

Criminalization of the Transfer of Fiduciary Guarantee Objects Without Consent: A Study Result of the Case No. 118/Pid.Sus/2024/PN Pgp

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Abstract

This research aims to examine the criminalisation aspect of the act of transferring the object of fiduciary guarantee without the written consent of the fiduciary recipient in the perspective of criminal law, with a case study of the Pangkalpinang District Court Decision Number 118/Pid.Sus/2024/PN Pgp. In this case, the defendant was sentenced to criminal punishment for transferring the vehicle which was the object of fiduciary guarantee to a third party without the consent of the financing party. The research method used in this research is normative juridical with a case approach. The results of the analysis show that the criminalisation of the act aims to provide legal protection for the financing institution, but on the other hand it raises a debate because the act of civil default is qualified as a criminal act. This study recommends the need for harmonisation between civil and criminal law in responding to violations of fiduciary agreements so as not to cause excessive criminalisation and still uphold the principle of justice.

Keywords: *Fiduciary Guarantee, Criminalisation, Legal Protection, Object Transfer.*



A. INTRODUCTION

In Indonesian consumer financing, one of the recurrent legal challenges involves the transfer of fiduciary collateral by a debtor to a third party without the fiduciary recipient's written consent. Such conduct not only generates financial losses for financing institutions but also exposes debtors to serious legal repercussions, including the possibility of criminal prosecution. For instance, in the Pangkalpinang District Court Decision No. 118/Pid.Sus/2024/PN Pgp, the defendant was sentenced to imprisonment for transferring a vehicle that had been pledged as fiduciary collateral without written authorization from PT Clipan Finance Indonesia Tbk, illustrating the severity of this violation (Simare Mare & Sidauruk, 2025). The Indonesian Fiduciary Law (Law No. 42 of 1999) explicitly regulates this matter, stipulating in Article 23(2) that the fiduciary grantor is prohibited from transferring, mortgaging, or leasing the fiduciary object without prior written approval from the fiduciary recipient, with violations subject to criminal sanctions under Article 36 (Government of Indonesia, 1999).

The case highlights the gravity of legal norm violations under Law No. 42 of 1999 on Fiduciary Guarantees, especially the interplay between Article 23(2) and Article 36. Article 23(2) categorically prohibits the fiduciary grantor from leasing, pledging, or transferring fiduciary collateral without the fiduciary recipient's written

consent (Hamka, 2023). Article 36 criminalizes such conduct by stipulating that any unauthorized transfer, pledge, or lease may result in a maximum sentence of two years' imprisonment and a fine of up to IDR 50 million (Nugroho & Hafidz, 2023). The criminalization of such breaches traditionally viewed as contractual or civil matters has sparked ongoing debate in both academic and legal practice circles regarding where to draw the line between civil disputes and criminal offenses (Subagiyo et al., 2024).

Normatively, fiduciary security operates as an auxiliary or accessory mechanism to the primary contract typically, the financing agreement rather than constituting a standalone contract. This accessory nature is particularly evident in motor vehicle financing, where the title to the financed asset is transferred in a fiduciary capacity to the creditor via a fiduciary certificate, while the debtor retains possession (McKenzie, 2025; Busro, 2019). As such, the debtor is expressly prohibited from transferring the collateral without authorization a prohibition enforced through criminalization under Article 36 of Law No. 42 of 1999, which penalizes unauthorized transfer, pledge, or lease with imprisonment and/or fines (Busro, 2019; Government of Indonesia, 1999). These unauthorized transfers frequently occur not out of malice but due to the debtor's lack of legal awareness, economic pressure, or social constraints highlighting the intersection between legal norms and the debtor's lived realities (Hamka, 2023).

The phenomenon of individuals agreeing to become so-called "name providers" permitting their names to be used in fiduciary transfer documents without understanding the legal ramifications is frequently observed in practice. This behavior stems from a combination of low legal literacy and precarious socio-economic conditions, revealing a deeply rooted sociological challenge (Wibowo, 2023). Unauthorized vehicle transfers often result not from malicious intent but from complex interwoven social, economic, and occupational relationships. Yet, many criminal court rulings tend to focus solely on the formal violation of legal norms, neglecting the nuanced sociological and relational underpinnings of such behavior (Simangunsong et al., 2024; Hirwansyah, 2023).

Within the legal community, there is ongoing debate over whether breaches of fiduciary agreements should be resolved exclusively through civil mechanisms or can be directly classified as criminal offences. From a criminological perspective, an act should only be subjected to criminalization if it adheres to the principle of *nullum crimen sine lege* that is, only acts explicitly defined as crimes by law may be punished and if it embodies the *mens rea* element, or guilty intent (Firman, 2023; IUSTUM, 2025). In many fiduciary cases, malicious intent is not clearly demonstrated; instead, criminal liability often rests solely on the act of transferring fiduciary collateral. This approach has drawn critique for potentially resulting in the over-criminalization of conduct that might be more appropriately managed within civil or financial mediation frameworks (Turno of Fiduciary enforcement; see Constitutional Court Decision clarifications) (AACC Asia, 2023).

The urgency of this research also arises from the necessity of critically evaluating the application of criminal law in the settlement of fiduciary disputes. The principle of *ultimum remedium* asserts that criminal law should only be employed as a last resort, after civil and administrative mechanisms have been exhausted; its violation occurs when every breach of a fiduciary security agreement is immediately criminalized (Yoserwan, Danil, Warman, & Yulfasni, 2019). Such premature reliance on criminal sanctions undermines the proportionality of law enforcement and risks conflating private contractual disputes with public offences. Financial institutions such as PT Clipan Finance maintain internal mechanisms including debt restructuring programs, mediation forums, and collection procedures that are designed to address debtor default prior to criminal escalation and therefore should be optimized before punitive legal measures are considered (Ardika, 2021). This tension between theoretical principles, institutional practices, and prosecutorial tendencies forms the foundation of the present study's problem formulation.

The Pangkalpinang District Court Decision No. 118/Pid.Sus/2024/PN Pgp is particularly significant because it not only demonstrates the applicability of criminal sanctions in fiduciary disputes but also sheds light on the judicial interpretation of fiduciary law, the evidentiary challenges of establishing *mens rea*, and the legal position of consumers within complex financing schemes. Examining this decision provides valuable insights into the broader development of Indonesian jurisprudence and the evaluation of legal policy in fiduciary law. More importantly, it highlights the risks of misusing criminal law as a mechanism for debt recovery rather than as a tool of last resort, raising concerns about the erosion of the *ultimum remedium* principle and the overextension of penal interventions in what are essentially contractual matters (Yoserwan et al., 2019; Subagiyo, Revita, Chalim, & Arifin, 2024).

This research is therefore not only of academic significance but also of normative and practical importance. Its central objective is to examine whether the application of criminal law is appropriate in addressing violations of fiduciary guarantee transfer provisions and whether the judiciary has effectively upheld substantive justice rather than adhering to a purely formalistic interpretation of legal norms. Such an inquiry is vital given ongoing scholarly and judicial debates about the proportionality of criminalization in private contractual disputes (Hamka, 2023). This research is expected to provide policymakers with valuable insights for improving fiduciary law regulations and considering alternative, non-criminal resolution mechanisms such as restructuring, mediation, or civil remedies that may better align with the principle of *ultimum remedium* and prevent the overextension of criminal sanctions in contractual relations (Ardika, 2021; Yoserwan, Danil, Warman, & Yulfasni, 2019).

The purpose of this research is to examine and analyze the criminalization of acts involving the transfer of fiduciary collateral objects without permission. Furthermore, the study aims to explore the specific forms of criminal responsibility imposed on perpetrators who transfer fiduciary collateral without obtaining the written consent of the fiduciary recipient.

B. METHOD

This study is a normative legal analysis that seeks to evaluate the implementation of positive legal norms regarding the criminalisation of the transfer of fiduciary collateral objects without consent. It is conducted through a case study of court decisions. In order to analyse Decision Number 118/Pid.Sus/2024/PN Pgp and the provisions in Law Number 42 of 1999 concerning Fiduciary Security as primary legal materials, the statute approach and the case approach are employed. In this investigation, the data sources include primary legal materials (laws, court decisions), secondary legal materials (legal literature, scientific periodicals, previous research), and tertiary legal materials (legal dictionaries and legal encyclopaedias). Data collection was conducted through library research, which involved the examination of pertinent legal documents and scientific works. Data analysis was conducted using normative qualitative analysis, which entails the interpretation of legal norms and their correlation with the legal facts in the case to generate logical and systematic legal arguments.

C. RESULTS AND DISCUSSION

1. Criminalization of the Act of Transferring Fiduciary Guarantee Objects without Permission

In an effort to fortify the legal protection of creditors within the financing system, legislators have criminalised the act of transferring the object of fiduciary collateral without the written consent of the fiduciary recipient. Within the framework of Law Number 42 of 1999 concerning Fiduciary Guarantees, specifically Article 36 in conjunction with Article 23 paragraph (2), it is stated that such actions constitute a criminal offence penalised by imprisonment and/or penalties (Government of Indonesia, 1999; Supiyadi, 2020). Nevertheless, despite the normative clarity of the prohibition and its sanctions, there is a debate as to whether this criminalisation truly reflects the principle of legal justice, particularly in the practice of criminal justice in Indonesia, which continues to encounter challenges in terms of substance, structure, and legal culture (Adhari, 2021).

In this context, legal justice must be comprehended in its entirety, not solely as the textual application of the law, but also as an endeavour to balance the protection of victims or creditors with the fair treatment of the perpetrator, in this case, the debtor. This principle is consistent with the concept of substantive justice, which posits that the law should not rely solely on a legalistic-formal approach, but should also be capable of reflecting the social context and motivations behind an action (Yoserwan, Danil, Warman, & Yulfasni, 2019).

The issue in the context of the transfer of fiduciary collateral is frequently not merely malicious intent to damage the financing party, but rather economic backgrounds, social relations, and even contractual misunderstandings that motivate such actions. In Case Decision No. 118/Pid.Sus/2024/PN Pgp, the defendant Mukhlison transferred the vehicle that was the subject of fiduciary collateral to a third party without the sanction of PT. Clipan Finance. This serves as a concrete illustration

of this. Nevertheless, the defendant maintains that the third party was the one who initially utilised the vehicle and that he only provided his identity in the credit application. If this is the case, has the criminalisation and sentencing of Mukhlison been wholly fair? This illustrates the tension between strict statutory enforcement and the socio-economic realities of debtors (Hamka, 2023).

In practice, the criminal law approach employed in this case demonstrates the positivistic paradigm's dominance in Indonesian law enforcement. Judges strictly adhere to the formulation of norms and formal facts that have been proven in court, while the social, economic, or relational context of the perpetrator is often disregarded as a primary factor. Nevertheless, modern criminal law literature elucidates that legal justice is not obtained solely by adhering to the text of the law; it must also incorporate the principles of proportionality, individual culpability, and restorative justice (Subagiyo, Revita, Chalim, & Arifin, 2024). The criminalisation of acts of default or contractual breaches, such as this one, can result in "over-criminalization," which can erode public confidence in the formal legal system (Yoserwan et al., 2019).

The criminalisation of fiduciary transfers has been criticised on the grounds that such actions essentially constitute breaches of civil agreements, rather than inherently criminal behaviour. According to the principle of *ultimum remedium*, criminal law should only be invoked when other legal mechanisms are ineffective or insufficient (Yoserwan et al., 2019). Creditors in fiduciary cases already possess civil recovery pathways, such as the execution of guarantees through court proceedings or public auctions (Fitriana, 2023). Yet, concerns persist that the criminal process is increasingly employed as a debt collection mechanism, rather than as an instrument for achieving justice, when criminal sanctions are prioritised (Ardika, 2021).

Financing companies frequently exploit this approach, leveraging their legal expertise and institutional relationships with law enforcement agencies to reframe breaches of contract as criminal acts. Such practices undermine the principles of human rights and equality before the law, exposing debtors especially those from lower- and middle-income backgrounds to criminalisation for financial difficulties that may reasonably be attributed to economic or social conditions (Hamka, 2023).

In addition, the failure of law enforcement to adequately examine the presence of *mens rea* raises significant concerns about procedural justice. In many cases, such as the Mukhlison decision, intent is inferred solely from the fact of transfer without consent, disregarding possible explanations such as economic hardship, lack of legal literacy, or pre-existing social relationships with third parties (Subagiyo, Revita, Chalim, & Arifin, 2024). In line with modern criminal law theory, the application of criminal liability should be rejected in the absence of demonstrable malicious intent (*dolus malus*) (Adhari, 2021).

Nevertheless, from the standpoint of creditor protection, criminal sanctions under the Fiduciary Security Law provide a strong measure of legal certainty. Finance companies often express greater confidence in extending credit because the law grants them a legal basis to pursue criminal charges when collateral is misused (Supiyadi, 2020). In this respect, criminalisation has a deterrent effect, discouraging fraudulent

conduct by irresponsible debtors. However, while criminalisation remains an important safeguard for the financing industry, it must be implemented prudently so as not to equate all contractual breaches with criminal offences (Yoserwan et al., 2019).

The fundamental question that arises is how courts can reconcile the pursuit of justice for debtors with the protection of creditors' legal rights. In this regard, it is crucial to adopt a progressive criminal law paradigm that regards the law not only as a means of social control but also as an instrument for safeguarding human dignity and facilitating social reconstruction (Muladi, 1995; Satriawan, 2022). Judges, therefore, should not serve merely as "mouthpieces of the law," rigidly applying statutory provisions, but must act as active interpreters who appreciate the sociological realities underlying fiduciary disputes (Hamka, 2023).

One alternative solution is the adoption of restorative justice mechanisms. For instance, a structured mediation process involving the debtor, the creditor, and potentially a neutral third party could be initiated in cases of fiduciary transfers before escalation to the criminal domain. If the parties successfully reach an agreement regarding restitution of the vehicle or settlement of outstanding obligations, criminal proceedings may be suspended. This approach not only enhances efficiency but also humanises the resolution process, in line with restorative justice principles increasingly embraced within Indonesia's legal framework, particularly following the enactment of Law No. 1 of 2023 on the National Criminal Code (*Kitab Undang-Undang Hukum Pidana Nasional*) (Hiariej, 2023; Marzuki, 2023).

From this perspective, the criminalisation of fiduciary transfers without consent does not yet fully embody the notion of legal justice within Indonesian criminal practice. The socio-economic background of debtors is frequently overlooked, while judicial reasoning remains heavily formalistic. Thus, strengthening the judiciary's role in substantive interpretation of norms is imperative, alongside establishing non-criminal resolution mechanisms founded on alternative dispute resolution and restorative justice. Ultimately, Indonesia's legal system must transition from a predominantly retributive orientation toward a corrective and rehabilitative approach, particularly in cases involving fiduciary guarantees and contractual obligations (Ardika, 2021; Subagiyo, Revita, Chalim, & Arifin, 2024).

2. Forms of Criminal Liability for Perpetrators Who Transfer the Object of Fiduciary Guarantee without Written Consent from the Fiduciary Recipient.

The act of transferring fiduciary collateral without the written consent of the fiduciary recipient is explicitly prohibited under Indonesian law. Law No. 42 of 1999 on Fiduciary Guarantees, Article 36, clearly stipulates that "The Fiduciary Grantor who transfers, pledges, or rents out the object of the Fiduciary Guarantee as referred to in Article 23 paragraph (2) without the prior written consent of the Fiduciary Recipient shall be punished with imprisonment for a maximum of two years and a fine of up to fifty million rupiah" (Government of Indonesia, 1999). Normatively, this provision indicates that a debtor who transfers fiduciary objects without such assent

fulfills the statutory elements of the offence and may therefore be held criminally liable (Supiyadi, 2020).

To properly establish the scope of criminal liability in this context, it is necessary to first understand the concept of criminal liability in Indonesian criminal law. Criminal liability is the legal consequence imposed on an offender whose conduct meets the elements of a crime, provided the individual is deemed legally responsible (Moeljatno, 2019/2008). In general, three essential conditions underpin the imposition of liability: the existence of an unlawful act (*actus reus*), the presence of culpability or guilty mind (*mens rea*), and the absence of grounds for justification or excuse (Simanjuntak, 2021). The element of *mens rea* is established where the perpetrator acts with intent or, at minimum, knowledge that the transfer of the fiduciary object is unlawful. Meanwhile, the *actus reus* element is satisfied by the actual act of transferring, pledging, or selling the collateral without authorisation, thereby fulfilling the criminal elements stipulated under Article 36 (Hamka, 2023).

The Pangkalpinang District Court's Decision No. 118/Pid.Sus/2024/PN Pgp constitutes a significant precedent for understanding the application of criminal liability under Article 36 of the Fiduciary Security Law. In this case, the defendant, Mukhlison, was adjudged guilty of transferring a vehicle secured under a fiduciary agreement to a third party without the knowledge and written consent of the creditor, PT. Clipan Finance Bangka Tengah Branch. The court concluded beyond reasonable doubt that the defendant's actions satisfied the elements of the offence, notwithstanding his claim that the vehicle was actually used by another individual and that he merely lent his name during the credit application process. The panel of judges emphasised that legal culpability rested on the defendant's formal status as the registered debtor and fiduciary grantor (Subagiyo, Revita, Chalim, & Arifin, 2024).

In their legal reasoning, the judges gave precedence to the objective aspects of the fiduciary agreement, particularly the contractual identity of the fiduciary grantor and grantee as evidenced in the fiduciary certificate. The defendant could not be exempted from liability by asserting that the vehicle was used or controlled by another party, since he had lawfully signed the financing contract and the fiduciary certificate. Within the framework of Indonesian positive law, this demonstrates that criminal liability under Article 36 is personal and non-transferable, even in the presence of third-party influence within the contractual relationship (Hamka, 2023).

Simultaneously, the imposition of criminal penalties reinforces the protection norms afforded to creditors. The fiduciary institution, designed as a substitute for property-based guarantees in Indonesian law, provides creditors with a privileged legal position, including the right to direct execution in cases of default (Government of Indonesia, 1999). Criminal provisions under Article 36 serve not only a punitive function but also a preventive one, deterring debtors from misappropriating collateral and thereby safeguarding creditors from potential financial losses (Supiyadi, 2020).

In both legal practice and academic discourse, it is imperative to undertake a more thorough assessment of the *mens rea* dimension in determining criminal liability for fiduciary violations. The transfer of fiduciary objects should not be automatically

punishable; judges must weigh additional factors, including the perpetrator's legal literacy, economic necessity, or coercion by third parties (Hamka, 2023). In this regard, adjudicators must distinguish between acts motivated by malicious intent to inflict harm and those arising from ignorance or negligence.

In criminal law theory, this distinction reflects the significance of differentiating *dolus* (intent) from *culpa* (negligence), with liability hinging on the fair evaluation of subjective circumstances (Simanjuntak, 2021). Failure to consider these circumstances risks excessive criminalisation, where contractual defaults are treated as crimes without sufficient proof of malevolent intent. Judges, therefore, have a duty to evaluate trial evidence holistically, rather than confining their analysis to the formal aspects of fiduciary documentation (Ardika, 2021).

The trajectory of Indonesian jurisprudence shows that in many cases, the unauthorised transfer of fiduciary objects is interpreted as a civil breach of contract, resolvable through litigation or internal mediation between debtor and creditor (Fitriana, 2023). However, where deception, manipulation, or data forgery is evident such as deliberately involving third parties to evade contractual obligations criminal sanctions are deemed appropriate. This was illustrated in the Mukhlison case, in which the vehicle was transferred to an unregistered individual who subsequently absconded, inflicting substantial financial losses on the financing company (Subagiyo, Revita, Chalim, & Arifin, 2024).

Accordingly, it may be inferred that criminal liability for transferring fiduciary objects without the creditor's written consent is normatively embodied in imprisonment and/or fines as prescribed by Article 36 of the Fiduciary Guarantee Law (Government of Indonesia, 1999). Liability remains personal, attached to the registered fiduciary grantor, regardless of third-party involvement. Yet, in judicial practice, courts often emphasise the mere occurrence of the transfer rather than examining exculpatory grounds such as ignorance, coercion, or factual error. Thus, strengthening the application of this norm through restorative justice and raising public awareness about the legal consequences of fiduciary agreements are critical to achieving a more equitable legal balance (Marzuki, 2023).

D. CONCLUSION

This research has two significant conclusions, as indicated by the analysis that has been provided. Initially, the transfer of fiduciary collateral without the written consent of the fiduciary recipient is a form of law enforcement that is based on the provisions of Article 36 in conjunction with Article 23 paragraph (2) of Law Number 42 of 1999 concerning Fiduciary Guarantees. The perpetrator is subject to criminal liability. Criminal liability is personal and is ascribed to the party who is legally designated as the fiduciary giver in judicial practice, as demonstrated in Decision No. 118/Pid.Sus/2024/PN Pgp, irrespective of who factually controls the object of the guarantee. This accountability is demonstrated through imprisonment and/or penalties, which are intended to serve as a deterrent and safeguard creditors in their capacity as fiduciary recipients.

Secondly, the criminalisation of the transfer of fiduciary objects without consent does not fully illustrate the principle of legal justice in the practice of criminal justice in Indonesia. This is due to the fact that its application tends to emphasise formal and legalistic aspects without taking into account the social background, economic motives, or legal ignorance of the perpetrator. This creates the possibility of over criminalizing actions that should be resolved through civil mechanisms or alternative dispute resolution. As a result, it is imperative to further develop a substantive and restorative justice approach to ensure that the law enforcement process in fiduciary matters not only provides legal certainty but also ensures proportional justice for all parties.

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