

INVESTIGATION PROCESS OF FIDUCIARY CRIMINAL ACT IN SPECIAL CRIMINAL UNIT, POLRESTABES OF SEMARANG CITY

Bambang Purwanto

purwantobambang1113@gmail.com

Post Graduate Law Study Program Sultan Agung University Semarang

Sri Endah Wahyuningsih

endah.w@unissula.ac.id

Sultan Agung Islamic University, Semarang, Indonesia

Lathifah Hanim

latifah.hanim@yahoo.com

Sultan Agung Islamic University, Semarang, Indonesia

ABSTRACT

Fiduciary crime is a problem that is often encountered in the business world, especially in consumer financing. This problem occurs in almost all financing institutions, if the problem is a criminal act, then to deal with it the creditor reports to law enforcement officers in this case the police. There were 54 cases reported by the citizen related to fiduciary crime from 2015 to March 2018 and 21 cases were settled.

Keywords: Investigation, Crime, and Fiduciary

A. Introduction

For citizens, both individual and business entities that seek to increase the needs of the consumer or productive need funding from a finance company as one of the sources of funds. One of the funds is credit, the fund is used to support the increase of their business.

Likewise in business activities, it is in accordance with the progress of information. Therefore, in Indonesia, there have been rapid growth of companies engaged in financing the ownership of two-wheeled and four-wheeled motorized vehicles. The motor vehicle ownership financing company is very profitable. However, these activities will not be separated from the role of law, especially the civil law governing the engagement, including in the business issues. In an engagement related to the ownership of two-wheeled or four-wheeled vehicles, it is often known as fiduciary guarantee, namely: "Transfer of ownership rights of an object on the basis of trust provided that the object of ownership held in possession of the object remains in possession of the object" [Law Number 42 of 1999 concerning Fiduciary Guarantee Article 1 paragraph (1)].

In the implementation of this engagement, the purchase agreement between the creditor and the debtor, as long as the debtor's obligation has not paid off his debt to the creditor, the vehicle is still the property of the creditor. However, in its implementation, in the lease agreement it is not always smooth as expected, there are times when the debtor

deliberately commits the transfer of the object of the fiduciary guarantee without the permission of the creditor or it is called as embezzlement.

The debtor who carries out the act of transferring the fiduciary object or embezzlement must be sanctioned by the creditor, in the form of a forced collection of collateral or by reporting to the obligatory party (police) to get a criminal due to his actions. Criminal nature is an imposition of affliction or sorrow or other unpleasant consequences.¹

The application of sanctions carried out by the creditor against the crime of transferring objects of fiduciary collateral without the permission of the creditor or embezzlement will be more appropriate, fulfill the sense of justice and in law enforcement efforts.

One thing directly related to this fiduciary crime is the presence of investigators, especially police investigators. The role of the National Police as an investigator in criminal justice system of fiduciary crime is essentially a function of criminal law², it means that functionalization plays an important role in law enforcement. Barda Nawawi Arief stated that the functionalization of criminal law can function, operate or work and manifest in reality. Functionality of criminal law is identical to the operationalization or concretization of criminal law, which is essentially the same as law enforcement.³

Until now, Investigators of Tipiter Polrestabes Semarang Unit are still preoccupied in handling the investigation process of fiduciary crimes reported by several leases in the city of Semarang.

From the description above, the author formulated several problems, including:

1. How is the process of investigating fiduciary crimes against perpetrators of fiduciary crimes in motor vehicle loans at Tipiter Polrestabes Unit Semarang?
2. What obstacles do investigators face in investigating fiduciary crimes by perpetrators of fiduciary crimes in motorized vehicle loans at the Tipiter Polrestabes Unit Semarang?
3. How to overcome the obstacles faced by investigators in the process of investigating fiduciary crimes by perpetrators of fiduciary crimes in motor vehicle loans in the Tipiter Polrestabes Unit Semarang?

¹ Sri Endah Wahyuningsih, 2013, *Prinsip-Prinsip Individualisasi Pidana Dalam Hukum Pidana Islam dan Pembaharuan Hukum Pidana Indonesia*, Cetakan Kedua, Badan Penerbit Universitas Diponegoro, Semarang, page. 80.

² Barda Nawawi Arief, 16-18 September 1991, *Kebijakan Kriminal*, Makalah disampaikan pada Seminar Krimonologi VI, Semarang, page. 2.

³ Barda Nawawi Arief, 1994, *Teori-Teori Kebijakan Pidana*, Alumni, Bandung, page. 157.

B. Research Methods

The research methods used by the author are as follows:

1. Approach Method

This study was designed by using empirical/sociological juridical methods, namely legal research that used primary data sources. The data obtained were derived from experiments and field observations. This research also used secondary data that were obtained through literature studies.

2. Research Specifications

The specification of this research is descriptive analytical, because this researchers wanted to describe the subject and object of research, which then analyzed and finally drew conclusions from the results of the research.⁴ Descriptive analytical means that the data obtained were analyzed and compiled, so that a general conclusion can be drawn, and provided a clear picture of the problems in this study.

3. Data Source

The data source used were primary data as the main data source, secondary data were only as a supporting element⁵. As for this research secondary data were also used in the form of primary legal materials, secondary legal materials and tertiary legal materials.

4. Data Collection Method

The data collected in this study were primary data and secondary data. They were obtained through field studies and literature studies.

5. Data Presentation Methods

This study used primary and secondary data presented in sentence form, the description of events or descriptions of cases obtained through field studies and literature related to the legal aspects were then arranged in a detailed and systematic way to produce accurate data and get answers the problem arise.

6. Data Analysis Methods

Data that has been obtained were then analyzed. The analysis used qualitative method. It is a research method that produces analytical descriptive data, what is obtained from library

⁴ Mukti Fajar ND dan Yulianto Achmad, 2010, *Dualisme Penelitian Hukum Normatif dan Empiris*, Pustaka Pelajar, Yogyakarta, page. 183.

⁵ Ronny Hanitijo Soemitro, 1990, *Metodologi Penelitian Hukum*, Ghalia Indonesia, Jakarta, page. 12-13.

research or expressed by the speaker in writing or verbally as well as real behavior, which is researched and studied as something intact.

C. Research Results and Discussion

1. The process of investigating to the perpetrators of fiduciary crimes in motor vehicle loans in the Tipiter Polrestabes Unit Semarang

The risk often faced by consumer financing institutions with fiduciary guarantees is consumers do not fulfill their obligations, so that problems arise between consumer financing institutions and consumers themselves.

Sri Soedewi Majhoen Sofwan said that fiduciary growth in Indonesia experienced other developments, development led to lively, fertile growth and extended to collateral with immovable objects.⁶

In running a business, consumer finance institutions experience constraints or problems both related to civil law and criminal law. Therefore, to solve these problems, consumer finance institutions make legal efforts, namely civil law and criminal law, those efforts aim to seeking justice.

The results of the interview with the Semarang Resident Criminal Investigation Unit, Polrestabes Tipiter Unit, were related to the modus operandi carried out by the perpetrators of fiduciary crimes, including the following points:⁷

- a. Perpetrators apply for consumer financing using the names of other people;
- b. The perpetrator submits credit with a motorbike/car BPKB (ownership book of vehicle) guarantee, after the credit is approved and a fiduciary guarantee agreement arises then the motorbike/car is leased to another person without the creditor's approval (leasing);
- c. The perpetrator sells/pawns a fiduciary guarantee to another person/third party on the grounds that he is unable to pay installments or is unable to pay the remaining debt to the creditor;
- d. The perpetrator uses the opportunity with a low down payment given to a financing institution, with easy credit and low money provides an opportunity for perpetrators to commit acts of fiduciary crime.

⁶ Sri Soedewi Masjhoen Sofwan, 1977, *Beberapa Masalah Pelaksanaan Lembaga Jaminan Khususnya Fiducia Di Dalam Praktek dan pelaksanaannya di Indonesia*, Fak. Hukum Gajah Mada, Yogyakarta, page. 75.

⁷ AIPDA Edy Purwanto selaku Kasubnit 2 Unit Tipiter Sat Reskrim Polrestabes Semarang dan AIPTU Murdianto dan AIPTU MURDIANTO as member of Tipiter Sat Reskrim unit Polrestabes Semarang, *interviewed on 7 and 8 May 2018*.

In the process of investigating the perpetrators of fiduciary crime began with the investigation process. From the investigation process, if it the result meets the elements of criminal acts then the investigator increase the investigation process. Moreover, if in the process of investigation, the investigator can find or determine the suspect, the investigator begins the process of investigating the perpetrator or suspect.

In the process of investigating fiduciary crimes, the investigator firstly summoned the reporting witness (the power of a consumer finance institution) and other witnesses then conducted an examination as outlined in the Minutes of Investigation. In the examination of the witness, the investigator explored the information related to the report, so that the investigator found evidence in the form of witness testimony. Investigators confiscate evidence, namely photocopies/original STNK (vehicle certificate), BPKB (ownership book of vehicle), fiduciary certificates, fiduciary deeds, letters of guarantee of financing and other evidence.

The investigator called upon the reported party (who is suspected of being the perpetrator of the crime) as a witness and then examined them. this step was taken by the investigator to obtain information from the reported party. The investigator could find out whether the report submitted was true or not, because reporters often came to Tipiter Polrestabes Semarang Unit reporting that fiduciary crimes explained that the fiduciary collateral object was transferred without permission from the creditor or fiduciary recipient, but after the investigation was conducted, the object of fiduciary guarantee had not been transferred.

When the investigator does not obtain information from a person who was suspected of being a criminal, the investigator made another attempt to find another witness or collect other evidence, so that it could support the case. After conducting a series of investigations, investigators carried out a case to determine the suspect or perpetrator of the crime. At the time the case was also discussed forcibly attempted against the perpetrator or suspect, a forced attempt made by the investigator namely calling as a suspect or arrest, to determine whether the investigator would summon or arrest the perpetrator or suspect first the investigator would conduct a case. Case title was done to provide input advice from other investigators who do not handle the cases. Besides, the title of the case was also intended to maintain the objectivity of the investigator, so that the case handling is professional and proportionate.

2. Constraints or obstacles faced by investigators in investigating perpetrators of fiduciary crimes in motor vehicle loans at Tipiter Polrestabes Unit Semarang;

Police reports that entered the Semarang Polrestaes Tipiter Unit about alleged fiduciary crimes cannot all be resolved by the investigator. The incompleteness of the report is not always because of the investigator does not carry out or conduct investigations, but also there are several factors in the process of investigating fiduciary crimes, especially in the process of investigating the perpetrators.

The results of interviews from members of the Semarang Polrestaes Sat Reskiter Tipiter Unit found that constraints in the process of eliminating Fiduciary crime experienced by Investigators of Tipiter Polrestaes Semarang Unit during the investigation process are as follows:⁸

- a. Domicile or place of residence of the perpetrator is unknown. The finance or creditor does not pay attention to the risk factors because the finance itself provides a target for the employee, a low down payment, the finance in conducting the survey is only based on the information from the debtor himself and does not look for other data regarding the track record of the debtor and the survey can be done by appointment outside the house or not the residence or domicile of the debtor in accordance with the SOP that has been determined by finance;
- b. The perpetrator is not cooperative. Uncooperative perpetrators of fiduciary crime are classified into 2 (two), namely:
 - 1) The perpetrator is not cooperative since the beginning of the investigation process, before the debtor is designated as a suspect, the investigator first calls the debtor as a witness, but when the debtor does not attend the call by giving a reasonable reason, then the perpetrator calls the second and the debtor does not present;
 - 2) The perpetrator is not cooperative. After the perpetrator is questioned as a suspect and when the perpetrator is summoned to be delegated to the Public Prosecutor, the suspect is not present and does not give proper reasons.
- c. The existence of fiduciary collateral is unknown and there is no evidence of submission of objects of fiduciary guarantee. In practice, it is often found that when the debtor transfers the fiduciary guarantee, namely selling, pawning or renting the guarantee, there is no receipt in the form of receipts or proof of submission of other fiduciary guarantees;

⁸ AIPDA Edy Purwanto selaku Kasubnit 2 Unit Tipiter Sat Reskrim Polrestaes Semarang dan AIPTU Murdianto dan AIPTU MURDIANTO as member of Tipiter Sat Reskrim unit Polrestaes Semarang, *interviewed on 7 and 8 May 2018.*

- d. There were no witnesses who knew the handover of the object of fiduciary guarantee or domicile/place of residence of the witness was unknown. In the case of a fiduciary crime, the witness in question is a witness who can explain that the object of the fiduciary guarantee has changed the ownership, whether to move is from the debtor to the third party because it was sold, mortgaged, rented or for other reasons. The witness can be a creditor and can be from a third party who receives a fiduciary collateral object (who accepts the transfer of a fiduciary guarantee object);
 - e. Limited investigators. The human resources (HR) referred to here are the number of personnel, members of the Semarang Polrestabes Sat Reskrim are currently 153 personnel. Personnel who handle fiduciary crimes, namely Tipiter Unit (certain criminal acts), who conduct investigations on fiduciary crimes are only 11 personnel, if compared with the number of fiduciary crimes reported in Semarang Polrestabes in 2012 as many as 153 cases, in 2013 as many as 219 cases, in 2014 there were 184 cases and in 2015 there were 30 cases.
3. Efforts to overcome obstacles or obstacles faced by investigators in the process of investigating fiduciary crimes by perpetrators of fiduciary crimes in motor vehicle loans at Tipiter Polrestabes Unit Semarang.

The results of interviews from the Sat Reskrim Polrestabes Semarang members⁹, during the process of investigating fiduciary criminals there were many obstacles experienced by investigators in Semarang Police Criminal Investigation Unit, but the investigators did not end up the investigation process, but the investigators always made effort and modification to overcome the obstacles faced by the investigator. The actions of investigators to overcome these constraints depending on the constraints faced by each investigator but in general can be explained as follows:

- a. To overcome the unknown domicile or residence of the fiduciary offender, the investigator goes to the house of the perpetrator's parents, the in-laws or relatives of the perpetrators, according to the data provided by the debtor at the time of applying for credit; the investigator meets the RT head/RW chairman where the perpetrator lives; or the investigator visits the civil registry office to obtain information about the offender's move;

⁹ Suprianto as the Kasubnit Sat Reskrim Polrestabes Semarang and Karis as the member of Reskrim Polrestabes Unit Semarang, on 08 December 2016, Interviewed on 5 December 2016.

- b. To deal with uncooperative perpetrators during the investigation process, the investigator makes efforts in the form of orders to bring or arrest suspects and to absent every Monday and Thursday to come to Semarang Polrestabes;
- c. To overcome the object of fiduciary guarantee and unknown its whereabouts and there is no evidence of submission of objects of fiduciary collateral, the investigator seeks supporting evidence, seeks witnesses either the recipient of fiduciary collateral objects or searches for witnesses who know when submitting objects of fiduciary guarantee, blocking objects of fiduciary collateral, and making a Goods Search List (DPB) and then the investigator sends to the Police Department or to other police stations;
- d. To overcome the obstacles with no witnesses who know the submission of a fiduciary guarantee object or domicile/residence, the investigator can look for other evidence such as the conversation of the perpetrator with the recipient of the fiduciary guarantee object either via SMS, WA, BBM, etc;
- e. To overcome the limited investigators, the handling of cases of fiduciary crimes is not only handled by Tipiter Unit IV, but also these cases are carried out by other units.

CONCLUSION

1. Summary
 - a. The process of investigating the perpetrators of fiduciary crimes at the Semarang Polrestabes, begins by summoning the perpetrator or suspect, examining the perpetrator or suspect, completing the case file, and delegating the perpetrator or suspect and the evidence to the public prosecutor;
 - b. The obstacles experienced by Polrestabes Semarang investigators in conducting investigations into fiduciary crimes are domicile or residence of the perpetrator is unknown, the perpetrator is not cooperative during the investigation process, the object of fiduciary guarantee is unknown and there is no evidence of submission of objects to fiduciary guarantee to third parties, no witnesses saw the hand over of the object of fiduciary guarantee or domicile/residence of the witness is unknown, and the limited number of investigators in charge of handling fiduciary crimes;
 - c. Efforts to overcome the obstacles faced in the process of investigating the perpetrators of fiduciary crimes in the Semarang Polrestabes area, among others, by coordinating with the head of the RT/RW head and Civil Registration Population, ordering the perpetrators to absent to Semarang Polrestabes, making DPB (list of evidence

searches), looking for other evidence such as conversations between perpetrators and recipients of fiduciary collateral objects, as well as handling fiduciary crimes not only handled by Tipiter Units but the handling is shared with other Units.

2. Suggestions

- a. Financing institutions should prior to giving credit financing approvals which are then born into a fiduciary guarantee agreement, in the survey process of prospective debtors, the results of the survey should not be made up to minimize the risk;
- b. Requirements in applying for credit other than collecting photocopies, the creditor should check the original documents of prospective debtors to minimize false documents.

REFERENCES

Barda Nawawi Arief, 16-18 September 1991, *Kebijakan Kriminal*, Makalah disampaikan pada Seminar Krimonologi VI, Semarang.

—————, 1994, *Teori-Teori Kebijakan Pidana*, Alumni, Bandung.

Mukti Fajar ND dan Yulianto Achmad, 2010, *Dualisme Penelitian Hukum Normatif dan Empiris*, Pustaka Pelajar, Yogyakarta.

Ronny Hanitijo Soemitro, 1990, *Metodologi Penelitian Hukum*, Ghalia Indonesia, Jakarta.

Sri Endah Wahyuningsih, 2013, *Prinsip-Prinsip Individualisasi Pidana Dalam Hukum Pidana Islam dan Pembaharuan Hukum Pidana Indonesia*, Cetakan Kedua, Badan Penerbit Universitas Diponegoro, Semarang.

Sri Soedewi Masjhoen Sofwan, 1977, *Beberapa Masalah Pelaksanaan Lembaga Jaminan Khususnya Fiducia Di Dalam Praktek dan pelaksanaannya di Indonesia*, Fak. Hukum Gajah Mada, Yogyakarta.

Undang-Undang Nomor 42 Tahun 1999 tentang Jaminan Fidusia