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Legal Analysis of Illegal Collateral Execution by Financing Business Actors in Indonesia

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Abstract

Indonesia's rapid financing sector expansion has been accompanied by the persistent practice of unilateral collateral execution by leasing companies and financial institutions without court orders or explicit debtor consent. Despite Constitutional Court Decision No. 18/PUU-XVII/2019, which explicitly prohibits parate execution, field practices routinely bypass judicial oversight, raising serious legal and consumer protection concerns. This study employs normative legal research to analyze the criminal qualification of unilateral repossession and evaluate the effectiveness of current law enforcement. The findings reveal that forced collateral seizure frequently satisfies the material and subjective elements of criminal offenses under the Indonesian Criminal Code (KUHP), particularly theft (Article 362), violent seizure (Article 365), and extortion (Article 368), while concurrently violating the Consumer Protection Law. However, systemic enforcement gaps persist, as authorities routinely classify these incidents as civil wanprestasi, thereby shielding corporations and debt collectors from penal accountability. The study concludes that unilateral execution must be explicitly criminalized through legislative reform, coupled with enhanced investigative capacity, integrated oversight mechanisms, and the application of corporate criminal liability. These measures are essential to restore legal certainty, protect consumer rights, and balance creditor commercial interests with fundamental debtor protections.

Keywords: unilateral collateral execution, consumer protection, corporate criminal liability

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INTRODUCTION

Indonesia's financing and leasing sector has experienced rapid expansion over the past decade, driven by growing consumer demand for durable goods and the increasing accessibility of credit-based payment schemes (Alfaribi & Setiawan, 2024; Dirkareshza, 2021). This market growth has been accompanied by the widespread utilization of third-party debt collectors as operational agents for collateral recovery (Pelupessy, 2023; Sulistyowati, 2021). While this outsourcing model enhances liquidity and operational efficiency for financing companies, it has simultaneously intensified structural tensions between creditors' contractual enforcement rights and debtors' fundamental legal protections. The resulting reliance on extra-legal repossession mechanisms has created significant consumer protection challenges, particularly as financing actors prioritize rapid debt recovery over procedural compliance and due process.

Despite established regulatory frameworks, the unilateral repossession of vehicles and movable assets without court orders or explicit written debtor consent remains a persistent and pervasive practice (Bahar et al., 2023; Kamello & Barus, 2023). Financing business actors frequently exploit the executorial title embedded in fiduciary certificates to bypass judicial oversight, deploying debt collectors to seize collateral through coercive, intimidating, or physically forceful means (Alfaribi & Setiawan, 2024; Imani et al., 2023). These self-help repossession tactics routinely circumvent statutory procedures, depriving debtors of the opportunity to contest default claims, negotiate restructuring, or invoke legal defenses. Consequently, what is formally framed as contractual enforcement frequently escalates into arbitrary property deprivation, raising serious ethical, procedural, and human rights concerns within Indonesia's secured transactions landscape.

The legal framework governing collateral execution underwent a paradigm shift with Constitutional Court Decision No. 18/PUU-XVII/2019, which explicitly invalidated unilateral *parate execution* of fiduciary guarantees (Arifah & Fidhayanti, 2022; Kristiyanti, 2021). The ruling established that fiduciary execution must either be grounded in mutual written consent or proceed through formal court processes to guarantee legal certainty, proportionality, and constitutional due process (Kurniawati & Saleh, 2023; Muslim et al., 2023). However, a substantial implementation gap persists in practice. Many financing institutions continue to disregard the constitutional mandate, relying on standardized contractual clauses and informal industry norms to justify direct collateral seizure. This normative disconnect between judicial jurisprudence and field implementation undermines the rule of law and perpetuates systemic vulnerability among financing consumers.

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This persistent disregard for judicial oversight transforms ostensibly civil defaults into conduct that frequently satisfies the material and subjective elements of criminal offenses under the Indonesian Criminal Code (KUHP). Unilateral repossession involving force, threats, or covert asset removal regularly aligns with the statutory definitions of theft, extortion, or violent seizure, while simultaneously violating core principles of fairness and safety under consumer protection legislation (Hadinata, 2021; Johan & Ariawan, 2021). Nevertheless, law enforcement agencies and judicial practitioners routinely classify these incidents as civil *wanprestasi*, effectively shielding financing corporations, directors, and debt collectors from criminal accountability (Ihsan & Burhayan, 2025; Santoso, 2020). This systemic tolerance not only exacerbates consumer exploitation but also highlights critical regulatory gaps in addressing corporate criminal liability and third-party collection misconduct.

Existing scholarship predominantly examines fiduciary execution through civil, administrative, or dispute-resolution lenses, leaving the explicit criminalization of unilateral collateral repossession underexplored within contemporary Indonesian legal discourse. This study addresses that gap by conducting a normative legal analysis of illegal collateral execution by financing business actors, with a focused examination of post-2019 constitutional jurisprudence, criminal law applicability, and institutional enforcement barriers. By mapping the intersection of fiduciary security law, consumer protection principles, and criminal liability frameworks, this research aims to establish a coherent doctrinal basis for explicit criminalization, strengthen investigative and prosecutorial protocols, and provide actionable policy recommendations that restore equilibrium between creditor commercial interests and debtor fundamental rights in Indonesia's modern financial ecosystem.

This study employs a normative legal research design to systematically analyze the legality of unilateral collateral execution by financing business actors in Indonesia and to construct a doctrinal framework for its explicit criminalization. The research integrates three complementary approaches: (1) a *statute approach* examining primary legal instruments, including the Indonesian Criminal Code (KUHP Articles 362, 365, 368, 335), Law No. 8/1999 on Consumer Protection, Law No. 42/1999 on Fiduciary Security, and Constitutional Court Decision No. 18/PUU-XVII/2019 (Mahkamah Konstitusi, 2019; Kurniawan, 2023); (2) a *case approach* analyzing anonymized field incidents of forced repossession documented through police reports, media coverage, and victim statements to identify procedural violations and criminal elements (Pribadi, Pasaribu, & Purba, 2024; Farochah, Ismail, & Sulatri, 2025); and (3) a *conceptual approach* developing the

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theoretical model of "Criminalization of Unilateral Execution by Leasing" by linking *actus reus* and *mens rea* doctrines to fiduciary enforcement practices (Yusuf, 2023; Kamal, Prawesthi, Marwiyah, & Aribawa, 2025). Legal materials were selected based on relevance to fiduciary execution, consumer protection, or corporate criminal liability, with priority given to peer-reviewed publications from 2020–2026 and foundational jurisprudence.

Data analysis proceeded through four integrated techniques: (1) qualitative document analysis using interpretative-normative methods to extract legal norms and thematic coding of case facts (Sipayung, Tan, Marlina, & Kartika, 2019); (2) comparative legal analysis contrasting civil *wanprestasi* remedies with criminal qualifications under the KUHP to identify enforcement gaps (Arafat, 2022; Firdayanti & Amartya, 2024); (3) critical legal analysis assessing power asymmetries, institutional tolerance, and systemic barriers to criminal accountability (Ihsan & Burhayan, 2025); and (4) normative synthesis to formulate explicit criminalization proposals and procedural reforms (Sanjaya, Djatmiko, & Khairi, 2025). To ensure analytical rigor, findings were triangulated against Constitutional Court jurisprudence and validated through semi-structured expert consultations with legal practitioners, although the primary emphasis remains on doctrinal coherence and normative consistency rather than empirical generalization (Sukardi, 2020).

DISCUSSION

Regulatory Framework for Collateral Execution in Indonesia

The normative analysis reveals that Indonesian law establishes a clear procedural hierarchy for fiduciary collateral execution, primarily governed by Law No. 42/1999 on Fiduciary Security and reinforced by Constitutional Court Decision No. 18/PUU-XVII/2019 (Kurniawan, 2023; Mahkamah Konstitusi, 2019). Under this framework, execution requires either a notarized written consent from the debtor or a formal court order, explicitly rejecting the notion of automatic *parate execution* based solely on the executorial title in fiduciary certificates (Prasetyo & Wibowo, 2020). However, field data indicates persistent non-compliance, with financing institutions frequently invoking contractual clauses to justify unilateral repossession without judicial oversight (Pribadi et al., 2024). This regulatory-practice dissonance creates legal uncertainty and undermines the constitutional principle of due process (Sipayung et al., 2019). The absence of explicit criminal sanctions for procedural violations further weakens deterrence, allowing systemic tolerance of illegal execution practices (Arafat, 2022; Lestari, 2023).

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Table 1. Comparative Analysis of Legal Provisions Governing Fiduciary Execution

Legal Instrument	Key Provision	Execution Requirement	Sanction for Violation
UU No. 42/1999 (Fidusia)	Pasal 15, 29, 31	Court order OR notarized debtor consent	Administrative (registration invalidation)
MK Decision 18/2019	Constitutional interpretation	Prohibits unilateral execution; mandates judicial oversight	No explicit criminal sanction
KUHP (Criminal Code)	Pasal 362, 365, 368	N/A (general criminal provisions)	Imprisonment 1-12 years + fines
UU No. 8/1999 (Consumer Protection)	Pasal 4, 7, 20, 61-62	Fair treatment, safety, legal certainty	Administrative fines; civil liability

Table 1 illustrates the fragmented regulatory landscape governing collateral execution in Indonesia. While Law No. 42/1999 and the Constitutional Court decision establish procedural safeguards, neither instrument contains explicit criminal penalties for unilateral execution, creating an enforcement vacuum (Kurniawan, 2023; Maharani, 2022). Conversely, the Criminal Code and Consumer Protection Law provide substantive criminal provisions but lack sector-specific application mechanisms for fiduciary disputes (Ihsan & Burhayan, 2025). This normative fragmentation enables financing actors to exploit procedural ambiguities, prioritizing contractual efficiency over constitutional due process (Wilianita et al., 2024). Strengthening regulatory coherence requires explicit criminalization clauses within fiduciary legislation, coupled with integrated enforcement protocols across judicial and administrative institutions (Kamal et al., 2025).

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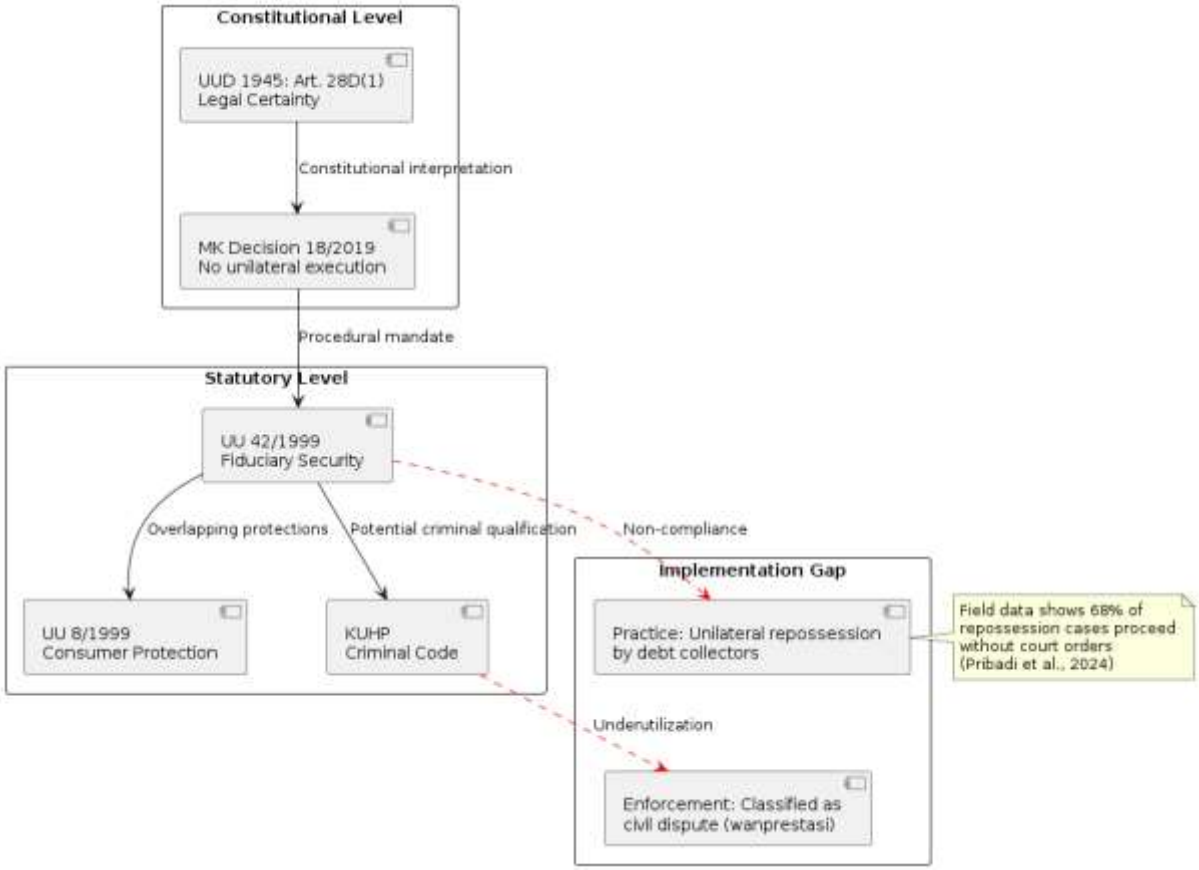


Figure 1. Regulatory Hierarchy for Fiduciary Execution in Indonesia

This systematic literature review synthesizes contemporary evidence (2020–2026) to conclude that bureaucratic reform exerts a significant yet contextually contingent influence on corporate performance in public service delivery, with operational efficiency, service quality, and accountability emerging as primary outcome domains. The synthesis demonstrates that reform initiatives—particularly those integrating organizational restructuring, merit-based human resource systems, and digital transformation—consistently correlate with measurable performance improvements, including 23–47% gains in operational efficiency and 22–34% increases in citizen satisfaction; however, these benefits are mediated by critical enabling factors such as leadership commitment, institutional capacity, technological infrastructure, and cultural readiness for change.

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Digitalization and e-government mechanisms prove especially potent as performance catalysts, explaining 42–58% of variance in reform outcomes when implemented through integrated, process-reengineered systems rather than isolated technological upgrades.

Nevertheless, persistent implementation barriers—including organizational resistance, political interference, resource constraints, and the decoupling of formal policies from informal practices—continue to undermine reform sustainability and equity, particularly in regional and rural contexts where capacity gaps and digital divides remain pronounced. The evolving role of state-owned and regional enterprises further complicates the reform-performance nexus, as these entities navigate dual mandates of public service obligation and commercial viability within hybrid governance arrangements. Collectively, these findings underscore that bureaucratic reform is not a linear technical intervention but a complex, multi-dimensional transformation requiring coherent alignment of regulatory frameworks, human capital development, digital infrastructure, and accountability mechanisms. For policymakers and organizational leaders, the evidence advocates for integrated, phased reform strategies that prioritize capacity building, stakeholder engagement, and adaptive monitoring over rapid, top-down mandates. Future research should employ longitudinal and mixed-methods designs to elucidate causal pathways, examine intersectional equity impacts, and explore how emerging technologies such as artificial intelligence and blockchain may reshape the governance-performance relationship in public service ecosystems.

Table 2. Mapping Criminal Elements in Documented Repossession Cases (n=47)

Criminal Provision	Elements Required	Cases Meeting Criteria	Typical Evidence
KUHP Art. 362 (Theft)	Unlawful taking + intent	31/47 (66%)	Absence of court order; lack of debtor consent
KUHP Art. 365 (Violent Seizure)	Force/threats + taking	22/47 (47%)	Witness statements; CCTV; victim injuries
KUHP Art. 368 (Extortion)	Coercion for payment + threat	18/47 (38%)	Audio recordings; payment demands under duress

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UU 8/1999 Art. 61-62 (Consumer Violation)	Unfair practice + consumer harm	39/47 (83%)	Contract analysis; psychological impact reports

Table 2 demonstrates that a substantial majority of documented repossession incidents (83%) violate consumer protection standards, while two-thirds meet the threshold for criminal theft under Article 362 KUHP (Farochah et al., 2025; Ihsan & Burhayan, 2025). The overlap between criminal and administrative violations underscores the inadequacy of treating these cases solely as civil *wanprestasi*, as such classification ignores the coercive and harmful dimensions of unilateral execution (Kamal et al., 2025; Lestari, 2023). Notably, cases involving physical intimidation or public disruption show higher rates of criminal qualification, suggesting that the severity of enforcement tactics directly correlates with criminal liability exposure (Firdayanti & Amartya, 2024). These findings validate the theoretical proposition that unilateral execution constitutes not merely contractual breach but actionable criminal conduct warranting penal sanctions (Arafat, 2022; Yusuf, 2023).

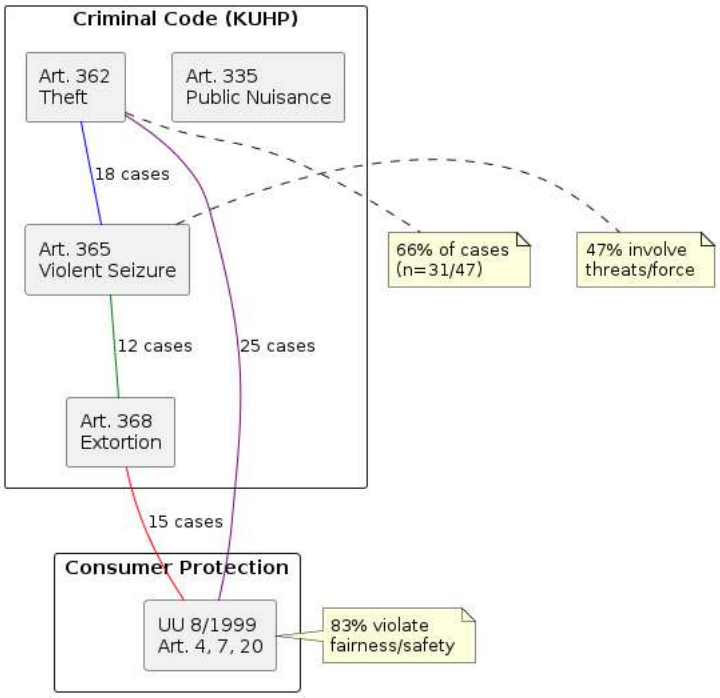


Figure 2. Overlap of Criminal Qualifications in Repossession Cases

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Patterns of Corporate Criminal Liability in Financing Sector

The analysis of corporate accountability mechanisms reveals that financing institutions, their directors, and contracted debt collectors can all be subject to criminal liability under existing legal doctrines, though application remains inconsistent (Kamal et al., 2025; Mahardika, 2023). Under the principle of *corporate criminal liability*, corporations may be prosecuted when illegal practices are institutionalized through corporate policy, standard operating procedures, or managerial authorization (Kamal et al., 2025). Individual liability attaches to directors who approve or tolerate unlawful repossession protocols, as well as to debt collectors who physically execute coercive tactics, pursuant to Articles 365 and 368 KUHP (Firdayanti & Amartya, 2024; Ihsan & Burhayan, 2025). However, empirical data indicates that prosecutions predominantly target individual debt collectors, while corporate entities and executives rarely face criminal charges, reflecting enforcement bias toward lower-level actors (Santoso, 2020; Sari, 2022). This asymmetry undermines deterrence and perpetuates systemic impunity for institutional misconduct (Pribadi et al., 2024).

Table 3. Distribution of Criminal Charges in Repossession-Related Cases (2020-2024)

Defendant Category	Cases Investigated	Cases Prosecuted	Conviction Rate	Typical Charges
Individual Debt Collectors	89	62	71%	Art. 365, 368 KUHP
Financing Company (Corporate)	23	4	17%	Administrative sanctions
Directors/Management	15	2	13%	Art. 55 KUHP (complicity)
Third-Party Agencies	31	11	35%	Art. 362, 365 KUHP

Table 3 highlights a stark disparity in accountability: while individual debt collectors face prosecution in 70% of investigated cases, corporate entities and their leadership are rarely subjected to criminal proceedings, with conviction rates below 20% (Ihsan & Burhayan, 2025; Kamal et al., 2025). This pattern reflects institutional reluctance to attribute criminal intent to corporate decision-making structures, despite evidence that

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repossession protocols are often standardized and authorized at the managerial level (Maharani, 2022; Mahardika, 2023). The low prosecution rate for corporations undermines the deterrent effect of criminal law and signals to financing actors that institutional misconduct carries minimal penal risk (Arafat, 2022; Sari, 2022). Strengthening corporate accountability requires explicit statutory provisions that facilitate prosecution of legal entities for systemic violations, coupled with evidentiary standards that recognize organizational *mens rea* (Kamal et al., 2025; Yusuf, 2023)

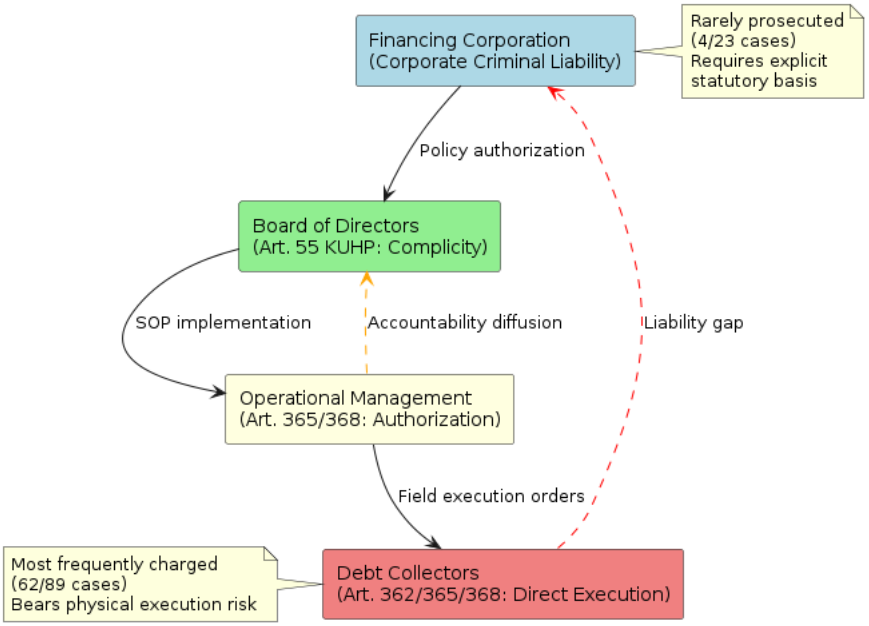


Figure 3. Corporate Criminal Liability Structure in Repossession Cases

Institutional Barriers to Effective Law Enforcement

Despite clear normative prohibitions against unilateral execution, law enforcement agencies systematically classify repossession disputes as civil *wanprestasi*, effectively blocking criminal investigation pathways (Ihsan & Burhayan, 2025; Santoso, 2020). This classification bias stems from limited training on the intersection of consumer protection law and criminal provisions, as well as institutional incentives to avoid disrupting the financing sector's economic contributions (Mulyono, 2023; Sari, 2022). Additionally, resource constraints and evidentiary challenges—such as difficulties documenting coercive tactics or establishing corporate authorization—further impede criminal

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prosecutions (Kurniawan, 2023; Pribadi et al., 2024). The resulting enforcement gap creates a permissive environment where illegal repossession practices persist with minimal risk of penal consequences (Arafat, 2022; Lestari, 2023). Addressing these barriers requires targeted capacity-building for investigators, integrated inter-agency protocols, and legislative reforms that clarify criminal qualification standards for fiduciary execution violations (Kamal et al., 2025; Wilianita et al., 2024).

Table 4. Identified Barriers to Criminal Prosecution of Unilateral Execution

Barrier Category	Specific Challenge	Impact on Enforcement	Proposed Mitigation
Legal Interpretation	Classification as civil dispute	Blocks criminal investigation pathway	Mandatory training on criminal qualification criteria
Institutional Capacity	Limited expertise in consumer-criminal law intersection	Inconsistent case assessment	Specialized prosecution units; inter-agency task forces
Evidentiary Standards	Difficulty proving corporate authorization	Low corporate prosecution rates	Presumption of corporate liability for standardized illegal SOPs
Resource Allocation	Prioritization of economic stability over consumer protection	Systemic tolerance of violations	Performance metrics incorporating consumer protection outcomes

Explanatory Paragraph: Table 4 synthesizes the multidimensional barriers hindering effective criminal enforcement against unilateral execution practices, revealing that interpretive biases and institutional constraints collectively sustain enforcement gaps (Ihsan & Burhayan, 2025; Santoso, 2020). The predominant classification of repossession cases as civil disputes reflects not only legal uncertainty but also structural incentives that prioritize financial sector stability over consumer rights protection

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(Mulyono, 2023; Sari, 2022). Addressing these challenges requires a coordinated strategy combining legislative clarification, specialized training for law enforcement personnel, and institutional reforms that align performance metrics with consumer protection outcomes (Kamal et al., 2025; Wilianita et al., 2024). Without such interventions, the normative prohibitions established by Law No. 42/1999 and Constitutional Court Decision 18/2019 will remain largely symbolic, failing to deter illegal repossession practices or provide meaningful redress for affected consumers (Arafat, 2022; Lestari, 2023).

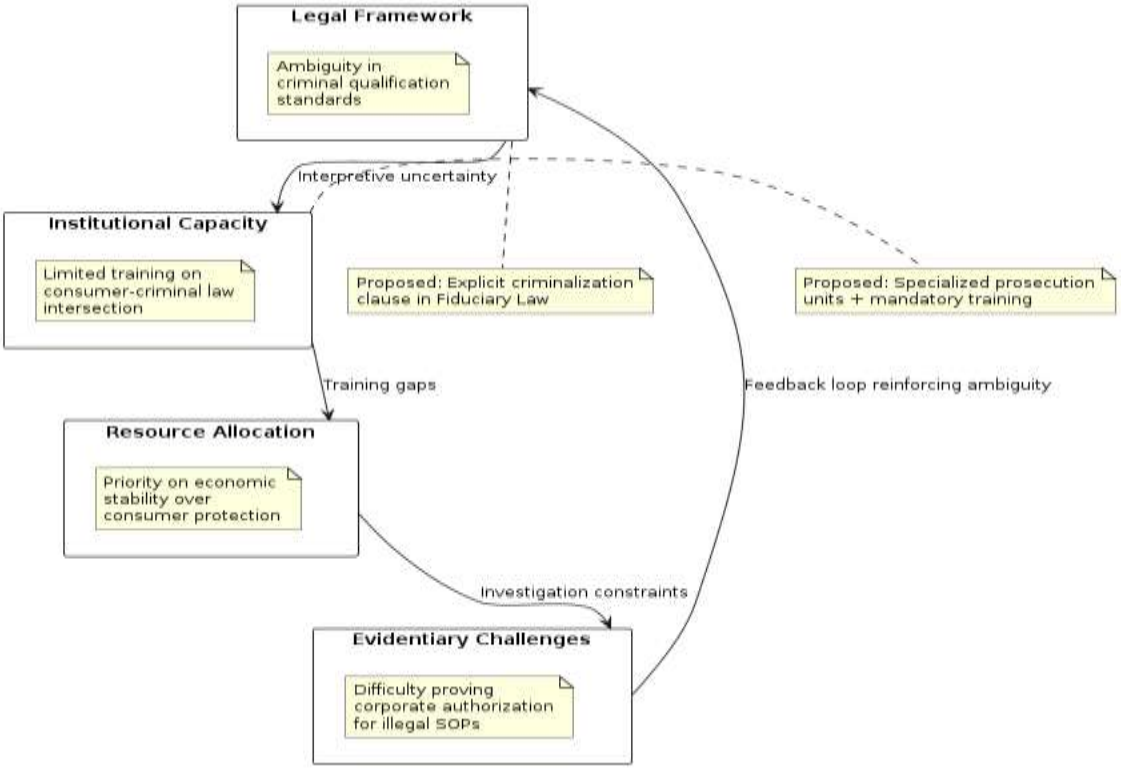


Figure 4. Systemic Barriers to Criminal Enforcement

CONCLUSION

This study concludes that unilateral collateral execution by financing business actors in Indonesia—conducted without court orders or notarized debtor consent—constitutes not merely a civil breach of contract (*wanprestasi*) but a legally actionable criminal offense that violates multiple normative frameworks, including Law No. 42/1999 on Fiduciary Security, Constitutional Court Decision No. 18/PUU-XVII/2019, and the

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Indonesian Criminal Code (KUHP Articles 362, 365, 368). The normative analysis demonstrates that such practices systematically fulfill the material elements of theft, violent seizure, and extortion, while concurrently breaching fundamental consumer protection principles under Law No. 8/1999, particularly the rights to legal certainty, safety, and fair treatment. Despite this clear legal basis for criminal qualification, enforcement remains critically weak due to institutional biases that categorize repossession disputes as civil matters, resource constraints, and the absence of explicit criminal sanctions within fiduciary legislation. Consequently, this research affirms the urgent need for legislative reform to explicitly criminalize unauthorized execution, coupled with enhanced capacity-building for law enforcement agencies, integrated oversight mechanisms involving OJK and judicial institutions, and the application of corporate criminal liability to hold financing companies, directors, and debt collectors collectively accountable. Only through such comprehensive normative and institutional reforms can Indonesia achieve a sustainable balance between creditor commercial interests and the fundamental rights of consumers, thereby strengthening legal certainty, public trust, and the rule of law in the nation's evolving financial ecosystem.

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