Academic Journal of Law and Governance
Institut Agama Islam Negeri (IAIN)
Curup, Indonesia
ISSN 2775-8621 (p), 2798-3803 (e)
volume 5, number 2, 2025

Implementation of Article 36 of Law Number 42 of 1999 concerning Fiduciary Security Regarding the Imposition of Criminal Sanctions for the Transfer of Fiduciary Collateral Objects

Suhardi, Hambali Yusuf, Abdul Latif Mahfuz, Habiburrahman
Universitas Muhammadiyah Palembang, Indonesia, suhardisuhay@gmail.com
Universitas Muhammadiyah Palembang, Indonesia, hambali@um-palembang.ac.id
Universitas Muhammadiyah Palembang, Indonesia, latif@um-palembang.ac.id

DOI : *http://doi.org/10.29240/negrei.v5i1.13200*

Submitted: May 15, 2025; Reviewed: May 23, 2025; Accepted: July 30, 2025

Abstract

Many fiduciary grantors, such as individual debtors, are unaware that transferring fiduciary collateral objects without written permission constitutes a criminal offense. They often perceive the collateral as entirely their own property. Such criminal acts are frequently committed without malicious intent (mens rea), which has sparked debates regarding their treatment under criminal law. This study examines the implementation of Article 36 of Law Number 42 of 1999 concerning Fiduciary Security, particularly in relation to the imposition of criminal sanctions for the transfer of fiduciary collateral objects without the written consent of the fiduciary recipient. The primary focus of this research is to assess the effectiveness of the application of this criminal provision in practice, as well as to identify both legal and non-legal obstacles in the enforcement process. This research uses a normative juridical method with a qualitative approach, employing both primary and secondary legal materials. The findings indicate that Article 36 of the Fiduciary Security Law is no longer relevant, and that the imposition of criminal sanctions for the transfer of fiduciary collateral objects does not yet reflect a sense of justice. Criminal sanctions against fiduciary grantors who transfer fiduciary collateral are regulated under Article 36 of Law No. 42 of 1999; however, third parties (i.e., receivers or buyers of the collateral) are not regulated under this law. As a result, fiduciary recipients often feel disadvantaged. However, with the verdict of the Kebumen District Court Number 50/Pid.B/2019/PN.Kbm dated April 11, 2019, the perpetrator of the offense of receiving fiduciary collateral objects (i.e., fencing) can now be prosecuted under Article 480 of the Indonesian Criminal Code (KUHP).

keywords:
Fiduciary, Collateral Object, Transfer, Criminal Sanctions

Introduction

The Proclamation of Independence and the establishment of the Unitary State of the

Republic of Indonesia (NKRI) as enshrined in the 1945 Constitution (Undang-Undang Dasar 1945) marked a major transformation in various aspects of Indonesian society. One of the most significant changes lies in the legal system, which is now based on legal ideals as the fundamental guiding principles. These legal ideals (*cita hukum*) reflect the aspirations, will, creativity, and thought concerning law, or more broadly, the perception of the meaning of law. At its core, the Indonesian legal ideal rests on three essential elements: justice, utility, and legal certainty. The legal ideals of the Indonesian nation are deeply rooted in Pancasila, which serves as the philosophical foundation for structuring the state's legal framework and institutional organization, as formulated in the 1945 Constitution.[1]

Legal development in Indonesia has been ongoing for quite some time, yet to this day, there has been no fundamental and comprehensive evaluation of the legal model established as a means of societal reform and the creation of justice and legal certainty. As a result, much of the law produced has proven to be ineffective, as it is perceived by the public as failing to reflect their aspirations.[2] In daily life, individuals within society require protection of their interests. Such protection can be achieved through the establishment of guidelines or rules of conduct that determine how individuals should behave in society so as not to harm others or themselves. These guidelines are known as norms or social rules, which essentially constitute a formulation of views regarding behaviors or attitudes that ought to be practiced or avoided—those that are prohibited or recommended to be carried out.[3]

Criminal law, as the object of the science of criminal law, is an abstract object. The concrete object of criminal law science, similar to legal science in general, is human behavior within social interaction. However, the focus of criminal law is specifically on human actions that fall within the scope (adressat) of criminal law itself, namely the actions of ordinary citizens as well as those of government officials or law enforcement authorities.[4] The criminal law currently in force in Indonesia is codified law, meaning that the majority of its rules have been systematically compiled into a legal code (wetboek), known as the Criminal Code (KUHP), according to a specific system.[5] However, there also exists criminal law outside the KUHP, covering areas such as corruption, environmental crimes, narcotics, and fiduciary security. The objective of criminal law is to protect the interests of individuals or human rights, as well as the interests of society and the state. This is done by balancing protection from criminal/immoral acts on one hand, and from arbitrary acts by authorities on the other. Therefore, what is protected by criminal law includes not only the individual, but also the state, society, and individual property.[6]

Law Number 42 of 1999 concerning Fiduciary Security serves as a form of legal protection to meet the public's need for security rights regulation. At the time of its enactment, there was a growing demand for a legal framework regarding fiduciary security, which had not yet been adequately addressed by existing legal structures. Through a fiduciary agreement, the fiduciary giver places trust in the fiduciary recipient to return ownership of the collateral once the debt has been fully repaid. Conversely, the fiduciary recipient is expected not to misuse or wrongfully appropriate the collateral under their control.

Law Number 42 of 1999 concerning Fiduciary Security explicitly regulates the obligations of encumbering, registering, as well as the sanctions for intentional acts or negligence when the

---

[1] Alvi Syahrin; Et.al, *Pembaharuan Hukum (Pidana) Berdasarkan Pancasila* (Medan: CV. Merdeka Kreasi Group, 2023), hlm.3.

[2] Abdul Latif Mahfuz, "Faktor Yang Mempengaruhi Politik Hukum Dalam Suatu Pembentukan Undang-Undang," *Jurnal Kepastian Hukum Dan Keadilan* 1, no. 1 (2020): 43–57.

[3] Sudikno Mertokusumo, *Mengenal Hukum Suatu Pengantar* (Yogyakarta: Maha Karya Pustaka, 2019), hlm.4.

[4] S H Alvi Syahrin et al., *Dasar-Dasar Hukum Pidana: Suatu Pengantar (Buku Kesatu Undang-Undang Nomor 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana)* (Merdeka Kreasi Group, 2023), hlm.17.

[5] Moeljatno, *Asas Asas Hukum Pidana* (Jakarta: Rineka Cipta, 2020), hlm.17.

[6] Erdianto Effendi, *Hukum Pidana Indonesia Suatu Pengantar* (Bandung: Refika Aditama, 2014), hlm.33.

parties fail to encumber the fiduciary collateral object or fail to register the fiduciary security. This law also stipulates criminal sanctions for the debtor (fiduciary giver) who transfers the fiduciary collateral object without obtaining prior consent from the fiduciary recipient (creditor).

Article 1 paragraph (1) of the Indonesian Criminal Code (KUHP) upholds the principle of *"Nullum delictum nulla poena sine praevia lege poenali"*, which means "No act may be punished unless it is based on a criminal law provision that existed prior to the act." Accordingly, the act of transferring fiduciary collateral is already regulated both under the Indonesian Criminal Code (KUHP) and under a special law, namely Law on Fiduciary Security. Under the KUHP, such actions may fall under Article 372 on embezzlement or Article 378 on fraud, or may alternatively be prosecuted directly under Articles 35 and 36 of the Law on Fiduciary Security.

Law governs all aspects of life in society, including matters related to fiduciary security, which are specifically regulated under Law Number 42 of 1999 concerning Fiduciary Security (UUJF). The enactment of the Fiduciary Security Law was prompted by the economic crisis of 1998, during which the business sector required a flexible security instrument for debtors while still providing legal certainty for creditors.[7] The Fiduciary Security Agreement serves as legal protection for parties engaging in fiduciary security agreements made in good faith. This is crucial because, under such agreements, the object of security remains under the debtor's control, thereby creating the potential for unauthorized transfer of the secured object to a third party—an act that could result in losses for the creditor. Therefore, Law Number 42 of 1999 concerning Fiduciary Security stipulates criminal provisions and fines for violations related to the fiduciary object.

The fiduciary giver (debtor) may transfer the object of the fiduciary security in accordance with the procedures and methods stipulated by the Fiduciary Security Law (Law No. 42 of 1999). However, this provision does not apply if the debtor or fiduciary giver commits a breach of contract (wanprestasi). If the fiduciary object is transferred to another party, the fiduciary giver is obliged to replace it with an equivalent object. In the event of a breach of contract by the fiduciary giver, the proceeds from the transfer or the resulting claims shall, by law, become substitute fiduciary security objects, as regulated in Article 21 of Law Number 42 of 1999 concerning Fiduciary Security.

Violations of the provisions of Article 23 paragraph (2) of Law Number 42 of 1999 concerning Fiduciary Security can be subject to criminal sanctions as regulated in Article 36 of Law Number 42 of 1999 concerning Fiduciary Security. A fiduciary giver who transfers, mortgages, or leases the object of fiduciary security as referred to in Article 23 paragraph (2) of Law Number 42 of 1999 concerning Fiduciary Security without prior written approval from the fiduciary receiver shall be punished with imprisonment for a maximum of 2 (two) years and a fine of up to IDR 50,000,000.00 (fifty million rupiahs).

The Fiduciary Security Law also regulates that if someone deliberately falsifies, alters, destroys, or in any way provides misleading information—where such action, if known by one of the parties, would nullify the fiduciary security agreement—that person shall be subject to a minimum prison sentence of 1 (one) year. For example, a prospective debtor applies for credit, not for themselves but for another person, without the creditor’s knowledge.

Recently, the practice of transferring fiduciary collateral objects seems to have become commonplace and is even used as a means of livelihood. The debtor’s sense of shame when being chased for debt repayment has diminished. The transfer of fiduciary collateral objects is not only caused by the debtor but can also originate from the creditor. Regardless of whether there is intent or negligence, the creditor has created opportunities for the debtor to transfer fiduciary collateral objects, for example, through low down payments, improper credit processes, and so on.

Case example, on September 12 2024, the Bekasi Police Criminal Investigation Unit

---

[7] Rio Christiawan dan Januar Agung Saputera, *Perkembangan Dan Praktik Jaminan Fidusia* (Depok: Rajawali Pers, 2022), hlm.1.

uncovered a case embezzlement and receiving motor vehicles as Fiduciary Guarantee objects. More than 50 motorbikes, including three cars were confiscated. The mode was that the motor vehicles were pawned to Ermi Uli Sijabat, with an interest agreement of 10% of the pawn value, if within three months the interest was not paid, the vehicle would become the property of Ermi Uli Sijabat.[8] On July 18, 2024, the Criminal Investigation Unit of the Indonesian National Police also uncovered a fraud and embezzlement case related to international fiduciary networks and arrested 11 (eleven) suspects, according to the suspects' statements that the act had been carried out since 2021, approximately 20 thousand motorbikes had been exported to various countries such as Vietnam, Russia, Hong Kong, Taiwan, and Nigeria. The impact of economic losses in this case is around IDR 876 billion.[9]

From the case example above, the transfer of fiduciary collateral objects has become a business field, the sale and purchase transaction of fiduciary collateral objects is quite tempting, especially for people who live in remote areas they do not need BPKB or STNK. To report related to the crime of transferring Fiduciary Collateral Objects, Investigators always ask for a statement letter from the Fiduciary Provider that the vehicle has been transferred, this makes it difficult for the Fiduciary Recipient, let alone getting a Statement Letter, to be able to meet the Fiduciary Provider is very difficult.[10]

The emergence of cases of receiving fiduciary collateral objects due to the actions of debtors who are less cooperative to creditors as collateral holders, various pressures that are often experienced by debtors to carry out their obligations to creditors. These factors make debtors unconsciously that the fiduciary collateral object has been bound by an agreement, where the creditor also has rights and authority over the collateral object. The less than optimal law enforcement in criminal sanctions against perpetrators of receiving fiduciary collateral objects which often occurs by syndicates or certain groups can have various impacts, namely:[11] 1) The modus operandi of the practice of receiving fiduciary collateral objects is increasingly rampant; 2) The number of modes used by perpetrators of criminal acts of receiving fiduciary collateral objects is increasing; 3) The police cannot take action against perpetrators of criminal acts of receiving fiduciary collateral objects; 4) The Investigation Team and the Police cannot drag the perpetrators of criminal acts of receiving fiduciary collateral objects.

Di dalam praktiknya, kreditor yang merasa dirugikan oleh debitor melakukan pelaporan kepada pihak yang berwenang yaitu kepolisian. Di dalam laporan tersebut kepolisian sering melakukan penindakan terhadap debitor yang melakukan pengalihan atas objek jaminan fidusia sehingga tidak sedikit debitor yang menerima sanksi pidana akibat perbuatannya tersebut. Akan tetapi, dalam hal ini kepolisian hanya memproses tindak pidana yang dilakukan oleh debitor, sedangkan pelaku tindak pidana penadahan seringkali terhindar dari proses penyidikan. Pahadal kepolisian dapat menjerat pelaku penadahan atas objek jaminan fidusia tersebut dengan Pasal 480 KUHP, karena unsur-unsur dalam pasal tersebut sudah terpenuhi.[12]

This article aims to explain how to implement Article 36 of Law Number 42 of 1999 concerning Fiduciary Guarantees related to the Imposition of Criminal Sanctions for the Transfer of Guarantee

---

[8] Ade Suhardi, "Bongkar Kasus Penggelapan Objek Fidusia, Polisi Sita 50 Motor Di Cibarusah Bekasi," Bekasi News, 2025, https: //bekasi.inews.id/read/498591/ bongkar-kasus- penggelapan- objek-fidusia-polisi-sita-50-motor-di-cibarusahbekasi# :~:text=Bongkar Kasus Penggelapan Objek Fidusia%2C Polisi Sita 50 Motor di Cibarusah Bekasi.

[9] Rahmadi Rasyad, "Polisi Bongkar Kasus Penggelapan Motor Jaringan Internasional Senilai Rp 876 M," kumparan.com, 2025, https: //kumparan.com /kumparannews/ polisi -bongkar -kasus- penggelapan- motor- jaringan -internasional- senilai -rp-876-m.

[10] Satria Raswanda, "Wawancara Pimpinan PT.BFI Finance Cabang Palembang," 15 April 2025.

[11] Yohana Puspitasari Wardoyo and Fery Kusnaini Afandi, "Studi Terhadap Tindakan Penyidik Dalam Menangani Sindikat Penadahan Atas Objek Jaminan Hasil Transaksi Fidusia Di Polresta Malang," *Legality: Jurnal Ilmiah Hukum* 27, no. 1 (2019): 128–46.

[12] Wardoyo and Afandi.

Objects and analyze whether Article 480 of the Criminal Code can be applied to Receivers of Fiduciary Guarantee Objects.

Research Method

In this study, the author conducted a type of legal research, namely empirical legal research. Empirical legal research is research whose objects are about symptoms, events and phenomena that occur in society, institutions or countries that are non-library by looking at the phenomena that exist in society.[13] The type of empirical legal research according to Ronny Hanitijo Soemitro is empirical legal research that obtains its data from primary data or data obtained directly from the community.[14]

Meanwhile, the research approach used by the researcher is a qualitative approach, namely a method of analyzing research results that produce descriptive analysis data, namely data stated by respondents in writing or verbally as well as real behavior, which is researched and studied as a whole.[15] Therefore, the author must be able to determine which data or legal materials have quality as data, which legal materials are relevant and related to the research material. Thus, in the analysis with this qualitative approach, what is important is the quality of the data.

In this study, using primary and secondary legal materials. Mukti Fajar and Yulianto Achmad [16] explains primary legal materials are legal materials that are authoritative in nature, meaning they have authority, namely the result of actions or activities carried out by an authorized institution for that purpose. Primary legal materials can be: 1) The 1945 Constitution of the Republic of Indonesia; Law Number 1 of 1946 concerning the Criminal Code; Law Number 42 of 1999 concerning Fiduciary Guarantees; Decision of the Constitutional Court of the Republic of Indonesia Number 18/PUU-XVII/2019; Government Regulation Number 86 of 2000 concerning Procedures for Registering Fiduciary Guarantees and Costs for Making Fiduciary Guarantee Deeds; Permenkumham Number 25 of 2021 concerning Procedures for Registration, Amendments, and Elimination of Fiduciary Guarantees. Secondary legal materials are legal materials that can provide explanations to primary legal materials such as reference books and scientific journal articles related to the problems to be studied.

In collecting data and interpreting legal materials to analyze the problems in this study, the researcher conducted interviews with several sources, including Officers/Officers of the Criminal Investigation Unit of the Palembang Police and the South Sumatra Police and Branch Managers/Employees of Financing Companies. The results of data collection and interviews were then analyzed using descriptive characteristics, namely the author in analyzing wants to provide a description or explanation of the subject and object of research as the results of the research conducted by the author.

Discussion and Analysis

Theory of Justice

Justice is actually a relative concept.[17] On the other hand, justice is the result of the interaction between expectations and existing reality, the formulation of which can be a guideline in the lives of individuals and groups. From the etymological aspect of freedom, the word "fair" comes from the Arabic "adala" which means middle or middle. From this meaning, the word "adala" is then synonymous with "wasith" which derives the word "wasith", which means a mediator or a person standing in the middle which implies a fair attitude.[18] From this understanding, the word "fair" is

---

[13] Bahder Johan Nasution, “Metode Penelitian Ilmu Hukum” (Bandung: Mandar Maju, 2008), hlm.24.

[14] Mukti Fajar ND; Yulianto Achmad, *Dualisme Penelitian Hukum Normatif & Empiris* (Yogyakarta: Pustaka Pelajar, 2013), hlm.154.

[15] Achmad, hlm.156.

[16] Achmad.

[17] Majid Khadduri, *The Islamic Conception of Justice* (JHU Press, 1984), hlm.1; Mahmutarom, *Rekonstruksi Konsep Keadilan* (Undip Semarang, 2009), hlm.31.

[18] Khadduri, *The Islamic Conception of Justice*.

synonymous with "inshaf" which means conscious, because a just person is a person who is able to stand in the middle without a priori taking sides. Such a person is a person who is always aware of the problem at hand in its overall context, so that the attitudes or decisions taken regarding the problem are appropriate and correct.[19]

Aristotle's views on justice can be found in the works of Nichomachean ethics, politics, and rhetoric. Justice based on Aristotle's general philosophy should be considered the core of legal philosophy, "since law can only be established in relation to justice".[20] The idea that justice should be understood in terms of equality, however, Aristotle makes an important distinction between numerical equality and proportional equality. Numerical equality equates every human being as a unit which is now commonly understood as the equality that all citizens are equal before the law. Proportional equality gives each person what is due to him according to his abilities, achievements, and so on.

This Aristotle's distinction has given rise to much controversy and debate about justice. He further differentiates justice into distributive justice and corrective justice. The former applies in public law, the latter in civil and criminal law. Distributive and collective justice are both susceptible to the problem of equality and can only be understood within the conceptual framework of distributive justice, that equal rewards are given for equal achievements. In the latter, the problem is that inequality is caused by, for example, a breach of agreement.

Distributive justice according to Aristotle focuses on the distribution of honor, wealth, and other goods that can be obtained equally in society. Leaving aside mathematical "proof", it is clear that what Aristotle had in mind was that the distribution of wealth and other valuables was based on the values prevailing among citizens. A fair distribution may be a distribution that is in accordance with the value of goodness, namely the value for society. On the other hand, corrective justice focuses on correcting something that is wrong. If a violation is violated or a mistake is made, then corrective justice seeks to provide adequate compensation for the injured party. If a crime has been committed, then appropriate punishment needs to be given to the perpetrator. However, injustice will disrupt the "equality" that has been established or formed. Corrective justice is tasked with rebuilding this equality. The description shows that corrective justice is the realm of the judiciary, while distributive justice is the realm of the government.[21]

John Rawls in his book A Theory of Justice explains the theory of social justice as the difference principle and the principle of fair equality of opportunity. Intu the difference principle, that social and economic differences must be arranged to provide the greatest benefit to those who are least fortunate. The term socio-economic differences in the difference principle refers to the inequality in a person's prospects for obtaining the basic elements of welfare, income, and authority. Meanwhile, the principle of fair equality of opportunity refers to those who have the least opportunity to achieve welfare prospects, opinions and authority. They are the ones who must be given special protection.[22]

The statements of the two principles read as follows:[23]First, everyone has an equal right to the most extensive basic liberty, equal to all. Second, social and economic inequalities must be arranged so that (a) they can be expected to be to the advantage of all, and (b) all positions and offices are open to all. There are two ambiguous phrases in the second principle, namely, "to the advantage of all" and "equally open to all." A more precise understanding of these phrases will lead to the second formulation. The final version of the two principles is expressed in considering the first principle.

---

[19] Nurcholis Madjid, "Islam Kemanusiaan Dan Kemoderenan, Doktrin Dan Peradaban, Sebuah Telaah Kritis Tentang Masalah Keimanan," *Jakarta: Yayasan Wakaf*, 1992, hlm.512-513.

[20] Carl Joachim Friedrich, "Filsafat Hukum: Perspektif Historis," 2008, hlm.24.

[21] Friedrich.

[22] Friedrich, hlm.26.

[23] John Rawls, A Theory of Justice, The Basic Philosophy of Politics to Realize Social Welfare in the State, Translated by*: Uzair Fauzan and Heru Prasetyo*(Yogyakarta: Student Library, 2006), p.69.

Implementation of Article 36 of Law Number 42 of 1999 concerning Fiduciary Security Regarding the Imposition of Criminal Sanctions for the Transfer of Fiduciary Collateral Objects

1. Transfer of Fiduciary Collateral Objects

In the world of financing, the case of over-transfer of Fiduciary Collateral Objects without the consent of the Fiduciary Recipient/Creditor is something that is very worrying for the Fiduciary Recipient, although it is not certain that it will be problematic in the future, at least there is a potential problem and handling this over-transfer case is not easy. Moreover, since the birth of the Decision of the Constitutional Court of the Republic of Indonesia (MKRI) Number 18/PUU-XVII/2019 concerning the Judicial Review of Law Number 42 of 1999 concerning Fiduciary Collateral, this can be used as a loophole/opportunity for the mafia over-transfer of fiduciary collateral objects to maintain the fiduciary collateral object if it will be withdrawn or executed, even though the installments are in arrears.[24]

Constitutional Court Decision Number 18/PUU-XVII/2019, namely:

a. Declares that Article 15 paragraph (2) of Law Number 42 of 1999 concerning Fiduciary Security (State Gazette of the Republic of Indonesia Year 1999 Number 168, Supplement to the State Gazette of the Republic of Indonesia Number 3889), insofar as the phrases "executorial power" and "equivalent to a court decision with permanent legal force" are concerned, contradict the 1945 Constitution of the Republic of Indonesia and have no binding legal force insofar as they are not interpreted as "for fiduciary guarantees where there is no agreement regarding breach of contract (default) and the debtor refuses to voluntarily surrender the fiduciary collateral object, then all legal mechanisms and procedures in the execution of the Fiduciary Security Certificate must be carried out and apply the same as the execution of a court decision that has permanent legal force";

b. Declares that Article 15 paragraph (3) of Law Number 42 of 1999 concerning Fiduciary Security (State Gazette of the Republic of Indonesia Year 1999 Number 168, Supplement to the State Gazette of the Republic of Indonesia Number 3889), insofar as the phrase "breach of contract" is concerned, contradicts the 1945 Constitution of the Republic of Indonesia and has no binding legal force insofar as it is not interpreted that "the occurrence of breach of contract is not determined unilaterally by the creditor but based on an agreement between the creditor and debtor or based on legal efforts that establish the occurrence of a breach of contract".

With the Constitutional Court Decision Number 18/PUU-XVII/2019, the essence of the Decision is that the Fiduciary Certificate no longer has the same "Executorial Power" as the Court Decision. And this Constitutional Court Decision Determination of "Breach of Promise" must be agreed upon by the Fiduciary Giver and Recipient. The Constitutional Court's decision is very detrimental to the Fiduciary Recipient, because it is always used as a reference by the Fiduciary Giver, to withdraw the Fiduciary Collateral Object there must be a Court Decision. To take legal action must be processed, requires a long time and costs a lot of money. Finally, the amount of Fiduciary Recipient's installment arrears continues to pile up, so that the possibility of the debtor being able to pay is getting smaller, the quickest solution for the debtor to "reduce the value of the loss" is by selling or Pawning the Fiduciary Collateral Object.[25]

In Article 1 paragraph (1) of the Criminal Code, there is a principle of "Nullum delictum nulla poena sine praevia praevia lege poenale" which means "No act can be punished, except based on the power of previously existing criminal law provisions". So the act of transferring fiduciary collateral is actually regulated in the Criminal Code (KUHP) and is also regulated in a Special Law, namely the Law on Fiduciary Guarantees, in the Criminal Code several alternative articles can be imposed,

[24] Raswanda, "Wawancara Pimpinan PT.BFI Finance Cabang Palembang."

[25] Raswanda.

namely those listed in Article 372 of the Criminal Code on Embezzlement and 378 of the Criminal Code on Fraud, or can be directly imposed under Article 36 of the Law on Fiduciary Guarantees.

Article 23 paragraph (2) of Law Number 42 of 1999 concerning Fiduciary Guarantees: "The Fiduciary Provider is prohibited from transferring, pawning, or renting to another party the Goods that are the object of the Fiduciary Guarantee that are not inventory items, except with prior written consent from the Fiduciary Recipient". Furthermore, Article 36 of Law Number 42 of 1999 concerning Fiduciary Guarantees states: "The Fiduciary Provider who transfers, pawns, or rents Goods that are the object of the Fiduciary Guarantee as referred to in Article 23 paragraph (2) which is done without prior written consent from the Fiduciary Recipient, shall be punished with imprisonment for a maximum of 2 (two) years and a maximum fine of Rp. 50,000,000 (fifty million rupiah)”

The criminal elements that must be fulfilled so that the perpetrator can be prosecuted based on the provisions of this article, namely: 1) The fiduciary giver, who transfers, pawns, or rents; 2) The object of the fiduciary; 3) Without written consent; 4) The recipient of the fiduciary.

According to UUJF in Article 23 paragraph (2), the fiduciary grantor is prohibited from transferring, pawning, or renting to another party an object that is the object of Fiduciary Guarantee that is not an inventory object, except with prior written consent from the fiduciary recipient. If the debtor transfers the object of Fiduciary Guarantee that is not an inventory object to a third party without written consent, the legal consequences that arise are in the form of an act of default and criminal sanctions as regulated in Article 36 of UUJF. In practice, debtors often still transfer Fiduciary Guarantee objects that are not inventory objects to third parties without the creditor's consent. One of the factors that causes this is because the debtor needs funds to pay monthly credit installments. The legal consequences that arise in relation to the transfer of Fiduciary Guarantee objects in a credit agreement cannot be separated from considering the nature of Fiduciary Guarantee as a property right regulated in UUJF.

Table 1. Case of Violation of Article 36 of Law Number 42 Year 1999 on Fiduciary Security at South Sumatra Regional Police (Polda Sumatera Selatan)

No	Year	Number of Cases	Information
1	2020	1	Criminal elements fulfilled
2	2021	6	Criminal elements fulfilled
3	2022	1	Criminal elements fulfilled
4	2023	0	-
5	2024	0	-

Source: South Sumatra Police

Property rights according to Sri Soedewi Masjchoen Sofyan are absolute rights over an object where the right gives direct power over an object and can be defended against anyone. The characteristics of property rights and individual rights are:

a. Property rights are absolute rights, meaning they can be defended against anyone.

b. Property rights have Zaaksgevolg or Droit de suite (following rights), meaning that the rights continue to follow the object wherever (in whoever's hands) the object is. This right continues to follow the person who has it. Meanwhile, individual rights are not like that, individual rights can only exercise these rights against someone, with the transfer of rights to the object the individual rights cease to exist.

c. The system that exists in property rights is that whatever occurs first has a higher level than whatever occurs later has the same level, in personal rights there is nothing that is lower or higher.

d. Property rights have Droit de preference (first right), its vruchtgebruk can be carried out against anyone, anywhere, not affected by faillissement. This is not the case with individual rights, in the event of bankruptcy, the person who has individual rights distributes the remaining assets in their respective portions, in balance with the size of their individual rights.

The property rights of the lawsuit are called a lebenda lawsuit and the lawsuit can be carried out against anyone who interferes with his rights. In this individual right, a person can only file a lawsuit against the opposing party (wederpartij).[26]

2. Criminal Liability

Criminal liability is based on the principle of culpability which emphasizes the balance between justice and legal certainty, namely between the principle of culpability and the principle of legality. Although in principle a person can only be punished if he is guilty, in practice there are exceptions such as vicarious liability and strict liability. In addition, error, both regarding facts (error facti) and law (error iuris), can be a reason for forgiveness, unless the error is to be blamed on the perpetrator.[27] Criminal liability cannot be separated from the philosophical aspect, especially the value of justice. The discussion of criminal liability becomes more meaningful when viewed within the framework of justice, because even though it is a legal issue, it is still closely related to the underlying philosophical values.[28]

Criminal responsibility (liability) is an assessment of whether a person can be held responsible for a crime. A person can only be punished if his actions are against the law and he has the ability to be responsible, which is shown through the existence of errors in the form of intent or negligence, and awareness of the reprehensibility of the act.[29] Criminal liability is the process of determining whether the perpetrator of a reprehensible act deserves to be held accountable for his actions. If the act is reprehensible and the perpetrator is considered reprehensible, then he can be punished. Conversely, if the perpetrator is not reprehensible even though his actions are reprehensible, then he is not punished.[30] A mistake in criminal law means that the perpetrator can be blamed for his actions. If someone is found guilty, then he is responsible and deserves to be punished.[31]

Menurut Ruslan Saleh, tidaklah ada gunanya untuk mempertanggungjawabkan terdakwa atas perbuatannya apabila perbuatannya itu sendiri tidak bersifat melawan hukum, maka lebih lanjut dapat pula dikatakan bahwa terlebih dahulu harus ada kepastian tentang adanya perbuatan pidana, dan kemudian semua unsur-unsur kesalahan harus dihubungkan pula dengan perbuatan pidana yang dilakukan, sehingga untuk adanya kesalahan yang mengakibatkan dipidananya terdakwa maka terdakwa haruslah:[32] 1) Melakukan perbuatan pidana; 2) Mampu bertanggung jawab; 3) Dengan kesengajaan atau kealpaan, dan 4) Tidak adanya alasan pemaaf.

According to Ruslan Saleh, there is no point in holding the defendant responsible for his actions if the actions themselves are not unlawful, then it can also be said that first there must be certainty about the existence of a criminal act, and then all elements of the error must also be connected to the criminal act committed, so that for there to be an error that results in the defendant being punished, the defendant must:[33] 1) Committing a criminal act; 2) Being able to take responsibility; 3) With intent or negligence, and 4) No excuse.[34]

Gunawan Jatmiko explained that criminal liability occurs due to errors by the perpetrator of the

---

[26] Et.al Sofyan, *Hukum Benda* (Yogyakarta, 1981), hlm.43.

[27] Barda Nawawi Arief, Problems of Law Enforcement and Crime Prevention Policies (Bandung: PT. Citra Aditya Bakti, 2001), p.23.

[28] Roeslan Saleh, *Pikiran-Pikiran Tentang Pertanggungan Jawab Pidana* (Ghalia Indonesia, 1982), hlm.10.

[29] E Y Kanter and S R Sianturi, *Asas-Asas Hukum Pidana Di Indonesia Dan Penerapannya* (Storia Grafika, 2002), hlm.54.

[30] Saleh, *Pikiran-Pikiran Tentang Pertanggungan Jawab Pidana,* hlm.76.

[31] Moeljatno, *Asas-Asas Hukum Pidana* (PT Rineka Cipta, 2009), hlm.49.

[32] Moeljatno, hlm.80.

[33] Moeljatno, p. 80.

[34] Kanter and Sianturi, *Asas-Asas Hukum Pidana Di Indonesia Dan Penerapannya,* hlm.60.

transfer of fiduciary guarantee objects, which include intent and negligence.[35]The element of intent is one of the most important elements in the formulation of Article 36 of the Fiduciary Guarantee Law which is conceptualized as a criminal act, so this element of intent also includes other elements in the form of acts listed therein and must be proven. Intentionally means that there is a conscious will and is intended to carry out the act of transferring the object of the fiduciary guarantee, so in relation to proving that the act was carried out intentionally, there is an understanding of wanting and knowing.

In addition, there is an element of negligence or negligence. The most important factor in this element is that the perpetrator can anticipate the consequences of his actions or the perpetrator is not careful enough, the perpetrator has awareness or knowledge of the consequences arising from the actions, in other words the perpetrator knows that if he transfers the object of the fiduciary guarantee without the consent of the fiduciary recipient, he can be subject to criminal penalties.[36]

Criminal liability for violation of the provisions of Article 36 of the Fiduciary Guarantee Law in case Number 49/Pid.B/2019/PN.Kbm, can be analyzed based on the elements of criminal liability as stated by EY Kanter and SR Sianturi which include:

a. The subject must be in accordance with the formulation of the law;
b. There is an error in the perpetrator;
c. The act is unlawful;
d. The act is prohibited and is punishable by law (in the broad sense);
e. The action is carried out in accordance with the place, time and other circumstances specified in the law.[37]

Based on this, the criminal liability of a fiduciary provider who transfers the object of fiduciary guarantee without the consent of the fiduciary recipient according to the author's analysis is as follows:

The subject of criminal responsibility must be in accordance with the provisions of the law. In case Number 49/Pid.B/2019/PN.Kbm, the defendant Sumarni as a consumer and fiduciary guarantee provider to PT. NSC Finance, has pawned two motorcycles (fiduciary guarantee objects) to another party without written consent from the fiduciary recipient. This action is a form of legal error that can be held criminally responsible to the defendant.

Article 23 Paragraph (2) of the Fiduciary Guarantee Law clearly states that the fiduciary giver is prohibited from transferring, pawning or renting to another party objects that are the object of the fiduciary guarantee which are not inventory items, except with prior written consent from the fiduciary recipient.

That the action is unlawful, according to Schaffmeister as quoted by JE Sahetapy, states that there are four meanings contained in the nature of an unlawful act, namely:

a. General unlawful nature (an act that is prohibited in criminal law provisions has an unlawful nature even if it is not written explicitly).
b. Special unlawful nature (an act has a special unlawful nature when the formulation of the criminal law provisions includes the term "unlawful").
c. Formal unlawful nature (the act fulfills every formulation of the applicable criminal law provisions).

[35] SIGIT JATMIKO SIGIT JATMIKO, "CONFISCATION OF MOTOR VEHICLES AS EVIDENCE OF THE CRIMINAL ACT OF THEFT WHICH IS STILL IN THE OBJECT OF FIDUCIARY COLLATERAL" (Batanghari University, 2020).

[36] Titin Apriani, "Konsep Perbuatan Melawan Hukum Dalam Tindak Pidana," *Ganec Swara* 13, no. 1 (2019): 43–49.

[37] Kanter and Sianturi, *Asas-Asas Hukum Pidana Di Indonesia Dan Penerapannya,* hlm.253.

d. Material unlawful nature (an act has a material unlawful nature because the act violates or endangers the legal interests that the legislators wish to protect). Based on these unlawful natures, it is known that every legal subject who is in the position of a fiduciary who carries out the act of transferring the object of the fiduciary guarantee without the consent of the fiduciary recipient, then the act can be assessed as an act that is unlawful by violating the legal provisions in Article 23 Paragraph (2) of the Fiduciary Guarantee Law and Article 36 of the Fiduciary Guarantee Law.
e. This action is prohibited and is punishable by law.[38]

The defendant's action of transferring the object of the fiduciary guarantee without permission violates Article 23 Paragraph (2) and Article 36 of the Fiduciary Guarantee Law. This act fulfills the elements of place, time, and circumstances according to the provisions of criminal law. The place of the incident is important for determining jurisdiction based on Article 2 of the Criminal Code, while time is related to the principle of legality in Article 1 Paragraph (1) of the Criminal Code. Other circumstances relate to the reasons for eliminating criminal penalties as regulated in Articles 44 to 51 of the Criminal Code.

Thus, Violation of the provisions regarding the transfer of fiduciary collateral objects by the fiduciary provider without the consent of the fiduciary recipient can result in criminal liability for the fiduciary provider. Article 36 of Law Number 42 of 1999 concerning Fiduciary Guarantees states that a fiduciary provider who transfers collateral objects without the written consent of the fiduciary recipient can be subject to criminal sanctions with a maximum imprisonment of 2 years and/or a maximum fine of Rp. 50 million (fifty million rupiah).

3. Weaknesses in the Implementation of Article 36 of the Fiduciary Security Law

Pembahasan mengenai kelemahan-kelemahan Penerapan Sanksi Pidana Terhadap Pengalihan Objek Jaminan Fidusia penulis menggunakan teori system hukum dari Lawrence Milton Friedman. Menurut M Friedman, sistem hukum mencakup tiga komponen atau sub-sistem, yaitu komponen struktur hukum (*legal structu*Discussion of the weaknesses of the application of criminal sanctions against the transfer of fiduciary collateral objects, the author uses the legal system theory of Lawrence Milton Friedman. According to M Friedman, the legal system includes three components or sub-systems, namely the legal structure component).[39] Legal substance and legal culture. In Friedman's view, the quality of these three components will greatly determine the level of success of law enforcement in a country.[40]

Adapun penjelasan ketiga komponen tersebut adalah sebagai berikut:

1. Weaknesses of Legal Structure

The legal structure relates to the institutions or institutions implementing the law, in this case the regulation on Criminal Sanctions Against the Transfer of Fiduciary Guarantee Objects includes, among others; Financing Institutions, police, Courts.

a. Fiduciary Institution

Fiduciary encumbrance is carried out through a Fiduciary Guarantee Deed which must be made by a notary and registered with the Fiduciary Registration Office under the Ministry of Law and Human Rights. This registration is important so that the debtor cannot sell or re-fiduciate the collateral object without the knowledge of the creditor. However, in the field, financing institutions are often found to include fiduciary in agreements without a notary deed and without official registration, so that they do not have executorial power. This shows a mismatch between fast business needs and

---

[38] J E Sahetapy and Agustinus Pohan, *Hukum Pidana*, *Citra Aditya Bakti* (Bandung: Citra Aditya Bakti, 2007), hlm.37.
[39] Jimly Asshiddiqie, *Dalam Dialektika Pembaruan Sistem Hukum Indonesia* (Sekretariat Jenderal Komisi Yudisial, Republik Indonesia, 2012), hlm.19.
[40] Achmad Ali, *Menguak Teori Hukum (Legal Theory) Dan Teori Peradilan (Judicialprudence)* (Jakarta: Kencana, 2017), hlm.204.

legal procedures that are still rigid and slow.[41]

b. Police Investigator

In reality, it does not always run smoothly as in theory, in this case what is in the Criminal Procedure Code. Investigators often encounter several obstacles in uncovering embezzlement of fiduciary collateral. First, evidence is often insufficient because it is difficult to obtain witness statements or uncooperative suspects. Second, the collateral object is difficult to find because it has been transferred to another party who is reluctant to hand it over, considering the item to have been purchased legally. Third, suspects often run away, do not have a permanent residence, or their identities are unclear, thus complicating the investigation process.[42] This could happen that the suspect is not at his residence. Maybe the suspect has run away or fled out of town or even abroad. In addition, there is a possibility that the suspect's identity is unclear and does not have a permanent residence, so investigators have difficulty meeting the suspect and asking for information from him.

c. Court

The application of the Principle of Lex Specialis Derogat Legi Generalis by the Panel of Judges in the criminal act of transferring the object of fiduciary guarantee, is one of the principles of preference known in legal science. The principle of preference is a legal principle that indicates which law is more prioritized (to be enforced), if in an event (law) related to or violated several regulations, the meaning of this principle is that for a special event, the law that mentions the event must be enforced, although for the special event a law can be enforced that mentions a broader/more general event that can cover the special event.[43]

The principle of lex specialis derogat legi generalis is regulated in Article 63 paragraph (2) of the Criminal Code, which states that if an act violates general and special criminal provisions, then the special provisions apply. However, the Criminal Code does not explain when this occurs. In the trial process, judges use evidence and careful consideration before deciding a case, in accordance with the Indonesian evidentiary system which is based on negative law (negative wettelijk bewijs theorie*)*.

In practice, judges often encounter cases involving Article 36 of the Fiduciary Guarantee Law and Article 480 of the Criminal Code related to the principle of lex specialis derogat legi generalis. However, the judge's decision to choose Article 480 of the Criminal Code and ignore this principle is considered wrong because it does not consider the legal fact that the object of fiduciary guarantee is regulated by a special law (the Fiduciary Guarantee Law). The perpetrator's intention in Article 480 of the Criminal Code is considered to have arisen after the agreement, while in this case the intention had existed since the agreement was to be made. Judges should prioritize Article 36 of the Fiduciary Guarantee Law as the lex specialis that applies absolutely compared to Article 480 of the Criminal Code as lex generalis, but in reality they often ignore this principle.

2. Weaknesses of the Legal Substantive Aspect

Legal substance includes all principles, norms, and legal rules, both written and unwritten, including court decisions. In contract law, if the debtor does not fulfill the contents of the agreement due to an error such as intentional, negligent, or violating the agreement, then there is a breach of contract which allows the injured party to demand the fulfillment of obligations or compensation. In this regard, Law Number 42 of 1999 and Article 480 of the Criminal Code regulate the crime of receiving goods, namely the sale and purchase or storage of goods suspected of originating from a crime, with a maximum prison sentence of four years or a fine.

The transfer of fiduciary collateral objects by debtors often harms financing companies because settlement through legal channels is less effective; the criminal threat in the Fiduciary Collateral Law

[41] Raswanda, "Wawancara Pimpinan PT.BFI Finance Cabang Palembang."

[42] Kompol. Iwan Gunawan, "Wawamcara Dengan Wakasat Reskrim Polrestabes Palembang," (2025).

[43] Muhammad Rusli Arafat, "Tindak Pidana Pengalihan Obyek Jaminan Fidusia Oleh Debitur (Tinjauan Yuridis Putusan Nomor: Nomor 137/Pid. Sus/2020/PN. Mks)," *HERMENEUTIKA: Jurnal Ilmu Hukum* 6, no. 1 (2022): 18–31.

(Article 36 of Law No. 42/1999) in the form of a maximum imprisonment of 2 years and a fine of IDR 50 million is considered not to provide a deterrent effect and justice. Collateral is often not found, so the company is still harmed. Although Article 36 is a lex specialis, the sanctions are lighter than Article 480 of the Criminal Code, so it is necessary to harmonize the rules to equalize the standards of criminal sanctions to be more effective and fair.

3. Weaknesses of the Legal Culture Aspect

Legal culture is related to habits, opinions, ways of thinking and acting as well as legal awareness of society. The crime of embezzlement is a crime that begins with a trust in others, and that trust is lost due to weak honesty. Even today there are many cases of embezzlement with various modes that indicate the increasing level of crime that occurs.

Factors that influence the crime of transferring fiduciary collateral objects include: 1) Economic factors, where the perpetrator is driven by the pressure of life's needs and difficulty in paying debts; 2) Educational factors, because low education causes limited skills, thus increasing the possibility of committing crimes; 3) Environmental factors, such as the transfer of collateral objects through social media without the permission of the fiduciary recipient, which facilitates the occurrence of criminal acts.

Public legal awareness influences legal compliance both directly and indirectly. In advanced societies, people obey the law because they realize that the law is good and just and is needed to regulate life. Whereas in traditional societies, legal compliance is driven more by the influence of leaders, religion, or beliefs, rather than by direct awareness of the importance of the law..

Legal awareness is very important for society because it is directly correlated with the level of legal compliance. The lower the legal awareness, the lower the public compliance, and vice versa. However, currently many people dare to break the law for personal interests because they consider law enforcement to have lost its authority and is discriminatory. Loyalty to personal interests is the main reason for non-compliance with the law.

The Application of Article 480 of the Criminal Code Against Recipients (Fences) of Fiduciary Security Objects

1. Criminal Act of Receiving Money

Law Number 42 of 1999 concerning Fiduciary Security does not regulate the crime of receiving stolen goods (penadahan). Therefore, cases of receiving fiduciary security objects can only be charged under Article 480 of the Criminal Code (KUHP), because receiving stolen goods is closely related to crimes such as theft, embezzlement, or fraud.[44] The term *penadahan* itself means an act of receiving or concealing stolen goods, indicating the crime or the subject (perpetrator).[45] In Dutch, *penadahan* is called *Heling*, which means "collusion" and refers to the mental element in Article 480 paragraph (1) KUHP, stating that the defendant must know and reasonably suspect that the goods obtained come from a crime (referred to as “dark goods”), not legitimate goods (referred to as “bright goods”). Receiving stolen goods is considered a continuous crime because it occurs after the initial crime, where the stolen goods can be used personally, given away, or used to seek profit.[46] This crime is regulated under Chapter XXX of Book II of the KUHP, consisting of Articles 480, 481, and 482. Article 480, as explained by R. Soesilo in his book, clarifies that the element of "collusion" or "receiving" in the crime of receiving stolen goods specifically refers only to the act mentioned in sub-article 1 of Article 480 KUHP.

---

[44] Coby Mamahit, “Aspek Hukum Pengaturan Tindak Pidana Penadahan Dan Upaya Penanggulangannya Di Indonesia,” *Jurnal Hukum Unsrat* 23, no. 8 (2017).

[45] Sugiyono Umar Ma’ruf, “Penanganan Perkara Tindak Pidana Penadahan Di Pengadilan Negeri Semarang,” *Jurnal Hukum Khaira Umar* 12, no. 3 (2017).

[46] P.A.F. Lamintang, *Delik-Delik Khusus Kejahatan-Kejahatan Terhadap Harta Kekayaan* (Bandung: Sinar Baru, 2009), hlm.337.

The types of acts mentioned in sub 1 are divided into two parts:[47]

a. Buying, renting, etc. (not necessarily with the intention of making a profit) goods which he knows or should suspect were obtained through crime;
b. Selling, exchanging, pawning, etc. with the intention of making a profit from goods which he knows or should suspect were obtained through crime.

The essence of this article is that the accused must know or should suspect that the goods come from a crime. The accused does not need to know for sure what kind of crime the goods came from (theft, embezzlement, etc.), it is enough if he should suspect that the goods are not "clear" (legal) goods.[48] Proving this element is indeed difficult, but usually seen from the circumstances or method of purchasing goods, for example bought at a cheap price, secretly at night, which is suspicious in that place. The goods can come from theft, embezzlement, fraud, counterfeiting, or conspiracy.

Every motorized vehicle must have a STNK and BPKB as proof of legal ownership. Especially for BPKB, this document is very important because it shows that the motorbike was obtained legally. Buying a motorbike without BPKB is suspected as the result of a crime, such asmotorcycle embezzlement syndicate. Currently, the sale of motorcycles "STNK only" or without BPKB is often found on social media at prices far below the market. Although tempting, you must be careful, especially if the motorcycle sale and purchase transaction is not carried out officially.

There are many cases out there, motorbikes offered at low prices on social media are often related to motorbikes obtained from crime. For example, there aredebt collectorwho abuse the situation by selling confiscated motorbikes, which should be returned to the leasing company. Sometimes, motorbikes that are claimed to be lost are actually sold by brokers at low prices. Buying such motorbikes can have long-term consequences, including legal problems with the police if the motorbike is proven to be the result of embezzlement.[49]Buying a motorbike without a BPKB can be an option with a cheaper price, but you need to understand the various dangers that can occur.

Here are some dangers that you should be aware of when buying a motorbike without a BPKB:[50]

a) Fraud risk: Sellers often avoid face-to-face meetings and online transactions, so they can cheat by not sending the motorbike after the money is transferred.
b) Debt collector extortion: You may be threatened or blackmailed by debt collectors because the motorbike is not yet paid off on credit or is the result of embezzlement.
c) Legal issues: A motorbike without a BPKB is at risk of being the result of a crime, it is difficult to prove ownership and you could lose the motorbike.
d) Risks of a motorbike being pledged: The motorbike may still be pledged to the bank/leasing company, at risk of being repossessed if the debt has not been paid off; the process of replacing the BPKB is also troublesome and expensive.
e) Difficulty changing the name: Without the BPKB, the name change process is complicated, takes a long time, and requires additional documents.
f) Check installments: Make sure you know the remaining installments to the leasing company, ask for written confirmation to avoid problems.
g) Check legal status: Make sure the motorbike is not involved in a dispute, stolen, or pledged with the help of authorities.

2. Criminal Sanctions for Receiving Fiduciary Collateral Objects

Creditors who experience the transfer of fiduciary collateral objects without consent, usually report to the police so that the vehicle can be returned. Most creditors do not want this problem to go

---

[47] R. Soesilo, Criminal Code (KUHP) and its Complete Article by Article Commentaries (Bogor: Politeia, 2013), p. 214.

[48] Gunawan, "Wawamcara Dengan Wakasat Reskrim Polrestabes Palembang."

[49] MH Kompol. Ahmad Firdaus, SE., SH, "Interview with the Head of the Harda Unit of the Directorate of Criminal Investigation of the South Sumatra Regional Police," (2025).

[50] Kompol. Ahmad Firdaus, SE., S.H.

to court. If the collateral object has been returned, usually there is peace between the creditor and the debtor.[51]The perpetrators of receiving fiduciary collateral objects are rarely prosecuted, so that the transfer of fiduciary objects without the permission of the fiduciary recipient is rampant because it is considered without legal risk. Some scientific writers even argue that recipients of fiduciary objects cannot be charged under Article 480 of the Criminal Code.

Based on the Decision of the Kebumen District Court Number 50/Pid.B/2019/PN/Kbm dated April 11, 2019, Nanang Muntadim, S. Sos Bin Suyadi has been sentenced. The Decision of the Kebumen District Court is as follows:

TO JUDGE:

1. Declaring that the Defendant NANANG MUNTADIM, S. Sos Bin SUYADI mentioned above, has been proven legally and convincingly guilty of committing the crime of RECEIVING as stated in the single indictment;
2. Sentencing the Defendant to imprisonment for 3 (three) months and 15 (fifteen) days;
3. Determine that the period of arrest and detention that the Defendant has undergone is deducted in full from the sentence imposed;
4. Determine that the Defendant remains in detention;
5. Establishing evidence in the form of:
    a. 1 (one) bundle of Financing Agreement Letter number 2233418030007, dated March 14, 2018 in the name of SUMARNI, address Pekuncen Village, Rt. 3, Rw. 2, Sempor District, Kebumen Regency
    b. 1 (one) bundle of Financing Agreement Letter number 0641117090017, dated September 20, 2017 in the name of SUMARNI, address Pekuncen Village, Rt. 3, Rw. 2, Sempor District, Kebumen Regency
    c. 1 (one) sheet of Fiduciary Guarantee Certificate number: W13.00854110.AH.05.01 YEAR 2018, dated November 15, 2018 an. SUMARNI, address Pekuncen Village, Rt. 3, Rw. 2, Sempor District, Kebumen Regency
    d. 1 (one) sheet of Fiduciary Guarantee Certificate number: W13.00854105.AH.05.01 YEAR 2018, dated November 15, 2018 in the name of SUMARNI, address Pekuncen Village, Rt. 3, Rw. 2, Sempor District, Kebumen Regency
    e. 1 (one) Fiduciary Guarantee Deed no. 114, dated November 14, 2018, issued by Notary MARIA NOVA LENAWATI,.SH,MHAdv.,M.Kn
    f. 1 (one) Fiduciary Guarantee Deed No. 115, dated November 14, 2018, issued by Notary MARIA NOVA LENAWATI,.SH,MHAdv.,M.Kn
    g. 1 (one) sheet of the 1st warning letter to Mr. SUMARNI, address Pekuncen Village, Rt. 3, Rw. 2, Sempor District, Kebumen Regency, dated November 8, 2018 with Financing Agreement Letter Number: 2233418030007, dated March 14, 2018
    h. 1 (one) sheet of the 1st warning letter to Mr. SUMARNI, address Pekuncen Village, Rt. 3, Rw. 2, Sempor District, Kebumen Regency, dated November 8, 2018 with Financing Agreement Letter Number: 0641117090017, dated March 14, 2018
    i. 1 (one) sheet of the 2nd warning letter to Mr. SUMARNI, address Pekuncen Village, Rt. 3, Rw. 2, Sempor District, Kebumen Regency, dated January 5, 2019 with Financing Agreement Letter Number: 2233418030007, dated March 14, 2018
    j. 1 (one) sheet of the 2nd warning letter to Mr. SUMARNI, address Pekuncen Village, Rt. 3, Rw. 2, Sempor District, Kebumen Regency, dated January 5, 2019 with Financing Agreement Letter Number: 0641117090017, dated March 14, 2018
    k. 1 (one) receipt from Ms. RUSMIASIH to Ms. SUMARNI in the amount of Rp. 4,000,000,- (four million rupiah) to pay for the pawn of a Beat motorbike with the number plate: AA-6523-BJ, blue and white, year 2017, in the name of SUMARNI, address Rt.3 Rw.2, dated July 31, 2018

[51] Raswanda, "Interview with the Head of PT. BFI Finance, Palembang Branch."

l. 1 (one) sheet of receipt from Ms. RUSMIASIH to Ms. SUMARNI in the amount of Rp. 4,500,000,- (four million five hundred thousand rupiah) to pay for the pawn of a Honda motorbike with the number plate: AA-2695-HJ, red, in the name of SUMARNI, address Rt.3 Rw.2, dated June 2, 2018
m. 1 (one) Motorcycle Unit, No. Pol AA-6523-BJ Brand HONDA BEAT Noka: MH1JM2116HK541947, Nosin: JM21E1526756, Color blue and white, year 2017 an SUMARNI address Pekuncen Village, Rt. 3, Rw. 2, Sempor District, Kebumen Regency
n. 1 (one) Motorcycle Unit, No. Pol AA-2695-HJ Brand HONDA BEAT Noka: MH1JFP218GK214972, Nosin: JFP2E1216680, Red Color, Year 2016 SUMARNI Address In Pekuncen Village, Rt. 3, Rw. 2, Sempor District, Kebumen Regency
o. 1 (one) Motorcycle BPKB book, HONDA BEAT Brand, Blue and white color, year 2017, No Pol AA-6523-BJ Noka: MH1JM2116HK541947, Nosin: JM21E1526756, an SUMARNI address Pekuncen Village, Rt. 3, Rw. 2, Sempor District, Kebumen Regency
p. 1 (one) book of BPKB Motorcycle Brand HONDA BEAT, Color Red, year 2016, No Pol AA-2695-HJ Noka: MH1JFP218GK214972, Nosin: JFP2E1216680, an SUMARNI address in Pekuncen Village, Rt. 3, Rw. 2, Sempor District, Kebumen Regency
q. Cash amounting to Rp. 10,500,000,- (ten million five hundred thousand rupiah) was used as evidence in the case under the name of SUMARNI.

6. Charge the Defendant with paying court costs amounting to Rp. 2,500 (two thousand five hundred rupiah).

The defendant Nanang Muntadim, S. Sos Bin Suyadi has been proven guilty as the Recipient of the Fiduciary Collateral Object Pawn from Sumarni (Fiduciary Grantor) without the consent of the Fiduciary Grantor (PT. NSC Finance). Meanwhile, Sumarni (Fiduciary Grantor), based on the Decision of the Kebumen District Court Number 49/Pid.B/2019/PN.Kbm, was sentenced with the following sentence, namely: "Sentencing the Defendant therefore to imprisonment for 5 (five) months and a fine of Rp. 2,000,000, - (two million rupiah) with the provision that if the fine is not paid it is replaced with imprisonment for 3 (three) months".

With the Kebumen District Court Decision Number 50/Pid.B/2019/PN.Kbm dated April 11, 2015, it can be a jurisprudence for similar cases in the future. However, in terms of the threat of punishment, there is a fairly large gap, article 36 of the UUJF carries a maximum sentence of 2 years in prison and a maximum fine of Rp. 50,000,000 (fifty million rupiah) while the sentence in article 480 of the Criminal Code is a maximum sentence of 4 years in prison. Finally, the sentence imposed on the Fence is very far from the maximum threat.

Conclusion

Article 36 of the UUJF is no longer relevant, the application of criminal sanctions against the transfer of fiduciary collateral objects has not fulfilled the sense of justice. Criminal sanctions against Fiduciary Providers who transfer fiduciary collateral objects are regulated in Article 36 of Law No. 42 of 1999 concerning Fiduciary Collateral, while third parties (Receivers) are not regulated in Law No. 42 of 1999, so that Fiduciary Recipients feel disadvantaged. With the decision of the Kebumen District Court Number 50/Pid.B/2019/PN.Kbm dated April 11, 2019, the Perpetrators of the Criminal Act of Receiving Fiduciary Collateral Objects can be charged with Article 480 of the Criminal Code

Based on the results of this study, the author provides suggestions to the Government to review the substance of Law Number 42 of 1999 concerning Fiduciary Guarantees, namely: The Power of the Fiduciary Certificate is returned to its function before the birth of the Constitutional Court Decision Number 18 / PUU-XVII / 2019, and the threat of criminal law does not provide a deterrent effect, and there are special regulations regarding third parties who receive the transfer of Fiduciary Guarantee Objects from Debtors. The public must also understand that when buying a vehicle without being accompanied by Proof of Motor Vehicle Ownership (BPKB), it can result in facing the law.

Bibliography

Achmad, Mukti Fajar ND; Yulianto. *Dualisme Penelitian Hukum Normatif & Empiris*. Yogyakarta: Pustaka Pelajar, 2013.

Ali, Achmad. *Menguak Teori Hukum (Legal Theory) Dan Teori Peradilan (Judicialprudence)*. Jakarta: Kencana, 2017.

Alvi Syahrin, S H, Ir Martono Anggusti, M MM, Abdul Aziz Alsa, and M H SH. *Dasar-Dasar Hukum Pidana: Suatu Pengantar (Buku Kesatu Undang-Undang Nomor 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana)*. Merdeka Kreasi Group, 2023.

Apriani, Titin. "Konsep Perbuatan Melawan Hukum Dalam Tindak Pidana." *Ganec Swara* 13, no. 1 (2019): 43–49.

Arafat, Muhammad Rusli. "Tindak Pidana Pengalihan Obyek Jaminan Fidusia Oleh Debitur (Tinjauan Yuridis Putusan Nomor: Nomor 137/Pid. Sus/2020/PN. Mks)." *HERMENEUTIKA: Jurnal Ilmu Hukum* 6, no. 1 (2022): 18–31.

Arief, Barda Nawawi. *Masalah Penegakan Hukum Dan Kebijakan Penanggulangan Kejahatan*. Bandung: PT. Citra Aditya Bakti, 2001.

Asshiddiqie, Jimly. *Dalam Dialektika Pembaruan Sistem Hukum Indonesia*. Sekretariat Jenderal Komisi Yudisial, Republik Indonesia, 2012.

Effendi, Erdianto. *Hukum Pidana Indonesia Suatu Pengantar*. Bandung: Refika Aditama, 2014.

Et.al, Alvi Syahrin; *Pembaharuan Hukum (Pidana) Berdasarkan Pancasila*. Medan: CV. Merdeka Kreasi Group, 2023.

Friedrich, Carl Joachim. "Filsafat Hukum: Perspektif Historis," 2008.

Gunawan, Kompol. Iwan. "Wawamcara Dengan Wakasat Reskrim Polrestabes Palembang." 2025.

Kanter, E Y, and S R Sianturi. *Asas-Asas Hukum Pidana Di Indonesia Dan Penerapannya*. Storia Grafika, 2002.

Khadduri, Majid. *The Islamic Conception of Justice*. JHU Press, 1984.

Kompol. Ahmad Firdaus, SE., S.H., M.H. "Wawancara Dengan Kanit Harda Dirkrimum Polda Sumatera Selatan." 2025.

Lamintang, P.A.F. *Delik-Delik Khusus Kejahatan-Kejahatan Terhadap Harta Kekayaan*. Bandung: Sinar Baru, 2009.

Ma'ruf, Sugiyono Umar. "Penanganan Perkara Tindak Pidana Penadahan Di Pengadilan Negeri Semarang." *Jurnal Hukum Khaira Umar* 12, no. 3 (2017).

Madjid, Nurcholis. "Islam Kemanusiaan Dan Kemoderenan, Doktrin Dan Peradaban, Sebuah Telaah Kritis Tentang Masalah Keimanan." *Jakarta: Yayasan Wakaf*, 1992.

Mahfuz, Abdul Latif. "Faktor Yang Mempengaruhi Politik Hukum Dalam Suatu Pembentukan Undang-Undang." *Jurnal Kepastian Hukum Dan Keadilan* 1, no. 1 (2020): 43–57.

Mahmutarom. *Rekonstruksi Konsep Keadilan*. Undip Semarang, 2009.

Mamahit, Coby. "Aspek Hukum Pengaturan Tindak Pidana Penadahan Dan Upaya Penanggulangannya Di Indonesia." *Jurnal Hukum Unsrat* 23, no. 8 (2017).

Mertokusumo, Sudikno. *Mengenal Hukum Suatu Pengantar*. Yogyakarta: Maha Karya Pustaka, 2019.

Moeljatno. *Asas-Asas Hukum Pidana*. PT Rineka Cipta, 2009.

———. *Asas Asas Hukum Pidana*. Jakarta: Rineka Cipta, 2020.

Nasution, Bahder Johan. "Metode Penelitian Ilmu Hukum." Bandung: Mandar Maju, 2008.

Raswanda, Satria. "Wawancara Pimpinan PT.BFI Finance Cabang Palembang." n.d.

Rasyad, Rahmadi. "Polisi Bongkar Kasus Penggelapan Motor Jaringan Internasional Senilai Rp 876 M." kumparan.com, 2025. https: //kumparan.com /kumparannews/ polisi -bongkar -kasus-penggelapan- motor- jaringan -internasional- senilai -rp-876-m.

Rawls, John. *A Theory of Justice (Teori Keadilan), Dasar Dasar Fitsafat Politik Untuk Mewujudkan Kesejahteraan Sosial Dalam Negara, Diterjemahkan Oleh : Uzair Fauzan Dan Heru Prasetyo*. Yogyakarta: Pustaka Pelajar, 2006.

Sahetapy, J E, and Agustinus Pohan. *Hukum Pidana*. *Citra Aditya Bakti*. Bandung: Citra Aditya Bakti, 2007.

Saleh, Roeslan. *Pikiran-Pikiran Tentang Pertanggungan Jawab Pidana*. Ghalia Indonesia, 1982.

Saputera, Rio Christiawan dan Januar Agung. *Perkembangan Dan Praktik Jaminan Fidusia*. Depok: Rajawali Pers, 2022.

SIGIT JATMIKO, SIGIT JATMIKO. "PENYITAAN KENDARAAN BERMOTOR SEBAGAI BARANG BUKTI TINDAK PIDANA PENCURIAN YANG MASIH DALAM OBJEK JAMINAN FIDUSIA." Universitas Batanghari, 2020.

Soesilo, R. *Kitab Undang-Undang Hukum Pidana (KUHP) Serta Komentar-Komentarnya Lengkap Pasal Demi Pasal*. Bogor: Politeia, 2013.

Sofyan, Et.al. *Hukum Benda*. Yogyakarta, 1981.

Suhardi, Ade. "Bongkar Kasus Penggelapan Objek Fidusia, Polisi Sita 50 Motor Di Cibarusah Bekasi." Bekasi News, 2025. https: //bekasi.inews.id/read/498591/ bongkar-kasus- penggelapan- objek-fidusia-polisi-sita-50-motor-di- cibarusahbekasi# :~:text=Bongkar Kasus Penggelapan Objek Fidusia%2C Polisi Sita 50 Motor di Cibarusah Bekasi.

Wardoyo, Yohana Puspitasari, and Fery Kusnaini Afandi. "Studi Terhadap Tindakan Penyidik Dalam Menangani Sindikat Penadahan Atas Objek Jaminan Hasil Transaksi Fidusia Di Polresta Malang." *Legality: Jurnal Ilmiah Hukum* 27, no. 1 (2019): 128–46.