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THE ROLE OF DEBT COLLECTOR SERVICES IN WITHDRAWAL OF FIDUCIARY COLLATERAL IN FINANCING COMPANIES (Case Study on Finance in the City of Kediri)

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Abstract: This finance company faces a dilemma when the consumer/customer defaults or is late or fails to pay. The leasing company will try to return its rights, namely goods that have become fiduciary guarantees. At first glance, it seems that there is a civil relationship, but we all know that efforts to restore the rights of these leasing companies are often difficult, in the end some of these companies use the services of debt collectors. Formulation of the problem how the role of debt collector services in withdrawing fiduciary guarantees at financing companies in Kediri City, the factors that cause finance companies to use debt collector services in withdrawing fiduciary guarantees in Kediri City, and the legal consequences of withdrawing fiduciary guarantees carried out by Debt Collectors. The method in this research is empirical juridical. The results of the research on the Role of Debt collector Services in Withdrawing Fiduciary Guarantees at Financing Companies in the City of Kediri. need each other to deal with bad credit problems between debtors who are in default and creditors of Financing Companies, but debt collectors solve bad credit problems for vehicles and to save company assets from being lost for practical reasons without having to go through legal channels and have to use a professional method and in accordance with regulations applicable. Factors That Cause Finance Companies to Use Debt collector Services in Withdrawing Fiduciary Guarantees in the City of Kediri. a) Because legal and legal means are not working, they are considered inefficient and ineffective. b) The lengthy process of law enforcement creates public disappointment. c) Courts cannot guarantee legal certainty and run short. d) Debt collectors are considered more able to work in a relatively short time and the success rate reaches 90%. Legal Consequences of Withdrawal of Fiduciary Guarantees Made by Debt Collectors. who take the object of fiduciary collateral by seizing and threatening the debtor, including committing a criminal act. This action is as regulated in Article 368 of the Criminal Code (Criminal law book). cause legal consequences which are punishable by imprisonment for a maximum of 9 (nine) months.

Keywords: Financing institutions, bad loans, debt collectors

1. Introduction

The presence of a credit system really helps people's lives and even economic growth in a country, but the current limitation is that not all goods sold in markets or shops offer a credit system for the goods they sell. Because besides the trust factor, other factors are taken into consideration by traders to make it more convenient to sell by cash rather than credit. But behind this convenience, if we are not responsible for paying off the credit, it will certainly bring us problems, because in the end we will be faced with debt collectors to collect a number of debts.

The existence of debt collectors is developing not only in the banking environment, but other business entities that have bills such as leasing which provides credit to consumers who want to own vehicles or other movable objects but payments are made on credit. However, the tendency that occurs in practice is that it is rare for debt collectors to act in accordance with applicable norms but instead violate legal provisions such as intimidation, threats and real violence, both physical and psychological.[1]

The action of a debt collector who forcibly confiscates goods, for example confiscating a motorbike that is in arrears on credit or confiscating goods in the house because it has not been able to pay off the debt to the bank, is an illegal act. The act of confiscating forcibly is like closing a hole in a problem with the problem of resolving law violations by violating more severe laws.

A debtor who has not been able to pay off his debt in full (for example motorcycle credit installments that are due) is a violation of the law, namely violating the agreement. In this case the creditor (motorcycle dealer) has the right to confiscate the goods that have been handed over to the debtor (motorcycle buyer) on the grounds of default. For this reason, the creditor usually sends his debt collector to confiscate the goods if he is unable to collect the debt.

In arrears who are unable to pay off their bills, debt collectors who are ordered by the bank for problem loans will take a number of movable and immovable goods as collateral. If the defaulter has paid it off, then the guarantee will be returned, but if it is not paid off, of course the item will disappear. In addition, it is also not uncommon for debt collectors to do this by using threats and violence.

The use of third party services (debt collectors) is basically a party that has the potential to cause harm to consumers. Sometimes the debt collector does not work professionally as expected by the bank or finance. Sometimes to get the debt they collect, they take actions against the law, causing losses to the customer whose debt is being collected.

The behavior of debt collection services in carrying out their duties from the consumer's point of view violates laws and regulations because they often threaten and even commit violence against consumers. The main task of collection services is to bill consumers who have not paid or are past due as determined by the finance company, but debt collection services collect money from consumers of financing services with threats and violence to pay, even taking consumer goods by force. , if the consumer does not pay the money within the time specified by the debt collection service.

Based on the description above, the author wants to discuss this in a thesis entitled The Role of Debt Collector Services in Withdrawal of Fiduciary Guarantees in Financing Companies (Case Study on Finance in the City of Kediri)

With the brief description of the background above, there are several issues that need attention:

1. What is the role of Debt collector services in withdrawing fiduciary guarantees at finance companies in the City of Kediri?
2. Factors that cause finance companies to use the services of debt collectors in withdrawing fiduciary guarantees in the City of Kediri.?

[1] M. Khoidin, *"Debt collectors and violence",* Republic, 17 September 2010, page 6

3. What are the legal consequences of withdrawing fiduciary guarantees carried out by debt collectors?

2. Method

This research is an empirical research, namely: Research in action on any particular legal event that occurs in society. The Juridical-Sociological approach is used to analyze law which is seen as a patterned societal behavior in people's lives that always interact and relate to social aspects. the research location is in the city of Kediri because in that area there are still many finance or financing institutions in the city of Kediri that use the services of debt collectors to settle problem loans randomly. Among the financing in this study are Wom Finance, FIF finance, Adira Finance in the city of Kediri. Types of Data and Data Sources, Primary data, in the form of data that is directly obtained in field research. The data obtained from in-depth interviews (deft interviews) while the secondary data, the data needed to complement the primary data. Data collection was carried out by the authors in this study by means of: Document Studies, Interviews, Population in the study, the sample in this study was determined by the sample, namely 5 people holding fiduciary guarantees for movable objects, 5 finance employees or financing institutions randomly in the City Kediri The sampling technique was carried out by purposive sampling, the data analysis used was descriptive method.

3. The Role of Debt Collector Services in Withdrawing Fiduciary Guarantees at Financing Companies in the City of Kediri

In the Joint Decree of the Minister of Finance, Minister of Industry and Minister of Trade of the Republic of Indonesia No. Kep-122/MK/iv/2/1974; No. 32/M/SK/2/1974; No. 30/Kpb/I/1974 concerning Leasing Business Licensing, Article 1 states that, "leasing is any company financing activity in the form of providing capital goods to be used by a company for a certain period of time, based on periodic payments accompanied by the right to vote (optie) for the company to purchase the capital goods in question or extend the leasing period based on a mutually agreed residual value"[2]

The parties in the leasing, namely[3]

a. Lessor, namely the party that provides financing by way of leasing to those who need it. In this case the lessor can be a financing company that is "multi finance," but can also be a company specifically engaged in leasing.

b. Lessee, namely the party that requires capital goods, which capital goods are financed by the lessor and intended for the lessee.

c. Supplier, namely the party that provides capital goods which are the object of leasing, which capital goods are paid by the lessor to the supplier for the benefit of the lessee. It could also be that this supplier is an ordinary seller.

But there is also a type of leasing that does not involve suppliers, but rather a bilateral relationship between the lessor and the lessee. For example in the form of Sale and Lease Back. The legal relationship between the lessor, the supplier and the lessee is: The lessor pays the supplier for the purchase of goods in cash. The supplier delivers the goods to

[2] https://www.scribd.com/doc/268567288/KOMPILASI-BIDANG-HUKUM-TENTANG-LEASING. Accessed on September 20, 2022

[3] Munir Fuady, Law on Financing, Citra Aditya Bakti, Bandung, 2006, p. 8

the lessee. After the lessee has acquired the goods, he makes lease payments to the lessor.

The definition of bad credit in the policy package was regulated in May 1993, in Indonesia there are two categories of bank credit, namely current credit and non-performing loans. Where non-performing loans are classified into three, namely substandard loans, doubtful loans, and bad loans. This bad credit is what every bank is very worried about, because it will disrupt the bank's financial condition. Bad credit or other problems are loans that experience repayment difficulties due to factors or elements of intent or conditions beyond the ability of the debtor[4] Of course, so that there are no losses for both parties, the leasing party can submit a settlement through the court. This is in accordance with Minister of Finance Regulation (PMK) No.130/PMK.010/2012 concerning Fiduciary Registration for Finance Companies.

Based on the results of an interview with the Credit Marketing Officer of PT FIF Federal International Finance, Kediri City[5] it can be seen that there are several problems that arise in the implementation of consumer financing agreements at the Kediri City office, namely as follows:

1. The debtor does not fulfill one of the obligations specified in the agreement, namely does not pay installments after 30 (thirty) days have passed since the installment due date.
2. The debtor does not maintain and care for collateral, namely motorbikes, from possible damage or loss.
3. The debtor sells, lends, or does other things that cause the transfer of motorbikes to third parties in any form and method without the knowledge of the creditor, for example motorbikes are usually intended for other people where if one day the person using the motorbike lost along with the motorbike, then on behalf of credit usually avoids/objects from being responsible for installment payments.

The measure used to determine whether the debtor has defaulted on PT FIF Federal International Finance in the City of Kediri, among others[6]:

1. Non-payment of financing debt installments with the lapse of 30 (thirty) days from the installment due date.
2. Motorbikes/cars pawned
3. Motorcycles taken out of the area
4. Over credit was carried out without the knowledge of PT FIF Federal International Finance, Kediri City

For the settlement of defaults at PT FIF Federal International Finance Kediri City, the debtor will first be summoned or given an SP (Warning Letter) by the collector department, each of which is as follows[7]:

1. Warning Letter 1 is given to debtors who are late in making payments for 1 month or 30 days.
2. Warning Letter 2 is given to debtors who are late in making payments for 2 months or 60 days.

[4] Siamat Dahlan, Commercial Bank Management, Intermedia, Jakarta, 1993, p. 220
[5] interview with PT FIF finance manager Mr. Pramadita anggara Putra on September 15 2022 at 12.00 WIB
[6] interview with PT FIF finance manager Mr. Pramadita anggara Putra on September 15 2022 at 12.00 WIB
[7] interview with PT FIF finance manager Mr. Pramadita anggara Putra on September 15 2022 at 12.00 WIB

3. Warning Letter 3 is given to debtors who are late in making payments for 3 months or 90 days.

If within a period of 3 months or 90 days the debtor is still unable to make payments, then the case will be transferred to the PSO (Problem Solving Officer) Division, namely the division for dealing with debtors who are late in fulfilling their obligations for 3 months and above. If the debtor in handling PSO is unable to make payments, then the unit, in this case the motorcycle, will be immediately secured by the PSO Division.

If the PSO Division is unable to make a withdrawal, the debt collector (DC) will process the withdrawal, which incidentally is an external employee of the company (freelance). In the event that the motorcycle is lost because the debtor did not take good care of it or the motorcycle is pawned without prior knowledge from Finance, the creditor will ask for help from the Debt collector (DC) to search for the motorcycle that is the collateral item.

As already mentioned, until now there are no regulations that specifically regulate the use of debt collector services by financial institutions. However, the use of debt collector services as a form of external collector is made possible by financial institutions to collect debts from other parties. In employment relations, one of the agreements that may exist is an employment agreement. The work agreement generally contains an agreement between the worker and the company, which in this case is often represented by the company's management or directors.

However, it is not uncommon for the debtor to put up a fight if the creditor/fiduciary guarantee recipient will execute the object that is the object of the guarantee. The form of resistance carried out by the debtor can be in the form of obstructing officers, hiding objects, diverting them to third parties so that these third parties also fight back. Basically, the debtor does not have good faith to voluntarily hand over collateral objects even though they have defaulted.

The problems encountered in the field need protection and legal certainty for creditors to prevent greater losses, especially for creditors. Non-performing loans greatly affect the soundness of the company. To facilitate execution, the creditor may use a third party. So far, creditors prefer to use third parties in the form of "debt collectors". However, in practice, debt collectors often take actions that are against the law, such as violence, insults, and some even cause legal problems.

Debt collectors are third parties that connect creditors and debtors in terms of credit collection, billing can only be done if the quality of credit claims in the collectibility category is doubtful or bad[8] Third-party services or debt collectors at finance companies employing debt collectors come from debt collector outsourcing companies that are bound by a work agreement or authorization of withdrawal. The work agreement granting power of attorney given by the finance company to the debt collector through an outsourcing company refers to the Article on the Granting of Power of Attorney in Articles 1792-1819 of the Civil Code[9]

A debt collector is a third party that connects creditors and debtors in terms of credit collection. Billing can only be done if the quality of the intended credit card bill is included in the collectibility category of doubtful or loss based on collectibility used by the credit

[8] Muchtar, Masrudi, Debt Collector in the Optics of Criminal Law Policy, Aswaja Presindo, Yogyakarta, 2013, p. 1

[9] Interview with the credit manager of PT wom Finance, Mr. Agus Rahmawan on September 9, 2022 at 09.00 WIB

card industry in Indonesia. The emergence of third party services (external debt collectors) to assist and overcome bad credit problems greatly assists the work of the collector department and can save company assets.

The power of attorney agreement also contains provisions regarding the withdrawal procedure, namely the withdrawal procedure must be in accordance with the provisions set by the finance company and avoid things that are not desirable or outside the provisions set by the finance company, so that if the debt collector does work outside of the determined by the finance company, the action will be personal responsibility in this case the debt collector[10]

Finance companies use the services of third parties in an effort to resolve vehicle bad credit problems and to save company assets from being lost for practical reasons without having to go through legal channels. In addition, the use of third party services is nothing but to save the image and good name of a finance company before the law.

But in fact, forcibly taking a vehicle by a credit finance company (leasing) through third party services is an unlawful act. According to Law no. 42 of 1999 concerning Fiduciary Guarantees, the right to execute is the authority of the court, not the authority of the seller of debt collection services which are often hired by leasing parties.

Many people, especially consumers of motor vehicle loans, do not know about this rule, as a result, people only give up when the leasing party takes their vehicle by force[11] In addition, the Ministry of Finance has issued PMK No. 130/PMK.010/2012 concerning Fiduciary Registration for Financing Companies. Diamana, leasing companies are prohibited from forcibly withdrawing vehicles from customers who experience arrears in vehicle loan payments. With the publication of these Fiduciary regulations, the leasing party has no right to forcibly withdraw or take your vehicle. The form of settlement for customers who are negligent in making payment of obligations for vehicle installments is resolved through legal channels.

Thus the role of debt collector services in withdrawing fiduciary guarantees at finance companies in the City of Kediri need each other to deal with bad credit problems between default debtors and financing company creditors, but debt collectors resolve bad credit vehicle problems and to save company assets from being lost for reasons practically without having to go through legal channels and having to use a professional method and in accordance with applicable regulations. In addition, the use of third party services is nothing but to save the image and good name of a finance company before the law.

4. Factors That Cause Finance Companies to Use Debt Collector Services in Withdrawing Fiduciary Guarantees in the City of Kediri.

The definition of a financing institution can be seen in the Presidential Regulation of the Republic of Indonesia Number 9 of 2009 concerning Financing Institutions Article 1 paragraph (1), namely: "Financing Institutions are business entities that carry out financing activities in the form of providing funds or capital goods".[12]

[10] Interview with police officer Joko Susilo on September 30, 2022 at 11.15 WIB.

[11] Law No. 42 of 1999 concerning Fiduciary Guarantees

[12] Article 1 paragraph (1) Presidential Regulation of the Republic of Indonesia Number 9 of 2009 concerning Financing Institutions. This regulation was made to increase the role of Financing Institutions in the process of national

A financing institution is a business entity in the form of providing goods or capital funds by not withdrawing funds directly from the public. As a business entity, financial institutions carry out their business in the field of financial services, both providing funds to finance productive and consumptive businesses.

Based on Presidential Regulation Number 09 of 2009 concerning Financing Institutions Article 1 paragraph (7) the definition of consumer financing is:

"financing activities for the procurement of goods based on consumer needs with installment payments"[13]

The definition above regarding consumer financing, according to Muhammad Abdulkadir and Rilda Muniati, has detailed the elements contained in the definition of consumer financing, namely:

a) Objects are all movable goods belonging to consumers that will be used for daily living or household needs;

b) The subject of the agreement is the parties involved in consumer financing law, namely in this case the creditor as a consumer finance company, the debtor as a consumer, the supplier or supplier is a supplier of goods;

c) The relationship between rights and obligations, namely consumer finance companies automatically finance the purchase of goods needed by debtors or consumers. And paying in cash to suppliers or suppliers, and vice versa consumers have the obligation to pay in installments to creditors or consumer companies, and finally suppliers or suppliers are required to deliver goods that have been agreed upon by consumers.

d) The guarantee consists of the main guarantee, and, additional guarantee, the main guarantee. The main guarantee is in the form of trust in the consumer (debtor) if the debtor in the middle of payment defaults, so the debtor provides a guarantee to the consumer company.

e) Agreements are financing agreements between consumer companies and consumers, along with buying and selling between suppliers and consumers. This agreement is followed by legal letters, in a consumer financing agreement it is usually referred to as a contract or agreement where the contents of the contract contain the rights and obligations of the parties.

Non-performing loans are classified into three, namely substandard loans, doubtful loans, and bad loans. This bad credit is what every bank is very worried about, because it will disrupt the bank's financial condition, and can even result in the cessation of finance business activities.

Bad credit or problem loans are loans that experience repayment difficulties due to factors or elements of intent or due to conditions beyond the ability of the debtor[14]

A credit is classified as bad credit if:

a. Unable to meet the criteria for current credit, substandard credit and doubtful credit or

development, as well as to provide an explanation regarding types, business activities, restrictions, as well as supervision.

[13] Munir Fuady, Law Regarding Financing, PT Citra Aditya Bakti, Bandung 2006, page 162

[14] Munir Fuady, Law Regarding Financing, PT Citra Aditya Bakti, Bandung 2006, p. 162, p.: 220

b. Can meet the criteria for doubtful credit, but after a period of 21 months since the credit classification period is doubtful, there has been no repayment of the loan, or efforts to save credit; or

c. Completion of the repayment of the credit in question, has been submitted to the district court or the State Receivables Agency (BUPN), or a request for compensation has been submitted to the credit insurance company.

The emergence of non-performing loans, including bad loans, basically does not happen suddenly, but through a process. The occurrence of bad credit can be caused either by the creditor (bank) or the debtor. The causal factors which are the fault of the creditor are:

a) It is too easy to give credit, which is caused by the absence of clear benchmarks regarding the eligibility standards for credit requests submitted;

b) Concentration of credit funds in a group of high-risk debtors or business sectors;

c) Inadequate number of experienced loan executives and staff;

d) Weak leadership guidance and supervision of executives and credit department staff;

e) The amount of credit disbursement exceeds the ability of the bank;

f) Weak ability of banks to detect the possibility of non-performing loans, including detecting the direction of cash flow developments (cash flow) of old debtors. Not being able to compete, so forced to accept debtors who are less qualified.

While the factors that cause bad credit are caused by the fault of the debtor. Deterioration in the condition of the company's business operations, which is caused by a decline in general economic conditions and/or the business sector in which they operate:

a) There is mismanagement in the management of the company's business operations, or because of a lack of experience in the business fields they handle.

b) Family problems, such as divorce, death, prolonged illness, or wastage of funds by one or several members of the debtor's family;

c) Failure of the debtor in their other line of business or company.

d) Serious financial liquidity difficulties.

e) The emergence of events beyond the control of the debtor, such as war and natural disasters.

f) The bad character of the debtor (who from the beginning had planned not to repay the credit).

Finance bad loans in the City of Kediri from several financing institutions from 2020 to September 2022 the author of the analysis is in the form of a table below:

Table 1.1

Bad Credit FIF Finance

Year	Type of vehicle	Number of bad loans
2020	Motorcycles	310 consumers
2021	Motorcycles	256 consumers
September 2022	Motorcycles	125 consumers

Data source: interview with PT FIF finance manager, Mr. Pramadita anggara Putra on September 15 2022 at 12.00 WIB

Table 1.2

Bad Credit Wom Finance

Year	Type of vehicle	Number of bad loans
2020	Motorcycles	437 consumers
2021	Motorcycles	336 consumers
September 2022	Motorcycles	257 consumers

Data source: Interview with the credit manager of PT wom Finance, Mr. Agus Rahmawan on September 9, 2022 at 09.00 WIB

Table 1.3
Adira Finance Bad Loans

Year	Type of vehicle	Number of bad loans
2020	Motorcycles	437 consumers
2021	Motorcycles	336 consumers
September 2022	Motorcycles	257 consumers

Data source: Results of interviews with Heri Susanto, manager of PT Adira Finance in the credit section on October 5, 2022 at 10.00 WIB

From the data above, it can be concluded that the large number of bad loans makes it possible for the finance party to use a third party (debt collector) in solving the bad credit problem.

Arrangements for the emergence of the right to collect all or part of the debtor's debt to the creditor are generally listed in the credit agreement that has been mutually agreed upon between the creditor and the debtor, which begins with the negligence/default of the debtor (at least the assumption of negligence/default of the debtor felt by the creditor on the agreement credit) which is notified by creditors through warning letters 1, 2, 3 and/or subpoenas, the essence of which is in the form of a warning letter to immediately make payments in accordance with the obligations by the debtor to the creditor.

The use of debt collector services by finance is seen as more efficient than deploying these finance employees. This can be 50 percent cheaper than using the finance employee itself[15]Another option If finance uses outsourcing as a contract employee, it is much more efficient, because the debt collector's job is just like that. No need special experience. Can be half more, 50 percent more inefficiency[16] said Adira's credit manager, Heri Susanto. Explain, this condition can be more efficient than using your own employees. Where if billing is done directly by finance employees, it requires more expenses such as bonus allowances and others. Because debt collectors only have a minimum salary and a bonus if they succeed. If employees still have THR, year-end benefits, bonuses, salaries, medical coverage. If you go to the hospital, you have to cover everything, retire, Social Security, Adira is still using the services of debt collectors. At the

[15] Results of interview with Heri Susanto, manager of PT Adira Finance in the credit section on October 5, 2022 at 10.00 WIB

[16] Results of interview with Heri Susanto, manager of PT Adira Finance in the credit section on October 5, 2022 at 10.00 WIB

moment I think its use is not prohibited, what is important is the control over the service or service of the debt collector," he said[17]

This problem of bad credit is in accordance with Bank Indonesia Regulation (PBI) No. 11/1 l/PBI/2009 and Bank Indonesia Circular Letter (SEBI) No. 11/10/DASP/2009 which allows the involvement of third parties in the settlement of non-performing bank loans for problem products . This PBI and SEBI regulate several requirements, such as if finance uses the services of another party to make billing, this must be conveyed to the customer at the time of the first credit agreement. The finance man[18]

in cooperation with third parties must have procedures or procedures for executing fiduciary guarantees for non-performing loans, including the following:

1. Then the bank is obliged to ensure that the mechanism procedures,
2. Procedures and quality of implementation of activities by other parties according to bank standards.
3. The bank must guarantee that billing is done in ways that do not violate the law.

Therefore the author can draw a conclusion that the factors that cause finance companies to use debt collector services in withdrawing fiduciary guarantees in the City of Kediri are services needed by finance in terms of bad credit debt collection. This service is an alternative way to resolve bad debts efficiently and economically compared to using legal channels in general.

a) Because legal and legal means are not working, they are considered inefficient and ineffective.
b) The lengthy process of law enforcement creates public disappointment.
c) Courts cannot guarantee legal certainty and run short.
d) Debt collectors are considered more able to work in a relatively short time and the success rate reaches 90%.

With these factors in place, Bank Indonesia issued a regulation wherein there are provisions that must be complied with in the collection of bad credit debts so that they do not conflict with applicable law.

5. Legal Consequences of Withdrawal of Fiduciary Guarantees Made by Debt Collectors

In accordance with what is regulated in the Consumer Protection Act, consumers are required to obtain legal protection in various types of agreements such as credit or deposits. At the time before the agreement was made, the consumer should have received legal protection from the financing institution. In the provisions for the implementation of consumer protection in Indonesia, there are several parties who regulate it, with the aim that the parties can have a smooth relationship. Where these parties are consumers, agencies and the government, and business actors.

In practice, the debt collector's method of billing, they go directly to the area where the debtor was. Regarding the method of billing, debt collectors have their own ways so that the party giving the debt agrees to pay installments related to the goods. But if you do not agree to pay in the goods of the vehicle in the implementation of the collection,

[17] Results of interview with Heri Susanto, manager of PT Adira Finance in the credit section on October 5, 2022 at 10.00 WIB

[18]

pressure will be carried out and also until there is a forcible withdrawal of the object unilaterally.

Debt collectors have the notion that if they use this action, the debtor will be reluctant and not brave and his calm will be disturbed as a result of which the debtor agrees to pay the installments. This coercive action taken by debt collectors often raises debates because it has both positive and negative consequences in billing the debtor.

In the article contained in Article 335 of the Criminal Code, there is an element that has an objective nature in it which states that whoever this case shows the fulfillment of all elements by that person, all of the actions he took that fulfilled the elements, then he must be observed as the perpetrator of such action. The act of threatening and withdrawing a vehicle committed by a debt collector who is known to be the object of the existing collateral is owned by another person in part or in whole, where the act of deprivation is clearly known.

The third party that is meant to use "other people" means that the forced withdrawal of a vehicle that is used as collateral which acts as an object, uses actions in the form of violence against other people, and takes other people's objects. And finally, the giving and handing over of an object shows an act of coercion in taking things that belong to other people and then being controlled.

The existence of a subjective element regulated in article 368 of the Criminal Code means "using coercion when towing other people's vehicles where there is legal resistance". Not to intend to show the nature of challenging the rules of the existence of personal gain which is desired to be obtained by the perpetrator in article 368 of the Criminal Code where it regulates the occurrence of criminal acts regarding deprivation, where ordinary offenses are contained in this action.

With no report obtained from the loss of the reporting party, so that the person who committed this crime will be subject to legal proceedings. With the existing elaboration, it appears that debt collectors will be carried out who have fulfilled the existing elements of crime, and have been regulated in Article 368 of the Criminal Code in the form of individual elements, namely the actions of debt collectors who intend to benefit themselves personally by going against the rules and objective elements where the occurrence confiscation and treatment of threats carried out by debt collectors in withdrawing fiduciary objects, where this is carried out by the debtor himself by means of violence. Furthermore, it can be subject to punishment under Article 368 of the Criminal Code by languishing in prison for a maximum of 9 months.

Leasing is an agreement relating to financing activities in the form of the supply of goods by the lessor to be used or utilized by the lessee within a certain period of time based on scale payments. Leasing is bound based on a standard agreement, a standard agreement is a written agreement made only by one of the parties, even what happens in the field is available in the form of a form made by only one of the parties, which in this case is generally when the agreement is signed by leasing parties, parties or consumers only fill in certain informative data with and/or without changes to the clauses, meaning that other parties or potential consumers in the agreement do not have the opportunity to negotiate in changing the clauses made by one of the parties. parties, so that usually the standard agreement can be said to only benefit one party or in other words it is one-sided.

Likewise, the terms that are already in the standard agreement cannot be changed, because these terms were made without negotiation from both parties. So that the standard agreement is essentially an agreement in which the terms of exoneration are standardized and set forth in the form.

As we know, the leasing agreement is bound by a fiduciary guarantee, in which they are required to have a fiduciary guarantee deed and must fulfill the conditions, namely in the form of a notarial deed and be registered with an authorized official. With this registration, the fiduciary recipient has the right of preference, namely the right to take payment of his receivables for the results of the execution of objects that are objects of fiduciary guarantees. If the debtor or fiduciary giver is in default, the execution of objects that are objects of fiduciary guarantees according to the rules with the implementation of the sale of the fiduciary guarantee object is carried out after past time 1 (one) month after being notified in writing by the fiduciary giver and receiver to interested parties and announced in at least 2 newspapers circulating in the area concerned.[19]

In the case of objects that are objects of fiduciary guarantees consisting of trading objects or securities that can be sold on the market or on the stock exchange, the sales can be made in these places in accordance with the applicable laws and regulations. Facts in the field show that in conducting financing agreements, financing institutions include the words guaranteed by fiduciary. However, ironically it was not made in a notarial deed and there are no facts showing that the agreement was made based on a notarial deed, the financing institution in carrying out the financing agreement included the words guaranteed by fiduciary.

Case example What is the legal opinion regarding the dispute over the withdrawal of the 2020 Merx Vario 2-wheeled vehicle with the AG 47810 XX plate number on behalf of Sugianto[20]

a dispute occurred at the FIF finance office, Kediri branch, between the debtor as a consumer and the leasing party regarding the forced withdrawal of a motorbike by a debt collector. Mr. Sugiarto did not accept the withdrawal. Based on the Decree of the Minister of Finance of the Republic of Indonesia number 1169/KMK.01/1991 concerning Fiduciary guarantees, it states that every credit car purchase agreement transaction must be bound in an agreement. A fiduciary agreement is a loan agreement between creditors and debtors that involves guarantees. The position of the guarantee is still in the possession of the guarantee owner. In Mr. Sugiarto's case, it must be known beforehand whether the vehicle has been guaranteed by fiduciary or not. If the transaction is not notarized and registered at the fiduciary registration office, then legally the fiduciary agreement does not have executorial rights and can be considered as an ordinary payable, so the leasing company is not authorized to execute it.

This causes the leasing party to withdraw the motorbike by force from the debt collector according to the fiduciary guarantee. This violates the applicable laws and regulations, including the following[21]

1. Law Number 42 of 1999 concerning Fiduciary Guarantees.

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[19] Yuyut PrayutiZ, 2020, "Legal Protection in Disputes Between Consumers of Motorized Vehicles and Financing Institutions Connected with Law Number 8 of 1999 Concerning Consumer Protection" Scientific Journal of the Faculty of Law, Universitas Islam Nusantara.

[20] Interview with dept collector Wawan Sugiarto on September 25 2022 at 10.00 WIB.

[21] Interview with police officer Joko Susilo on September 30, 2022 at 11.15 WIB.

2. Law Number 8 of 1999 Concerning Consumer Protection.
3. The Criminal Code.
4. Ministry of Finance Number 130/PMK.010/2012.

Officer Joko Susilo[22]adding that the violations committed by the collector department listed in the legislation in detail are as follows:

1) The provisions of Law 42 of 1999 concerning fiduciary guarantees Article 15 paragraph (2) states that the Fiduciary Guarantee Certificate as referred to in paragraph (1) has the power to obtain permanent legal force. So the leasing party is not authorized to execute the withdrawal of the vehicle.

Execution must be carried out by an official pricing body or Public Procurement Board. If a motorbike is withdrawn by the leasing party without showing a fiduciary guarantee certificate, that is an illegal act.

2) Regulation of the Minister of Finance Number 130/PMK.010/2012 states that the provisions of article 3 "finance companies are prohibited from withdrawing fiduciary collateral objects in the form of motorized vehicles if the fiduciary registration office has not issued a fiduciary guarantee certificate and handed it over to the finance company" Act of leasing through debt Collectors who forcibly take vehicles along with STNK and motorbike keys, can be subject to criminal threats. This action is included in the category of deprivation 3. Article 368 paragraph (1) of the KHUP states that whoever with the intention to unlawfully benefit himself or another person, forces another person with violence or threats of violence, to give something, which is wholly or partly the property of another person, or in order to give a debt or write off a debt, is punishable by a maximum imprisonment of 9 years."

3) Provisions of Law number 8 of 1999 concerning consumer protection Based on the provisions of Article 4 of Law number 8 of 1999 concerning consumer protection it is also explained that consumer rights are:

a. The right to comfort, security and safety in consuming goods and/or services;
b. The right to choose goods and/or services and obtain said goods and/or services in accordance with the exchange rate and the conditions and guarantees promised;
c. The right to correct, clear and honest information regarding the conditions and warranties of goods and/or services;
d. the right to have their opinions and complaints heard about the goods and/or services used;
e. the right to obtain proper advocacy, protection, and efforts to resolve consumer protection disputes;
f. the right to obtain consumer guidance and education;
g. the right to be treated or served properly and honestly and not discriminatory;
h. the right to obtain compensation, compensation and/or reimbursement, if the goods and/or services received are not in accordance with the agreement or not as they should be;
i. the rights regulated in the provisions of other laws and regulations.

A similar thing has happened to the Adira Financing Institution, which is a financing institution that greatly facilitates consumers in buying and selling motorized vehicles, this

[22] Interview with police officer Joko Susilo on September 30, 2022 at 11.15 WIB.

happened to an Adira consumer named Mrs. Solikhah[23] the financing credit with the type of Mexr Vespa motorbike made in 2021 with a credit term (tenor) of 4 years. For one reason or another, he is 7 months late and does not pay installments. And the motorbike was used by his son who was confiscated by the collector's department on Jalan Sudirman. Then the collector department advised to contact Adira's office to settle the arrears in installments by being given a letter of collection of goods.

Basically, the forcible taking of motorized vehicles by Adira's leasing company and using the services of a third party (debt collector) to deal with bad loans is an act that is against the law. The forced withdrawal was carried out by Adira Finance's debt collector as a creditor who violated the law and was considered an unlawful act because it was carried out without showing a fiduciary certificate. This is contrary to Minister of Finance Regulation No.130/PMK.010/2012 and the requirements of Article 30 of Law Number 42 of 1999 concerning Fiduciary Guarantees which states that a fiduciary recipient may seek assistance from the authorities if the fiduciary giver does not surrender the fiduciary object.

The appropriate policy party is the police[24] Based on Law no. 42 of 1999 concerning Fiduciary Guarantees, the existence of execution rights or executorial power is the execution which can be carried out directly without going through a court and is final and binding on the parties to carry out the decision.

If the author analyzes from the theory of legal protection, of course, regarding these rules, many people do not know and only surrender if business actors or debt collectors take their vehicles by force. Law No. 8 of 1999 concerning Consumer Protection, consumers are entitled to legal protection in the event of a breach of contract made by a business actor, in this case the forced taking of a consumer's vehicle that is not yet due. Regarding this problem, the form of consumer protection for executing vehicles that are not yet due is regulated under Law no. 8 of 1999 concerning Consumer Protection.

The form of preventive legal protection for consumers is contained in the UUPK which regulates the rights and obligations of consumers and business actors, besides that the UUPK also regulates limitations on the actions of consumers and business actors to prevent losses for one party. Furthermore, Repressive Protection is the final protection in the form of sanctions such as fines, imprisonment, and additional laws that are given if a dispute has occurred or a violation has been committed.[25]

Regarding repressive legal protection for consumers and business actors, it has been regulated in Article 45 UUPK which states, "Consumer dispute resolution can be reached through court or out of court based on the voluntary choice of the parties to the dispute". Consumers are protected by the provisions of Law no. 8 of 1999 concerning Consumer Protection. The government has the duty to foster and supervise consumer protection, regarding the recall of vehicles suspected of violating the existing legal rules, namely the Fiduciary Guarantee Law and Minister of Finance Regulations.

[23] Interview with Mrs. Solikhah, PT Adira Finance's financing consumer on October 4, 2022 at 10.00 WIB

[24] Shavira Ramadhanneswari, 2017, "Withdrawal of Motorized Vehicles by Financing Companies for Debtors Experiencing Bad Credit (Default) With Fiduciary Guarantees Viewed From a Juridical Aspect" Scientific Journal of the Faculty of Law, Diponegoro University

[25] Muschin, Protection and Legal Certainty for Investors in Indonesia, Surakarta, Master's Thesis, Faculty of Law, Sebelas Maret University, 2003, page, 20

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In addition, Finance already has a special mechanism in its rules regarding credit agreements between finance and consumers. In English, financing institutions are called consumer finance. Financing is the same as consumer credit, the difference is in the financing institution that finances it. Consumer financing is a fee provided by financing companies (financing companies), while consumer loans are provided by banks[26] This is in accordance with the results of interviews with Adira Credit Manager Heri Susanto[27] stated that Adira has its own way of resolving bad loans, one of which is by using third-party collector department staff.

Even though according to the author in Article 5 of Law Number 42 of 1999 concerning Fiduciary Guarantees, in essence, if the consumer is unable to pay, the finance is given the power to take the vehicle anywhere and anytime, which is then signed by the consumer. When taking a vehicle, if there is already a fiduciary agreement, then a notarial deed is drawn up that clearly states that in this case the finance has complied with the rules for withdrawing the vehicle.

But in reality, most finance parties do not comply with these rules, such as not including their fiduciary guarantees, and some are even suspected of being fake when taking a vehicle. Facts on the ground show that leasing in executing fiduciary guarantees that have changed hands often uses the services of a third party (debt collector), which often creates legal risks or acts against the law, which are caused by third parties (debt collectors), so that property can be endangered. even the body and soul of the authorities of the fiduciary guarantee object and third parties (debt collectors), using violence, to put psychological and even physical pressure to carry out the execution of fiduciary guarantees. The actions of third parties (debt collectors) can lead to criminal acts regulated in Article 335 of the Criminal Code. This article states:

"Anyone who unlawfully forces another person to do, not do or allow something by using violence, or using threats of violence, either against the person himself or another person, can be threatened with imprisonment for a maximum of 1 year"[28]

or criminal acts regulated in article 170 of the Criminal Code which reads:

"Anyone who publicly commits violence against people or property, shall be punished with imprisonment for a maximum of five years and six months."[29] Apart from that, the crime of theft (article 362 of the Criminal Code) "takes goods that partially or wholly belong to another person unlawfully"[30]

According to the author, for violations of the law, the debtor's motorbike buyer has the right to report it to the police. Criminal liability is not possible without someone previously committing a crime. Thus criminal responsibility is always directed at the perpetrator of the crime. In this case the 'maker' cannot be equated with the 'material actor'. Criminal liability is not only aimed at the material actor (pleger) but also the maker (dader).

Therefore, whether criminal responsibility is aimed at the person who committed the crime (the perpetrator) or another person related to him (the maker other than the

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[26] Sunaryo, Financing Institution Law, Sinar Graphic, Jakarta, 2007, p. 96.

[27] Interview with Heri Susanto, manager of PT Adira credit section on October 4, 2022 at 11.00 WIB

[28] Article 335 of the Criminal Code

[29] Article 170 of the Criminal Code

[30] Article 362 of the Criminal Code

perpetrator), is a matter of determining a crime (criminalization) and not a matter of criminal responsibility.[31]

6. Conclusion

1. The Role of Debt Collector Services in Withdrawing Fiduciary Guarantees at Financing Companies in the City of Kediri. need each other to deal with bad credit problems between debtors who are in default and creditors of Financing Companies, but debt collectors solve bad credit problems for vehicles and to save company assets from being lost for practical reasons without having to go through legal channels and have to use a professional method and in accordance with regulations applicable. In addition, the use of third party services is nothing but to save the image and good name of a finance company before the law.

2. Factors That Cause Finance Companies to Use Debt Collector Services in Withdrawing Fiduciary Guarantees in the City of Kediri. is an alternative way to resolve bad loans efficiently and economically compared to using legal channels in general.

a) Because legal and legal means are not working, they are considered inefficient and ineffective.
b) The lengthy process of law enforcement creates public disappointment.
c) Courts cannot guarantee legal certainty and run short.
d) Debt collectors are considered more able to work in a relatively short time and the success rate reaches 90%.

3. Legal Consequences of Withdrawal of Fiduciary Guarantees Made by Debt Collectors. who take the object of fiduciary collateral by seizing and threatening the debtor, including committing a criminal act. These actions as already regulated in Article 368 of the Criminal Code (Criminal Code), which are divided into subjective elements, namely the actions of debt collectors against the rules and have the aim of obtaining benefits for themselves as well as objective elements where deprivation and threat treatment are carried out. by debt collectors in withdrawing fiduciary objects, where this is done by the debtor himself by means of violence. Debt collectors in carrying out these actions are capable of causing legal consequences which are punishable by imprisonment for a maximum of 9 (nine) months.

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[31] Chairul Huda, No Crime Without Error Leads To No Criminal Responsibility Without Error, Prenada Media, Jakarta, 2006. p. 39

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Peraturan Presiden Republik Indonesia Nomor 9 Tahun 2009 tentang Lembaga Pembiayaan. Peraturan ini dibuat untuk meningkatkan peran Lembaga Pembiayaan dalam proses pembangunan nasional, serta memberikan penjelasan mengenai jenis, kegiatan usaha, pembatasan, juga pengawasan.

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