



EXECUTION OF FIDUCIARY GUARANTEE IN MOTOR VEHICLE FINANCING AGREEMENT

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Abstract

Fiduciary guarantees are designed to facilitate public access to credit. However, various issues arise in their implementation, particularly concerning the execution of fiduciary guarantees and instances of arbitrary actions during the billing process. The problem of fiduciary guarantee execution has garnered public attention following the Constitutional Court Decision No. 2/PUU-XIX/2021, issued on August 31, 2021. This decision is perceived to potentially simplify the process for financing companies in executing fiduciary guarantees. This research aims to (1) analyze the execution of fiduciary guarantees in motor vehicle financing agreements following the Constitutional Court Decision No. 2/PUU-XIX/2021, and (2) examine the legal enforcement concerning violations committed by debt collectors. The study employs a normative legal research method, utilizing a legal approach to address these issues.

Keywords: *Agreement Financing, Execution, Guarantee Fiduciary*

A. Introduction

The need for consumer goods procurement is categorized under consumer financing.¹ At present, consumer financing activities are experiencing rapid growth. This growth is largely due to the facilities offered by companies involved in consumer financing to the public.² Additionally, this growth is influenced by the increasing population and the corresponding rise in demand for transportation, which has also contributed to frequent traffic congestion in Indonesia. The transportation means in question include both four-wheeled vehicles (cars) and two-wheeled vehicles (motorcycles).³ Transportation has become an essential part of daily life.⁴ This demand has been capitalized on by businesses to establish consumer financing companies.⁵ In the process of extending credit to debtors, creditors typically require a credit guarantee from

¹DY Witanto, *Fiduciary Guarantee Law in Consumer Financing Agreements: Aspects of Engagement, Registration, and Execution*, Bandung: CV Mandar Maju, 2017), p. 15.

²Miranda Nasihin, *Everything About Financing Institution Law*, (Yogyakarta: Smart Books, 2012), p. 80.

³Milawatati T. Ruslan, *Law in Motor Vehicle Financing Agreement* (CV. Azka Putra, 2021), p. 1.

⁴Sunaryo, Muhammad Fakhri, Ratna Syamsir, and Kasmawati, "Improving Public Legal Awareness of Law No. 22 of 2009 as an Effort to Realize the Creation of Orderly Traffic on Highways", *SAKAI SAMBAYAN: Journal of Community Service*, Vol. 4, No. 2 (2020): 155-164. p. 155

⁵Milawatati T. Ruslan, *Op Cit*, p. 2.

the debtor.⁶ Fiduciary guarantees are not only utilized in bank credit agreements but also in consumer financing agreements between debtors and consumers.⁷

A fiduciary guarantee involves the transfer of ownership of the collateralized item without the physical transfer of the item itself (*constitutum possessorium*). Thus, the owner retains control over the item⁸, but its ownership temporarily transfers to the creditor until the debtor fulfills their debt obligations.⁹ In consumer financing, fiduciary guarantees are common, where all related ownership documents of the collateral are held by the financing company (creditor) until the consumer completes their installment payments.

While fiduciary arrangements simplify access to credit for the public, as the collateral remains under the debtor's control, various problems still arise in practice.¹⁰ One of the main issues is the execution of the fiduciary guarantee due to defaulted credit, a classic problem in the credit distribution process.¹¹ The high ratio of non-performing loans compels financing companies to take all necessary measures to recover the debt, including aggressive collection efforts.

To maximize debt recovery, financing companies often resort to various methods, some of which may involve coercion by debt collectors acting on behalf of the creditor.¹² These coercive practices can lead to significant losses and disputes with debtors. In practice, it is common to witness forced execution by debt collectors without proper fiduciary documentation, which constitutes a legal violation. Instances of forced actions by debt collectors have included threats of violence, personal attacks, and assaults on the debtor's dignity, honor, and worth.

In South Jakarta District Court Decision Number 345/PDT.G/2018/PN.Jkt.Sel,¹³ it was determined that the actions taken by fiduciary recipients, as previously described, constitute unlawful acts. A related case involved an assault by a group of debt collectors on a member of the Indonesian National Army (TNI). In brief, the incident occurred when a TNI member, who was assisting a sick neighbor by taking them to the hospital using his personal vehicle, was suddenly intercepted and beaten by a group of debt collectors at the West Koja Toll Gate, North Jakarta, on Saturday, May 8, 2021.¹⁴

Despite ongoing issues related to execution, the execution of fiduciary guarantees has gained public attention following the Constitutional Court Decision Number 2/PUU-XIX/2021 on August 31, 2021. There is a perception that this decision facilitates financing companies in executing fiduciary guarantees on debtors (consumers) who have been proven to be in default, allowing these companies to proceed with execution without a court order, even in the absence of debtor consent or a mutual agreement on the default between the parties.¹⁵ On the other hand,

⁶ Priyanto Hadisaputro, *Fiduciary Guarantee, Execution and Problems: After the Decision of the Constitutional Court Number 2/PUU-XIX/2021*, (South Jakarta: Adhi Sarana Nusantara, 2021), p. 1

⁷ Congratulations Sida Uruk, Retno Kus Setyowati, and Yessy Kusuma dewi, "Default Settlement in an Agreement with Fiduciary Guarantees Based on the Bengkayang District Court Decision Case Number 10/Pdt.G/BPSK/2015/PN.Bek", *Journal of Krisna Law*, Vol. 2. No. 2 (2020): 189-200, pp. 190

⁸ Sunaryo, *Law on Financial Institutions*, (Jakarta, Sinar Graphics, 2008), p. 105.

⁹ Eko Surya Prasetyo, "Implications of the Decision of the Constitutional Court Number 18/PUU-XVII/2019 on the Execution of the Guarantee Institution", *Legal Reflection*, Vol. 5. No. 1 (2020): 43-62, pp. 44

¹⁰ Nurlela, *Debt With Guaranteed Goods Without Fiduciary Certificate of Legal Disability*, (Publishing Law, 2019) p. 2-3

¹¹ Priyanto Hadisaputro and Ulya Yasmine Prisandani. *Billing Ethics: Upholding Morality and Professionalism*, (South Jakarta: Adhi Sarana Nusantara, 2021), p. 1

¹² *Ibid.* p. 5

¹³ Shanti Riskawati, "The Decidend Ratio of the Constitutional Court Decision Number 18/PUU-XVII/2019 and Changes in the Construction of Execution Norms and Defaults in the Indonesian Legal System", *ACTA DIURNAL: Journal of Notary Law*, Vol. 5. No. 1 (2021): 33-48, pp. 35-36.

¹⁴ Priyanto Hadisaputro and Ulya Yasmine Prisandani. *Op-cit.* p. 99 -100

¹⁵ Mochamad January sustenance. 2021. *Understanding stipulation Court As Alternative In Execution Guarantee Fiduciary*, <https://www.Hukumonline.com/>. Retrieved October 30, 2021.

an alternative view posits that the execution of fiduciary guarantees should only occur with the agreement of the parties involved in the breach of contract or when the debtor voluntarily surrenders the collateral. If these conditions are not met, the execution should proceed with an application to the District Court, necessitating a court decree if the conditions are unmet.¹⁶

The use of debt collectors is a common practice in the credit/receivables collection process; however, they must adhere to ethical billing practices and relevant legal regulations.¹⁷ When debt collectors harm debtors through actions that violate ethical standards and legal regulations, those actions may be subject to legal prosecution. In pursuing the collection of non-performing loans, debt collectors often resort to terrorizing, intimidating, persecuting, confiscating debtor-owned goods, or threatening guarantors.

The novelty of this research lies in its examination of the execution of fiduciary guarantees in motor vehicle financing agreements following the Constitutional Court Decision Number 2/PUU-XIX/2021, as well as the legal enforcement against violations committed by debt collectors. This research employs a normative legal research method, focusing on legal principles, legal systematics, legal synchronization, legal history, and comparative law, utilizing a legal approach.

The researcher was intrigued in conducting research entitled "Execution of Fiduciary Guarantees in Motor Vehicle Financing Agreements Post-Constitutional Court Decision Number 2/PUU-XIX/2021." The legislative approach is undertaken by researching all relevant laws and regulations related to the legal issue.¹⁸ The constitutional approach aims to provide answers to the legal problems concerning the execution of fiduciary guarantees after the Constitutional Court Decision Number 2/PUU-XIX/2021 and legal enforcement against violations committed by debt collectors.¹⁹ The data used in this research is secondary data, consisting of primary legal materials, secondary legal materials, and tertiary legal materials, collected through library research.

B. Discussion

1. Execution Guarantee Fiduciary in Agreement Financing Vehicle Motorized Post Decision Court Constitution Number 2/PUU-XIX/2021

a. Execution Guarantee Fiduciary in Agreement Financing Vehicle Motorized Before Decision Court Constitution Number 2/PUU-XIX/2021

Based on Article 29 of the Law Number 42 of 1999 concerning Guarantee Fiduciary, execution to object guarantee fiduciary could conducted with a number of way, namely:

1. Execution of the Executorial Title by the Fiduciary Recipient.
2. Public Auction of the Fiduciary Object: The fiduciary object may be sold through a public auction conducted by the fiduciary recipient, with the proceeds used to repay the debt.
3. Private Sale: A private sale of the fiduciary object may be carried out based on an agreement with the fiduciary giver, provided the following conditions are met:
 - a. The sale occurs at least one month after written notification has been sent by the fiduciary giver and/or receiver to interested parties.
 - b. The sale must be announced in at least two newspapers circulating in the relevant area.²⁰

Based on the relevant legal provisions, creditors can directly execute fiduciary guarantees against debtors in default. However, in 2019, a couple, Apriliani Dewi and Suri Agung

¹⁶Sumarso, Bastianto Nugroho, and Surti Yustiant I, "Criminal Liability for Crimes Performed by Debt Collectors in Collection of Receivables Against Bank Debtors" *Legal Scientific Journal*, Vol. 13. No. 1 (2019): 15-28, p. 18

¹⁷Priyanto Hadisaputro. *Loc.Cit.* p. 99.

¹⁸Zainudin Ali, *Legal Research Methods*, (Jakarta: Sinar Graphic, 2009), p. 12.

¹⁹Djulaeka and Devi Rahayu, *Legal Research Methods Textbook*, (Surabaya: Scopindo Media Pustaka, 2019), p. 32-33.

²⁰Priyanto Hadisaputro, *Op.Cit.*, pp. 57.

Prabowo, filed a judicial review challenging the constitutionality of Article 15 paragraphs (2) and (3) of Law No. 42 of 1999 concerning Fiduciary Guarantees. This resulted in the issuance of Constitutional Court Decision No. 18/PUU-XVII/2019 on January 6, 2020. Following this decision, the execution of fiduciary guarantees against defaulting debtors has been altered.²¹ Execution can still be carried out directly, provided that two conditions are met: (1) the parties have agreed upon the occurrence of default, and (2) the fiduciary guarantee object is voluntarily surrendered by the debtor.²² Thus, Constitutional Court Decision No. 18/PUU-XVII/2019 does not annul the Fiduciary Guarantee Law but imposes conditions that must be fulfilled for its execution.

b. Execution Guarantee Fiduciary in Agreement Financing Vehicle Motorized Post Decision Court Constitution Number 2/PUU-XIX/2021

The judicial review of Law No. 42 of 1999 concerning Fiduciary Guarantees was pursued because it was considered to be in conflict with the 1945 Constitution of the Republic of Indonesia, and potentially infringed upon the constitutional rights and/or authority of the petitioner. Joshua Michael Djami, an employee at a finance company with the position of internal collector and certified in the field of debt collection, filed this judicial review.²³ The legal provisions in this case were Article 15 paragraph (2) and the elucidation of Article 15 paragraph (2). Notably, this provision had previously been subject to a judicial review by the Constitutional Court on February 27, 2019, which resulted in Constitutional Court Decision No. 18/PUU-XVII/2019 on January 6, 2020. The petitioner argued that the Constitutional Court had already provided an interpretation of this provision.²⁴

Upon legal consideration, the Court opined that, regarding the strength of the executive title of fiduciary guarantees in light of Constitutional Court Decision No. 18/PUU-XVII/2019, the petitioner had not fully understood that the restriction on unilateral execution was meant to prevent arbitrary actions during the execution process. Furthermore, the Court stated that the determination of the relevant District Court is required for the execution of a fiduciary guarantee if there is no agreement between the creditor and debtor regarding default, or if the voluntary surrender of the fiduciary object by the debtor does not occur. Therefore, this requirement serves as an alternative measure.²⁵

Based on these considerations, the Constitutional Court, in its ruling, rejected the petition in its entirety, thus affirming the validity and binding nature of Constitutional Court Decision No. 18/PUU-XVII/2019. The Court further noted that the arguments used as the basis for the petitioner's request for judicial review had already been considered and decided in Decision No. 18/PUU-XVII/2019. Consequently, there were no fundamentally different legal reasons or conditions for the Court to alter its stance on the issue of fiduciary guarantee execution.²⁶ Essentially, Constitutional Court Decision No. 2/PUU-XIX/2021 aligns with Decision No. 18/PUU-XVII/2019, as the determination of default cannot be made unilaterally by the creditor but must be based on a mutual agreement between the parties, namely the creditor and the debtor.²⁷

²¹ Robert Bouzen and Ashibly , " Implementation of the Execution of Fiduciary Guarantees against Debtors in Default after the issuance of the Constitutional Court Decision Number 18/PUU-XVII/2019 ", *Journal of Legal Ideas* , Vol. 3. No. 2 (2021) : 137-148 , pp. 144

²² *Ibid.* p . 146

²³ Priyanto Hadisaputro , *OpCit* , p. 86 -87

²⁵ Constitutional Court Decision Number 2/PUU-XIX/2021 , p . 83-84

²⁶ Constitutional Court Decision Number 2/PUU-XIX/2021 , *Loc Cit* , p. 84

²⁷ Sigit Nurhadi Nugroho and Nurlaili Rahmawati , " Default (Default) in Fiduciary Agreements Based on Article 15 Paragraph (3) of Law Number 42 of 1999 Post-Decision of the Constitutional Court Number : 18 /PUU-X VII / 2019 and the Constitutional Court Decision Number 2/PUU-XIX/2021 ", *AL WASATH: Journal of Law* , Vol. 2. No. 2 (2021) : 77-92 , pp. 90.

Based on the description above, it can be analyzed that Constitutional Court Decision Number 2/PUU-XIX/2021, concerning the submission related to Law Number 42 of 1999 on Fiduciary Guarantees, essentially reaffirms the Constitutional Court Decision Number 18/PUU-XVII/2019. The recent decision does not introduce any fundamental changes but serves as a confirmation of the previous ruling. The Court reiterated that the execution of a fiduciary guarantee, which can be requested by creditors through the District Court, is an "alternative" measure. This "alternative" means that creditors may seek execution through the District Court only if there is no agreement on the default between the creditor and the debtor, and if the debtor does not voluntarily surrender the fiduciary object.²⁸ Consequently, under this Constitutional Court decision, the interpretation of Article 15, paragraph (2), regarding the equivalence of a fiduciary certificate with a final and binding court decision, implies that an agreement regarding the default must first be reached between the fiduciary giver (debtor) and the fiduciary recipient (creditor). Furthermore, the fiduciary giver (debtor) must voluntarily hand over the fiduciary object before execution can proceed.²⁹

In this context, the following opinions are advanced in this research. Concerning the Court's legal reasoning that mandates an agreement between the parties in cases of default to prevent creditors from unilaterally executing the guarantee, this rationale is deemed appropriate. This approach aims to mitigate the risk of potential abuse during the execution process. Consequently, the Court's decision serves to protect the rights of both parties, whether debtor or creditor. For example, if a debtor (consumer) experiences arbitrary treatment during the execution of the fiduciary guarantee, or if the execution process does not adhere to applicable regulations, the debtor is entitled to seek legal recourse through the courts. Similarly, if a creditor (typically a company) faces a situation where the debtor defaults and refuses to voluntarily surrender the fiduciary object, the creditor can request the execution of the fiduciary guarantee through the District Court. This procedural safeguard helps to prevent arbitrary actions, promotes order, and fosters constructive relations between the involved parties.

Second, regarding the Court's consideration that applying for execution to the District Court serves as an alternative when an agreement between the parties is not achieved in cases of default, and when the debtor refuses to surrender the fiduciary object, this view is deemed valid. Direct execution by creditors remains permissible under certain conditions, recognizing that not all debtors act in bad faith. Thus, the Court's decision, which reaffirms previous rulings, is appropriate as it reflects the inherent risks in business operations that creditors cannot entirely avoid.

Although some debtors may act unethically by failing to fulfill their agreements, not all debtors will necessarily exhibit such behavior. Debtors are expected to comply with their agreements, making timely payments as stipulated. Good faith is crucial in executing any agreement, and it must be maintained throughout the agreement's formation, implementation, and in seeking solutions that protect both parties' interests. However, this rationale does not justify arbitrary execution of fiduciary guarantees through force or violence by creditors or their representatives. Even in cases where the debtor has acted in bad faith or defaulted, debt collectors should avoid unethical or dangerous practices that could compromise the debtor's safety.³⁰

²⁸ Priyanto Hadisaputro, *Op Cit*, p. 96.

²⁹ Romlatust Nain, Fadilah Atika Suri, Pradita Putri Rachmawati, and Aldi Indra Setiawan, "Alternative Models of Execution of Fiduciary Guarantee Objects after the Decision of the Constitutional Court Number 2/PUU-XIX/2021" *Gorontalo Law Review*, Vol. 5. No. 1 (2022): 288-299, pp. 294-295

³⁰ Translated from Hamzah's journal. 2020. Civil Law Agreement and its Implication on Regulation for Prevention of Corruption within Covid-19 Pandemic. *Journal of Social Studies Education Research* 11. No. 3: 156-176. pg. 167

While there is no prohibition against creditors using third-party services for debt collection, ethical considerations are sometimes overlooked during the collection process. Unethical actions can pose significant risks for creditors, including damage to their reputation and potential legal consequences. As debt collection is a professional activity, it is imperative that ethics and morality are upheld at the highest standards throughout the collection process.³¹

2. Law Enforcement Against Violations Committed by Debt Collectors

Legislation is derived from the law, which encompasses the rules that must be adhered to. To ensure justice and prosperity for society, Pancasila, as the foundational state philosophy, serves as the fundamental basis and guideline for government operations.³² The enforcement of laws is intrinsically linked to the values, ideas, attitudes, and behaviors associated with legal principles.³³ However, ethical considerations are frequently disregarded by debt collectors during their collection activities. Despite the existence of regulations designed to guide the actions of debt collectors, these rules are often violated. This issue is evidenced by the increasing prevalence of unethical behavior among debt collectors. The erosion of moral standards in debt collection necessitates robust legal enforcement measures. Effective law enforcement is crucial to maintaining order and legal compliance in debt collection activities.³⁴ This enforcement can be achieved through the imposition of stringent sanctions, including administrative, civil, and criminal penalties.

Law enforcement should target both individual debt collectors and the companies employing their services. By doing so, all parties involved, whether internal or external, will be incentivized to uphold ethical standards in debt collection and adhere to applicable regulations. Enforcement measures may include administrative sanctions, civil penalties, and criminal charges, as detailed below.

a. Administrative Penalty

Administrative penalties serve as a form of punishment for debt collectors who are found to have committed administrative violations. The imposition of administrative penalties becomes necessary when a debt collector breaches company regulations. These penalties can include various measures such as verbal or written warnings, temporary suspension, or termination of employment. Additionally, the Financial Services Authority has the authority to impose penalties such as revocation of operating licenses and inclusion in a blacklist of debt collectors.

Administrative sanctions are not limited to debt collectors alone but should also extend to the companies employing their services. This is in accordance with the Debt Collector Act, which holds both the debt collector and the company accountable for breaches. Companies that are found to have committed violations may face administrative penalties, which can include warnings, reprimands, fines, temporary suspension of operations, or even revocation of their operating licenses, depending on the severity of the violations.

b. Civil Penalty

Civil penalties are a form of punishment for debt collectors who have been found to engage in unlawful conduct during debt collection activities. These penalties focus on compensating for any losses incurred as a result of the debt collectors' actions. Civil penalties are intended to address and rectify harm caused by unethical or illegal practices.

³¹Priyanto Hadisaputro and Ulya Yasmine Prisandani , *OpCit* , p. 8.

³²Vita Hestiningrum, Erna Dewi, and Ahmad Irzal Fardiansyah , " Judge's Legal Considerations in Imposing Guidance Sanctions on Children Perpetrators of theft with Weights " *PANCASILA AND LAW REVIEW* , Vol. 1. Issue 1 (2020) : 38-48 , pp. 40-41

³³Translated from Rohaini, Kinkin Wahyuningdiah, and Nenny Dwi Ariani. 2020. The Challenges of Legal Protection on Traditional Cultural Expressions of Lampung. *FIAT JUSTISIA: Journal of Legal Studies* 14. No. 3: 221-232. pg. 229

³⁴Priyanto Hadisaputro and Ulya Yasmine Prisandani , *Op.Cit* , p. 171.

The enforcement of civil penalties can be implemented through the provisions outlined in Articles 1365-1367 of the Civil Code (*KUHPerdata*). These articles provide a framework for holding debt collectors and their employing companies accountable for damages caused to debtors. By applying these provisions, debt collectors and companies can be held liable for any losses resulting from unethical or unlawful behavior, thereby ensuring accountability and offering compensation to affected debtors.³⁵

c. Criminal Penalty

Criminal penalties are a form of punishment imposed for actions that result in legal violations and have significant legal consequences. Criminal accountability is inextricably linked to the nature of the offenses committed. Imposing criminal penalties on debt collectors who engage in criminal activities during debt collection is essential for addressing severe breaches of the law.³⁶

Criminal sanctions serve as a final recourse and are designed to have a deterrent effect on debt collectors. While debt collection typically falls within the realm of civil law, there is an acknowledgment of the potential for criminal acts, which necessitates the enforcement of criminal law in cases of wrongdoing.³⁷ For example, in the context of fiduciary guarantees, if enforcement actions are carried out improperly, they may constitute criminal offenses. Such actions may be classified as extortion under Article 368 of the Criminal Code if they involve coercion, or theft under Article 362 if they involve the unlawful taking of property.³⁸ If the enforcement involves violence or threats, it may be prosecuted under Article 365, paragraph (1) of the Criminal Code.³⁹

To prevent further criminal activities by debt collectors, it is crucial that offenders are prosecuted and, if found guilty, receive appropriate prison sentences. This approach ensures that criminal acts are addressed effectively and serves as a deterrent to potential offenders.⁴⁰

C. CLOSING

1. Conclusion

- a. The Constitutional Court Decision Number 2/PUU-XIX/2021 essentially reaffirms the principles established in the earlier Constitutional Court Decision Number 18/PUU-XVII/2019, without introducing significant changes. The decision clarifies that, following the Decision Number 2/PUU-XIX/2021, the provision for determination by the District Court regarding fiduciary guarantee enforcement in motor vehicle financing agreements is now considered an alternative measure. A determination can be requested if parties fail to reach an agreement on the fulfillment of promises and voluntary surrender of the fiduciary object by the debtor. Conversely, if the debtor voluntarily agrees to surrender the fiduciary object, a court determination is not required.
- b. Enforcement of the law against debt collectors for violations can involve administrative, civil, or criminal penalties. Administrative penalties may include warnings (either verbal or written), temporary suspension, or dismissal. Civil penalties are applicable to actions by debt collectors that are deemed unlawful under Article 1365 of the Civil Code

³⁵ *Ibid.* p. 172-174.

³⁶ Imaculata Sherly Mayasari, and Nynda Fatmawati Octarin " Criminal Law Position on Forced Vehicle Taking of Debtors by Debt Collector of Financing Institutions ", *Rechtens Journal*, Vol. 9, No. 2 (2020) : 141-152, pp. 147.

³⁷ Median Dwi Raharjo, " Criminal Liability in the Transfer of Objects of Fiduciary Security without the Consent of the Fiduciary Recipient ", *Ius Poenale*, Vol. 1, Issues. 2 (2020) : 119-134, pp. 124

³⁸ Mashita Nagieb Kuddah, " Execution outside the court of the object of fiduciary security by a financing company (Research of Gorontalo State Court Decision Number 60/PDT.G/2019/ PN.GTO and Source District Court Decision Number 25/PDT.G/2020/PN.SBR) ", *Indonesia Notary*, Vol. 3, No. 4 (2021) : 67-89, pp. 69.

³⁹ Priyanto Hadisaputro and Ulya Yasmine Prisantani, *Op.Cit*, p. 175.

⁴⁰ Imaculata Sherly Mayasari, and Nynda Fatmawati Octarin, *Op Cit*, p. 150

(*KUHPerdata*), which addresses acts that are contrary to the law. Criminal penalties are imposed for actions such as coercive execution of fiduciary guarantees. Such actions may constitute criminal offenses, including extortion under Article 368 of the Criminal Code, theft under Article 362 if the fiduciary guarantee is executed forcibly at home, or robbery if carried out with violence or threats under Article 365, paragraph (1) of the Criminal Code.

2. Suggestion

Creditors (financing companies and consumers) should be more selective in choosing debtors to avoid ethical issues and ensure compliance with regulations during fiduciary guarantee enforcement in motor vehicle financing agreements. This practice is intended to prevent arbitrary actions during execution and facilitate a smooth process. Debt collectors must uphold high standards of morality and professionalism, avoiding any actions that could threaten debtor safety, thereby contributing to an ethical debt collection process. Debtors (consumers) should also adhere to their agreement terms and fulfill their obligations as specified, which will help prevent the need for forceful fiduciary guarantee execution and reduce the risk of arbitrary actions by debt collectors.

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