**JILPR** Vol. 8, No. 1 October 2026
*Journal of Indonesia Law & Policy Review* 2715-498X

# A LEGAL ANALYSIS OF LEGAL CERTAINTY AND THE IMPLICATIONS OF RECLASSIFYING CIVIL DISPUTES AS EXTRAORDINARY CRIMES

**Buhit Christian[1], Appe Hutauruk[2*], Hotman Sinambela[3], Sunarno[4]**
[1,2,3,4]Program Studi Ilmu Hukum, Fakultas Hukum, Universitas Mpu Tantular, Jakarta, Indonesia
buhitchristians@gmail.com[1], appehturuk@gmail.com[2*], hotmanbertaok@gmail.com[3], sunarno.partners@gmail.com[4]

Abstract

This research departs from the phenomenon of debt collection practices by debt collectors which often exceed legal and ethical boundaries, thus raising the question of whether such actions should be qualified as a breach of contract in the civil realm or as a criminal act or even an extraordinary crime. The focus of the study is directed at the consistency of the application of the principle of legal certainty in civil cases that have the potential to enter the criminal realm, with the main study being Decision Number 311 / Pid.B / 2023 / PN JKT.SEL and its comparison with Decision Number 30 / Pdt.G / 2025 / PNPdg. The research method used is a normative juridical approach with statutory, case-based, and conceptual approaches. The statutory approach is conducted by examining the applicable legal norms in the 1945 Constitution, the Civil Code, the Criminal Code, Law No. 42 of 1999 concerning Fiduciary Guarantees, and Law No. 8 of 1999 concerning Consumer Protection. The case-based approach is conducted by analyzing the ratio decidendi of judges in relevant court decisions, particularly the South Jakarta District Court and the Padang District Court. Meanwhile, the conceptual approach is used to understand the principle of legal certainty and the principle of ultimum remedium in criminal law. Primary legal materials include statutory regulations and court decisions, while secondary legal materials consist of the doctrines of legal experts, journals, and academic literature. With this method, the research attempts to provide a comprehensive analysis of the consistency of the application of the principle of legal certainty in disputes that have the potential to shift from the civil to the criminal realm.

**Keywords:** Debt Collector, Extraordinary Crime, Fiduciary Guarantee, Legal Certainty, Default

## INTRODUCTION

The phenomenon of debt collectors in debt collection practices in Indonesia has metamorphosed into a serious problem that threatens the stability of social order and legal certainty (Zahra *et al*., 2026). Collection activities, often accompanied by intimidation, physical violence, unilateral vehicle confiscation without a valid executorial basis, and threats against debtors, have created a dense legal fog (Rizal & Mursid, 2022). This phenomenon fundamentally challenges the dichotomous boundary between defaults within the realm of civil law and acts that fulfill the elements of a criminal offense. As a state of law (rechtsstaat), as affirmed in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, every legal action in Indonesia, whether by state administrators or private legal subjects, must be based on applicable norms. Within this framework, legal certainty is not merely jargon, but a vital element that, according to Gustav Radbruch, is one of the three main pillars of the purpose of law, alongside justice and expediency. Laws that lack certainty will lose their function as consistent and predictive guidelines for societal behavior (Lestari & Hartono, 2025).

In the reality of law enforcement in Indonesia, the demarcation line between contractual disputes and criminal acts often becomes very blurred. Disputes over breach of contract in credit or leasing agreements, which should be resolved through civil litigation mechanisms or procedural enforcement of fiduciary guarantees, often transform into criminal cases in practice through coercive collection methods. If enforcement is carried out with violence or threats, the act clearly goes beyond the civil realm and enters the criminal realm, such as confiscation (Article 368 of the Criminal Code) or destruction (Article 406 of the Criminal Code) (Sadiqien *et al*., 2025). The problem is that the formalistic interpretation of law in law enforcement practice often fails to capture the substance of justice. Satjipto Rahardjo emphasizes that law should not be understood merely as a formal text, but rather as an instrument for realizing substantive justice. Inconsistencies in interpreting these actions often create legal uncertainty, where judges can, on the one hand, decide the case as purely criminal, but on the other hand, often fall into the trap of viewing it as a regular civil dispute (Syam *et al*., 2023).

Previous studies on debt collectors in Indonesia focus on two crucial aspects that have not been comprehensively addressed. First, previous studies generally focused on the realm of consumer protection partially or highlighted aspects of compliance with the Financial Services Authority Regulation (POJK). Few studies have conducted in-depth comparative analyses between criminal and civil cases with similar subjects and objects to test the consistency of the application of the principle of legal certainty (Renaldy, 2026). Often, legal literature only examines one aspect, namely the civil side (default) or the criminal side (violence), without critically evaluating how judges use different ratio decidendi when dealing with similar legal facts (Mulyadiva & Triningsih, 2026). The disparity in evidentiary standards between preponderance of evidence in civil cases and beyond reasonable doubt in criminal cases often results in inconsistent rulings that undermine legal certainty. This study aims to address this gap through a comparative analysis of Decision Number 311/Pid.B/2023/PN JKT.SEL and Decision Number 30/Pdt.G/2025/PN Pdg.

Second, there is a theoretical gap in qualifying organized debt collection practices as extraordinary crimes. Many previous studies view debt collector actions as merely conventional crimes. However, if the debt collection pattern is systematic, structured, involves an organized network, and creates mass fear and disrupts public order, there is academic urgency to examine whether this practice can be classified as organized crime or even approaches the characteristics of an extraordinary crime. Existing literature is still very limited in exploring the use of extraordinary criminal law instruments to respond to debt collection practices that have exceeded the limits of reasonableness (Kamal *et al*., 2025). This study aims to break through these limitations by placing debt collection practices within a more comprehensive criminal

law framework, to examine the effectiveness of legal protection for the public, who have often been neglected by the dominance of creditor interests (Mukhlis *et al*., 2026).

The importance of this study is further strengthened given the strategic role of finance (leasing) companies in the national economy (Joharsah & Ikhwan, 2024). However, when the debt collection mechanism goes beyond Law No. 42 of 1999 concerning Fiduciary Guarantees, specifically Article 15 paragraph (2), which requires a fiduciary certificate as the basis for execution, has resulted in a fatal legal deviation. Case Decision Number 311/Pid.B/2023/PN JKT.SEL, which stemmed from a report by celebrity Clara Shinta, is a highly appropriate locus for examining non-compliance with debt collection ethical standards as stipulated in POJK No. 35/POJK.05/2018 and POJK No. 6/POJK.07/2022. In this case, the behavior of defendants Erick Jonshon *et al*. not only violated the rights of legal subjects but also challenged the authority of the police. However, has the action taken in this case been sufficient to provide a deterrent effect or has it merely scratched the surface of a broader systemic phenomenon.

Sociologically, this debt collection practice that exceeds authority not only causes material harm but also causes deep psychological trauma and social unrest. If the public perceives the state as failing to guarantee legal certainty, the law's function as social engineering will lose its legitimacy (Pabbu & Qadri, 2023). Therefore, this research goes beyond normative analysis and also examines the implications of inconsistent judicial decisions for the protection of human rights. By examining two different decisions with essentially similar cases, this study will examine whether the Indonesian justice system is capable of providing substantial legal certainty. It will also examine whether judges have considered the weak bargaining position of debtors (asymmetry of information and power) compared to creditors, who have greater access to law enforcement.

Finally, this research is expected to contribute to the development of criminal law in Indonesia by offering a new analytical framework: shifting the paradigm of debt collector handling from merely "ordinary misconduct" to an examination of threats to the rule of law that may require an extraordinary approach. Through a rigorous mapping of the evidentiary system and legal considerations in the two analyzed decisions, it is hoped that legal formulations will emerge that provide greater certainty and justice for the public as legal subjects entitled to state protection. Thus, this research is expected to close the gap between ideal legal theory and law enforcement practices that are still far from expectations, while also providing recommendations for law enforcers in handling similar cases consistently, ethically, and based on the values of substantive justice.

## RESEARCH METHODS

This study uses a normative-juridical legal research method (library research) that focuses on the review of applicable legal norms, principles, and doctrines. This method was chosen based on the urgency of analyzing court decisions that reflect the crucial debate between civil law (default) and criminal law in debt collection practices by debt collectors. The main objects of this study are Decisions Number 311/Pid.B/2023/PN JKT.SEL and Decision Number 30/Pdt.G/2025/PN Pdg, which are examined to assess the extent of judges' consistency in applying the principle of legal certainty. To answer the problem formulation in depth, this study applies three main approaches. First, a statutory approach is used to dissect the contractual and executorial legal basis, including provisions in the 1945 Constitution, the Civil Code, the Fiduciary Guarantee Law, the Consumer Protection Law, and technical regulations such as POJK No. 35/2018 and POJK No. 6/2022. Second, a case approach is applied by comparatively analyzing the ratio decidendi of court decisions, including Constitutional Court decisions regarding the execution of fiduciary guarantees. Third, a conceptual approach is used to build a theoretical foundation regarding the principle of legal certainty according to Gustav Radbruch, the principle of ultimum remedium in criminal law, and the criteria for extraordinary

crimes, which are systematic and organized according to international standards. The legal sources used in this study consist of three categories. Primary legal materials include statutory regulations (the 1945 Constitution, the Criminal Code, the Civil Code), court decisions, and Supreme Court Circulars. Secondary legal materials include legal literature from experts such as Andi Hamzah and Barda Nawawi Arief, academic journals, and reference books relevant to criminology and criminal law. Furthermore, tertiary legal materials are used to enrich the factual context, such as legal articles from Hukumonline and investigative reports from the Indonesian Consumer Protection Foundation (YLKI).

The legal data collection technique was conducted through library research, which involved inventorying regulations, collecting court decisions, and systematically reviewing legal literature. All collected data was then processed and analyzed using descriptive-analytical methods. The analysis process involved describing applicable legal norms, comparing legal considerations between criminal and civil decisions with similar characteristics, and assessing the consistency of the application of the principle of legal certainty within them. This analysis aimed to uncover the legal implications of the shift from civil disputes to the criminal realm, particularly regarding debt collector behavior that could potentially be classified as an extraordinary crime. Given the normative nature of this research, the research location was conducted through searches in libraries, legal repositories, and official digital databases to ensure the accuracy and credibility of the data used in drawing conclusions.

## RESULT AND DISCUSSION

The first issue relates to the legal implications of the shift from civil disputes to the criminal realm in the Indonesian justice system, particularly regarding debt collection practices by debt collectors. Normatively, disputes over default in credit agreements or the execution of fiduciary guarantees fall within the realm of civil law, regulated by the Civil Code and the Fiduciary Guarantee Law. However, on the ground, there is a tendency to criminalize contractual disputes, with collection actions involving intimidation, violence, or unilateral seizure being classified as criminal acts. This situation creates serious legal problems: the weakening of the principle of legal certainty due to the blurring of the boundaries between civil and criminal law, the potential misuse of criminal law as an instrument of pressure on creditors, and the erosion of the principle of ultimum remedium. Theoretically, this unclear qualification not only harms the debtor's rights as a consumer but also burdens the criminal justice system with cases that should be resolved through civil or administrative legal mechanisms, thus triggering legal uncertainty and predictability for the wider community (Sidiki *et al*., 2026).

The second problem focuses on the inconsistent application of the principle of legal certainty by judges in examining and deciding cases with similar characteristics. A comparison of South Jakarta District Court Decision No. 311/Pid.B/2023 and Padang District Court Decision No. 30/Pdt.G/2025 reveals a significant disparity in legal reasoning (ratio deciden-di). On the one hand, judges in South Jakarta tended to emphasize the formal aspects of the criminal process by ruling that forced executions constitute extortion due to the element of violence. Conversely, judges in Padang emphasized the civil aspect by categorizing the dispute as a pure breach of contract as long as contractual procedures were followed. This inconsistency is clear evidence that the standard of proof, between preponderance of evidence in civil cases and beyond reasonable doubt in criminal cases, has not been uniformly applied to identical legal facts. This phenomenon creates a dilemma for law enforcement officials in interpreting the limits of their authority and demonstrates that legal certainty, a fundamental value according to Gustav Radbruch, has not been fully upheld in our judicial practice. This emphasizes the urgency of critically evaluating law enforcement patterns to prevent excessive criminalization and to ensure that human rights protection and the effectiveness of regulations (such as the OJK

Regulation on debt collection) are implemented consistently and substantively across all court jurisdictions in Indonesia (Adinata & Bunga, 2026).

The phenomenon of debt collectors in resolving bad debts has created complex legal problems in Indonesia. Disputes that initially began as purely contractual (civil) matters often metamorphose into criminal acts due to aggressive collection methods. This requires a clear demarcation between the exercise of civil rights and criminal offenses to maintain the principle of legal certainty. The legal relationship between creditors and debtors is essentially bound by a financing agreement. If a debtor fails to fulfill their installment obligations, this is classified as a default under Articles 1238 and 1243 of the Civil Code. Resolution should be pursued through civil channels, such as a summons, debt restructuring, or execution of fiduciary guarantees. However, legal issues (juridical implications) arise when debt collection by third parties (debt collectors) no longer adheres to these mechanisms. Some of the main legal implications of this shift include (Yunianto *et al*., 2025).

Conflict of Understanding of Executorial Rights versus Criminal Law Although Law Number 42 of 1999 concerning Fiduciary Guarantees grants executorial title to creditors, this does not mean that execution can be carried out arbitrarily. Constitutional Court Decisions (No. 18/PUU-XVII/2019 and No. 2/PUU-XIX/2021) and SEMA No. 4 of 2016 affirm that unilateral execution without the debtor's consent and without going through the courts is a violation of due process of law. Criminalization of civil disputes when collection is accompanied by threats, intimidation, and confiscation, the object of the dispute is no longer limited to default, but changes into general criminal offenses such as extortion and violence (Article 368 of the Criminal Code). Violations of administrative regulations (POJK) forced collection practices in the field often violate the Financial Services Authority Regulation (POJK) which requires collection to be carried out ethically, with valid identity/assignment letters, and respecting consumer rights. This administrative violation can transform into criminal liability if it meets the elements of a material offense. Disruption of the principle of ultimum remedium in criminal law is actually a last resort (ultimum remedium). However, the practice of forced withdrawal overrides this principle, triggers legal uncertainty in society, and has the potential to give rise to abuse of authority. To test the consistency of legal certainty, this analysis compares Decision Number 311/Pid.B/2023/PN JKT.SEL with Decision Number 30/Pdt.G/2025/PN Pdg. These two decisions have identical root causes (default and withdrawal of collateral by debt collectors), but result in different legal qualifications.

**Table 1.** Comparison of Court Decisions in Case Studies

| Assessment Aspects | South Jakarta District Court Decision (311/Pid.B/2023) | Padang District Court Decision (30/Pdt.G/2025) |
|---|---|---|
| **Case Qualifications** | Criminal (Extortion/Violence) | Civil (Breach of Contract) |
| **Trial Facts** | Forced towing involved threats, intimidation, and physical violence, even resisting law enforcement. | Vehicle towing without a valid fiduciary certificate, but without violence or threats. |
| ***Ratio Decidendi (Judge's Consideration)*** | The actions of debt collectors have exceeded the limits of civil rights and legally fulfill the elements of a criminal offense. | The subject of the dispute is the consequences of a contractual relationship. The absence of any element of violence makes this dispute a purely civil matter. |
| **Application of Legal Principles** | Emphasizing the principle of legality (nullum crimen sine lege) and substantive justice. | Emphasis on the settlement of contractual obligations and the principle of ultimum remedium. |

In Table 1, the differences in these decisions complement each other and demonstrate the consistency of the principle of legal certainty. A debtor's default does not automatically eliminate the potential for criminal liability, but a contractual relationship also does not

transform every violation into a criminal offense. Judges consistently use the fulfillment of the elements of a crime (violence/threats) as the primary criterion. If the criminal element is proven, the case is decided criminally (South Jakarta District Court). Conversely, if only a procedural violation without violence occurs, the case is resolved civilly (Padang District Court).

Although debt collectors' actions are disturbing, systematic, and involve violence, these crimes cannot be classified as extraordinary crimes. Extraordinary crimes (such as terrorism, corruption, or money laundering) have specific characteristics: they threaten state security, undermine macroeconomic stability, and require evidentiary mechanisms that deviate from ordinary procedural law. In contrast, crimes committed by debt collectors are rooted in private civil disputes. Their resolution must still be subject to proof of the conventional elements of the crime in the Criminal Code, uphold the principle of legality, and be guided by the principle of ultimum remedium. Simplifying this case as an extraordinary crime would undermine the legal hierarchy and proportionality of punishment (Dzaky et al., 2024).

To strengthen the principle of legal certainty and prevent excessive shifting of civil disputes into the criminal realm, comprehensive measures are needed from various stakeholders. Financing companies (creditors) are required to register fiduciary guarantees and comply with collection procedures as stipulated in the Fiduciary Guarantee Law and OJK regulations. All forms of enforcement must avoid intimidation and prioritize persuasive approaches or formal litigation. Debt collectors must be equipped with official certification, valid power of attorney, clear identification, and adhere to Standard Operating Procedures (SOPs) prohibiting physical or psychological violence. Law enforcement officials must have uniform and objective parameters to distinguish between administrative-contractual violations and purely criminal crimes, always referring to the fulfillment of the material elements of the offense. The Supreme Court and OJK need to refine regulations and issue new Circulars or jurisprudence that specifically defines the criteria for civil collection and the critical point at which such actions enter the criminal realm. This synchronization between institutions is crucial to ensure balanced legal protection for creditors and debtors.

## CONCLUSIONS

Based on the results of research and analysis of Decision Number 311/Pid.B/2023/PN JKT.SEL and Decision Number 30/Pdt.G/2025/PN Pdg, it can be concluded that the determination of the boundary between criminal liability and civil liability in debt collection practices by debt collectors is determined by the judge's ratio decidendi based on trial facts, valid evidence, and fulfillment of the elements of a criminal act. Decision Number 311/Pid.B/2023/PN JKT.SEL shows that debt collection actions accompanied by violence, threats, or other acts that fulfill the formulation of a crime result in the act no longer being in the realm of default or the implementation of collection rights based on the agreement, but rather giving rise to criminal liability. On the other hand, Decision Number 30/Pdt.G/2025/PN Pdg emphasizes that disputes that only relate to the implementation of the rights and obligations of the parties under the financing agreement, without being accompanied by proof of elements of a criminal act, remain civil disputes whose resolution is carried out through civil law mechanisms. The difference in ratio decidendi in the two decisions reflects that a contractual legal relationship does not preclude the application of criminal law if an act that meets the elements of a crime is proven, but it also does not justify the application of criminal liability for every form of breach of contract. An analysis of the two decisions demonstrates that the application of the principles of legal certainty, legality, and ultimum remedium plays

a crucial role in distinguishing the scope of civil law from criminal law in financing disputes. Consistency in law enforcement requires that the determination of the qualifications.

## REFERENCES

Adinata, I. D. M. W., & Bunga, D. (2026). Penyidikan Dugaan Tindak Pidana dalam Penagihan Hutang Oleh Debt Collector di Wilayah Hukum Kepolisian Daerah Bali. *Jurnal Kajian Hukum dan Pendidikan Kewarganegaraan*, *2*(3), 1053-1058. http://jurnal.globalscients.com/index.php/jkhpk/article/view/1493

Dzaky, A. R. A., Kamal, M., & Badaru, B. (2024). Efektivitas Penegakan Hukum Terhadap Korban Melalui Aplikasi Pinjaman Online Ilegal Yang Terjadi Di Masyarakat. *Journal of Lex Theory (JLT)*, *5*(2), 711-729. https://pasca-umi.ac.id/index.php/jlt/article/view/1784

Joharsah, J., & Ikhwan, H. (2024). Edukasi Bahaya Investasi Ilegal Dan Pinjaman Online Ilegal Di Deli Serdang Kecamatan Patumbak. *Jurnal Pengabdian Masyarakat Inovasi*, *3*(2), 111-118. https://doi.org/10.35126/jpmi.v3i2.759

Kamal, G. M., Prawesthi, W., Marwiyah, S., & Aribawa, M. Y. (2025). Pertanggungjawaban Pidana Korporasi terhadap Pengguna Jasa Debt Collector dalam Melakukan Penagihan Pinjaman Online. *SENTRI: Jurnal Riset Ilmiah*, *4*(10), 2366-2387. https://doi.org/10.55681/sentri.v4i10.4612

Lestari, T., & Hartono, R. (2025). Pelaksanaan Eksekusi Jaminan Fidusia Terhadap Debitur Atas Sengketa Wanprestasi Dalam Perjanjian Leasing. *Restorative Justice: Jurnal Hukum Universitas Muhammadiyah Kalianda*, *1*(2). https://doi.org/10.52655/aj21yb68

Mukhlis, N. Z., Qahar, A., & Assaad, A. I. (2026). Teror Penyebaran Data Pribadi Debitur Oleh Debt Collector Fintech: Perspektif Hukum Pidana. *LEGAL DIALOGICA*, *1*(2), 1-20. http://103.133.36.88/index.php/legal/article/view/2485

Mulyadiva, S., & Triningsih, A. (2026). Pertanggungjawaban Hukum Penyelenggara Layanan Pinjaman Online atas Penyalahgunaan Foto KTP Konsumen dalam Praktik Debt Collection Digital. *Arus Jurnal Sosial dan Humaniora*, *6*(1), 71-84. https://doi.org/10.57250/ajsh.v6i1.2289

Pabbu, A., & Qadri, R. (2023). Tinjauan Hukum Terhadap Tindak Perampasan Mobil Oleh Debt Collector (Studi Putusan No. 141/Pid. B/2019/Pn. Pky.). *Pledoi Law Jurnal*, *1*(03), 183-192. https://jurnalfkmuit.id/index.php/plj/article/view/40

Renaldy, R. (2026). Perlindungan hukum debitur dalam perjanjian pinjaman online pasca penguatan regulasi Otoritas Jasa Keuangan tahun 2025. *Al-Zayn: Jurnal Ilmu Sosial & Hukum*, *4*(2), 4938-4945. https://doi.org/10.61104/alz.v4i2.4974

Rizal, M., & Mursid, F. (2022). Pertanggung Jawaban Pidana Debt Collector Pengaihan Hutang Dalam Pinjaman Online Ditinjau Dari Hukum Pidana Islam. *Ta'zir: Jurnal Hukum Pidana*, *6*(2), 103-118. https://doi.org/10.19109/tazir.v6i2.14528

Sadiqien, R. A., Marintan, R. P., & Napitupulu, D. R. (2025). Perlindungan Konsumen Terhadap Perjanjian Leasing Kendaraan. *Rechtsnormen Jurnal Komunikasi dan Informasi Hukum*, *4*(1), 10-15. https://doi.org/10.56211/rechtsnormen.v4i1.1155

Sidiki, W. P., Badu, L. W., & Kadir, M. K. K. (2026). Penegakan Hukum Terhadap Penarikan Kendaraan Bermotor Oleh Debt Collector Yang Disertai Kekerasan:(Studi pada Polres Gorontalo Kota). *Al-Zayn: Jurnal Ilmu Sosial & Hukum*, *4*(2), 2957-2965. https://doi.org/10.61104/alz.v4i2.4592

Syam, M., Zahara, Z., Fitri, D., & Oktarina, N. (2023). Sengketa Leasing dalam Konteks Penyelesaian Sengketa Konsumen. *UNES Journal of Swara Justisia*, *7*(1), 161-173. https://doi.org/10.31933/ujsj.v7i1.324

Yunianto, W. A., Astutik, S., & Handayati, N. (2025). Analisis Yuridis Terhadap Tindak Pidana Yang Dilakukan oleh Penyedia Aplikasi Pinjaman Online Ilegal. Indonesia of Journal Business Law, 4(1), 49-63. https://doi.org/10.47709/ijbl.v4i1.5390

Zahra, N. A., Irawan, A. F. Y., Rambe, F. R., & Hadi, S. H. (2026). Perlindungan Konsumen Terhadap Nasabah Kartu Kredit Dalam Proses Penagihan Oleh Debt Collector. *Jurnal Riksa Cendikia Nusantara*, *2*(7), 1-6. https://doi.org/10.5281/zenodo.21195501