abdullah, 2021). Therefore, a study begins by looking for an event that occurs and then provides an assessment of the legal event associated with applicable legal norms. Peter Mahmud Marzuki explained the approaches used in legal research as follows (Widyastuti, T. V Irwansyah, 2024): a) The legal method involves examining all laws and regulations relating to the legal issue under consideration; b) The conceptual approach is based on the perspectives and theories established in legal science; c) The case method involves studying cases related to topics that have resulted in binding court decisions.

This study uses a descriptive-analytical approach, which means that the research describes the event and then analyzes it based on secondary data from primary, secondary, and tertiary legal materials (Zaini, 2011). Primary, secondary, and tertiary legal materials are the research subjects used in this study, which are carried out in two stages: literature research and field data collection. The data analysis method used in this study is a qualitative normative juridical analysis method (Sigit Sapto Nugroho, 2020).

After determining the issue, the researcher collects relevant legal materials from law books, journals, legal dictionaries, and statutes. Data is supported by field documents such as Constitutional Court Decision No. 18/PUU-XVII/2019, Constitutional Court Decision No. 2/PUU-XIX/2021, reports from the Financial Services Authority (OJK), internal company guidelines on debt collection, and police reports regarding forced vehicle repossession. In addition, the study also utilizes archives such as court case files, fiduciary registration certificates from the Ministry of Law and Human Rights, and memoranda from professional associations of financing institutions as the main documents analyzed in this research.

After the researcher determines the issue to be discussed, then the researcher will search for relevant legal materials related to the problem that the researcher discusses. The search is by collecting law books, legal journals, legal dictionaries, and other literature related to the problems discussed by the researcher. Legal materials are collected by conducting searches and documentation studies, either through bookstores, libraries, internet media, and other media or institutions that are relevant to the problems discussed by the researcher (Widiarty, 2024).

There are 3 (three) methods of data collection techniques in normative law research, namely literature studies, documentation studies, and archival studies, which are as follows:

- 1) Literature Studies is a technique of examining written information about law from various widely published sources and is necessary in normative legal research. The procedures carried out in the data collection technique using the method of literature study are: a) Identify a source of legal materials through the library; b) Record the required legal materials by searching the table of contents on the legal materials used; c) Cite the necessary legal materials and mark each quote used; d) Analyze all legal materials that have been determined according to the problem in the research.
- 2) Documentation Study, is a method used to examine a legal material that is not publicly available.
- 3) Archival studies are the study of written information about events that occurred in the past (including legal events) that have historical value, are stored and maintained in a special place for reference. It can be in the form of; letters, records, maps, sketches, or specific documents.

To ensure the validity of field data, the researcher applies triangulation by cross-checking Constitutional Court decisions, OJK reports, police records of forced repossession, and internal company debt collection guidelines. This guarantees that the findings are not based on a single source but verified by multiple authoritative documents.

To maintain the relevance and accuracy of secondary legal data, only statutes, court decisions, accredited journals, and official government publications are used, while materials from non-academic or unofficial sources are excluded to avoid bias.

The descriptive-analytical method is then applied to assess compliance with the law and Constitutional Court Decision No. 18/PUU-XVII/2019. This involves describing actual repossession practices, comparing them with statutory provisions, and analyzing deviations as potential unlawful acts.

The steps of analysis are as follows: (a) identification of legal norms governing fiduciary guarantees; (b) comparison of these norms with practices in the field; (c) evaluation of whether repossession actions conform to Constitutional Court interpretations; and (d) formulation of recommendations for regulatory improvements to align practice with constitutional mandates.

3. Analysis and Results

Leasing financing institutions are non-bank business entities that play a strategic role in providing financing facilities for capital goods, such as motor vehicles, machinery, and property, through installment payment mechanisms. Their existence is regulated by the Financial Services Authority (OJK) through Presidential Regulation Number 9 of 2009 and POJK Number 35/POJK.05/2018 to ensure professional and transparent governance. However, weak oversight often opens up opportunities for collection practices by illegal debt collectors who forcibly repossess vehicles, violate consumer rights, and damage the image of the leasing industry. To address this, strengthening OJK regulations and supervision, certification and training of debt collectors, and the implementation of law-based execution procedures and consumer protection are needed. These efforts are expected to create a safe, transparent financing mechanism and increase public trust in the non-bank financing sector.

3.1. Legal Consequences That Arise When a Vehicle is Forced to be Repossessed by Debt Collectors

The enforcement of fiduciary guarantees through vehicle repossession by debt collectors in Indonesia has become a significant issue in civil law practice. Prior to Constitutional Court (MK) Decision No. 18/PUU-XVII/2019, Article 15 paragraphs (2) and (3) of Law No. 42 of 1999 granted fiduciary certificates the same executorial power as court decisions, allowing creditors to execute collateral without a court proceeding (Suryono, 2023).

According to Ms. Wasiam, S.H., M.H., a Constitutional Court employee handling the case concerning the Legality of Vehicle Repossession by Debt Collectors, she explained:

"...this issue has actually given rise to numerous legal issues, particularly regarding consumer ownership rights, violations of the legal principles of fiduciary guarantee agreements, and allegations of unlawful acts. Many debtors have complained about this, without realizing that they may have committed a breach of fiduciary agreement, such as late payments and so on. Therefore, Constitutional Court Decision No. 18/PUU-XVII/2019, which was reaffirmed in Constitutional Court Decision No. 2/PUU-XIX/2021, ruled that the repossession mechanism carried out by debt collectors must follow procedures established by law and Constitutional Court decisions..."

The Constitutional Court Decision, reaffirmed in Decision No. 2/PUU-XIX/2021, emphasizes that execution can only be carried out if the debtor acknowledges the breach or voluntarily surrenders the object. Otherwise, the creditor is required to file a court order. This ruling strengthens legal protection for debtors and limits the authority of debt collectors, making unilateral repossession unlawful (Muhammad & Sarjana, 2024).

Ms. Wasiam, S.H., M.H., a Constitutional Court employee handling the case regarding the Legality of Vehicle Repossession by Debt Collectors, added:

"...Decision No. 18 is actually already legally binding and is even confirmed in Decision No. 2/PUU-XIX/2021. Therefore, if an incident occurs where a creditor commits an unlawful act, this must again refer to the existing decision, which also outlines the sanctions that creditors and collectors will face if they engage in unlawful actions..."

However, the implementation of the ruling in practice still faces obstacles, such as the prevalence of forced repossession by unscrupulous debt collectors, resistance from debtors who are reluctant to hand over their vehicles, and time-consuming and costly legal processes for financing companies. This situation creates a dilemma between protecting consumer rights and the effectiveness of guarantee enforcement. Therefore, additional policies and more efficient dispute resolution mechanisms are needed to balance the interests of creditors and debtors and ensure legal certainty (Ismail & Kasim, 2025).

3.2. Motor Vehicle or Car Repossession Mechanism Based on Law Number 42 of 1999 Concerning Fiduciary Guarantees

Constitutional Court (MK) Decision No. 18/PUU-XVII/2019 brought fundamental changes to the enforcement mechanism for fiduciary guarantees, particularly for motor vehicles, the primary subject of leasing agreements (Faniyah & A, 2024). Prior to this ruling, fiduciary certificates, under Law No. 42 of 1999, were considered to have executorial powers, allowing creditors to unilaterally execute the assets, often through intimidating debt collectors.

Ms. Wasiam, S.H., M.H., a Constitutional Court employee handling the case concerning the Legality of Vehicle Repossession by Debt Collectors, stated:

"...the mechanism for this is already stipulated in Law No. 42 of 1999 concerning Fiduciary Guarantees, Article 29 of the Fiduciary Law. If the debtor defaults, the creditor has the right to sell the fiduciary collateral, and the creditor must also show the existence of the fiduciary collateral certificate. The creditor can only enforce the fiduciary collateral if the fiduciary certificate is present. However, many believe that this article only benefits the creditor. Hence, Constitutional Court Decision No. 18/PUU-XVII/2019 was issued, which amended Article 15 paragraphs 2 and 3. This decision stipulates that the creditor is not permitted to execute the collateral directly unless the debtor voluntarily surrenders the collateral and there is a fiduciary agreement..."

The Constitutional Court emphasized that enforcement can only be carried out if the debtor voluntarily surrenders the collateral. In the event of refusal, the financing company is required to file a request for enforcement with the court. This mechanism emphasizes the principles of justice, consumer protection, and legal certainty, while also limiting the practice of unilateral repossession, which could potentially violate the debtor's rights.

Ideally, enforcement should be carried out through written notification, a summons, and the debtor's written consent, or through a court decision in the event of refusal. Repossession without these procedures can be challenged as an unlawful act. Furthermore, the concept of *constitutum possessorium* emphasizes that even though ownership of a vehicle has been legally transferred to the creditor, the debtor remains the legal user until formal enforcement is carried out. Therefore, financing companies need to establish a transparent and accountable repossession system, train debt collectors, and strengthen oversight (Yani, 2020). The state is obliged to provide legal protection mechanisms. For instance, data from the Indonesian Consumers Foundation (YLKI) in 2022 recorded more than 1,200 complaints related to forced vehicle repossession by debt collectors, while police reports in major cities such as Jakarta and Surabaya indicated recurring cases of intimidation and violence, showing the persistence of legal violations despite Constitutional Court rulings. These steps are crucial for achieving a balance between economic interests and the protection of debtor rights in fiduciary financing practices.

In practice, the implementation of Constitutional Court Decision No. 18/PUU-XVII/2019 has only been partially effective. Although the ruling has provided stronger legal protection formally, weak law enforcement, insufficient socialization of the decision, and the lack of strict supervision from OJK have caused unilateral repossession practices to continue in the field.

Another weakness in the current legal system is the absence of clear and firm sanctions for financing companies that still employ illegal debt collectors, the vagueness of fiduciary clauses that often disadvantage debtors, and the inequality in bargaining power between creditors and debtors. These systemic shortcomings allow unlawful repossession practices to persist despite constitutional guarantees.

4. Conclusion

Constitutional Court Decision No. 18/PUU-XVII/2019 affirms that the execution of fiduciary guarantees, particularly vehicle repossession, may only be carried out if the debtor acknowledges default and voluntarily surrenders the collateral, while in cases of refusal, execution must be conducted through a court order. Thus, unilateral repossession by debt collectors constitutes an unlawful act and potentially violates debtor rights. This study concludes that to establish a fair and constitutional enforcement mechanism, it is essential to strengthen OJK regulations, ensure consistent law enforcement, and implement practical recommendations such as mandatory certification and training for debt collectors, clearer fiduciary contract clauses, and the establishment of fast and affordable dispute resolution mechanisms. The practical implication of these measures is the creation of legal certainty, enhanced consumer protection, and increased public trust in non-bank financing institutions. What makes this study different from previous research or existing regulations is its emphasis on bridging the gap between normative legal theory and practical implementation, by not only analyzing Constitutional Court decisions but also integrating policy recommendations such as debt collector certification, OJK supervisory reforms, and accessible dispute resolution mechanisms areas that have not been comprehensively addressed in earlier studies.

Acknowledgments

I express my gratitude to Allah SWT, the Most Gracious and the Most Merciful, for all His grace and blessings so that this research can be completed. I would also like to express my gratitude to my lecturers, namely Dr. Hj. Sulkiah Hendrawati, S.H., M.H. and Mr. H. Wahyudi, S.H., M.H. who have provided guidance, direction, and motivation so that this research can run smoothly.

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