

Analysis of The Application of Criminal Sanctions Against the Act of Transferring Fiduciary Collateral Goods (Case Study: Decision Number 880/Pid.Sus/2024/Pn Srg)

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Abstract. The purpose of this research is to examine and analyze the application of criminal sanctions to the transfer of fiduciary collateral. Pancasila serves as the legal basis for creating prosperity and social justice for all Indonesian citizens. To achieve this, economic development requires capital, supported by the active participation of the business world. In this regard, banking institutions play a crucial role by channeling funds to the public, both in the form of loans and credit. However, a recent phenomenon in financial institutions is the numerous fiduciary cases involving the transfer of ownership rights. A person who intentionally embezzles, transfers, or pawns a fiduciary collateral object to another party can be considered to have committed a crime and can be prosecuted. This research uses a sociological-juridical approach, with descriptive analytical specifications. The data used in this study are primary and secondary data. Data analysis was conducted using qualitative analysis methods. The results of this study are first, the construction of criminal sanctions for the act of transferring fiduciary collateral is based on Law Number 42 of 1999 concerning Fiduciary Guarantees. In addition, Article 372 of the Criminal Code concerning Embezzlement and Article 378 of the Criminal Code concerning Fraud can be imposed. Second, the process of law enforcement against the act of transferring fiduciary collateral at the Banten Regional Police in handling cases against the act of transferring collateral can be done in two ways, the first is Penal and non-penal means. Third, the application of criminal sanctions against the act of transferring fiduciary collateral for the future, for law enforcers in this case must understand the legal instruments or norms regarding the crime of transferring the transfer of fiduciary collateral objects. Likewise, there is a need for literacy for people who have loans through fiduciary collateral institutions, that

fiduciary collateral goods are not yet their property, because the loan has not been repaid.

Keywords: Crime; Embezzlement; Fiduciary Guarantee.

1. Introduction

Pancasila and the 1945 Constitution emphasize the importance of economic progress as a means to achieve national development, which aims to create a just and prosperous society. Pancasila is considered the Indonesian nation's philosophy of life, governing the relationship between humans and God and among humans themselves.¹ Pancasila also serves as the legal basis for creating prosperity and social justice for all Indonesian citizens. Therefore, the success of economic development in Indonesia is measured by the extent to which people can live in prosperity and social justice.

Indonesia's development aims to involve all levels of society, including the most impacted, the lower classes, in economic development. Economic development requires capital, which can be supported by the active participation of the business sector. Business actors include not only individuals but also governments, organizations, and society as a whole.²

In this context, banking and consumer finance institutions play a crucial role by channeling funds to the public, both in the form of loans and credit. Financial institutions help people finance their needs with cash. The agreement between financial institutions and consumers often takes the form of a credit agreement, where consumers use the credit provided by the financial institution to purchase goods and services and then repay the loan in installments. In this way, financial institutions facilitate people's access to their economic needs, which in turn supports inclusive and sustainable economic development.³

The public's need for financing institutions is extremely high, and this opportunity has been recognized by entrepreneurs to establish or even expand their businesses in the financing sector. One such institution that has grown and developed is leasing, a financing institution specializing in motor vehicle financing, both two-wheeled and four-wheeled. Credit, as a rapidly growing economic activity in Indonesia, has provided numerous opportunities to facilitate

¹Moh. Saleh and Dwi Fajra Fakhrizal, 2021, Legal Protection for Creditors Against Confiscation of Fiduciary Guarantee Objects by the State, Jurnal Sosial dan Budaya Syar-I, Vol 8 No. 6, p. 1.

²Fadillah Hanum and Ayu Trisna Dewi, 2022, Legal Protection for Fiduciary Providers in the Implementation of Fiduciary Guarantees for Four-Wheeled Motor Vehicles, Scientific Research Journal, Vol III No. 1, p. 2.

³Gentur Cahyo Setiono et al., 2021, Default in Fiduciary Guarantee Credit Agreements, Journal of Legal Transparency, Vol. 4 No. 1, p. 2.

economic activity across various sectors, such as credit for purchasing motor vehicles.⁴

Credit plays a crucial role in driving economic activity, both in rural and urban areas, in trade, transportation, and entrepreneurship. Businesses, both large and small, require access to credit to support their operations. However, there is a gap in credit access between medium-sized and large-scale businesses and small and medium-sized businesses.⁵ Medium-sized and large businesses tend to have an easier time obtaining credit due to their greater financial capacity and trustworthiness. Meanwhile, small and medium-sized businesses often struggle to meet credit requirements due to a lack of financial capacity and trustworthiness.⁶

Banks must carefully grant credit, adhering to the principle of prudence. As creditors, banks require tools to ensure debtors can safely repay their debts, one of which is collateral. This collateral serves to protect the bank from the risk of default. Therefore, the existence of collateral is crucial in the credit granting process. Therefore, a sound credit system must adhere to the principle of prudence.⁷

Currently, many financial institutions (leasing companies) offer easy credit applications for prospective customers. This entices consumers to apply for motor vehicle loans, both cars and motorcycles. People take out motor vehicle loans with financing companies, with installment payments based on the agreed amount and over a specified period. However, a recent phenomenon in financing institutions is the increasing number of fiduciary cases involving the transfer of ownership rights. The transfer of ownership rights is explained in Article 1, paragraph 1 of the Fiduciary Law, which states:

"The transfer of ownership rights of an object on the basis of trust with the provision that the object whose ownership rights are transferred remains in the possession of the owner of the object."

So if the fiduciary guarantee provider (Debtor) transfers, mortgages or rents the fiduciary guarantee object to a third party without written consent from the fiduciary recipient (Creditor), it is clearly a criminal act, where in this fiduciary

⁴Yuzrizal, 2015, Criminal Aspects in Law Number 42 of 1999 concerning Fiduciary Guarantees, Malang, p.1.

⁵Moch. Isnaeni et al., 2021, Criminal Aspects in Law No. 42 of 1999 concerning Fiduciary, Media Nusa Creative, Malang, p. 2.

⁶Ni Made Yunika Andriini, 2023, Legal Protection for Creditors in the Event of Debtor Default on Credit Agreements with Unregistered Fiduciary Guarantees, Journal of Legal Construction. Vol 4 No. 2, p. 2.

⁷Ibid.

case the criminal provisions in Article 36 of Law Number 42 of 1999 concerning Fiduciary Guarantees can be imposed, which reads:

"A Fiduciary Provider who transfers, pawns, or rents out objects that are the object of fiduciary guarantee as referred to in Article 23 paragraph 2 of the Fiduciary Law, which is done without prior written consent from the fiduciary recipient, can be punished with a maximum prison sentence of 2 (two) years and a maximum fine of IDR 50,000,000 (fifty million rupiah)."

The main elements of the crime can be linked to Article 372 of the Criminal Code such as the objective elements, namely the act of owning an object, which is in his power not because of a crime, where the object is partly or wholly owned by another person which is proven to have transferred ownership rights to the object of fiduciary guarantee, and the subjective element, namely intentionally breaking the law. But the main legal basis for the police, namely using Article 36 of Law Number 42 of 1999 concerning Fiduciary Guarantee, is the principle of *Lex specialis derogat legi generalis*, namely special law overrides general law.

Article 23 paragraph 2 of the Fiduciary Law reads:

"The Fiduciary Provider is prohibited from transferring, pawning or renting to another party the Objects that are the object of Fiduciary Guarantee which are not inventory items, except with prior written approval from the Fiduciary Recipient."

A person who intentionally embezzles, transfers, or pawns a fiduciary security object to another party can be said to have committed a crime and can be prosecuted, provided that the elements of the crime are met so that the perpetrator can be prosecuted under the provisions of this article. These elements are:

1. Fiduciary Grantor, who transfers, mortgages or rents.
2. Fiduciary Objects
3. Without written consent
4. Fiduciary Recipient.

If these four elements are met, the perpetrator can be subject to imprisonment and a fine. The maximum prison sentence is two years and the maximum fine is IDR 50,000,000 (fifty million rupiah).

There are several factors why people commit these crimes, namely because some people are not aware that their actions are against the law, but there are also some people who are actually aware that their actions are against the law. In addition, some people commit these crimes because of economic factors,

environmental factors, Fiduciary guarantees are currently a trend in society. Therefore, people prefer fiduciary guarantees over pawn guarantees, because according to people, pawn guarantees have weaknesses and shortcomings so people prefer fiduciary guarantees.

In relation to these actions, the investigation process is somewhat difficult to carry out because sometimes the goods with fiduciary guarantees are often not in the hands of the perpetrators, in the context of law enforcement according to the Criminal Justice System, the Indonesian National Police is tasked with investigating criminal acts carried out by investigators/assistant investigators in the Criminal Investigation function of the Indonesian National Police who are authorized to conduct investigations. The role of Indonesian National Police investigators in the Criminal Justice System is at the forefront and is the initial stage of the criminal justice process mechanism, namely the preliminary examination.

An investigation itself is the activity of investigators in seeking and gathering evidence to shed light on a crime and identify the suspect. An incident or crime can be discovered through reports, complaints, arrests, and direct knowledge by police officers. Criminal investigations are essentially a form of law enforcement regulated by law, given that the tasks of criminal investigations are often related to matters concerning human rights.

One of the duties of police investigators is to conduct examinations of criminal suspects. The examinations carried out by investigators in the context of investigations are activities to obtain information, clarity and identity of suspects and/or witnesses and/or evidence as well as elements of the crime that has occurred so that the position or role of a person or evidence in the crime becomes clear and is stated in the Examination Report (BAP).

In the jurisdiction of the Banten Regional Police, cases of transfer of fiduciary collateral are common. According to data from Indomobil Finance, a financing institution in Serang City, in 2023, the number of fiduciary collateral transfers reached 846 units out of 1,805 credit agreements received in Serang City. People sold or pawned fiduciary collateral to others without the leasing company's permission, despite the practice being bound by a fiduciary agreement in consumer financing agreements.

In this regard, when viewed from Law No. 42 of 1999 concerning Fiduciary Guarantees, Fiduciary Guarantees are individual guarantees, where the Fiduciary Giver and Fiduciary Recipient give each other trust, the Fiduciary Giver hands over his ownership rights to the Fiduciary Recipient, but the Fiduciary Recipient does not directly own the object that is the fiduciary guarantee that is handed over by the Fiduciary Giver, so that fiduciary guarantees are a guarantee theory.

Fiduciary security is a security for movable property, both tangible and intangible, in connection with debts and receivables between debtors and creditors. Fiduciary security applies to both movable and immovable property. Fiduciary security arises because, in practice, there are things that cannot be accommodated. For immovable property, the object is an object that is not subject to a mortgage.

The case of the transfer of fiduciary collateral goods in the Banten Regional Police has handled this case, namely in 2023. In that year there was a criminal act of Fiduciary and or Embezzlement, On Saturday, July 8, 2023 at Link Jombang Kali RT / RVW 002/001 Village. Masiat, District. Jombang, Cilegon City, Banten Province. It is suspected that there has been a criminal act of Fiduciary Guarantee and or Embezzlement of goods in the form of 1 (one) unit of R4 Mark Suzuki New Carry PU FD vehicle, Metallic type / 2022 Registration Number A 8112 RA goods car Pickup Model Silky Silver Color No. Rangka MHYHDC61TNJ262778. Bpkb Number: T-05734569 Al. Link Jombang Kali K15BT-1477434, RT / RW Number 002/001 Ds. Masigit Kec. Jombang, Cilegon City, on behalf of Scalin Brianca, a debtor of PT Indomobil Finance Indonesia, Serang Branch, as the creditor. Based on the financing contract number 133.2300033 dated January 30, 2023, the method used by Ms. Scalin Brianca, a debtor of PT Indomobil Finance Indonesia, Serang Branch, is based on the financing contract number 133.2300033 dated January 30, 2023.

Dnature committed the crime, namely Based on the financing agreement, Ms. Scalin Brianca has an obligation to insure the vehicle for 48 times with monthly installments of Rp. 3,882,000. However, in the 7th installment, it is suspected that the vehicle which is the object of the fiduciary guarantee has been taken over based on the Fiduciary Guarantee Deed Number 996 dated February 8, 2023 at 18:36 WIB made by a notary public LINSIA, SH, M.KN domiciled in WEST JAVA and Fiduciary Guarantee Certificate Number W12.00066447. AH.05.01 of 2023 Dated 08-02-2023 at 18:36:01 WIB, without written permission from PT. Indomobil Finance Indonesia branch. Serang which is a creditor to Dedi with evidence in the form of: 1 (one) photocopy of the goods takeover agreement signed by Ms. Scalin Brianca, party 1 and Ms. Dedi, the second party in Cilegon on July 8, 2023. Therefore, due to this incident, PT Indomobil Finance Indonesia suffered a loss of Rp. 163,044,000.- (one hundred sixty-three million forty-four thousand rupiah) and reported the incident to the SPKT Polda Banten.

In the decision of case number 880/Pid.Sus/2024/PN SRGState :

1. The defendant Scalin Brianca, son of Rudi Haryanto (deceased), was legally and convincingly proven guilty of committing a criminal act, namely transferring objects that were the object of a Fiduciary Guarantee without the written consent of the Fiduciary Recipient as stated in the single indictment;

2. Sentencing the Defendant to 6 (six) months imprisonment and a fine of Rp. 1,000,000.00 (one million rupiah) with the provision that if the fine is not paid, it will be replaced with 1 (one) month imprisonment;
3. Determine the evidence in the form of:
 - a. 1 (One) Motor Vehicle Ownership Certificate (BPKB) Number T05734569 An. SCALIN BRIANCA;
 - b. 1 (One) bundle of Financing Agreement Letter Number 133.2300033 dated January 30, 2023;
 - c. 3 (three) Financing history;

Returned to PT. Indomobil Finance Indonesia Tbk Serang branch through witness Dimas Dwiananda Bin Edhy Boediono and Charged the Defendant to pay court costs in the amount of Rp. 5,000.00 (five thousand rupiah);

Referring to the case above, in reality, after the credit agreement is in effect, many people commit crimes by failing to fulfill their obligations to pay their car/motorcycle installments. They even divert their funds by selling, pawning, exchanging, and/or renting out the car/motorcycle without the company's knowledge. These actions are certainly very detrimental to the company and are also a criminal offense.

Based on the above considerations, the researcher wishes to better understand and understand the application of criminal sanctions to the act of transferring fiduciary collateral, with the research location being the Banten Regional Police. Therefore, the researcher chose the title of the thesis "Analysis of the Application of Criminal Sanctions to the Act of Transferring Fiduciary Collateral (Case Study: Decision Number 880/Pid.Sus/2024/PN SRG)."

2. Research Methods

The approach method used in this research is the sociological juridical method, namely, in addition to using legal principles and principles in reviewing, viewing and analyzing problems, this research also reviews how they are implemented in practice,⁸ which in this case relates to law enforcement in criminal acts of transfer of fiduciary guarantee objects by debtors at the police level based on restorative justice.

⁸Ronny Hanitijo Soemitro, 1990, Legal Research Methodology and Jurimetry, Ghalia Indonesia, Jakarta, p. 33.

3. Results and Discussion

3.1. Construction of Criminal Sanctions for the Act of Transferring Fiduciary Collateral.

The criminal law currently in force in Indonesia is codified criminal law, that is, the majority of its rules have been compiled in a code of laws (wetboek) called the Criminal Code, according to a specific system.⁹ The purpose of criminal law is to protect the interests of individuals or human rights and to protect the interests of society and the state by considering them equally against crimes/reprehensible acts on the one hand and against arbitrary actions of the authorities on the other. Thus, criminal law protects not only individuals but also the state, society, and the individual's property.¹⁰

Law Number 42 of 1999 concerning Fiduciary Guarantees is one way to protect the public's need for guarantee law. At that time, there was a perceived need for this guarantee law, which was not yet regulated by legal construction. Under this fiduciary agreement, the fiduciary provider trusts that the fiduciary recipient will return ownership of the transferred goods after the debt has been repaid. Conversely, the recipient Fiduciaries will not misuse collateral under their control.

Law Number 42 of 1999 concerning Fiduciary Guarantees explicitly regulates the obligation to encumber, register, and impose sanctions due to deliberate or negligent actions if the parties do not encumber the object of the fiduciary guarantee and do not register the fiduciary guarantee. This law also regulates criminal sanctions for debtors (fiduciary providers) who transfer the object of the fiduciary guarantee without prior consent from the fiduciary recipient (creditor).

In Article 1 paragraph (1) of the Criminal Code there is a principle of "Nullum delictum nulla poena sine praevia praevia lege poenale" which means "No act can be punished, except based on the power of previously existing criminal law provisions". So the act of transferring fiduciary collateral is actually regulated in the Criminal Code (KUHP) and is also regulated in a Special Law, namely the Law on Fiduciary Guarantees, in the KUHP several alternative articles can be applied, namely those listed in Article 372 of the KUHP on Embezzlement and 378 of the KUHP on Fraud, or can be directly applied to Articles 35 and 36 of the Law on Fiduciary Guarantees.

Talking about the application of criminal sanctions for the act of transferring fiduciary collateral objects, the author conducted a case study at the Banten Regional Police, where in the first year the Banten Regional Police handled several cases, one of the cases that frequently occurred and was reported was

⁹Moeljatno, 2015, Principles of Criminal Law, Rineka Cipta, Jakarta, p. 17

¹⁰Erdianto Effendi, 2014, Criminal Law in Indonesia, Refika Aditama, Bandung, p. 33

the transfer of fiduciary collateral objects, related to motor vehicles, both motorbikes and cars.

The case of the transfer of fiduciary collateral goods in the Banten Regional Police has handled this case, namely in 2023. In that year there was a criminal act of Fiduciary and or Embezzlement, On Saturday, July 8, 2023 at Link Jombang Kali RT / RVW 002/001 Ds. Masiat, Kec. Jombang, Cilegon City, Banten Province. It is suspected that there has been a criminal act of Fiduciary Guarantee and or Embezzlement of goods in the form of 1 (one) unit of R4 Mark Suzuki New Carry PU FD vehicle. Type Metallic / 2022 Registration Number A 8112 RA goods car Model Pickup Warma Silky Silver Frame Number MHYHDC61TNJ262778. Bpkb Number: T-05734569, Al. Link Jombang Kali K15BT-1477434, Number RT / RW 002/001 Ds. Masigit Kec. Jombang City, on behalf of Scalin Brianca, a debtor from Cilegon, Banten Province, carried out by PT Indomobil Finance Indonesia, Serang branch, as the creditor, based on financing contract number 133 2300033 dated January 30, 2023.

The way in whichuse Ms. Scalin Brianca who is a debtor of PT Indomobil Finance Indonesia branch. Serang based on financing contract number 133.2300033 dated January 30, 2023 in committing the crime, namely Based on the financing agreement Ms. Scalin Brianca has an obligation to insure the vehicle for 48 times with monthly installments of Rp. 3,882,000, - but in the 7th installment it is suspected that the vehicle which is the object of the fiduciary guarantee has been taken over. Based on the Fiduciary Guarantee Deed Number 996 dated February 8, 2023 at 18.36 WIB made by a notary public LINSIA, SH, M.KN domiciled in WEST JAVA and Fiduciary Guarantee Certificate Number W12.00066447. AH.05.01 Year 2023 Date 08-02-2023 Time 18:36:01 WIB, without written permission from PT. Indomobil Finance Indonesia branch. Serang which is a creditor to Mr. Dedi with evidence in the form of: 1 (one) photocopy of the goods takeover agreement signed by Ms. Scalin Brianca party 1 and Mr. DEDI party 2 in Cilegon on July 8, 2023. Therefore, due to this incident, PT Indomobil Finance Indonesia suffered a loss of Rp. 163,044,000.- (one hundred sixty-three million forty-four thousand rupiah) and reported the incident to the SPKT Polda Banten.

From the police report, the investigator applied Article 36 of Law Number 42 of 1999 concerning Fiduciary Guarantees with the Alternative Article in the Criminal Code, namely Article 378 of the Criminal Code concerning the crime of Embezzlement, where the object transferred by the debtor is the object of the fiduciary guarantee in the provisions of Article 36 of Law Number 42 of 1999 concerning Fiduciary Guarantees. "The Fiduciary Provider who transfers, pawns, or rents an object that is the object of the fiduciary guarantee as referred to in Article 23 paragraph (2) which is carried out without prior written consent from

the fiduciary recipient, shall be punished with imprisonment for a maximum of 2 (two) years and a maximum fine of IDR 50,000,000 (Fifty Million Rupiah)".

Therefore, the act of transferring, pawning, or renting an object that is the object of a fiduciary guarantee without the prior written consent of the fiduciary recipient constitutes a criminal act. This act fulfills the elements set out in Article 36 of the Fiduciary Guarantee Law, namely:

- a. Fiscal Giving Elements
- b. The element that transfers, pawns or rents objects that are fiduciary objects as referred to in Article 23 paragraph (2). Regarding this provision, it is alternative in nature, if one of the actions in this element is fulfilled, then this element can be said to have been fulfilled. The elements of criminal acts threatened in this provision are:
 - 1) Transferring the object of fiduciary guarantee
 - 2) Pawning objects as fiduciary collateral
 - 3) Renting out objects of fiduciary guarantee
- c. The elements are carried out without prior written consent from the Fiduciary recipient.

According to the investigator of the Banten Regional Police's Criminal Investigation Directorate, Aipda Junjung P. Nababan, he provided an alternative article to Article 372 of the Criminal Code because he was concerned that the fiduciary deed and fiduciary certificate submitted when reporting the transfer of the fiduciary guarantee object were not valid or legal and were not registered according to the regulations stipulated in Government Regulation Number 21 of 2015. Therefore, all actions such as transferring, renting, pawning the fiduciary guarantee object can be subject to Article 372 of the Criminal Code concerning Embezzlement.¹¹ Which act fulfills the elements of the crime of embezzlement as follows:¹²

- a. Whoever element
- b. Elements of intentional and unlawful
- c. The element of claiming as one's own property something which is wholly or partly owned by another person, but which is in one's control not because of a crime.

¹¹Interview with Aipda Junjung P. Nababan, SH, Investigator of the Criminal Investigation Directorate of the Banten Regional Police, November 12, 2025

¹²Ibid.

Juridically, the consideration of investigators at the Banten Regional Police to alternatively transfer fiduciary collateral with embezzlement in Article 372 of the Criminal Code is a deviation from the basic principle. This is based on the fact that in the case of a criminal provision which is a special criminal provision, in the sense that it more specifically regulates behavior that is actually regulated in a criminal provision, then the special criminal provision must be applied. Or in other words, the principle of criminal law, namely *Lex specialis derogate legi generalis*, applies. Therefore, based on this, theoretically the Criminal Code can no longer be applied to fiduciary collateral cases. However, in his book, Yurizal said: "If a debtor transfers the object of fiduciary collateral privately to another party, it cannot be prosecuted under the Fiduciary Law, because the fiduciary collateral agreement is invalid or legal without the creditor's knowledge and can be reported on charges of embezzlement according to Article 372 of the Criminal Code by the creditor."¹³

3.2. Law Enforcement Process Against the Transfer of Fiduciary Collateral at the Banten Regional Police

In modern society, there is reluctance/unwillingness and laziness of people to litigate through the courts, whether civil or criminal cases, or other administrative cases. Because the settlement is protracted or time-consuming, it is not uncommon to be burdened with costs, a long time and sometimes it can even cause ongoing conflict, is not responsive and accommodating and even threatens 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, so that it gives rise to models of dispute or problem resolution outside the court or known as non-litigation, peace, and others.

This is especially true in cases related to business and banking activities. Conflicting parties will prefer to resolve cases through non-litigation channels, as they offer more advantages to all parties (win-win) than litigation (win-lose).¹⁴

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 produce an accommodative agreement (win-win solution), guaranteed confidentiality of the parties, avoid delays caused by formal and administrative procedural matters, and the resolution of legal problems can be resolved comprehensively together and still maintain good relations between the two parties. Alternative Dispute Resolution

¹³Yurizal, 2015, Criminal Aspects in Law No. 42 of 1999 concerning Fiduciary Guarantees, Media Nusa Creative, Malang, p. 42

¹⁴Interview with Aipda Junjung P. Nababan, SH, Investigator of the Criminal Investigation Directorate of the Banten Regional Police, November 12, 2025.

(ADR) can be interpreted as cooperative conflict management.¹⁵ Therefore, in fact Alternative Dispute Resolution (ADR) is a dispute resolution outside the court that is carried out peacefully.

Many countries in the world have tried to develop alternative dispute resolution as an effort to reduce the heavy flow of cases entering the courts, including America, Japan, South Korea, Australia and Singapore.¹⁶²³⁴ In Indonesia, settlement through Alternative Dispute Resolution (ADR) can be found in Law Number 48 of 2009, the provisions in Article 60 state that: "Alternative dispute resolution is an institution for resolving disputes or differences of opinion through procedures agreed upon by the parties, namely settlement outside the court by means of consultation, negotiation, mediation, conciliation or self-assessment.

In Indonesia, Alternative Dispute Resolution (ADR) can only be applied in civil cases and cannot yet be applied to the settlement of criminal cases. Of course, in the future, not all criminal cases can be resolved peacefully through Alternative Dispute Resolution (ADR), and of course, its application will use the concepts and standards of justice that apply based on legislation, religious norms, morality, and customary law that apply in indigenous Indonesian communities. Furthermore, according to the Supreme Court, in general, the main forms of dispute resolution include the following:¹⁷

1. Litigation/court;
2. Arbitration;
3. *Early Neutral Evaluation*;

Law enforcement is an activity to harmonize the relationship of values outlined in the rules / views of solid values and attitudes as a series of final stage value elaboration to create, maintain and defend peace in social life. Law enforcement of criminal acts of transfer of fiduciary collateral is carried out by the police because the police are an institution that in the Criminal Procedure Code is given the authority to conduct investigations and inquiries. Investigations and inquiries are the initial understanding of the legal process in criminal cases, starting from the process handled by the police as investigative officers and investigative officers and other officers in this case are PPNS as referred to in the provisions of Article 4 of the Criminal Procedure Code.

¹⁵Rachmadi Usman, 2012, Mediation in Court in Theory and Practice, Sinar Grafika, Jakarta, p. 9.

¹⁶Ibid.

¹⁷Ketut Sumedana, 2020, Penal Mediation in a Justice System Based on Pancasila Values, First Edition, Genta Publishing, Yogyakarta, p. 13.

In handling cases regarding the transfer of fiduciary collateral at the Banten Regional Police Criminal Investigation Directorate, according to Aipda Aipda Junjung P. Nababan, this can be done in two ways, namely:¹⁸

1. Penal Means (repressive activities after a crime occurs)

Penal measures are taken after a report or complaint from the reporter (creditor) is received. In an effort to follow up on the report of the transfer of the fiduciary collateral object, the police, after receiving the report, conduct an investigation regarding the crime and summon or arrest the perpetrator (debtor) who transferred the fiduciary collateral object without credit approval. In the process of handling the case, Banten Police investigators believe that not only legal justice is achieved but there are legal benefits that can be felt by the community. Investigators in resolving the case of the transfer of fiduciary collateral can use a Restorative Justice approach which is a condition for creating justice and balance for the perpetrator of the crime and the victim themselves. In handling it after being reported, investigators provide space for the victim and perpetrator to undertake mediation efforts to resolve the problem outside the court for the benefit of the conflicting parties. This can be seen from the case of the transfer of fiduciary objects at the Banten Police in 2024 with Police Report Number: LP/B/18/I/SPKT I.DITKRIMSUS/2024/POLDA BANTEN

2. Non-Penal Means

The efforts of investigators from the Banten Regional Police's Special Criminal Investigation Directorate (Ditreskrimsus) as law enforcement officers include providing preventive counseling, educating the public about the criminal sanctions for diverting fiduciary collateral. This is to ensure the public understands the consequences of their actions and is aware of the law.

In addition, in relation to this matter, to identify the obstacles to the roles and functions carried out by the police, by using general factors that influence the law enforcement process, namely:

a. The legal factors themselves

The sanctions in Article 36 of the Fiduciary Guarantee Law are still considered unable to provide a deterrent effect because the criminal threat is 2 (two) years in prison and detention cannot be carried out during the investigation process.

b. Law enforcement factors

¹⁸Interview with Aipda Junjung P. Nababan, SH, Investigator of the Criminal Investigation Directorate of the Banten Regional Police, November 12, 2025.

Ynamely the parties who form and implement the law, that law enforcement officers are not prepared and lack understanding so that there are differences of opinion in the application of the articles applied.

c. Facilities or infrastructure factors

Inadequate budgetary support for handling cases involving the transfer of fiduciary collateral, and a lack of equipment and technology. Without these facilities, it is impossible for law enforcement to align their intended roles with their actual roles.

d. Social factors, namely the environment in which the law applies or is implemented

Lack of public awareness and understanding of the transfer of fiduciary collateral, many people do not understand that the transfer of fiduciary collateral objects enters the criminal realm, but there are some people who are aware of the act but still violate it and can be subject to criminal sanctions, people still do this because of economic factors. This is triggered because fiduciary collateral is still considered the easiest and most convenient institution to obtain additional capital that is done by everyone, because in fiduciary collateral, the transfer of a right is based on trust alone.

3.3. Implementation of Criminal Sanctions for the Transfer of Fiduciary Collateral for the Future

Law is one of the means or tools for achieving the goal of a just and prosperous society. Law is crucial in human life in society, and it is inseparable from it throughout life. Without legal regulations, chaos would ensue. It is clear that law serves to create order, justice, and legal certainty within society. Law determines what is permissible and what is not, and it applies to everyone without exception.

In connection with the enactment of Law Number 42 of 1999, this law is of great significance for financial institutions. As is well known, financial institutions, such as banks and non-banks, play a vital role in economic development in Indonesia.¹⁹ The main activity or principal activity of a bank is as a financial institution that collects funds from the public and distributes them.²⁰ Credit disbursement by banks, of course, doesn't always run smoothly as planned, so

¹⁹Riskha Amaliya Lubis and Maryanto, 2018, Outcome Measures of Non-Performing Loans on BPR Sejahtera Klaten of Central Java, *Jurnal Daulat Hukum*, Vol. 1 No. 3, Faculty of Law, Sultan Agung Islamic University, Semarang, p. 779.

²⁰Kustriyo and Aryani Witasari, 2018, Abuse of Authority in Position and Redemption of Credit Fictitious Apparatus for Civil State (ASN) PD. Bank Perekreditan Rakyat (BPR) Sumber, Cirebon District, *Jurnal Daulat Hukum*, Vol. 1 No. 3, Faculty of Law, Sultan Agung Islamic University, Semarang, p. 754.

banks must exercise caution. Banks must be prudent in granting loans to the public, and therefore must adhere to the principles of credit disbursement.²¹

Considering the important position of credit funds in the development process, it is only right that credit providers and recipients as well as 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.

Guarantees or collateral 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 of healthy credit, in addition to that the bank must also ask for collateral from the creditor. There is a debtor to ensure payment of the debtor's debt. This collateral can be in the form of movable or immovable property.

The legal function of fiduciary guarantees, as stated in the fiduciary guarantee deed, further strengthens the bank's position as a preferred creditor. This legal function will also reduce the bank's level of risk in conducting its business, as defined in the Banking Law.²²

Collateral is an object or item used as collateral for a loan. Goods are tangible objects that people use to meet their needs or to produce other goods that will meet their needs. However, with the emergence of fiduciary institutions that can provide collateral to creditors without having to hand over control of the collateral to the creditor, this has become a helpful alternative for the community, especially the lower-middle class who need credit. The owner of the goods can still control and use the goods, but they are required to hand over their ownership rights to the goods in a *constitutum possessorium* manner to the creditor.²³

Although based solely on trust, fiduciary obligations require debtors to comply with the terms of the credit agreement, including prohibitions against transferring collateral to another party without the creditor's knowledge. The creditor trusts the borrower (debtor) that the debtor will fulfill their obligation to repay the loan within the agreed timeframe.²⁴

²¹Dhika Rachmat Pratama and Amin Purnawan, 2018, Default In And Credit Agreement And Implementation Of Solution Efforts (A Case Study Of Decision 336/Pdt/G/2016/Pn. Smg), *Jurnal Daulat Hukum*, Vol. 1 No. 2, Faculty of Law, Sultan Agung Islamic University, Semarang, p. 345.

²²Tan Kamello, 2014, *Fiduciary Guarantee Law, A Desired Need, Its History, Development, and Implementation in Banking and Court Practice*, Second Edition, First Printing, Alumni, Bandung, p. 187.

²³Ibid, p. 189.

²⁴Ismail, 2011, *Banking Management, From Theory to Application*, First Edition, Second Printing, Kencana Prenada Media Group, Jakarta, pp. 94-95

Although fiduciary guarantees are regulated by law, namely Law Number 42 of 1999, in practice, legal violations often occur, committed by both debtors and creditors. These frequent violations are sometimes caused by fiduciary guarantees still being considered the easiest institution for everyone to use, because the transfer of rights is based on trust. The criminal provisions in Law Number 42 of 1999 are contained in Article 36, which states that:²⁵

A fiduciary who transfers, pawns or rents out an object which is the object of a fiduciary guarantee as referred to in Article 23 paragraph (2) without prior written consent from the fiduciary recipient shall be subject to a maximum prison sentence of 2 (two) years and a maximum fine of IDR 50,000,000 (fifty million rupiah).

In this regard, in practice, there are often legal violations committed by the fiduciary giver (debtor) which are contrary to Article 23 paragraph (2) which states: "The fiduciary giver is prohibited from transferring, pawning or renting to another party objects which are the object of fiduciary guarantees which are not inventory items, except with prior written approval from the fiduciary recipient."

Other criminal provisions, namely in Article 35 of Law Number 42 of 1999, which states that:

Any person who intentionally falsifies, changes, removes or in any way provides misleading information, which if known by one of the parties would not give rise to a Fiduciary Guarantee agreement, shall be punished with imprisonment for a minimum of 1 (one) year and a maximum of 5 (five) years and a fine of at least Rp. 10,000,000 (ten million rupiah) and a maximum of Rp. 100,000,000 (one hundred million rupiah).

There are certainly legal consequences and losses experienced by creditors due to the actions of debtors who have violated fiduciary guarantees by alienating or even transferring the object of fiduciary guarantees to other people, and even as a result of these actions, debtors can be prosecuted through criminal violations as regulated in Article 35 and Article 36 of Law Number 42 of 1999. Because there is a law that has been violated, the law in this case is Law Number 42 of 1999 must be enforced.

Law enforcement begins the moment legal regulations are created or enacted. Law enforcement is the process of making legal intentions a reality. Legal intentions are the thoughts of the legislature, formulated in legal regulations. The law enforcement process extends to lawmaking itself. The formulation of the thoughts of lawmakers is reflected in legal regulations.will also determine how law enforcement is carried out. In reality, the law enforcement process

²⁵Yurizal, 2015, Criminal Aspects in Law Number 42 of 1999 concerning Fiduciary Guarantees, Tenth Edition, Media Nusa Creative, Malang, p. 7.

culminates in its implementation by law enforcement officials,²⁶ one of them is the police.

In this case, the application of criminal sanctions for the transfer of fiduciary collateral in the future, for law enforcement in this case, it is necessary to understand the legal instruments or norms regarding the crime of transferring the transfer of fiduciary collateral objects. Likewise, literacy is needed for the public who have loans through fiduciary collateral institutions, at least that the fiduciary collateral is not yet their property because the loan has not been repaid. Therefore, if the fiduciary collateral is transferred without the creditor's consent, it is included in the elements of the crime of embezzlement as regulated in Article 372 of the Criminal Code.

4. Conclusion

1. The legal construction of the crime of fiduciary transfer is based on Law Number 42 of 1999 concerning Fiduciary Guarantees, which states that the act of transferring, pawning, or renting out fiduciary guarantee objects without the written consent of the fiduciary recipient is a criminal act. In addition, in the Criminal Code, several alternative articles can be imposed, namely those listed in Article 372 of the Criminal Code concerning Embezzlement and 378 of the Criminal Code concerning Fraud, or can be directly imposed under Articles 35 and 36 of the Law concerning Fiduciary Guarantees. 2. The law enforcement process against the act of transferring fiduciary collateral at the Banten Regional Police in handling cases against the act of transferring collateral can be done in two ways, the first is through Penal Means if a crime has occurred and the second is through Non-Penal Means by providing counseling for preventive measures, namely educating the public regarding criminal sanctions if they transfer fiduciary collateral objects.

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²⁶ Satjipto Rahardjo, 2009, Law Enforcement, A Sociological Review, First Edition, Genta Publishing, Yogyakarta, pp. 23-24.

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