

Analysis of Law Enforcement in the Criminal Act of Transfer of Fiduciary Collateral Objects (Case Study of Police Report Number: LP/B/31/III/2024/SPKT/Banyumas Police/Central Java Police)

Fauzan Aziz¹⁾ & Andri Winjaya Laksana²⁾

¹⁾Faculty of Law, Sultan Agung Islamic University, Semarang, Indonesia, E-mail: fauzanaziz.std@unissula.ac.id

²⁾Faculty of Law, Sultan Agung Islamic University, Semarang, Indonesia, E-mail: andriwinjayalaksana@unissula.ac.id

Abstract. *The abstract of this thesis discusses the analysis of law enforcement in the criminal act of transferring fiduciary collateral objects, with a case study on Police Report Number: LP/B/31/III/2024/SPKT/Polresta Banyumas/Polda Jawa Tengah. Illegal transfer of fiduciary collateral objects is an act that violates the provisions of Law Number 42 of 1999 concerning Fiduciary Collateral. This crime can be detrimental to the creditor because the collateralized object can no longer be used as collateral for unpaid debts. This study aims to identify how the law enforcement process is against perpetrators of illegal transfer of fiduciary collateral objects and to examine the obstacles faced by law enforcement officers in handling the case. In addition, this study will also evaluate the role of the police in investigating and investigating cases of transfer of fiduciary collateral objects, as well as the factors that influence the effectiveness of law enforcement in the field. By using an empirical legal approach, it is hoped that the results of this study can contribute to improving the quality of law enforcement in Indonesia, especially in fiduciary collateral cases.*

Keywords: *Collateral; Debt; Fiduciary.*

1. Introduction

The development of a just and prosperous community economy based on Pancasila and the 1945 Constitution requires good synergy between the Government and the community, whether it is an individual or a legal entity. The cooperation in question is related to funding that is not small and requires support from various parties. One of these funds can be done with a loan agreement which in this case cannot be separated from a business world. Financing companies, both banks and non-banks, certainly play a very strategic role in being able to do this,

so that a trust system is needed that is carried out reciprocally, namely between financing companies and the community.

In providing credit to the public, banks or financing institutions as creditors must be confident that the funds lent to the public will be returned on time along with interest and under the conditions that have been mutually agreed upon by the creditor and debtor concerned in the credit agreement.

“The debtor's ability is a very important thing to be considered by the creditor in relation to the debtor's debt repayment. To find out the debtor's ability and willingness to return the credit on time in the credit application, the bank or financing institution needs to review the credit application, one of which is collateral, namely in the form of goods submitted by the debtor to the creditor as collateral for the repayment of the credit received. Collateral is generally a way for creditors to guarantee the fulfillment of bills, in addition to the debtor's obligations to their debts.”¹

Considering the importance of the position of credit funds in the development process, it is only right that credit providers and recipients and other related parties receive protection through a strong guarantee rights institution in order to provide legal certainty for all interested parties as an effort to anticipate the emergence of risks for creditors in the future.

The implementation of guarantees to obtain loans by creditors has been recognized by the guarantee law for immovable and movable objects. For immovable objects such as land, using the mortgage guarantee institution regulated in Law Number 4 of 1996 concerning Mortgage Rights, and for immovable objects using the fiduciary guarantee institution regulated in Law Number 42 of 1999 concerning Fiduciary Guarantees.

The emergence of a fiduciary institution that can provide collateral to creditors without having to hand over control of the collateral to the creditor is a fairly helpful alternative for people who need additional capital for their business, especially the lower middle class. The owner of the goods can still control and use the goods, but he is required to hand over his ownership rights to the goods in a constitutum possessorium manner (a situation in which the object remains in the hands of the debtor even though the ownership rights to the object have been transferred from the creditor to another creditor).

¹Sri Kusriyah, Bambang Tri Bawono, and Suwanto, Criminal Aspects Of The Fiduciary Guarantee Transfer As Decision Basis On Criminal Justice Process, Jurnal Daulat Hukum, Vol. 3

In the increasingly rapid development of law, the realization of Law Number 42 of 1999 in the field is not in accordance with what is expected. In other words, violations are still found around fiduciary guarantees. This is triggered because fiduciary guarantees are still considered the easiest and most convenient institution to get credit or additional capital carried out by everyone, because in fiduciary guarantees the transfer of a right is based on trust alone. Such violations include the transfer of fiduciary guarantee objects by debtors without the knowledge of the creditor, and cases that often occur are the transfer of motor vehicles as fiduciary guarantee objects by debtors to other parties, thereby harming financing institutions (leasing). In addition, there are also acts of embezzlement of fiduciary guarantee objects.

For example in the case LP number: LP / B / 31 / III / 2024 / SPKT / POLRESTA BANYUMAS / POLDA JAVA TENGAH, . With the case of the car owned by the suspect is still the object of fiduciary collateral and the collateral is the BPKB, but the vehicle was transferred or pawned to someone else, then the installment obligation was not paid, when the leasing party visited the debtor's house to make an installment withdrawal, it was found that the vehicle had been transferred to someone else without the permission and knowledge of the leasing party.

The purpose of this research is To find out and analyze law enforcement in criminal acts of transfer of fiduciary collateral objects by debtors based on restorative justice at the Banyumas Police, Central Java;

2. Research Methods

The method to be used in this research consists of the following steps:

1) Approach Method

The approach method used in this research is the sociological legal method, which in this case is related to law enforcement in criminal acts of transfer of fiduciary guarantee objects by debtors at the police level based on restorative justice.

2) Research Specifications

This research is descriptive analytical in nature, because the researcher wishes to describe or explain the subject and object of the research, then analyze and finally draw conclusions from the results of the research.

3) Method of collecting data

Determination of data collection tools in this study is guided by the type of data. The data collected in this study are primary data and secondary data obtained through interviews and literature studies.

4) Data Analysis Methods

As mentioned that the data used in this study through interviews and literature studies, then analyzed. The analysis used in this study is qualitative analysis, which is a research procedure that produces analytical descriptive data, namely what is obtained from literature research and field research stated by sources through

interviews and also their real behavior, researched and studied as something whole.

The data that has been collected and complete is selected and compiled systematically, and then analyzed qualitatively using the existing theoretical basis, so that a conclusion can be reached. From the data that has been compiled and analyzed, truths will be obtained that can be used to answer the problems raised in the study. This is to ensure that it can be accounted for in accordance with reality, then the data is processed and presented descriptively.

3. Results and Discussion

3.1 Law enforcement in criminal acts of transfer of fiduciary collateral objects by debtors based on restorative justice at the Banyumas Police, Central Java Regional Police.

The Republic of Indonesia is a country based on law, as stipulated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, so that the attitudes and behavior of every Indonesian citizen must be in accordance with applicable law. In such a country based on law, every act carried out by an individual can only be said to be legitimate if the act is given legitimacy or is still guided by a legal rule.².

The existence of law in social life in Indonesia which is based on Pancasila does not merely show other countries or the outside world that Indonesia is based on law, but rather shows an awareness of the functions that reside in the law itself. The functions of law as described by Baharuddin Lopa are as follows:

Therefore, as with religion, law is also a tool of social engineering, as stated by a legal sociologist Roscoe Pound and an educational sociologist Karl Mannheim. So law is a force to change society (change agent), not a law that functions merely as a night watchman, which is to remain silent whatever happens around it, as long as there is no violation of the law. Indeed, the law will act if there is a violation of the law or a crime, but it must also create new social conditions, namely with legal regulations that are created and implemented, social engineering occurs, social change occurs from a limited life to a prosperous life or a better life. More than that, law also functions as a tool to check whether a behavior is correct or not (as a tool of justification). By knowing the characteristics of the truth desired by the law, it is quickly easy to see if there is an action that deviates from that truth. Finally, law also functions as a tool of social control, namely controlling thoughts and steps so that they are always maintained from committing acts that violate the law.

Since the enactment of Law Number 42 of 1999 concerning Fiduciary Guarantee on September 30, 1999, the Indonesian nation has its own rules regarding fiduciary guarantee as a national positive law. Thus, the public must comply with the implementation of this Law, especially in the banking sector, especially related

²AA Andi Prajitno, 2009 p.1

to credit.

The emergence of Law Number 42 of 1999 concerning Fiduciary Guarantees, in addition to being made to spur economic activity with a guarantee of legal certainty, especially for small entrepreneurs to face the global economy, so that it can be expected to be more resilient and not easily affected by very rapid and increasingly complex economic changes, is partly due to the delay in legal growth in relation to the needs of society. Thus, to fill this gap, people seek other alternatives to meet these needs outside of existing legislation. The fiduciary guarantee institution was created because of the needs of the practices and developments of society that are known in banking operational practices, also in notary practices.³

Law Number 42 of 1999 is not only to provide legal protection for creditors, but also to provide a strong legal basis for users of this institution in practice, especially for those who obtain credit in order to run their business.⁴

Law is one of the means or tools to achieve the goal of a just and prosperous society. Law is very important in human life in society and law cannot be separated from human life throughout his life. Without legal certainty, chaos will arise in society. It is clear that the function of law is to create order, justice, and legal certainty in society. The law determines what can be done and what cannot be done, and the law applies to everyone without exception, even corporations.

Related to the enactment of Law Number 42 of 1999, the Law is very important for financial institutions. As is known, financial institutions, such as banks and non-banks, have an important role in economic development in Indonesia.⁵ The main activity or principal activity of a bank is as a financial institution that collects funds from the public and distributes funds (Kustriyo and Aryani Witasari, 2018). The implementation of credit distribution carried out by the bank, of course, does not always run smoothly. according to wishes, so that in its implementation the bank must be careful. Banks must be able to be wise in providing loans or credit to the community so that in this case the bank is required to pay attention to the principles of credit distribution or provision.⁶

Considering the importance of the position of credit funds in the development process, it is only right that credit providers and recipients and other related parties receive protection through a strong guarantee rights institution in order to provide legal certainty for all interested parties as an effort to anticipate the emergence of risks for creditors in the future.

Collateral or security can be seen in the Explanation of Article 8 of Law Number 10 of 1998 concerning Banking, which states that credit provided by banks contains risks, so that in its implementation the bank must pay attention to the principles

³ibid .h 1

⁴ibid. p 1

⁵Riskha Amaliya Lubis and Maryanto, 2018

⁶Dhika Rachmat Pratama and Amin Purnawan, 2018

of healthy credit, in addition the bank must also ask for collateral from the debtor for the certainty of payment of the debtor's debt. The collateral can be in the form of movable or immovable objects.

Additional collateral that is a movable object is a car, stock of merchandise, trucks, semi-finished goods, ships measuring no more than 20 cubic meters. The form of the collateral agreement is a fiduciary guarantee. Some banking circles and notaries say that fiduciary guarantees are only complementary guarantees to collateral rights. Some others argue that fiduciary guarantees are not complementary to collateral rights, but even without collateral rights, the bank will provide credit with fiduciary guarantees. From the results of the study, it appears that there is still an assumption that fiduciary guarantees are not primary, but a secondary guarantee as a complement to collateral rights. This view is not quite right, because when viewed from the legal system of collateral, fiduciary guarantees and collateral rights have the same legal force, only differing in terms of their objects. Fiduciary guarantees always have a smaller credit loan value when compared to credit loans provided through collateral binding. However, according to banking circles and notaries, legally collateral rights and fiduciary guarantees have the same security function in credit agreements, namely as collateral recognized in positive law.⁷.

The legal function of fiduciary guarantee stated in the fiduciary guarantee deed further strengthens the position of the bank as a preferred creditor. In addition, the creditor receiving the fiduciary will obtain certainty regarding the return of the debtor's debt. The legal function will also reduce the level of risk for the bank in running its business as referred to in the Banking Law.

For people who need capital for business, namely activities carried out to obtain results in the form of profits, wages, or business profits, but do not have goods that can be used as collateral for credit at the bank, of course it will hinder them from obtaining loans or credit at the bank. Credit is the ability to make a purchase or make a loan with a promise of payment that will be carried out at an agreed time period. People who need funds, but do not have land as collateral, can use movable objects to be used as collateral such as vehicles using a fiduciary guarantee institution.

Although fiduciary guarantees have been regulated in laws and regulations, namely Law Number 42 of 1999, in practice there are often violations of the law committed by both debtors and creditors. The violations that often arise are sometimes caused because fiduciary guarantees are still considered the easiest institution to do by everyone, because the transfer of rights is based on trust.

The number of cases reported to Unit II of the Banyumas Police Criminal Investigation Unit during 2024 was 34 cases with the following details:

⁷Tan Kamello

Table Transfer of Fiduciary Guarantee Objects

No	Report Month	Number of Cases	Information
1	January	1	
2	February	3	
3	March	11	
4	April	5	
5	May	2	
6	June	7	
7	July	1	
8	August	4	
Amount		34	

source: Banyumas Police, case handled by Unit II of Banyumas Police Criminal Investigation Unit 2024

From the above data, there are many cases regarding the Criminal Act of transferring Fiduciary collateral objects in the jurisdiction of the Banyumas Police, which were handled by Unit II of the Banyumas Police Criminal Investigation Unit, totaling 34 cases, with the following developments:

- a. Investigation stage of 14 cases
- b. Investigation stage of 5 cases
- c. Phase II at the prosecutor's office as many as 2 cases
- d. Termination of investigation with restorative justice in 13 cases

As per Article 35 and 36 of Law no. 42 of 1999 concerning Fiduciary Guarantees, the causes of many of these cases, after researchers conducted research, include the following:

- a. Economic factors in society
- b. Lack of understanding of the criminal act of transferring fiduciary guarantee objects from the community
- c. Cooperation Agreement with relatives/friends, etc.
- d. There is an element of intent to seek profit by the perpetrator of the crime

In the case handled by Unit II of the Banyumas Police Criminal Investigation Unit, the resolution is prioritized through restorative justice, if the vehicle unit is clearly located, because the amount of costs incurred by the debtor is the same as the costs when transferring the vehicle unit, because the finance party only provides 2 (two) options for restorative justice by returning the vehicle unit that is the object of the fiduciary guarantee or paying off all remaining loans for financing the vehicle.

The obstacles faced by investigators in handling criminal acts of transferring fiduciary guarantees with *restorative justice* among others :

- a. The debtor was not found, had moved address, had gone out of town for a long period of time after a search was carried out at the address where the debtor was thought to live and was also not found.
- b. The lack of witnesses who can be asked for information about the existence of the unit, because many parties are diverting it from brokers, etc.

- c. The debtor's inability to redeem the transferred unit, so that the last unit owner does not want to hand it over to the debtor.
- d. The large remaining loan for financing the vehicle, so that the debtor is unable to make payments.

If the debtor is found and the debtor also has the ability to redeem the unit, there are witnesses who can provide information on the whereabouts of the unit, the investigator will summon the parties from the debtor, unit holder and from the finance party to be resolved through restorative justice, but if the debtor does not have the ability to redeem the unit/pay off the finance, and according to the investigator's belief the incident is clear that there was a criminal act and unlawful act committed by the debtor and the investigator already has evidence or at least 2 pieces of evidence, whether or not the vehicle unit is found, the investigator will increase the status from investigation to investigation and then determine the debtor as a suspect, which will then be carried out coercive measures, summons, arrest, search and seizure, if it is feared that the suspect will run away and remove evidence, the investigator will take coercive measures by detaining the suspect, then we will send the case file to the public prosecutor.

3.2 Obstacles in law enforcement in criminal acts of transfer of fiduciary collateral objects by debtors based on restorative justice at Banyumas Police Headquarters and efforts to resolve these obstacles

In modern society there is reluctance/inability and laziness of people to litigate through the courts, whether civil or criminal cases, or other administrative cases. Therefore protracted or time-consuming settlement, often burdened with costs, long time and sometimes can actually cause ongoing conflict, unresponsive and accommodating and even threaten the good name of both parties, the perpetrator of the crime and the victim, both the reporter and the reported, both the plaintiff and the plaintiff become tarnished in the midst of society, thus giving rise to models of dispute or problem resolution outside the court or known as non-litigation, peace, and others.

Especially in cases related to business and banking activities. The conflicting parties will prefer to resolve the case through non-litigation channels, because it is more beneficial for the parties (win-win) compared to resolving the case through litigation (win-lose)

"The oldest case resolution process or so-called litigation in court often gives rise to various new problems that will complicate the legal settlement situation, thus giving rise to new problem-solving alternatives, namely (ADR/Alternative Dispute Resolution) where this problem-solving model will result in an accommodating agreement (win-win solution), guaranteed confidentiality of the parties, avoiding delays caused by formal and administrative procedural matters, and legal problem resolution can be resolved comprehensively together and maintain good relations between the two parties. Alternative Dispute Resolution (ADR) can be interpreted as cooperative conflict management. Therefore, ADR is actually a dispute

*resolution outside the court that is carried out peacefully*⁸.

As for the obstacles in enforcing the law in criminal acts of restorative justice against the criminal act of transferring fiduciary guarantee objects at the Banyumas Police, Central Java Police and how to resolve these obstacles and efforts to resolve them, namely⁹

1. Legal structure:

- a. Lack of understanding and weak recognition by some police officers of their authority to implement restorative justice;
- b. The concerns of some police officers are due to the assumption that they are taking an illegal route or one that is not in accordance with the procedures set out in the law.

The solution is to conduct socialization and improve the quality of human resources in the police, so that all police officers better understand case resolution using a restorative justice approach.

2. Legal substance:

- a. There is no regulation on the settlement of criminal cases involving the transfer of fiduciary guarantee objects using restorative justice through penal mediation in Law Number 42 of 1999;
- b. There are no regulations regarding the procedures and requirements for the use of penal mediation in handling criminal cases involving the transfer of fiduciary guarantee objects.

The resolution effort is to carry out an ideal legal construction in resolving the criminal act of transferring fiduciary guarantee objects by including penal mediation in the context of renewing national criminal law.

3. Legal culture:

- a. The attitude of the community, especially debtors, who underestimate the ease of fiduciary guarantees in submitting credit applications;
- b. Lack of legal awareness among the public in obeying the law, especially contract law.
- c. The negative view from the community is that choosing to take the restorative justice approach is merely a trick by the police to gain material benefits from the reporting party or complainant or the victim (creditor).

The efforts to resolve this are socialization and coaching for the community regarding the importance of public legal awareness in the law enforcement process, and also the implementation of community obligations regarding agreements that have been made.

⁸Rachmadi Usman, 2012

⁹ AKP Susanto, SH

4. Conclusion

Law enforcement against criminal acts of transfer of fiduciary collateral objects by debtors at Polrestabes Banyumas faces a number of obstacles that hinder effective and efficient legal processes. The main obstacles found in this study include: Lack of Legal Understanding: Many people, including perpetrators of criminal acts of transfer of fiduciary collateral objects, do not have sufficient understanding of the legal provisions governing fiduciary collateral. This results in the transfer of collateral objects without the creditor's permission, which often results in violation of the law; Limited Evidence: In cases of transfer of fiduciary collateral objects, evidence that can support the investigation is often difficult to obtain, especially because the transfer transactions are often carried out unrecorded or not fully verified. This limited evidence is a major obstacle in law enforcement; Complicated Procedures and Prolonged Legal Process: The long and complicated legal process, especially in data collection and documentation, often slows down the handling of this case. This often allows perpetrators of criminal acts of transfer of fiduciary collateral objects to avoid punishment or delay the resolution of the case; Lack of Coordination between Related Parties: There is a lack of effective coordination between the police and financial institutions, which should have an important role in monitoring and reporting the transfer of fiduciary collateral objects. This lack of communication and cooperation causes difficulties in early detection and disclosure of cases; Regarding the implementation of restorative justice, this principle is still rarely applied in cases of transfer of fiduciary collateral objects. Although restorative justice offers a more peaceful dispute resolution solution and prioritizes the restoration of relations between the parties involved, in practice, restorative justice has not been fully accepted or applied in handling cases of transfer of fiduciary collateral objects at Polrestabes Banyumas. However, the application of restorative justice in resolving cases of transfer of fiduciary collateral objects can provide a better solution, with a focus on mediation between debtors and creditors. This approach can reduce tensions between the two parties, accelerate dispute resolution, and avoid protracted legal processes. This restorative approach is also more likely to restore relationships damaged by violations of the law, provide an opportunity for debtors to correct their mistakes, and provide compensation or solutions for creditors.

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