



Law Enforcement Against Fiduciary Credit Guarantee Embezzlement By Debtors Based On Consumer Financing Agreements

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Abstract: This study examines the efficacy of legal enforcement in addressing the criminal offense of fiduciary collateral misappropriation by debtors under consumer financing agreements, with reference to Supreme Court Decision No. 419K/Pid.Sus/2021. Employing a normative- descriptive methodology, the research adopts statutory and case law analysis. The findings reveal inadequacies in current enforcement mechanisms, as the sentencing framework imposes disproportionately lenient penalties, thereby undermining their deterrent function. Further, the study identifies a normative conflict between the sanction provisions of Article 36 of Law No. 42 of 1999 on Fiduciary Security and Article 372 of the Indonesian Criminal Code (KUHP), which creates legal uncertainty and diminishes creditor protection. The analysis underscores the imperative of enhancing public legal awareness and fostering academic engagement in the dissemination of fiduciary law principles. To mitigate risks, the study proposes legislative reforms to harmonize penal sanctions and advocates for the institutional adoption of prudential measures by financing entities to deter fiduciary collateral fraud.

Keyword: Law Enforcement, Embezzlement, Fiduciary Security, Consumer Financing, Creditor Protection

INTRODUCTION

Indonesia, as a law-based state, emphasizes that government activities must be conducted in accordance with the provisions of Article 1, paragraph (2) of the 1945 Constitution, which states that sovereignty lies with the people and is exercised according to the Constitution. This means that the system of governance in Indonesia must be based on the principles of popular sovereignty and the rule of law. Consequently, all decisions and actions of government officials must be grounded in the sovereignty of the people and the law, not based on the power inherent in the position of the government officials themselves. A clear manifestation of the principle of the rule of law is the enforcement of law in a manner that ensures legal certainty, social justice, and ultimately, public welfare (Asshiddiqie, 2006). A society is considered prosperous when its economy is at a middle to upper level, and the security conditions are harmonious. This can be achieved when individuals behave in harmony with the prevailing societal interests

and norms. However, recently, with the economic crisis significantly affecting society, Indonesia has experienced a moral crisis. This can be seen in the increasing crime rates and rising unemployment. The increase in unemployment has a significant impact on public welfare (Gunanegara, 2022).

Achieving this ideal is not an easy task, as there are still numerous unlawful acts occurring in society, harming both the state and society's interests, known as criminal offenses acts prohibited by law and accompanied by specific criminal penalties for violators (Moeljatno, 2008). The current criminal law concept in Indonesia prioritizes legal certainty, sometimes overlooking other legal goals such as justice and usefulness (Salvia & Putri, 2024). Criminal offense (Moeljatno, 2008) are classified into two general categories: *mala in se* and *mala prohibita*. *Mala in se* refers to crimes in a sociological context, recognized as crimes by society even if not codified in law, while *mala prohibita* refers to actions considered criminal solely because they are written and codified in law (Sudarto, 1987).

The distinction between these categories lies in their nature; *mala in se* offenses are inherently wrong, conflicting with the fundamental values of justice, peace, and welfare, while *mala prohibita* offenses are wrong merely because they are prohibited by law (Sudarto, 1987). A specific example of such offenses is embezzlement, which involves taking another person's property, partially or entirely, where the perpetrator had lawful possession of it, as seen in cases where items are entrusted or where the perpetrator has a legitimate role in the safekeeping of property (Chazawi, 2006). In banking, particularly in credit agreements, banks allocate significant funds each year to provide credit to the public. However, cases of fraud and embezzlement related to fiduciary credit have risen due to non-compliance by debtors, such as selling or pawning the collateral without the creditor's written consent, as stated in Article 23, paragraph (2) of Law Number 42 of 1999 concerning Fiduciary Guarantees (Nugroho & Hakim, 2017)(Butarbutar, 2023).

These fraudulent actions cause significant losses to creditors, as seen in a case involving PT Mitra Pinasthika Mustika Finance in Kendari, where a debtor transferred fiduciary objects without consent. This violation of fiduciary trust led to legal consequences, with the defendant being sentenced to seven months of imprisonment and a fine for embezzling fiduciary collateral. Based on this case and the issues discussed, the author is interested in conducting a detailed analysis, which is presented in this study titled Law Enforcement on Embezzlement of Fiduciary Credit Collateral by Debtors under Consumer Financing Agreements (Case Study of the Supreme Court Decision No. 419K/Pid.Sus/2021).

Based on the background above, this research addresses the following issues: How is the implementation of law enforcement in cases of embezzlement of fiduciary credit collateral committed by debtors based on consumer financing agreements? And how is the legal protection provided to creditors regarding the embezzlement of fiduciary credit collateral committed by debtors based on consumer financing agreements? The objectives of this study are to examine the implementation of law enforcement in such cases and to explore the legal protection provided to creditors. The research aims to contribute to the development of knowledge in the field of law, specifically regarding criminal offenses like embezzlement of fiduciary credit collateral. Practically, the findings can provide valuable insights for readers and the government in improving criminal law, particularly concerning the enforcement of law in fiduciary credit collateral embezzlement committed by debtors based on consumer financing agreements, and may also serve as a foundation for future studies.

METHOD

This research uses a normative legal research methodology, focusing on understanding legal norms related to criminal offenses like embezzlement of fiduciary credit collateral. The research is descriptive, as it seeks to explain applicable laws and relate them to legal theories

in practice, specifically addressing the law enforcement of fiduciary credit collateral embezzlement by debtors based on consumer financing agreements. Data is primarily secondary, gathered from legal documents such as laws, regulations, and judicial decisions, supplemented by primary data obtained through interviews with stakeholders, including financing institutions. The research uses various approaches, including the Statute Approach to examine relevant laws such as the 1945 Constitution, the Criminal Code, the Civil Code, and the Fiduciary Guarantee Law, and the Case Approach to analyze case law, notably the Supreme Court Decision No. 419K/Pid.Sus/2021, to explore judicial reasoning. The research also employs qualitative data analysis, focusing on the quality rather than the quantity of data, with the goal of drawing reliable, scientifically accountable conclusions about law enforcement related to fiduciary credit collateral embezzlement by debtors under consumer financing agreements

RESULTS AND DISCUSSION

Position Case in Supreme Court Decision No. 419K/Pid.Sus/2021

The defendant in this study is Ahmadi, SE, 39 years old with a job as a Civil Servant. The case began with the defendant buying 1 (one) unit of Daihatsu Ayla brand car in metallic orange color with Police Number DT 1957 AF, Frame Number MHKS4GA5JKJ016464, Engine Number 3NRH453778 at PT. Kharisma Sentosa, but did not have cash for the car price in question, so the defendant asked for help from PT. Kharisma Sentosa to find a solution so that the defendant continues to make purchases of the car in question.

The PT. Kharisma Sentosa conveyed to PT. MPM Finance Kendari Branch that the defendant will purchase 1 (one) unit of Daihatsu Ayla brand car in metallic orange with Police Number DT 1957 AF, Frame Number MHKS4GA5JKJ016464, Engine Number 3NRH453778 at PT. Kharisma Sentosa but did not have the money for the car, then on information from PT. Kharisma Sentosa, PT MPM Finance confirmed how much principal will be financed and how much down payment or down payment will be paid by the prospective Debtor to PT Kharisma Sentosa which is the seller.

PT MPM Finance Kendari Branch through the credit marketing office (CMO) conducted a physical check on the vehicle, surveyed the address of residence, and confirmed the work or business owned by the defendant. Ensure identity in the form of an ID card and the completeness of other documents such as salary slips because the defendant is a civil servant, and at the same time the defendant and his wife signed the financing application as applicants.

The defendant then made an application which then the credit marketing office (CMO) reported and submitted the defendant's application file to the supervisor and then to the witness Soson Sonardi, SE for the next stage, namely verification and credit auditor of the head office to obtain approval whether the defendant's application file was feasible or not and after the application was declared feasible, then PT MPM Finance made a contract.

Furthermore, the defendant together with his wife signed the contract that had been made by PT MPM Finance Kendari Branch, After the defendant and his wife signed the contract, then the payment of the price of the car was paid by the office of PT MPM Finance Kendari Branch to PT Kharisma Sentosa. Then the defendant as the Debtor obtained 1 (one) unit of Daihatsu Ayla brand car in metallic orange color with Police Number DT 1957 AF, Frame Number MHKS4GA5JKJ016464, Engine Number 3NRH453778, at PT Kharisma Sentosa which on October 3, 2019 was located on Jl. MT. Haryono Kel. Bende Kec. Kadia

The office of PT MPM Finance Kendari Branch then registered with the Notary and the office of the Ministry of Law and Human Rights to obtain a copy of the fiduciary guarantee deed and fiduciary guarantee certificate, so that a copy of the fiduciary deed and fiduciary guarantee certificate were issued. However, on April 14, 2020 the defendant transferred 1 (one) unit of Daihatsu Ayla brand car in metallic orange color with Police Number DT 1957 AF,

Frame Number MHKS4GA5JKJ016464 Engine Number 3NRH453778 to the man Irfan Diansyah (DPO)

without obtaining written approval from PT MPM Finance Kendari Branch and the car installments since April 2020 were not paid by the defendant so that PT MPM Finance Kendari Branch suffered a loss of around Rp. 152,000,000,- (one hundred and fifty-two million rupiah) or at least around that amount.

In the case, the Public Prosecutor made the following demands: 1) To declare the defendant, Ahmadi, SE alias Adi, guilty of committing the criminal offense of "The fiduciary giver who transfers, pledges, or rents out the object of fiduciary collateral without written consent from the fiduciary recipient," as stipulated in Article 36 in conjunction with Article 23 paragraph (2) of Law No. 42 of 1999 concerning Fiduciary Guarantees, as charged in the Second Indictment; 2) To impose a prison sentence of 1 (one) year and a fine of IDR 1,000,000 (one million rupiahs) on the defendant, with the provision that if the defendant fails to pay the fine, it will be substituted with a prison sentence of 2 (two) months, deducted by the time the defendant has spent in detention; 3) To state that the following evidence is declared: the documents related to the financing application, including the MPM Finance Financing Application Form, copies of identity cards, family card, salary slips, the financing agreement, the joint agreements, BPKB copies, vehicle invoices, receipts, vehicle handover minutes, and fiduciary guarantee certificates, all of which are attached to the case file; 4) To order the defendant to pay the court fees amounting to IDR 2,000 (two thousand rupiahs).

Consideration of the Panel of Judges

The Panel of Judges, at the first level, appeal, and cassation, provided legal considerations regarding the Public Prosecutor's indictment against the defendant Ahmadi. At the first level, the Panel of Judges stated that the legal facts revealed at the trial had proven that the defendant committed the crime of transferring the object of fiduciary guarantee without the written consent of the fiduciary recipient. This consideration is based on sufficient evidence, and the judgment is considered legally valid. At the appeal level, the Panel of Judges of the Southeast Sulawesi High Court upheld the decision of the Kendari District Court, arguing that the evidence presented had sufficient evidence to prove the defendant's actions. At the cassation level, the Supreme Court rejected the defendant's grounds for cassation, considering that the decisions of the District Court and the High Court were appropriate and in accordance with applicable law, and were based on relevant legal facts.

Decision of the Panel of Judges

On January 6, 2021, the Panel of Judges of the Kendari District Court gave a verdict against the defendant Ahmadi, SE, who was legally proven to have committed the crime of transferring the object of fiduciary collateral without the written consent of the fiduciary. The defendant was sentenced to 7 months in prison and a fine of Rp1,000,000.00, with the provision that if the fine is not paid, it will be replaced with imprisonment for 1 month. This decision was later strengthened by the Southeast Sulawesi High Court at the appeal level. At the cassation level, the Supreme Court rejected the defendant's cassation application and charged the case fee that must be paid by the defendant.

Interview with Andi Rachman, S.H., M.H.

Based on an interview with Andi Rachman, a legal expert in the field of fiduciary guarantees and consumer financing, several important findings related to law enforcement against the evasion of fiduciary guarantees by debtors were revealed. According to Rachman, the embezzlement of fiduciary guarantees can be clearly defined based on the provisions of Article 23 paragraph (2) of the Fiduciary Guarantee Law, which prohibits the transfer,

mortgage, or rental of fiduciary guarantee objects without the consent of the creditor. Effective law enforcement requires consistency of law enforcement officials in applying the law fairly. In addition, consumer finance institutions play an important role in providing valid written evidence to support law enforcement, as well as in verifying and supervising any fiduciary agreements.

The law enforcement procedure begins with the provision of a warning letter to debtors who do not meet their debt obligations, before proceeding to the stage of execution of fiduciary guarantees. If the move does not yield results, the financing institution can report the case to the police with relevant evidence, such as a fiduciary agreement document.

Special Findings and Implications in Fiduciary Guarantee Law Enforcement

Law enforcement against the transfer of fiduciary guarantees relies heavily on an understanding of wrongdoing, which involves subjective aspects such as intentionality. This legal action must consider the intention and motivation behind the debtor's actions, as well as the available evidence. Judges have a crucial role in assessing intentionality based on legal facts, to ensure justice in each case. The impact of the verdict is not only repressive on the perpetrator, but also preventive and educational for the community. Socialization of clear fiduciary regulations can increase people's legal awareness, encourage them to obey the law and avoid violations (Susanti & Anshori, 2017).

Academics also play an important role in improving public legal literacy through socialization, research, and teaching about fiduciary guarantees. A better understanding of this law can help the public avoid mistakes and understand the risks and consequences of unauthorized transfer of fiduciary guarantees.

The Impact of the Decision on the Community

Legal decisions related to the transfer of fiduciary guarantees have the potential to have a broad deterrent effect on the community. Through strict law enforcement, the public can be more aware of the importance of consent in the transfer of fiduciary guarantees. The criminal sanctions imposed can serve as a warning to individuals who may intend to do the same. Effective socialization through various communication channels, including social media, can accelerate people's understanding of their rights and obligations under fiduciary agreements, as well as the legal consequences that can arise if legal provisions are violated.

Implementation of Law Enforcement of Criminal Acts of Embezzlement of Fiduciary Credit Guarantees Committed by Debtors Based on Consumer Financing Agreements

The existence of needs in the economy of each individual plays a major role that cannot be ignored, the presence of financial institutions including financing institutions provides solutions related to the provision of this. As a financial entity, the financing institution collects funds from the community indirectly and reflows them in the form of credits.

Credit is an important element in meeting economic needs. Despite the risks, the credit sector is one of the largest sources of income for financial institutions. A credit agreement between a borrower and a lender is based on trust, a reciprocal agreement. Therefore, before granting credit, financial institutions should evaluate the borrower's ability and feasibility to pay off his or her debt on time, to avoid the possibility of future bad credit.

The evaluation of the ability and feasibility of borrowers carried out by financial institutions is known as *the Five C's*, namely *character, capacity, capital, collateral* and *condition of economic* (business conditions or prospects). Financial institutions in this case are required to apply the principle of prudence not only limited to studying the character of the

debtor, but also to make a careful assessment of the collateral or guarantee of immovable goods or movable goods to be used as collateral or commonly called secured *loans*.

Such credit is given to the debtor, in addition to being based on confidence in the debtor's ability, it is also based on the existence of collateral or collateral in the form of physical collateral as principal collateral or additional collateral, for example, in the form of land, buildings, production equipment, and so on. Therefore, entrepreneurs or prospective debtors who need capital to develop their business or do a job that requires large capital and want to apply for credit at financial institutions are required to have collateral first.

This guarantee can be obtained from assets owned by oneself or personal assets owned by parents or belonging to other parties who have a relationship or business relationship with the debtor. In order for financial institutions to exercise their rights and powers over collateral, the binding of collateral must be carried out in accordance with the provisions of applicable law. This is very necessary because if at any time the debtor breaks the promise or there is a default, the goods used as collateral will be sold through a public auction to cover the debtor's obligations. One of the collateral items in credit is a fiduciary guarantee.

Fiduciary guarantees are chosen by the public to obtain large funds because the procedures and provisions in fiduciary tend to be simple and in a faster time, especially when compared to other banking loans such as Dependent Rights which only apply to immovable objects, while fiduciary guarantees apply to both movable and immovable objects.

In fiduciary guarantees, based on Article 15 paragraph (2) of Law Number 42 of 1999 concerning Fiduciary Guarantees, it is stipulated that the fiduciary guarantee certificate has the same executory power as a court decision that has obtained permanent legal force, so based on the executory title, the Fiduciary as a separatist creditor can directly carry out execution through a public auction on the object of fiduciary guarantee without going through the court.

The execution of fiduciary guarantees carried out by creditors is carried out through a fiduciary guarantee deed which is a fiduciary guarantee certificate issued by the fiduciary registration office that was born on the date recorded in the fiduciary register book and is proof of the creditor as the holder of the fiduciary guarantee,¹⁴⁸ so as to make it easier for creditors to execute fiduciary guarantees if there is a debtor in default. Default can have several legal consequences for the Debtor and creditors. Especially for creditors, it will definitely cause losses, while for the Debtor the legal consequences are the existence of a new status for which the Debtor must be held accountable.

The risk of the existence of a fiduciary guarantee is not only in the form of default by the debtor, but also in the form of selling, pawning the credit item without the knowledge of the *leasing* as a creditor which is actually prohibited as stipulated in Article 23 paragraph (2) of Law Number 42 of 1999 concerning Fiduciary Guarantees. This is as happened in the case of embezzlement of the object of fiduciary guarantee at PT. Mitra Pinasthika Mustika Finance Kendari Branch that the author has explained in the background and Chapter III.

Based on the case, it is known that the defendant Ahmadi SE is said to be guilty and committed the crime of a fiduciary who transfers, mortgages or rents objects that are the object of fiduciary guarantees without the written consent of the fiduciary recipient was sentenced to imprisonment for 7 (seven) months and a fine of Rp 1,000,000.00 (One Million Rupiah). The verdict was lighter than the Public Prosecutor's demand that the defendant Ahmadi SE be sentenced to 1 (one) year in prison and a fine of Rp 1,000,000.00 (One Million Rupiah).

The author argues that law enforcement in the case of the defendant Ahmadi, SE has not been fully carried out. Referring to the legal system theory by Lawrence M. Friedman, the author explains the following: The first element is Structure, which refers to the components of a legal system such as the number and size of courts, their jurisdiction, appeal processes, and the organization of the legislature. In this case, the Public Prosecutor and the judges of the Kendari District Court were part of the structure of the legal system, where the Public

Prosecutor sought a one-year prison sentence for the defendant, but the judges imposed a seven-month sentence.

The author believes that the sentence was too light and did not create a deterrent effect on the defendant, Ahmadi, SE, especially since the maximum penalty for embezzling fiduciary collateral, as regulated in Article 36 of Law No. 42 of 1999, is two years in prison and a fine of up to IDR 50 million. The leniency of the sentence, according to the author, may be attributed to the independence of the judiciary as mandated by the Constitution and laws of Indonesia. The second element is Substance, referring to the actual laws, norms, and behavior patterns within the system. The author argues that the lighter penalties in Article 36 compared to the provisions in the Criminal Code (KUHP), which carry heavier penalties, undermine the effectiveness of law enforcement.

The third element is Legal Culture, which refers to people's attitudes toward law and the legal system. The author points out that the lenient penalties set forth in Article 36 may cause debtors not to fear committing embezzlement, as creditors generally seek compensation rather than pursue legal action, which is time-consuming and costly. Legal culture also affects creditors' willingness to report embezzlement, as they are more focused on recovering their losses rather than pursuing criminal cases. The author suggests that the imbalance in penalties between Article 36 of the Fiduciary Guarantee Law and Article 372 of the KUHP creates an environment where law enforcement does not result in a deterrent effect or justice for the creditors. Therefore, there is a need to apply regulations related to money laundering to deter debtors from committing embezzlement, provide legal protection to creditors, and ensure restitution through asset confiscation.

Legal protection for creditors for the occurrence of criminal acts of embezzlement of fiduciary credit guarantees committed by debtors based on consumer financing agreements

The development of the financial world in the 2000s has experienced a lot of progress in Indonesia after the downturn during the economic crisis in 1998. This progress is shown through the amount of funds that can be absorbed from the community and redistributed back to the community continues to increase accompanied by the development of quality and better services provided. This has an impact on the increase in the amount of funds, the number of customers, and the increasing variety of services or products offered to the public.

The development of non-bank financial institutions in Indonesia has also experienced a lot of progress in various sectors such as insurance services, deposits and investments, loans (credit) and other forms that aim to meet the needs of the community, especially those not provided by banking financial institutions. Non-bank financial institutions themselves are institutions or corporate entities that carry out activities in the financial sector and collect funds from the public indirectly and redistribute them to those in need for productive activities.

In its development to date, the distribution of funds by non-bank financial institutions for working capital and consumption purposes is no less intensive than investment purposes. Therefore, it can be said that financial institutions that are not banks can actively participate in the community in providing fair distribution. The types of non-bank financial institutions are many and diverse, one of which is a finance company in the field of fiduciary guarantees.

Fiduciary guarantees are a conventional product that is applied to provide protection for creditors, in particular (Lestari & Sari, 2019). When the debtor defaults, the creditor can seek compensation from the debtor through the execution of the fiduciary guarantee. With fiduciary registration, the execution of the collateral can be carried out immediately without waiting for a court decision. This kind of condition makes it easier for financial institutions to withdraw compensation from the financing provided to customers.

Another legal problem is when the debtor commits embezzlement of the object of fiduciary guarantee, so that not only can the creditor not immediately execute the object of

fiduciary guarantee, because the existence of the object of fiduciary guarantee is unknown, but also the creditor is preoccupied with resolving criminal cases against the debtor who committed embezzlement, as happened in the case of embezzlement of the object of fiduciary guarantee at PT. Mitra Pinasthika Mustika Finance Kendari Branch who has been explained in the background and Chapter III.

Based on the decision of the Kendari District Court Case Number 449/Pid.B/2020/PN. Kdi, it is known that the defendant Ahmadi, SE was sentenced to 7 (seven) months in prison on Tuesday and a fine of one million rupiah, which decision was confirmed by the Southeast Sulawesi High Court until the Supreme Court decision Number 419K/Pid.Sus/2022. Based on these facts, criminal law enforcement has been completed, however, civil law enforcement has not been completed.

This is because PT. Mitra Pinasthika Mustika Finance Kendari Branch as a creditor suffered material losses with the loss of the fiduciary guarantee object in the form of a metallic orange Daihatsu Ayla car with Police Number DT 1957 AF, Frame Number MHKS4GA5JKJ016464, Engine Number 3NRH453778. Therefore, according to the author, legal protection for creditors for the occurrence of criminal acts of embezzlement of fiduciary credit guarantees committed by debtors based on consumer financing agreements are divided into 2 (two), namely:

1. Preventive Legal Protection

According to Philipus M. Hadjon, preventive legal protection aims to prevent disputes from arising. The author believes that preventing disputes in this context means resolving them outside of the court. This is because once the debtor commits embezzlement of the fiduciary collateral, a dispute between the creditor and the debtor has already occurred. Prevention of disputes in the context of fiduciary collateral embezzlement can be seen in Article 20 of Law No. 42 of 1999 concerning Fiduciary Guarantees, which stipulates that fiduciary guarantees remain attached to the object regardless of its holder, except for the transfer of goods that are part of the inventory of the fiduciary guarantee. The transfer of fiduciary collateral that is allowed is governed by Article 21 of the same law, which mandates that such a transfer must be known and approved by the creditor. In this case, because the transfer was unknown and not approved by the creditor, PT Mitra Pinasthika Mustika Finance Branch Kendari, as the creditor, may search for and execute the fiduciary collateral, a Daihatsu Ayla car, wherever it is located.

2. Repressive Legal Protection

Philipus M. Hadjon defines repressive legal protection as a mechanism aimed at resolving disputes through litigation. In this case, the dispute is resolved through a civil lawsuit in the district court, specifically for unlawful acts, by seizing the debtor's assets to be auctioned off to settle the outstanding debt with the creditor. The elements of unlawful acts committed by Ahmadi (Handayani & Hadi, 2018), SE in this case are as follows:

- a. Unlawful Act: Ahmadi, SE transferred fiduciary collateral—a Daihatsu Ayla car, registration number DT 1957 AF—to Irfan Diansyah without written consent from PT Mitra Pinasthika Mustika Finance Kendari, violating Article 23 paragraph (2) of Law No. 42 of 1999 concerning Fiduciary Guarantees.
- b. Resulting in Harm: This action caused material loss to PT Mitra Pinasthika Mustika Finance Kendari, including the loss of benefits from the fiduciary guarantee, and immaterial harm, such as loss of time and focus, affecting the creditor's business continuity.
- c. Error: The transfer of the fiduciary collateral by Ahmadi, SE is a wrongful act that contradicts the law.

- d. Causal Link: The unlawful act and error led to harm for PT Mitra Pinasthika Mustika Finance Kendari, as the creditor, who acted in good faith to enter into a fiduciary agreement as per the prevailing laws. The lawsuit for unlawful acts is based on Article 1365 of the Civil Code and is also regulated under Article 34 paragraph (2) of Law No. 42 of 1999 concerning Fiduciary Guarantees, which obligates the debtor to settle the unpaid debt.

3. Discussion and Synthesis of Research Findings

Based on interviews with legal experts, several key findings can be synthesized in this research:

- a. Law enforcement in fiduciary collateral embezzlement is well-grounded in Law No. 42 of 1999, which provides clear legal frameworks for handling such cases.
- b. The law enforcement process follows a systematic approach, beginning with non-litigation actions such as warning letters and advancing to formal litigation through criminal reporting. This structured approach ensures all parties have an opportunity to resolve issues amicably before involving formal legal processes.
- c. Consumer financing institutions tend to prioritize non-litigation approaches in resolving disputes, reflecting their desire to maintain good relationships with debtors and create mutually beneficial solutions.
- d. There is a significant difference in the handling of cases based on the economic value of the collateral and the level of embezzlement involved. Large-scale cases require extra attention and stricter procedures, while smaller cases may not receive the same level of attention

4. Conflicting Norms and Legal Uncertainty in Fiduciary Collateral Execution

- a. Conflicting norms and legal uncertainty in the execution of fiduciary guarantees are pressing issues in Indonesian legal practice. The Constitutional Court's decision No. 18/PUU-XVII/2019 has provided a clear foundation for fiduciary guarantee execution, stipulating that execution must be based on a default agreement and carried out voluntarily by the debtor (Pratama & Nurhidayat, 2020). However, while this decision aims to protect the debtor's rights, it also introduces new problems that require further analysis. One main point of this decision is that execution cannot be conducted unilaterally by the creditor without the debtor's consent or a court ruling with legal force. Although this should protect the debtor, in practice, many debtors feel deprived of their right to defend themselves. For example, in cases where the creditor deems the debtor to be in default, the debtor often does not have the opportunity to clarify or prove they have fulfilled their obligations. This creates significant injustice and opens the door for abuse of power by creditors.
- b. Legal uncertainty arising from this provision is also a major concern. Determining whether a default has occurred often depends on the creditor's unilateral judgment. In many cases, the creditor may have an interest in labeling the debtor as in default, even though the debtor may have fulfilled their obligations. This can lead to unjust actions by the creditor, such as executing collateral unfairly. For example, a debtor who has paid on time may still be considered in default by the creditor due to misunderstandings or poor communication. This ambiguity can lead to the debtor losing their collateral without a fair process.
- c. Moreover, unclear execution procedures create opportunities for new disputes. When creditors execute without the debtor's consent or without proper legal processes, the debtor has the right to sue the creditor. However, this legal process often takes time and incurs costs, leaving the debtor in an unfavorable situation. In many cases, debtors may lack the resources to challenge the creditor in court, leading them to give up and lose their collateral.
- d. Legal protection for creditors and debtors becomes unbalanced in this context. On one hand, creditors have the right to protect their interests and reclaim collateral if the debtor

fails to meet their obligations. However, this right should not infringe upon the debtor's right to fair legal protection. In practice, creditors often have more resources and power to influence the legal process, while debtors face difficulties in asserting their rights.

- e. Moreover, unclear execution procedures create opportunities for new disputes. When creditors execute without the debtor's consent or without proper legal processes, the debtor has the right to sue the creditor. However, this legal process often takes time and incurs costs, leaving the debtor in an unfavorable situation. In many cases, debtors may lack the resources to challenge the creditor in court, leading them to give up and lose their collateral.
- f. Legal protection for creditors and debtors becomes unbalanced in this context. On one hand, creditors have the right to protect their interests and reclaim collateral if the debtor fails to meet their obligations. However, this right should not infringe upon the debtor's right to fair legal protection. In practice, creditors often have more resources and power to influence the legal process, while debtors face difficulties in asserting their rights.
- g. International legal systems also address similar issues, with some countries providing clearer guidelines on fiduciary collateral execution, offering more protection for debtors. This indicates room for improvement in Indonesia's system to ensure fairness and transparency. By adopting best practices from other countries, Indonesia could provide better legal protection for debtors while reducing the risk of abuse of power by creditors.

In conclusion, the conflict of norms and legal uncertainty in fiduciary collateral execution is a complex issue that requires serious attention. While the Constitutional Court's decision No. 18/PUU-XVII/2019 provides an important legal framework, practice in the field reveals significant injustice that needs to be addressed. By clarifying execution procedures, increasing legal awareness among debtors, and adopting best practices from other countries, Indonesia can create a fairer and more transparent legal system for all parties involved in consumer financing agreements.

5. Implementation of Criminal Law Enforcement in Unauthorized Fiduciary Collateral Transfers

The unauthorized transfer of fiduciary collateral, often referred to as a criminal act, is a complex issue in financing practices in Indonesia. This issue affects not only the relationship between debtors and creditors but also has broader implications for the financial system and public trust in financial institutions. It is important to understand why the unauthorized transfer of fiduciary collateral is considered a criminal act and how law enforcement can address this issue effectively.

Fiduciary guarantees provide creditors with the right to control the collateral, even though the debtor retains physical possession of the collateral. The debtor is obligated to maintain and care for the collateral and is not authorized to transfer or sell it without the creditor's consent. Failure to comply with these provisions can have serious consequences, particularly if the debtor defaults or fails to meet their obligations. In a financing agreement, for example, a debtor who secures a loan by using a vehicle as fiduciary collateral must hand over the fiduciary guarantee to the creditor. If the debtor sells the vehicle without the creditor's knowledge, the creditor faces difficulty in executing the collateral when the debtor defaults on the loan. This creates significant financial risks for the creditor, who should be protected by law.

In criminal law, the unauthorized transfer of fiduciary collateral can be classified as fraud or embezzlement (Dewi & Arifin, 2021). According to Article 372 of the Criminal Code (KUHP), anyone who intentionally takes someone else's property with the intent to profit for themselves or others may face criminal charges. In this case, the debtor who transfers fiduciary collateral without consent can be subject to criminal sanctions, aimed at protecting the creditor's rights and maintaining fairness in financial transactions.

However, enforcing the law in these cases is not straightforward. One of the main challenges is proving the debtor's malicious intent. In many cases, the debtor may argue that they did not realize the transfer of collateral was illegal, or they may claim that they did not intend to deceive the creditor. Therefore, it is essential for the creditor to have strong evidence, such as written agreements, communications, and witnesses that can support their claims.

Furthermore, the role of legal institutions in handling cases of unauthorized fiduciary collateral transfers is crucial. The Supreme Court, as the highest judicial body in Indonesia, has the responsibility to enforce the law and provide guidance in resolving civil cases, including those involving fiduciary guarantees. The Supreme Court Regulation No. 1 of 2016 on Civil Case Settlement Guidelines can serve as a reference for courts in handling disputes related to fiduciary guarantees.

Additionally, the Financial Services Authority (OJK) plays a key role in ensuring that financing institutions comply with applicable regulations. Through OJK Regulation No. 35/POJK.05/2018 on Peer-to-Peer Lending, OJK seeks to enhance transparency and accountability in the financial industry and protect consumers from harmful practices. Strict supervision of financing institutions can help prevent unauthorized fiduciary collateral transfers. In a deeper analysis, it is important to consider the social impact of unauthorized fiduciary collateral transfers. When debtors engage in such actions, they not only harm the creditors but also create uncertainty in the financial market. Public trust in financial institutions may decline, which can negatively affect the ability of these institutions to lend in the future. This creates a negative cycle that could worsen the overall economic condition.

In conclusion, unauthorized fiduciary collateral transfers are serious criminal acts that require effective law enforcement. Creditors must be protected from harmful practices, and legal institutions and regulators must work together to ensure that existing regulations are properly enforced. By implementing effective law enforcement, it is hoped that fairness and legal certainty will be achieved in financing transactions, thereby enhancing public trust in the financial system in Indonesia.

6. Implications for Notary Practices

Role of Notaries in Preventing Fiduciary Collateral Embezzlement

In the context of Indonesian law, the role of notaries is crucial, especially in preventing fiduciary collateral embezzlement. Based on the analysis of Supreme Court Decision No. 419K/Pid.Sus/2021, it is evident that notaries play a critical role in the registration process of fiduciary guarantee deeds. One of the main issues faced is the high percentage of fiduciary collateral embezzlement cases caused by failure to register fiduciary deeds with the Fiduciary Registration Office. According to data from Hukumonline 2021, approximately 30% of fiduciary embezzlement cases are due to non-compliance with the registration of deeds. This highlights that the deed is not merely a formality but a strategic step that grants enforceability to the deed.

Notaries are responsible for ensuring that every deed they create and sign is registered according to the provisions of Article 11 of the Fiduciary Law. In this regard, notaries must have a deep understanding of the registration process and the legal implications of failing to register the deed. For example, if a debtor fails to register the fiduciary guarantee deed, the creditor may face difficulty in executing the collateral if the debtor defaults. In other words, compliance with deed registration can prevent a vacuum of execution, where the creditor lacks the legal tools to take control of the collateral if default occurs.

CONCLUSION

Based on the discussion above, the conclusion of this study is first, the implementation of law enforcement against the crime of embezzlement of fiduciary credit guarantees committed by debtors based on consumer financing agreements is still experiencing inequality.

Although there is law enforcement with the imposition of criminal sanctions, this does not have a deterrent effect and does not provide justice for creditors, due to the low prosecution structure, weakness in Article 36 of the Fiduciary Guarantee Law, and the lightness of sanctions compared to Article 372 of the Criminal Code. Second, legal protection for creditors is divided into preventive protection, where creditors can exercise the right to execute the object of fiduciary guarantee anywhere, as well as repressive protection, which allows creditors to file lawsuits for unlawful acts based on Article 1365 of the Civil Code and Article 34 paragraph (2) of the Fiduciary Guarantee Law. The suggestions given are first, to the Government and the House of Representatives to revise Article 36 of the Fiduciary Guarantee Law by increasing criminal sanctions in order to provide a deterrent effect to debtors. Second, to Non-Bank Financial Institutions as creditors, to be more careful in applying the Five C's principle in providing financing, in order to prevent losses due to debtors in bad faith.

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