



DOI: <https://doi.org/10.38035/jlph>
<https://creativecommons.org/licenses/by/4.0/>

Juridical Analysis of Over Credit in Motor Vehicle Credit Agreement with Fiduciary Guarantee in View of Undang-Undang Nomor 42 of 1999 on Fiduciary Guarantee

Puspawangi Prameswari¹, Temmy Fitriah Alfiany².

¹Muhammadiyah University, Sukabumi, Indonesia, puspawangiprameswari@gmail.com.

²Muhammadiyah University, Sukabumi, Indonesia, temifitriahfitriah@ummi.ac.id.

Corresponding Author: puspawangiprameswari@gmail.com¹

Abstract: In the world of motor vehicle credit financing as stipulated in Pasal 23 ayat 2 of Undang-Undang Nomor 42 Tahun 1999 concerning Fiduciary which explains that a debtor is prohibited from selling transferring and or mortgaging the object of fiduciary guarantee, except with the permission of the creditor, but in reality the practice of transferring (Over Credit) or mortgaging often occurs among the public as in case study Number. 130/PID SUS/2023/PN SKB. This research examines and analyzes related to over credit that occurs without the knowledge of creditors that occurs among the community, therefore researchers raise two problem formulations among them. First, the legal consequences to the creditor arising from the decision in case No. 130/pid sus/2023/pn skb. 130/PID SUS/2023/PN SKB. Second, the legal consequences for debtors who over credit without the knowledge of the creditor. This research uses an analytical descriptive method with a normative juridical approach, in which data and information are analyzed normatively. The results showed that it is important to be careful in determining a person who can be held legally responsible, because those who can be held legally responsible are legal subjects who carry out legal relations in this study are creditors and debtors.

Keyword: Over Credit, Credit Agreement, Juridical, Fiduciary.

INTRODUCTION

Seeing the rapid development of economic activities among the people today in order to achieve a just and prosperous society as the manat of the Undang-Undang Dasar Republik Indonesia tahun 1945. Therefore, layers of society, both individuals and companies, carry out various activities to boost the national economy, in terms of developing economic activities in the financial services sector, including leasing business activities.

Leasing is a contractual agreement between Lessor and Lessee to lease a certain movable object chosen by the lessee (Sunaryo, 2013). Basically, the use of leasing services can be found in the activities of crediting motorized vehicles or other movable objects, in the

case of crediting motorized vehicles, leasing parties usually have provided a credit agreement contact to debtors or buyers of motorized vehicles for protection in the event of default (broken promises).

In the study of civil law, there is the concept of property rights that have a function as collateral and are specifically the focus of security law. In addition, there is also the concept of "Accessoir Agreement", which is an additional agreement related to the main agreement. Accessoir agreements, such as those found in mortgages, pledges, and fiduciaries that will be discussed in this thesis, are inherent to the principal agreement and function as a burden on the collateral. In other words, the collateral agreement, which is an accessoir agreement, is bound to the main agreement (Santosa et al, 2022).

According to Pasal 8 of Undang-Undang No.10 Tahun 1998 concerning Amendments to Undang-Undang No.7 Tahun 1992 concerning Banking, collateral is confidence in the ability and ability of the debtor to pay his debts in accordance with the agreement that has been made. Mariam Darus Badruzaman's opinion cited by Frieda Husni Hasbullah explains that collateral is a guarantee given by the debtor or a third party to the creditor to guarantee obligations in an agreement. Meanwhile, according to Thomas Suyanto, collateral is a transfer of wealth or a statement of one's ability to guarantee repayment of debt (Solihin & Ahmad, 2010: 288).

There are several types of collateral that can be considered. One is the Pawn system, which involves borrowing money by providing an item as collateral, with a specific time limit; if no payment is made by the specified time, then the item becomes the right of the lender. In addition, there is also the illicit pawn system, which is a pawn without official authorization. There is also the redemption pawn system, where the pledged item can be redeemed for a certain payment. This collateral system can also be applied to houses as a place to borrow money by giving the house as collateral. There is also a guarantee system that involves debt securities with goods as collateral (Poerwadarminta, 2016: 289). the provisions regarding pawning are regulated in the provisions of pasal 1150 of the Civil Code.

In the case of a motorized vehicle credit agreement, the guarantee applied therein is a fiduciary guarantee. Fiduciary guarantees came into force after the enactment of Undang-Undang Nomor 42 Tahun 1999 concerning Fiduciary Guarantees on September 30, 1999. In a fiduciary guarantee, there is a transfer of property rights from the debtor who acts as a fiduciary to the creditor who receives the fiduciary, but the collateral object remains under the debtor's ownership. This means that a person can use a particular object as collateral to obtain a loan, but he or she retains ownership rights to the object (Subagiyo, 2018).

The basic principle in providing credit is trust, where banks provide credit as a form of trust to the community. Lending by banks is a service of trust to the community with the aim of making a profit. Therefore, banks must ensure that credit recipients have the ability to repay the loan. To ensure a smooth credit process, banks need to conduct a thorough analysis of the customer's ability and intention to repay the loan (Setiono, 2018). The leasing agreement also regulates the SOP for crediting car vehicles. In addition, the leasing agreement also regulates the mechanism of over credit (transfer of debt) if the vehicle debt is to be transferred to the new lessee. The definition of over credit (transfer of debt) is taking over or it can also be a takeover, within the scope of a company takeover is a change in the controlling interest of a company (Muda, 2003: 26).

Takeover, according to T. Guritno, refers to the act or process of taking over an entity or asset. In a corporate context, a takeover occurs when an offer is made to shareholders to purchase the company's shares, either in whole or in part, at a specified price, with the aim of controlling the offered company. The term takeover denotes the transition of ownership or control from the previous owner or management. The bidder may be an individual or a company, which is generally larger in scale than the entity being offered (Guritno, 1996:199).

However, there is a phenomenon that injures the credit agreement that has been agreed upon by the creditor and the debtor in terms of the credit agreement made by Leasin. Which is where the debtor does over credit (transfer of receivables) under the hands outside the knowledge and approval of the Leasing party as the creditor. In general, this happens because people want to get a motorized vehicle in an easy way and with a short time and a cheap price. However, this has actually harmed the credit agreement that has been agreed upon by the parties, because if Over credit is carried out under the hands of the lender or creditor it has violated the provisions of pasal Undang-Undang No.42 Tahun 1999 concerning Fiduciary Guarantees, which if this happens then the debtor can be punished with a maximum sentence of 2 years in prison.

For example, the case in the criminal case of Ivan Rusvansyah Trisya Bin RM. Ruchiansyah in the case of the criminal act of the Fiduciary who transfers, mortgages, or leases the object of the Fiduciary Guarantee which is carried out without the prior written consent of the Fiduciary and/or Embezzlement, as referred to in the formulation of Pasal 36 of the Undang-Undang Republik Indonesia nomor 42 Tahun 1999 concerning Fiduciary Guarantees and / or Pasal 378 KUHP and / or Pasal 372 KUHP, which occurred at the Office of PT Mandiri Utama Finance. The suspect IVAN RUSVANSYAH TRISYA as the debtor by transferring the vehicle which became the object of the Fiduciary Guarantee to another person before the contact of the financing agreement was completed without the written permission of PT. Mandir Utama Finance Sukabumi branch office as the creditor made legal efforts against the suspect through a civil lawsuit to the Sukabumi City District Court.

In this thesis research, researchers have conducted a literature review sourced from books and theses on leasing issues. The materials from researchers related to previous studies on over credit research (transfer of debt) include:

1. A thesis on Legal Analysis of Fiduciary Security Objects Transferred by Debtors Case Study at PT. Pegadaian (PERSERO) Pasar Butung Makasar. by Nurul fadilah Rusli, Faculty of Law, Bosowa University Makasar 2022. This thesis discusses the settlement of the fiduciary guarantee credit transferred by the debtor, the similarity with the researcher's work is that the researcher studies the fiduciary guarantee transferred by the debtor, the difference in this research work is how the settlement of the fiduciary object transferred by the debtor, while the researcher's work discusses criminal liability for the fiduciary guarantee object transferred by the debtor without the knowledge / permission of the creditor in this case PT. Mandiri Utaman Finance, Sukabumi City Branch (Rusli, 2022).
2. A thesis on juridical analysis of the selling and purchase of cars by over credit at pt astra sedaya finance batam (Decision Number: 14/Pdt.G/2020/Pn.Btm) by Zafrinal, Faculty of Law, Bung Hatta University Padang 2022. This thesis discusses the legal consequences of over credit under the hand without the consent of the creditor in the civil aspect, the similarity with the researcher's work is that the researcher studies the fiduciary guarantee transferred by the debtor, the difference in this research work is how the legal consequences in the civil aspect of the fiduciary object transferred by the debtor, while in the researcher's work discusses the judge's consideration in deciding Case No. 130/Pid.Sus/2023/PN Skb. Criminal case against the object of fiduciary guarantee transferred by the debtor without the knowledge / permission of the creditor in this case PT. Mandiri Utaman Finance, Sukabumi City Branch (Zafrinal, 2022).

With this event, it is necessary for the public to understand the mechanism of over credit (transfer of debt) legally in credit, especially for motorized vehicles. On the basis of these problems through the background above, the researcher is interested in conducting comprehensive research on the legal consequences of " Juridical Analysis of Over Credit in Motor Vehicle Credit Agreement with Fiduciary Guarantee in View of Undang-Undang

Nomor 42 Tahun 1999 on Fiduciary Guarantee (Case Study Of Case Number 130/PID SUS/2023/PN SKB)".

METHOD

In this study, the researcher applied an empirical normative research approach. This type of research also adopts a qualitative approach. This approach is often known as a naturalistic research method because it is conducted in a natural context or unregulated setting. This method is also often referred to as ethnography, mainly because of its early history associated with cultural anthropology research (Aripin & Ahmadi, 2010). Qualitative research can be in the form of literature studies, observations, photos/images, verbatim recordings (interview results). The data processing technique used by researchers is by taking literacy that is relevant to the subject matter, then described and discussed systematically. The researcher also processed the agreement document data and interview results from the audio format into a text narrative form for easy understanding.

RESULTS AND DISCUSSION

Legal Consequences for Creditors With the existence of Decision NO. 130/PID SUS/2023/PN SKB.

A judge is a job that has great responsibility for the implementation of law in a country. In a sense, judges are the last bastion of law enforcement in a country. Therefore, if judges in a country have very fragile morals, then the authority of the law in that country will be weak or fallen (Supriadi, 2018: 14).

Judges who are the personification of the law must ensure a sense of justice for everyone who seeks justice through the legal process, and to ensure that sense of justice a judge is limited by signs such as accountability, moral and ethical integrity, transparency and supervision. The integration requirement is the idea that judges should decide cases in a way that makes the law more coherent, favoring interpretations that make the law more like a single moral vision (Susanti, 2019:44).

As the panel of judges in examining case NO. 130/PID SUS/2023/PN SKB. where the panel of judges in examining such a case considered its decision with the legal consideration that the person who carried out the legal relationship was Erisa Isma Dewi's sister with the consent of Ivan Rusvansyah Trisya, meaning that here ivan or the defendant was only limited to giving consent because the person who carried out the legal relationship in the fiduciary deed made before a notary, and also as a fiduciary power of attorney in other provisions in the guarantee deed of ivan or the defendant. Therefore, the panel of judges is of the view that this does not meet the criteria as referred to in Pasal 1 ayat 5 of Undang-Undang Nomor 42 Tahun 1999 Concerning Fiduciary.

Seeing from the other consideration is the matter of this case is the embezzlement and or pawned object of collateral so it is without the knowledge or without the consent of Erisa Isma Dewe who is in legal contact with PT Mandiri Multi Finance. Therefore, the prosecutor's indictment of the party charged with Pasal 36 jo Pasal 23 ayat 2 of Undang-Undang Nomor 42 Tahun 1999 concerning Fiduciary cannot be proven legally and convincingly violating such provisions.

Although it can indeed be said that the one who entered into a financing agreement with PT. Mandiri Multi Finance is the defendant as in the description of the financing agreement made on 10-01-2020 (ten January twenty) number: 020520000020, however, this is only limited to an underhand legal relationship because in the authentic deed contained in the form of a fiduciary deed the debtor or the one who has a legal relationship with the finance company is Erisa Isma Dewi as in the provisions of pasal 1 ayat 5 of Undang-Undang Nomor 42 Tahun 1999 concerning Fiduciary. and not the defendant. Thus it can be said that the panel

of judges was quite careful and precise in conducting legal considerations in order to decide such a case, which should have been drawn before the court or could be suspected and subject to the provisions of prohibited acts as in Pasal 23 ayat 2 jo 35,36 Undang-Undang Nomor 42 Tahun 1999 concerning Fiduciary is Erisa Isma Dewi because she is the one who has entered into a legal relationship with the finance company as in the fiduciary guarantee deed she acts as the debtor therefore all applicable provisions related to the transfer and or pawning without the knowledge of the creditor is Erisa Isma Dewi because the legal subject who can be held accountable is her with regard to pasal 23 ayat 2.

Leasing is an institution that provides financing to provide goods as capital or for other needs, with payments made gradually or through credit, both for individuals and organizations. However, the financing provided by the leasing industry is not comparable to the financing provided by financial institutions such as banks.

The leasing business in the field of lending funds is considered to play an important role in expanding the circulation of money. Many individuals or organizations use leasing to acquire capital products. Financing is a common activity and has long been practiced by various levels of society. However, in order to obtain a loan (credit), it is generally necessary to have a credit guarantee from the borrower (debtor) to the party providing the loan. In general, when a financial institution (both banks and non-banks) provides capital credit, it requires collateral that must be fulfilled by the party seeking the capital. Fiduciary guarantee is a legal rule that regulates the guarantee from the debtor to the lender, which is in accordance with the needs, both in the short-term and long-term credit system (Satrio, 2011: 112).

Pasal 1131 of the Civil Code states that all assets belonging to the debtor, both future and existing, including both movable and immovable, can be pledged for all debts to debt holders. This pasal stipulates that everyone is responsible for their obligations, including providing their property, both movable and immovable, if necessary to fulfill these obligations. This principle is in accordance with the rule of trust in the law of ties, which allows any individual (debtor) to fulfill his obligations within a certain period of time. Everyone is obliged to fulfill the promises he or she has made, which is considered a moral obligation as well as a legal obligation.

In the case of an agreement made by the creditor and debtor, of course, it is necessary to pay attention to the rights and obligations of the parties as agreed, the parties must fulfill their obligations as according to Pasal 4 of Undang-Undang Nomor 42 Tahun 1999 concerning Fiduciary Guarantees, an ancillary agreement is an addition to the main agreement that creates an obligation for the parties to fulfill their obligations, or what is called an achievement. "Performance" in this context means doing something, not doing something, or giving something. Although the borrower is bound by a legally valid loan agreement and the loan collateral has been confirmed, there is a risk of default or failure to fulfill the agreed-upon performance. Credit takeover is the process of transferring ownership or responsibility for an object that is still in credit status to a third party through a credit transfer agreement in the form of an underhand deed. This practice is common in loans secured by fiduciary guarantees and can harm the parties to the credit agreement.

Leasing agreements as principal agreements are usually followed by assecoir agreements or additional agreements that function as collateral for the leasing object. The function of the guarantee is so that the position of the leasing company as a creditor becomes safer if the customer breaks the promise. The guarantee agreement used for motorized vehicles is a fiduciary guarantee agreement. The fiduciary guarantee itself is regulated in Undang-Undang Nomor 42 Tahun 1999 concerning Fiduciary Guarantees (Fiduciary Law) (Misael & Partners, 2024).

A cession of receivables agreement (cessie) is the process of transferring rights over intangible movable objects, which are generally in the form of receivables to third parties. In cessie, only receivables are transferred, not debts, because what changes is the creditor, namely from the old creditor to the new creditor. "The term cessie became popular in the late 19th century due to the emergence of the need for a mechanism for transferring receivables that could not be done through the pawn or fiduciary system." The Civil Code does not recognize the term cessie, but Pasal 613 ayat (1) of the Civil Code states that (Satrio & Rachmad, 2010: 56) " The assignment of debts in name and other immovable property is made by means of an authentic deed or a deed under hand, by which the rights to the property are transferred to another person".

In practice, there is often a transfer of debt by the old debtor without the knowledge of the leasing party. The agreement is usually made informally without an authentic deed, using only receipts. The practical way that is often done in transferring car debt is that the old debtor and the new debtor make a debt payment agreement without involving the leasing party as a creditor. This, of course, can cause problems in the future for the new debtor regarding legal certainty and ownership of the debt object, because the new debtor has no legal relationship or authority with the creditor during the credit period.

The transfer of car debt without the knowledge of the leasing company is known as an underhand transfer of car debt. Although a credit agreement made legally under the hand still binds the parties, both the leasing party and the debtor, this kind of agreement has weaknesses. One of the weaknesses is that the debtor can deny the signature contained in the credit agreement, especially if it only uses a thumbprint. The denial of the signature or thumbprint forces the creditor to prove its authenticity. Therefore, credit agreements should be made in writing to become the main agreement, which determines the validity of other agreements that accompany it, such as collateral binding agreements. A written agreement also serves as evidence in the event of a dispute.

As happened or if it has happened in this study, there has been a transfer of the object of collateral under the hands without the knowledge of the creditor or the leasing party, in this case PT Mandiri Multi Finance, therefore it can be alleged that there has been an act of default where the debtor has transferred collateral in the form of a Honda Civic HB Turbo E CVT car with police number F 81 CA and BPKB number P-07959398, for Rp.486.000.000, (four hundred eighty-six million rupiah) with a period of 60 (sixty) months or 5 (five) years of installments starting from January 2020 to January 2025, with a period of 60 (sixty) months.000,000, (four hundred eighty-six million rupiah) with a period of 60 (sixty) months or 5 (five) years of installments starting from January 2020 to January 2025, and monthly installments of Rp.9,400,000 (Nine million four hundred thousand rupiah).

As the provisions of Pasal 23 ayat (2) of Undang-Undang Nomor 42 Tahun 1999 concerning Fiduciary Guarantees states that: " The Fiduciary is prohibited from transferring, mortgaging, or leasing to another party the object of the Fiduciary Guarantee which is not an inventory object, except with the prior written consent of the Fiduciary Recipient".

Thus, the actions carried out by the debtor can be said to be a default or breach of promise as it is known that in the provisions of Pasal 1238 of the Civil Code which states that: "The debtor is declared negligent by a writ, or by a deed of similar nature, or by the force of the obligation itself, i.e. if this obligation causes the debtor to be deemed negligent by the lapse of a specified time".

Thus, although in the Sukabumi City District Court case with case NO. 130/PID SUS/2023/PN SKB. Ivan Rusvansyah Trisya was acquitted because he was not proven legally and convincingly to have committed a criminal offense as referred to in the provisions of fiduciary legislation Pasal 35 of Undang-Undang Nomor 42 Tahun 1999 concerning Fiduciary Guarantees, however, this does not diminish or nullify the rights of the creditor in

exercising the right of collection to the debtor as it is known that it is Erisa Isma Dewi who carries out the legal relationship as stated in the fiduciary power of attorney and in the fiduciary deed. Mandiri Multi Finance can still collect Erisa Isma Dewi as a debtor who is obliged to pay off the credit agreement that has been made between PT. Mandiri Multi Finance and Erisa Isma Dewi as in the Fiduciary Deed made before notary Ario Setyo Adi Petaka with number: 6268 made on 17-01-2020 Notary in Sukabumi.

Legal Consequences of Underhand Transfer of Car Vehicles in PT. Mandiri Utama Finance.

According to Pasal 1233 in the Civil Code, an obligation can arise either through an agreement between the parties concerned or due to legal provisions. Before the car is transferred to the lessee, as the buyer of the car, the lessee receives a financing agreement that must be signed by the lessee himself. If the lessee has signed and agreed to the agreement, this indicates that the lessee is obliged to comply with the contents of the financing agreement, as the agreement has the same force as the law (Muljadi & Widjaja, 2003: 36).

The process of overcredit or mortgaging the fiduciary guarantee in the agreement clause requires that the lessee must notify the finance company if they want to transfer the installment payment to a new lessee (Patrik & Kashadi, 2009: 117). Moreover, the finance company prohibits lessees from deliberately transferring their vehicle debts for no apparent reason. The lessee who is officially registered in the financing agreement is responsible for the installment payment of the car, not the new lessee who tries to take over the debt unofficially, this is in line with the provisions of pasal 36 of Law number 24 of 1999 concerning fiduciary guarantees.

Regulations regarding fiduciary transfer can be found in Pasal 19 to Pasal 24 of Law No. 42/1999 on Fiduciary Guarantee. One form of transfer of rights is the transfer of debt (cession), which refers to the process of transferring receivables that can be done through an authentic deed or an underhand deed. This transfer includes various actions, such as sale or lease in the context of business activities, Debt secured by fiduciary has the possibility to be transferred by the fiduciary beneficiary to a new fiduciary beneficiary (new creditor). The new creditor is responsible for registering the change in ownership of the fiduciary guarantee at the Fiduciary Registration Office.

With the cession, all rights and obligations originally owned by the old fiduciary are transferred to the new fiduciary, and the change in ownership of the receivables must be informed to the fiduciary. The fiduciary is not permitted to transfer, mortgage, or lease the object of the fiduciary guarantee to another party, as the fiduciary guarantee remains linked to the object of the fiduciary guarantee, regardless of where it is located. However, there is an exception to this rule, namely that a fiduciary may transfer inventory objects that are the object of fiduciary guarantee (Fuady, 2003:77).

In case number. 130/PID SUS/2023/PN SKB, as stated in the trial pact, the person who made the agreement in the legal event with PT Mandiri Utama Finance was Eriesa Ismia Dewi, thus the one who had a legal relationship as a debtor was Eriesa Isma Dewi as the wife of the defendant in the aforementioned case, namely Ivan Ruvansyah Trisya.

An agreement or contract can be explained as a legal bond in the realm of property law, where one party has the right to demand certain achievements, and the other party has the obligation to fulfill those achievements (Prayoga, 2016). As a tenant, it is obliged to comply with the terms of the financing contract. On the other hand, the finance company has the right to provide a loan if the lessee is considered reliable in paying the car installments.

In addition, the agreement between the parties is the basis for the creation of an engagement or agreement. Therefore, everything that has been agreed by the parties must be carried out in accordance with the agreed provisions. The concept of "agreement" refers to

the expression of the wishes of two or more parties to the agreement regarding what they want to do, how it should be done, when it should be done, and who is responsible for carrying it out (Rachmad, 2020: 95).

In terms of the agreement in the case as stated above, the debtor has an obligation to pay monthly installments of Rp.9,400,000 (Nine million four hundred thousand rupiah) for 60 months and 5 years. On the other hand, the obligation arising for PT Mandiri Utama Finance is to finance the procurement of Honda Civic Turbo motorized vehicles as mentioned above, basically PT. Mandiri Utama, has fulfilled its obligations as a creditor by providing financing in the purchase of these vehicles, in this case the debtor only fulfills his obligations for 23 (months) in paying installments which should be for 60 (months), thus there is a breach of promise or default which is carried out by the debtor against the creditor.

Pasal 1234 of the Civil Code describes the obligation, be it in giving, doing, or not doing something. It should be emphasized that this Pasal highlights the concepts of obligation, grant, action, and refusal. The meaning of an obligation is a legal relationship between two individuals or parties, in which one party has an obligation to fulfill the demands of the other party (Subekti, 1987:11).

A positive bond or the giving of something and the act of doing something are referred to as positive bonds, meaning that they may be performed, while the non-performance of something is referred to as a negative bond, meaning that they may not be performed. In the context of the legality of overcredit, which is the transfer of debt on a vehicle, the lessee must "give something" by paying the installments on the vehicle until it is paid off. Meanwhile, "doing something" in the context of the legality of overcredit means that the lessee must comply with the contents of the credit agreement between the leasing company and perform all obligations in accordance with the contents of the credit agreement clause.

The meaning of "not doing something" is that the lessee or in this case the debtor is prohibited from taking actions that are contrary to the contents of the leasing credit agreement, such as overcredit or unauthorized transfer of debt. So, the meaning of giving something and doing something is the obligation for each party to fulfill the promised performance. Meanwhile, not doing something refers to actions that are prohibited in the mutually agreed upon agreement clause (Subekti, 1987: 142).

The breach of promise or default in question is by transferring or mortgaging a motorized vehicle that is a fiduciary guarantee to another party in this case to mawardi through Hendra, based on the results of the examination before the trial the transfer was not proven to be a prohibited act as stipulated in Pasal 36 jo Pasal 23 ayat (2) of Undang-Undang Nomor 42 Tahun 1999 concerning Fiduciary Guarantees where the defendant in this case is the husband of Eriesa Ismi Dewi or as a surety or person having a legal relationship with PT. Mandiri Utama Finance as the creditor, this happened based on the results of the examination before the trial examined by the judges at the Sukabumi City District Court, which stated that the defendant's actions did not fulfill the elements of Pasal 36 jo Pasal 23 ayat (2) of the Fiduciary Law because the defendant was not a person who had a legal relationship with the fiduciary, thus the provisions of the indictment and charges against the defendant were not legally grounded, because the defendant did not have legal standing over the fiduciary guarantee, therefore the panel considered based on the facts in the trial that the defendant unlawfully took the vehicle from Eriesa Ismi Dewi.

Thus, judging from the consideration of the panel of judges, it can be said that the person who has the right to transfer or pawn the fiduciary guarantee is the person who has a legal relationship as stipulated in Pasal 1 ayat (5) of Undang-Undang Nomor 42 Tahun 1999 concerning Fiduciary Guarantees, and if it is related to the provisions of Pasal 36 of the Fiduciary Law, the person who can be sanctioned by the provisions of the pasal is the person who has a legal relationship with the creditor. Pasal 1 ayat (5) of Undang-Undang Nomor 42

Tahun 1999 Concerning Fiduciary: "Fiduciary is an individual or corporation who owns the object of the Fiduciary Guarantee."

Pasal 36 of Law No. 42/1999 regulates the granting of fiduciary rights without the consent of the fiduciary. The pasal emphasizes that: "A fiduciary who transfers, mortgages, or leases the object of the fiduciary, without the prior written consent of the fiduciary, shall be punished with a maximum imprisonment of 2 (two) years and a maximum fine of Rp 50,000,000.00 (fifty million rupiah)."

The criteria that must be met to prosecute the perpetrator of a criminal offense under the provisions of this Pasal are as follows:

1. Make a fiduciary gift by transferring, mortgaging, or leasing.
2. The fiduciary object that is the thing given.
3. Without obtaining written consent
4. There is a fiduciary beneficiary involved in the transaction

This means that when associated with case number. 130/PID SUS/2023/PN SKB, the public prosecutor erred in applying Law No. 36 of 1999 regulating the granting of fiduciary without the consent of the fiduciary against the defendant because the defendant is not the person who has legal standing or is not the person who has a legal relationship with the motorized vehicle that is subject to fiduciary guarantee from PT Mandiri Utama Finance, rather the defendant unlawfully took the motorized vehicle and then pawned the vehicle to a person named Andriansyah or Mawardi through Hendra.

However, if it is related to the provisions of Pasal 35 of Law Number 1 of 1974 concerning Marriage which states that the property obtained during marriage is joint property, it means that if it is related to the decision in case Number 130/PID SUS/2023/PN SKB, which says that one of the reasons for not fulfilling the criminal elements as referred to in Pasal 36 of the Fiduciary Law is because the defendant took someone's property without permission and then pawned it by the defendant, Referring to these facts, of course the defendant's wife did not need permission to take the goods or the car because the goods were joint property of the defendant and his wife, unless there was a property separation agreement or a marriage agreement between the two as referred to in the provisions of Pasal 29 of Law Number 1 Year 1974 concerning marriage.

In addition, the transfer of goods used as fiduciary security, whether in the form of informal over-credits or pawned without the consent and knowledge of the creditor, occurs as a result of default, which is when one party does not fulfill its promise. This is due to a lack of understanding of the theory of justice with a contractual approach as the foundation for an agreement (Santoso, 2014: 61). This is because only with a contractual approach, the theory of justice can guarantee rights and equally assign obligations to all parties involved. In addition, the contractual justice approach also ensures that the agreement is always on track by containing rights and obligations for all parties involved, so that the performance can be carried out properly without any breach of promise.

The case of unauthorized pawning by one party is also not in line with the principles promoted by the theory of justice known as "justice as fairness" introduced by Rawls (Hernoko, 2010: 56). This principle emphasizes the importance of rationality, freedom, and equality. Rawls also emphasized that true justice must be based on the principles of rights, not just benefits, as the principle of benefits is not included in the concept of justice in the context of contracts. In addition, the different principle, known as "the different principle", not only considers equal benefits for all parties, but also considers reciprocal benefits. These reciprocal benefits refer to providing mutually beneficial benefits to all individuals, whether they come from advantaged or disadvantaged groups (Subekti, 2014:53). In relation to the case of unauthorized pawning, this can be interpreted as an attempt to enable parties who

want to own a car to make it happen by buying a car from a supplier, then getting help from the leasing party.

After successfully acquiring the desired car, the responsibility that the lessee as a car buyer must adhere to is to comply with the terms set by the lessor. This is done by signing a financing agreement provided by the leasing party, which acts as the financing institution that facilitates the transaction. However, in reality, rather than providing mutually beneficial benefits, the lessee actually transferred the debt on the vehicle to another party without the knowledge of the leasing party. This situation is clearly not in line with the principle of reciprocal benefits which emphasizes justice as a form of fairness.

From a legal point of view, the legal consequences of the practice of pawning collateral under the hand, informally, can pose a risk, both in terms of criminal law and civil law. However, if understood as a whole, such actions are actually a form of default or breach of promise. Thus, this means that informally mortgaging a collateral object related to the purchase of a motor vehicle can be categorized as a case that falls into the realm of civil law. Salim argues that the legal consequences arising from such defaults are:

1. The Engagement Remains in Force

The leasing party or lessor has the right to demand payment of late car installments from the lessee, When it comes to the practice of pawning under the hands of a motor vehicle informally, the legal consequence is that the engagement continues until after the contract. However, the lessee who informally pawned the vehicle used as collateral object can submit a settlement negotiation with the leasing party. The aim is to prevent the cancellation of the agreement.

2. Debtor Risk Charges

If the risk is transferred to the debtor or lessee, this indicates that the lessee has deliberately violated the agreement that makes him accept the risk of loss. Loss, according to Niewenheus, is a decrease in the wealth of one party caused by an act that violates the norms of the other party, either by committing or allowing it to occur. With a default, the leasing party who feels aggrieved has the right to file a lawsuit in court to enforce their contractual rights violated by the lessee. In this case it is stated in the Civil Code Pasal 1267 which explains that: "The party against whom the obligation is not fulfilled may either; compel the other party to fulfill the agreement, if that is still practicable, or demand the annulment of the agreement, with reimbursement of costs, damages and interest."

Based on Pasal 1267, leasing has the right to file a claim in the form of cancellation of the agreement, reimbursement of costs, losses, and interest. The legal impact of the practice of informally mortgaging collateral objects in accordance with Pasal 1267 is that leasing is authorized to continue the obligations of the agreement with the first party.

However, in addition to the legal consequences already mentioned, the leasing company also has the right to sue the lessee and third parties involved in the informal pawn process. If the third party is found to have stolen the vehicle using the pawn from the first party, then the leasing company is not responsible for any losses, including loss insurance. As a result, the first party must bear all losses and pay off all installment payments for the car that has been taken away by the third party to the leasing company.

CONCLUSION

As it is known that in the case of a motor vehicle credit agreement, be it a car or a motorcycle, the collateral attached to the agreement is a fiduciary guarantee in which it is said that the object of fiduciary guarantee is prohibited from being sold or transferred and or pawned to other parties, except with the permission of the creditor, but in this research it has happened that the above is prohibited.

As for case number 130/PID SUS/2023/PN SKB, the panel of judges decided to acquit the defendant because it was deemed that the defendant could not be held responsible for the alleged criminal offense as stipulated in pasal 23 ayat 2 jo pasal 35,36 of Undang-Undang Nomor 42 Tahun 1999 concerning Fiduciary. however, even so, the creditor still has the right to collect the debtor as stated in the fiduciary deed which should be the subject in the fiduciary deed who should be held accountable. Other than that, debtors who commit prohibited acts as stipulated in Pasal 23 of the Fiduciary Law must still fulfill their obligations as stated in the fiduciary deed because under applicable positive law the debtor who is responsible is the debtor in the fiduciary deed agreement. meaning that the debtor still has to pay off the installments even though the car or object of the fiduciary guarantee is no longer in his control or is already in another party, and such things can also be held accountable in criminal law as in Pasal 35 or 36 of the Fiduciary Law and Pasal 372 KUHP.

As seen in this study, the financing agreement contained only in an underhand agreement should have been made using an authentic deed, this is because the fiduciary deed issued is also an authentic deed, this is to provide legal certainty and provide the principle of prudence because it is carried out in front of an authorized official, in this case a notary official. The author assesses that foresight is needed in examining the subject of legal relations in order to avoid mistakes in attracting someone to the judiciary to be held accountable.

The author realizes that there are many shortcomings in this writing, therefore the author hopes that the reader can provide constructive suggestions and criticisms so that it can be a good provision for the author in the future in writing again, the author also hopes that this writing can provide benefits both for the world of education and legal practitioners in general, especially for the author himself in order to provide reasoning and understanding in terms of over credit motorized vehicles with fiduciary guarantees.

REFERENCE

- Aripin, J., & Ahmadi, F. M. (2010). *Metodologi penelitian hukum* (Cet. pertama). Jakarta: Lembaga Penelitian UIN Syarif Hidayatullah.
- Fuady, M. (2003). *Jaminan fidusia*. Bandung: Citra Aditya Bakti.
- Guritno, T. (1996). *Kamus perbankan dan bisnis*. Yogyakarta: UGM Press.
- Hernoko, A. Y. (2010). *Hukum perjanjian asas proporsionalitas dalam kontrak komersial*. Jakarta: PT Kharisma Putra Utama.
- Kitab Undang-undang Hukum Perdata
- Kitab Undang-Undang Hukum Pidana
- Misael & Partners. (2024). Over kredit kendaraan bermotor tanpa sepengetahuan pihak leasing. Diakses melalui <http://misaelandpartners.com/over-kredit-kendaraanbermotor-tanpa-sepengetahuan-pihak-leasing/>
- Muda, A. A. K. (2003). *Kamus lengkap ekonomi*. Jakarta: Gramedia Press.
- Muljadi, K., & Widjaja, G. (2010). *Perikatan yang lahir dari perjanjian*. Jakarta: PT RajaGrafindo Persada.
- Patrik, P., & Kashadi. (2009). *Hukum jaminan*. Semarang: Universitas Diponegoro.
- Poerwadarminta, W. J. S. (2016). *Kamus umum bahasa Indonesia* (Edisi ketiga). Jakarta: Balai Pustaka.
- Prayogo, S. (2016). Penerapan batas-batas wanprestasi dan perbuatan melawan hukum dalam perjanjian. *Jurnal Pembaharuan Hukum*, 3(2), 280-287.
- Rachmad, S. (2020). *Hukum perikatan ajaran umum perjanjian*. Bandung: Yrama Widya.
- Rusli, N. F. (2022). *Analisa hukum terhadap objek jaminan fidusia yang dialihkan oleh debitur studi kasus di PT. Pegadaian (PERSERO) Pasar Butung Makasar*. Fakultas Hukum, Universitas Bosowa Makasar.

- Rusli, N. F. (2022). *Analisis hukum terhadap objek jaminan fidusia yang dialihkan oleh debitor* (Doctoral dissertation, Universitas Bosowa).
- Santosa, I. N., Husnullabib, R. F., Zakaria, M. B., & Sianturi, S. (2022). Analisis kasus over kredit sengketa objek jaminan fidusia (Analisis Putusan Pengadilan Negeri Pekanbaru Nomor 853/Pid.Sus/2019/PN Pbr). *Diponogoro Private Law Review*.
- Santoso, M. A. (2014). *Hukum, moral & keadilan sebuah kajian filsafat hukum* (Cet. kedua). Jakarta: Kencana.
- Satrio, J. (2011). *Hukum perikatan*. Bandung: Citra Aditya Bakti.
- Satrio, J., & Rachmad, S. (2010). *Penjelasan hukum tentang cessie*. Jakarta: Nasional Legal Reform Program.
- Setiono, G. C. (2018). Jaminan kebendaan dalam proses perjanjian kredit perbankan (Tinjauan yuridis terhadap jaminan benda bergerak tidak berwujud). *Transparansi Hukum*. <https://doi.org/10.30737/transph.v1i1.159>
- Solihin, I., & Ahmad. (2010). *Buku pintar ekonomi syariah*. Jakarta: Kompas Gramedia Building.
- Subagiyo, D. T. (2018). *Hukum jaminan dalam perspektif undang-undangan jaminan fidusia (Suatu pengantar)*.
- Subekti. (1987). *Hukum perjanjian*. Jakarta: Intermassa.
- Sunaryo. (2013). *Hukum lembaga pembiayaan*. Jakarta: Sinar Grafika.
- Supriadi. (2018). *Etika dan tanggung jawab profesi hukum di Indonesia*. Jakarta: Sinar Grafika.
- Susanti, D. I. (2019). *Penafsiran hukum; teori & metode*. Jakarta: Sinar Grafika.
- Undang-Undang No 42 Tahun 1999 Tentang Jaminan Fidusia
- Zafrinal, Z. (2022). *Analisis yuridis terhadap jual beli mobil melalui over kredit pada PT Astra Sedaya Finance Batam (Putusan Nomor: 14/Pdt. G/2020/Pn. Btm)*. *Abstract of Undergraduate Research, Faculty of Law, Bung Hatta University*, 13(1), 5-5.