

Law Enforcement Against the Crime of Embezzlement of Fiduciary Guarantees

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Abstract

This research has the purpose of reviewing and knowing the process of investigation, investigation and obstacles as well as solutions in the process of law enforcement of fiduciary crimes. This study uses a sociological juridical approach, because in this study it identifies and conceptualizes law as a real and functional social institution in real life. Based on the research, it can be concluded that in the process of law enforcement the criminal act of embezzlement of fiduciary guarantees in today's developments is affected by the community's need for motorized vehicles more and more and more and more unlimited. For example, financial institutions (banks, leasing, etc.) these financial institutions have a very large role in meeting human needs by way of credit or installments.

Keywords: Law enforcement, criminal acts of embezzlement, fiduciary guarantees.

1. Introduction

The Unitary State of the Republic of Indonesia is one of the big countries that prioritizes applicable legal provisions. The positive rule of law that applies in Indonesia is clearly an important component in building a safe, peaceful and peaceful life.¹As in the Constitution of the Republic of Indonesia, namely the 1945 Constitution of the Republic of Indonesia, which has confirmed that Indonesia is a state of law, this phrase is contained in Article 1 paragraph 3 of the 1945 Constitution of the Republic of Indonesia. with the will of the law. The fourth paragraph of the Preamble to the 1945 Constitution which is the constitutional basis of this country states that one of the goals of the state is to create general welfare and educate the nation's life.²

The Indonesian state which stands on a legal footing to regulate the life of the nation and state. In the theory and practice of the state, we recognize the concept of a state of law "Rechtstaat", the concept of a state of law "Rule of Law", the concept of a state of law "Religy Legality" and "Islamic Nomocracy", the concept of a state of law "Socialist Legality", and for the Unitary State of the Republic of Indonesia. Indonesia is based on the concept of "State of law based on Pancasila".³ Law enforcement is part of

¹Sumaryono and Sri Kusriyah. (2020). The Criminal Enforcement of the Fraud Mode of Multiple Money (Case study Decision No.61 / Pid.B / 2019 / PN.Blora), Jurnal Daulat Hukum: 3 (1), url: <http://jurnal.unissula.ac.id/index.php/RH/article/view/8811/4075>

²Sulistiyawan Doni Ardiyanto, Eko Soponyono, and Achmad Sulchan. (2020). Judgment Considerations Policy in Decree of the Court Criminal Statement Based On Criminal Destination, Jurnal Daulat Hukum: 3(1), url: <http://jurnal.unissula.ac.id/index.php/RH/article/view/8409/4067>

³Aloysius R. Either, Indonesia is a State of Law Based on Pancasila, Faculty of Law, Semarang State University, Volume 2 Number 1 Year 2016, p. 533

the behavior carried out by law enforcement officers. Law enforcement is aimed at improving order and legal certainty in society⁴

In addition to the rule of law, Indonesia is also a country that upholds human rights, including children's rights, which are marked by guarantees for the protection and fulfillment of children's rights in the 1945 Constitution of the Republic of Indonesia and several provisions of laws and regulations both national and international.⁵The concrete form of the Government in providing protection to everyone, especially to children as regulated in Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia, namely "Everyone has the right to recognition, guarantee, protection, and fair legal certainty and equal treatment before the law" and Article 28B paragraph (2) of the 1945 Constitution of the Republic of Indonesia, namely "Every child has the right to survive, grow, and develop and has the right to protection from violence and discrimination".⁶

Fiduciary is one form of guarantee that exists in Indonesian legal arrangements, where in Indonesian law it is known that there are individual guarantees and material guarantees. attached to and following the object in question. Meanwhile, individual guarantees do not give rights to certain objects, but are only guaranteed by one's assets through the person who guarantees the fulfillment of the engagement in question.⁷

Fiduciary means trust. According to Subekti, the word fiduciary means "in trust" is intended to trust reciprocally given by one party to another, that what comes out is seen as a transfer of property, in fact it is only a guarantee for a debt.⁸The understanding given by Subekti can be interpreted that fiduciary is a trust given reciprocally from the parties which looks like a transfer of rights, but is actually only in the form of a guarantee for a debt.

In Indonesia, fiduciary guarantees continue to grow, considering the enormous and increasing needs of the community in financing the business world for the availability of funds from banks using fiduciary guarantees as guarantees for repayment of debtors' debts. Even so, the reality in the course of a credit is not always in accordance with the credit agreement, ranging from inaccurate prestatie ability calculations and other obstacles/disasters that arise in the course of a credit making creditors default to pledging the object of fiduciary guarantees and even selling them to other people without approval. in writing from the debtor/fiduciary recipient, Another cause of this incident is because the debtor does not understand the fiduciary laws and regulations even though his intention to pawn/sell the object of the fiduciary

⁴ Sanyoto. Law Enforcement in Indonesia, Journal of Legal Dynamics, Vol.8 No.3, September 2008:199-204.

⁵Ari Yudistira and Widayati. (2021). The Investigation Process of Prospective Children in Criminal Action, Jurnal Daulat Hukum: 4 (1), url: <http://jurnal.unissula.ac.id/index.php/RH/article/view/13695/5374>

⁶Didi Wahyudi Sunansyah, and Aryani Wirasari. (2020). Effectiveness Of Allotment Penalty Imposed By Judge In The Case Of Children For A Child Protection As Victims(Case Study at StateCourt of Source),Jurnal Daulat Hukum: 3 (1), url : <http://jurnal.unissula.ac.id/index.php/RH/article/view/8483/3939>

⁷Salim HS., 2004, Development of Guarantee Law in Indonesia, PT. Raja Grafindo Persada, Jakarta, p. 23.

⁸Abdul R. Saliman, 2011, Business Law for Companies, Prenada Media Group, Jakarta, 2011, p. 38-39

guarantee is to pay/pay off his debts, but this is not at all justified by the fiduciary laws. Therefore, it needs to be balanced with effective law enforcement against criminal acts of embezzlement of fiduciary guarantees

From the things described above, the author's intention arises to establish the purpose of writing, namely to study and analyze law enforcement against criminal acts of embezzlement of fiduciary guarantees..

2. Methods

To conduct an assessment in this writing, the author uses a sociological juridical method. The specifications of the writing were carried out using a descriptive analytical approach. The data used for this writing are primary data and secondary data. To obtain the data in this paper, the primary data collection method was used through interviews and secondary data collection obtained from literature books, laws and regulations, as well as the opinions of legal experts. The data that has been obtained is then analyzed by qualitative analysis.

3. Results and Discussion

3.1 Law enforcement against the crime of embezzlement of fiduciary guarantees at the Kendal Police.

The process of law enforcement by the Indonesian National Police is carried out by conducting investigations and investigations into reports of alleged criminal acts. Based on PERKAPOLRI No. 06 of 2019 concerning the investigation of criminal acts, regulates the investigation and investigation, as follows:

1. INVESTIGATION is a series of actions by an investigator to seek and find an event that is suspected of being a criminal act in order to determine whether or not an investigation can be carried out according to the method regulated by law. The investigation was carried out based on:
 - a. reports and or complaints. And
 - b. investigation warrant.
2. INVESTIGATION is a series of actions by an investigator in terms of and according to the method regulated by law to seek and collect evidence with which evidence makes light of the criminal act that occurred and in order to find the suspect.

In the process of law enforcement of criminal acts of embezzlement of fiduciary guarantees in today's developments, it is affected by the needs of the community which are increasing and increasingly not limited to financial institutions (banks, leasing, etc.) these financial institutions have a very large role in fulfilling human needs by way of credit. or installments. but along with the development of these times, many cases of fiduciary crimes regarding the transfer of ownership rights, which are not in accordance with the provisions of law number 42 of 1999 concerning fiduciary guarantees must be with written approval by the fiduciary recipient (creditor).

As well as the obstacles that often occur in the process of investigation and investigation of criminal acts of fiduciary embezzlement is the legality of the fiduciary deed which should have been registered with the Ministry of Law and Human Rights no later than 30 (thirty) days from the date of making the fiduciary guarantee deed (according to Article 4 PP No. 21 of 2015) as well as the existence of fiduciary and fiduciary guarantee providers who are no longer in accordance with the registration address so that it slows down the process of investigation and investigation in an effort to enforce the law of criminal acts of fiduciary security at the Kendal Police. As well as determining the determination of criminal events to carry out the application of the articles in the laws and regulations that they do.

In enforcement. According to Andi Hamzah's theory, to enforce criminal law must go through several stages which are seen as a rational effort or process that is deliberately planned to achieve a certain goal which is a chain of activities that does not include originating from values and leads to criminal and sentencing. ⁹At the application stage, the law enforcement process by applying Law no. 42 of 1999 concerning fiduciary guarantees Article 36 embezzlement of fiduciary guarantees in an effort to enforce the law against criminal acts of embezzlement of fiduciary guarantees must also see Article 35 (forgery) of Law no. 42 of 1999 concerning fiduciary guarantees and Article 372 of the Criminal Code concerning embezzlement and 378 concerning fraud. So that the law enforcement process for the disclosure of all existing crimes will be appropriate and in accordance with the purpose of the law, namely to provide certainty, benefit and justice.

As an example of the case that the author took as an example of law enforcement on suspicion of embezzlement of fiduciary guarantees at the Kendal Police, which was reported by PT. Bank Perkreditan Rakyat Nusamba Cepiring Kendal:

There have been allegations of embezzlement by the fiduciary/debtor/customer of PT. BPR Nusamba Cepiring named SITI AROFAH, based on credit agreement No: 140/SPK/NC-PST/IX/2020 and based on a fiduciary guarantee deed by notary Kartika Trisna Wahyu SH,M,Kn. Number : 42 and registered fiduciary guarantee certificate Number : W13.00654711.AH.05.01. year 2020 on 26-10-2020. Hereby the fiduciary giver provides a fiduciary guarantee to the fiduciary recipient PT.BPR Nusamba Cepiring Kendal to guarantee the repayment of the fiduciary debt of Rp. 60,000,000,. (sixty million rupiah). With a guarantee value of Rp. 90,000,000,. (Ninety million rupiah). The object of the fiduciary guarantee is as stated in the Deed number 42, dated 30 September 2020 made by Notary Kartika Trisna Wahyu, SH.M.Kn. in the form of a 4-wheeled car. Kind of car : Passenger Car, Brand : HONDA BRIO SATYA 1.2 E CVT CKD. Type/model MPNP/MINIBUS, year : 2017. Frame Number : MHRDD1850HJ703459. Engine Number : L12B31845901. Fuel: Gasoline. Color: Metallic Steel Grey. Police Number : H-9289-KD based on BPKB Number : N-02021291 on behalf of : JFR. SOEGITO SIGIT PRAJITNO obtained by the fiduciary from the sale and purchase transaction as evidently from the sale and purchase receipt. The lapse of time the fiduciary

⁹ Andi Hamza. 1994. Criminal Law Enforcement Issues. Jakarta. page 21

giver experiences credit arrears and is due so that the collectibility of the debtor's credit is jammed until the fiduciary recipient asks the fiduciary giver to voluntarily so that the object of the fiduciary guarantee is handed over to the fiduciary recipient as an effort to settle the credit of the fiduciary giver. But because this was not done by the fiduciary giver and it turned out that the object of the fiduciary guarantee at that time was not under his control but was under the control of the JFR. SOEGITO SIGIT PRAJITNO, the fiduciary recipient filed a Simple Lawsuit at the Kendal District Court with case register number 11/Pdt.GS/2022/PN Kdl and was won by the fiduciary recipient because the fiduciary giver still has not been able to complete his credit and cannot show and submit the object of the fiduciary guarantee in full. voluntarily, the fiduciary recipient makes a police report at the Kendal Police regarding embezzlement of fiduciary guarantees.

3.2 Obstacles and solutions in law enforcement against the crime of embezzlement of fiduciary guarantees at the Kendal Police.

Observation means a careful review of the activity of a process or object with the intention of feeling and then understanding the knowledge of a phenomenon based on previously known knowledge and ideas, to obtain the information needed to continue a research.

In this study, the author makes observations on the law, namely Law No. 42 of 1999 concerning fiduciary guarantees and makes observations on community developments to find out obstacles in achieving law enforcement effectiveness against criminal acts of embezzlement of fiduciary guarantees, with the following results:

The need for legal effectiveness in law enforcement against fiduciary crimes in order to minimize and eliminate obstacles that arise in law enforcement of embezzlement of fiduciary guarantees. According to Soerjono Soekanto's theory of legal effectiveness, that whether or not the law is effective is determined by the following factors:¹⁰

The increasing cases of embezzlement of fiduciary guarantees that enter and are processed at the Kendal Police are affected by legal factors, Law No. 42 of 1999 concerning Fiduciary Guarantees has clearly regulated criminal sanctions against embezzlement of fiduciary guarantees, but the criminal sanctions are considered light enough to only be sentenced to a maximum of 2 (two) years.) years and the verdict obtained by the defendant was felt to be too light, not to mention the existence of clemency when carrying out a crime which made the perpetrator less deterrent. And before the decision of the Constitutional Court number 71/PUU-XIX/2021 there was no binding legal protection and certainty regarding the execution of fiduciary guarantees as long as it was not interpreted as a "district court" by canceling the phrase "authorized party" in the explanation of Article 30 of the Fiduciary Guarantee Law.

Next is the community factor, people in rural areas who still use barter culture, etc., even though it is done to pay/pay off their debts, but this is not at all justified by

¹⁰Soerjono Soekanto, Factors Affecting Law Enforcement, PT Raja Grafindo Persada. Jakarta, 2008, page 8.

Law No. 42 of 1999 because it did not get written permission from the recipient. fiduciary.

Based on these obstacles, conclusions can be drawn:

To address these obstacles. Kendal Police Police in obtaining effectiveness in carrying out law enforcement for fiduciary crimes in the Kendal district jurisdiction must make new, effective, fast and precise efforts as a solution to various forms of law enforcement obstacles that often occur in law enforcement of criminal acts, especially law enforcement embezzlement of guarantees. Fiduciary examples that have been carried out are: carrying out patrols and raids on motorized vehicles and taking precautions by making warning boards that are expected to open the horizons of fiduciary recipients that there is a criminal threat in the act of embezzling fiduciary objects carried out without the fiduciary recipient's permission. ,

4. Closing

In the process of law enforcement, criminal acts of embezzlement of fiduciary guarantees in today's developments are affected by the increasing number of people's needs for motorized vehicles and increasingly unlimited. For example, financial institutions (banks, leasing, etc.) these financial institutions have a very large role in meeting human needs by way of credit or installments. but along with the development of these times, many cases of fiduciary crimes regarding the transfer of ownership rights, which are not in accordance with the provisions of law number 42 of 1999 concerning fiduciary guarantees must be with written approval by the fiduciary recipient (creditor). And based on PERPOL No. 08 of 2021 concerning Handling of Crimes based on Restorative Justice and having fulfilled all the requirements between the two parties, this case is resolved through Restorative Justice efforts. The obstacle that often occurs in the process of investigation and investigation of criminal acts of fiduciary embezzlement is the legality of the fiduciary deed which should have been registered with the Ministry of Law and Human Rights no later than 30 (thirty) days from the date of making the fiduciary guarantee deed (according to Article 4 PP No. 21 of 2015) and the existence of fiduciary and fiduciary guarantee providers who are no longer in accordance with the registration address so that it slows down the process of investigation and investigation in an effort to enforce the law of criminal acts of fiduciary security at the Kendal Police. And the best solution by looking at the barriers to the cultural factors of the community is through Restorative Justice in Police Regulation no. 8 of 2021 as a settlement effort with the absolute condition that the suspect will not repeat the crime of embezzling fiduciary guarantees again and the parties are mutually beneficial and the community responds positively as an example of the " exchange bolster " culture in village communities whose purpose is to pay off their debts because they do not know about the existence of fiduciary laws that do not justify this except with written approval by the fiduciary recipient.

In order to encourage law enforcement of fiduciary crimes, it is necessary to take several actions, while the suggestions from the author are: 1). Financial institutions must comply with Article 4 of PP No. 21 of 2015 concerning the deadline for registration of fiduciary deeds in order to create legal certainty and justice as well

as legal benefits for fiduciary givers and fiduciary recipients so that they can create a sense of security in social life so that the law enforcement process carried out at the police level can be carried out effectively, quickly and precisely. And must make new efforts that are more effective, fast and precise as prevention and guidance to debtors so that fiduciary crimes do not occur. 2).

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