

Action criminal embezzlement object guarantee fiduciary duties carried out by Debtor

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ABSTRACT

This study aims to analyze the legal protection for creditors who become victims of the criminal act of embezzling fiduciary collateral by the debtor. In practice, debtors often transfer or pledge fiduciary collateral without the creditor's consent, which can potentially harm the creditor. The research questions in this study are how the criminal act of embezzling fiduciary collateral occurs and what legal protection is provided to creditors. The research method used is a normative juridical approach, analyzing Law No. 42 of 1999 on Fiduciary Security, as well as related court decisions. The results show that although the Fiduciary Security Law provides protection through the registration of collateral and fiduciary certificates with executive power, there are still obstacles in its implementation, especially when the debtor commits embezzlement. Legal protection for creditors can be pursued through criminal legal action based on the provisions in the Fiduciary Security Law and the Criminal Code (KUHP). This study suggests the need for tighter supervision by creditors and increased public understanding of rights and obligations in fiduciary agreements.

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1. INTRODUCTION

In practice social, bond guarantee fiduciary appear with the beginning contract loan between creditors and debtors. The existence of an agreement bond guarantee fiduciary aiming as step prevention for party creditors if debtor No can fulfil obligations. Agreement this made for ensure fulfillment obligations that have been agreed in contract loan. Obligation for divert right on goods to the other party shows that agreement the nature materiality (substantive).

Guarantee fiduciary appear when there is debt agreement bound by agreement fiduciary. Guarantee fiduciary nature accessories, which means agreement guarantee the depends on the agreement basically. Agreement the main point in question is debt- receivable transactions with existence guarantee for anticipate possibility debtor fail pay or for guard interest creditors.

Guarantee Institution Fiduciary is not matter new, because Already There is since the Dutch colonial era. The difference with the past is formerly based on jurisprudence and has not set up in law. In Indonesia, the form guarantee This start applicable since September 30, 1999, as set up in Law no. 42 of 1999. In 1999, regarding Guarantee Fiduciary, State Institution No. 168, Supplement State Gazette Number 3889 (hereinafter called as UUJF), institution This founded with objective give protection law to consumer in the process of giving credit. Based on Article 1 Number 1 of the JF

Law, it is explained that: " Fiduciary is transfer right ownership on a goods based on trust with provision that the right thing his ownership moved the still is at in mastery owner goods the."

There is case related crimes with Embezzlement of Ojek Guarantee Fiduciary carried out by Brother Sugma Budiman Suprpto.who sentenced eight month imprisonment and a fine of Rp. 3,000,000.00 by the Panel of Judges at the District Court (PN) of the city of Pangkalpinang. The Defendant stated proven guilty on action pawn the thing that becomes Objects guarantee Fiduciary to party others, namely none other than PT. BFI which without to the best of my knowledge PT.BFI Pangkalpinang himself. The defendant was sentenced sentence on November 9, 2020 at the Pangkalpinang District Court (PN). With provisions, if fine No paid replaced with criminal confinement addition for 1 (one) month. The defendant proven has embezzle the Ayla car, which was moved hand over without to the best of my knowledge PT. BFI. So that PT. BFI reported case This to the Bangka Belitung Regional Police in May 2020.

History of development the leasing industry in Indonesia started in 1974 with publication Joint Decree of the Minister of Finance, Minister of Industry, and Minister of Trade of the Republic of Indonesia. Although has There is for twenty year Lastly, regulation official for leasing still Not yet there is, and settings follow regulations set by Bank Indonesia.

2. METHOD

2.1 Type Study

Type Study This use method approach legal normative (Budianto, 2020), approach legal normative is method research that focuses on the study material literature or secondary data like regulation legislation, doctrine law, and decisions court. In the context of study this, method this used for analyze protection law for creditors in face act criminal embezzlement object guarantee fiduciary carried out by the debtor. Research this aiming for to study conformity applicable regulations, with its implementation in the field as well as How regulation the capable give protection effective law for creditors in situation embezzlement object guarantee by the debtor.

2.2 Approach Study

Study This use approach statute approach to analyze provision applicable law in regulation related, and approach studies case study approach for investigate in a way deep phenomenon the law that occurs in context specific cases, in order to to obtain better understanding comprehensive about the problem being studied.

2.2.1 Approach statute approach

Approach legislation (statute approach), according to Baldwin et al., 2011 is the method used with to examine all over regulation relevant legislation and regulations with issue the law in progress discussed. In the research this, approach this used for to study provision the law that governs guarantee fiduciary. Approach this aiming for evaluate to what extent are the existing regulations can protect rights creditors from act criminal embezzlement object guarantee by the debtor as well as for find gap law that can fixed use increase effectiveness protection law.

2.2.2 Case Study Approach

According to Ellinger et al., 2005, the approach studies case is a research strategy used for investigate in a way deep a phenomena, events, or case certain in context real. This method aiming for to obtain comprehensive understanding with collect data from various sources, such as interviews, observations, documents, and artifacts, so that produce comprehensive and in - depth picture about object of research.

2.3 Data source

Hamzani et al., 2023 explain that study law normative is type research conducted with to study material literature or secondary data, such as regulation legislation, doctrine law, and decisions court. This method relevant for analyze protection law in context guarantee fiduciary, with focus on existing regulations for protect right creditors in face embezzlement object guarantee by the debtor.

2.3.1 Primary Legal Materials

In research about protection law for creditors related act criminal embezzlement object guarantee fiduciary by the debtor, some relevant laws as material Primary laws include:

- a. Constitution Number 42 of 1999 concerning Guarantee Fiduciary

Constitution This arrange about guarantee fiduciary, including rights and obligations creditors and debtors, as well as procedure execution guarantee fiduciary. Article 15 paragraph (2) states that

deed guarantee fiduciary who has registered at the office registration fiduciary own strength same executive with decision the court that has powerful law still.

b. Criminal Code (KUHP) Article 372

This article arrange about act criminal embezzlement, namely action control goods delivered to self Alone or other people with Meaning for control goods the in a way oppose law.

c. Criminal Code (KUHP) Article 374

This article arrange about embezzlement with weighting, namely embezzlement committed by a person who has control to goods due to Because there is connection Work or Because disbursement or Because get wages for that.

2.3.2 Secondary Legal Materials

Legal materials secondary is material the law that covers books, journals, doctrines, and writings of experts that discuss principles base law or principle law. This material functioning as Supporter in understand and interpret material primary law and give perspective addition in study law .

2.3.3 Tertiary Legal Materials

Legal materials tertiary is materials that provide instruction or explanation about material primary and secondary laws, such as dictionary law, dictionary language, encyclopedia general, and encyclopedia law. This material used For to clarify term or draft relevant laws in study .

2.4 Procedure Collection

According to Connaway & Radford, 2021, study library research is method data collection with read and analyze various source open like books, journals, theses, dissertations, papers, and scientific seminar results. This technique aiming for obtain relevant and in-depth data about topic research. The data obtained usually originate from library or recognized digital sources in a way academic. This method is very effective for study law, because Lots material primary and secondary law can found in form literature written.

In research this, study literature used for collect related data regulation like Constitution. Apart from that, materials law secondary and tertiary like book law and encyclopedia law analyzed for understand more in about draft fiduciary, act criminal embezzlement, as well as protection existing law. This technique help compile runway a strong theory and provides solution based on comprehensive law to the issues raised.

2.5 Data analysis

Analysis is the process of processing, studying, and analyzing data to interesting concrete conclusion on the problem being researched. In the research this, method data analysis used is method deductive, which works from things general to things special. According to Lipscomb, 2012, approach deductive show what happened to a aspect with utilise relevant theories as base understanding and analysis.

In context study this, method deductive used for to study theories law about guarantee fiduciary, embezzlement, and protection creditors. Theories the then applied for analyze case specific and provide appropriate solution with regulation applicable laws, such as Law Number 42 of 1999 and the Criminal Code. The approach This help produce logical and based conclusions law to the issues being researched.

3. RESULTS AND DISCUSSION

3.1 Action Criminal Embezzlement Committed by the Giver Fiduciary in Transfer Objects Fiduciary

Guarantee fiduciary is form guarantee individual based on trust between giver and receiver fiduciary (Kamello & Sh, 2022). In his concept, the provider fiduciary deliver right ownership on object guarantee to recipient fiduciary without accompanied by handover physique object said. Guarantee This functioning as theory guarantee in system law, which is based on principles law guarantee like principle belief, principle certainty law and principles protection for the parties involved.

Action criminal embezzlement committed by the giver fiduciary in diversion object fiduciary happen when giver fiduciary, without agreement recipient fiduciary, divert or use object guarantee fiduciary for interest personal. Actions This violate the belief that becomes base connection fiduciary, because object the should guarded and maintained is at in mastery giver fiduciary for ensure debt settlement. Embezzlement this cause loss for recipient fiduciary and can bother certainty law as well as protection creditors.

Principles law guarantee consists of from three aspect main: first, Pancasila as principle philosophical or idealist who becomes base values and principles law in Indonesia, secondly, the 1945 Constitution as principle constitutional which provides runway law highest for the state, and third, the law as principle operational management implementation law guarantee in practice, give clear guidelines in implementation law in life daily (Yurizal, 2011).

Constitution Number 42 of 1999 concerning Guarantee Fiduciary arrange about system guarantee fiduciary in Indonesia, which allows giving guarantee on goods move or object not tangible with method handover right ownership to recipient fiduciary without accompanied by with handover physique goods said. In guarantee fiduciary, giver fiduciary still hold or control the collateral, but right ownership on goods the switch to recipient fiduciary as guarantee for debt payment. Law this aiming for give certainty law for creditors in matter debt settlement with object guarantee that still exists in mastery debtor. Law this also regulates procedure registration guarantee fiduciary, execution on object guarantee, as well as rights and obligations second split the parties involved, namely giver and receiver fiduciary. In addition, the law this set sanctions for giver fiduciary who does violations, such as divert object guarantee without permission recipient fiduciary.

Article 19

- (1) Redirection right on secured receivables with fiduciary result in the shift by law all rights and obligations recipient fiduciary to creditors new.
- (2) The switch guarantee fiduciary as meant in (1) registered by the creditor new to office registration fiduciary.

Article 19 of the Law Number 42 of 1999 concerning Guarantee Fiduciary arrange about diversion right on secured receivables with fiduciary. In paragraph (1), it is explained that diversion right on receivables the in a way automatic result in the switch all rights and obligations recipient fiduciary to creditors new. Meanwhile, in paragraph (2), the shift guarantee fiduciary the must registered by creditors new to office registration fiduciary For ensure validity and certainty law on change the.

Article 21

- (1) The Giver fiduciary can divert object supplies that become object guarantee fiduciary with common methods and procedures done in business trade.
- (2) Provision as meant in Article (1) does not applies, if has happen injury promise by the debtor and or give fiduciary party third.
- (3) The object that becomes object guarantee fiduciary who has diverted as meant in Article (1) is mandatory replaced by the giver fiduciary with object equivalent.
- (4) In terms of giver fiduciary injury promise, then results transfer of funds or bills incurred Because diversion as meant in Article (1), by law become transferred fiduciary.

Article 21 of the Law Number 42 of 1999 concerning Guarantee Fiduciary arrange about diversion object supplies that become object guarantee fiduciary. In paragraph (1), the giver fiduciary allowed divert object collateralized inventory with the usual way done in trade. However, paragraph (2) states that provision This No applicable If debtor or giver fiduciary do injury promise. Furthermore, in paragraph (3), if collateral object diverted, giver fiduciary must replace it with equivalent object. In paragraph (4), if giver fiduciary injury promise, result transfer of funds or bills incurred from diversion object the will in a way automatic become object guarantee transferred fiduciary.

Article 23

- (1) With No reduce provision as meant in Article 21, if recipient fiduciary agree can using, combining, mixing, or divert object or results from the thing that becomes object guarantee fiduciary, or agree do billing or do compromise on receivables, then agreement the no means that recipient fiduciary release guarantee fiduciary.
- (2) The Giver fiduciary forbidden transfer, pawn, or rent to other party the object that becomes object guarantee fiduciary who is not is object supplies, except with agreement written formerly from recipient fiduciary.

Article 23 of the Law Number 42 of 1999 concerning Guarantee Fiduciary arrange about rights and obligations related use and transfer object guarantee fiduciary. In paragraph (1), if recipient fiduciary agree, giver fiduciary can using, combining, mixing, or divert object or results from the thing that becomes object guarantee fiduciary, or do billing on receivables. However, the agreement the No reduce guarantee status fiduciary on object the. In paragraph (2), the giver fiduciary forbidden

transfer, pawn, or rent something that is not object supply to other party without agreement written from recipient fiduciary.

Article 23 paragraph (2) of the Law Number 42 of 1999 concerning Guarantee Fiduciary arrange prohibition for giver fiduciary for transfer, pawn, or rent object guarantee fiduciary which is not in the form of object supply to other party without agreement written from recipient fiduciary. In the context of act criminal embezzlement committed by the giver fiduciary in diversion object fiduciary, violation to provision This can culminating in action embezzlement, because giver fiduciary in a way illegal divert right on collateral object without permission from recipient fiduciary. This is violate principle trust in connection fiduciary and detrimental recipient fiduciary, and can charged sanctions criminal in accordance with provision applicable law.

Article 24

"Recipient fiduciary No bear obligation on consequence action or negligence giver fiduciary Good yanhg arise from connection contractual or that arises from action violate law in connection with use and transfer the thing that becomes object guarantee fiduciary."

Article 24 of the Law Number 42 of 1999 concerning Guarantee Fiduciary explain that recipient fiduciary No responsible answer on obligations arising consequence action or negligence giver fiduciary, whether originating from from connection contractual or related with action violate law in connection with use and transfer object guarantee fiduciary. This means that the recipient fiduciary only functioning as the receiving party guarantee and not can blamed on action giver fiduciary in breach law or obligation contractual related collateral object.

Article 36

"The Giver fiduciary who transfers, mortgages, or rent to other party the object that becomes object guarantee fiduciary who is not is object supply without agreement written from recipient fiduciary, criminal with criminal imprisonment for a maximum of 2 (two) years and a maximum fine of Rp. 50,000,000.00 (fifty million rupiah)".

Article 36 of the Law Number 42 of 1999 concerning Guarantee Fiduciary arrange sanctions criminal for giver fiduciary who transfers, mortgages, or rent object guarantee fiduciary which is not object supply to other party without agreement written from recipient fiduciary. Violation to provision This can charged criminal prison maximum 2 years and a fine up to Rp. 50,000,000.00. This article aiming for protect right recipient fiduciary and safeguard certainty law in transaction guarantee fiduciary.

Action criminal embezzlement by the giver fiduciary in diversion object fiduciary can happen If giver fiduciary transfer, pawn, or rent object guarantee fiduciary without agreement written from recipient fiduciary, which violates provisions of Article 23 paragraph (2). Violations this, as form embezzlement, can charged sanctions criminal in accordance with Article 36, which stipulates threat criminal prison maximum 2 years and/ or fine up to Rp50,000,000.00. Sanctions this aiming for protect right recipient fiduciary and safeguard integrity connection regulated law in guarantee fiduciary.

In the Criminal Code (KUHP), several chapter arrange about act criminal embezzlement and fraud, which focuses on the actions someone who with on purpose control or divert goods owned by someone else oppose law. Articles This explain How someone who controls goods without permission, okay That items borrowed, rented, or entrusted, can charged sanctions criminal. In addition, the articles this also regulates act criminal fraud that occurred when somebody use cheat Power or lie for to obtain profit with harm other parties. The provisions this aiming for give protection to right owned by somebody as well as ensure justice for the injured party.

Article 372 of the Criminal Code

"Whoever with on purpose darken the whole thing or part belonging to another person, which is entrusted to him, threatened with criminal maximum four years in prison year."

Article 372 of the Criminal Code regulates act criminal embezzlement, which occurred when somebody with on purpose control or take goods belongs to someone else who has entrusted to him without permission, with objective for profitable self itself. In the context of guarantee fiduciary, article This relevant because If giver fiduciary divert object guarantee fiduciary without permission from recipient fiduciary, then matter the can categorized as embezzlement, which can charged sanctions criminal prison maximum four year. Settings This confirm importance trust and obligation for the party holding goods belongs to someone else.

Article 374 of the Criminal Code

"Embezzlement committed by a person who has control over the goods due to because there is connection work or because search or because get wages for that, threatened with criminal maximum imprisonment of five years."

Article 374 of the Criminal Code regulates about embezzlement committed by someone who has mastery to goods belongs to someone else because connection work, search, or Because accept wages For look after goods said. If someone with on purpose darken the goods that are there in his mastery consequence connection said, he can charged criminal imprisonment for a maximum of five years. In the context of guarantee fiduciary, article This relevant If giver fiduciary, which should be guard or manage object guarantee, divert or abuse object guarantee fiduciary for interest personal, then action the can categorized as embezzlement that can punished more heavy.

Article 378

"Whoever with Meaning for profitable self Alone or other people in oppose law, with using a fake name or dignity fake, with cheat trickery, or series lies, moving others to deliver goods something to him, or so that give debt and also to abolish receivables, threatened Because fraud with criminal maximum four years in prison year".

Article 378 of the Criminal Code regulates about act criminal fraud, which occurred when somebody with on purpose using a fake name, dignity fake, cheat trickery, or lie for move others to submit goods, giving debt, or to abolish receivables, for profit personal or other people. The perpetrator fraud this threatened with criminal maximum four years in prison year. In the context of guarantee fiduciary, article This relevant if giver fiduciary use lie or cheat trick for divert object guarantee fiduciary to other party without to the best of my knowledge or agreement recipient fiduciary, which can categorized as fraudulent misrepresentation the injured party.

Based on the Criminal Code, the articles that regulate about embezzlement and fraud own relevance in context guarantee fiduciary. Article 372 threatens with criminal prison for Who only with on purpose darken entrusted goods to him, who can happen If giver fiduciary divert object guarantee without permission. Article 374 provides punishment more heavy for embezzlement committed in connection work or because accept wages, which can also be applicable in context management object fiduciary. While that, article 378 regulates fraud, which can happen if giver fiduciary use cheat trick for divert object guarantee or to deceive other party for profit personal. Third chapter This give base law for overcome act criminal embezzlement and fraud in practice guarantee fiduciary.

The case in Gorontalo, namely A man with the initials RS was reported by PT. KB Finasia Multi Finance (Kredit Plus) Gorontalo Branch because divert object guarantee fiduciary in the form of Nissan Grand Livina car without agreement written from recipient fiduciary. This action violate provision in Article 36 of the Law Number 42 of 1999 concerning Guarantee Fiduciary, which regulates that diversion object fiduciary without permission written from recipient fiduciary can charged sanctions criminal in the form of punishment prison maximum of two years and a fine. Case This is example implementation law related act criminal embezzlement fiduciary, which can ensnared in accordance with provision.

Case in Banggai, In August 2024, PT. Federal International Finance (FIF) reported BH (35) who diverted object guarantee fiduciary in the form of motorcycle without agreement written from recipient fiduciary. Case This delegated to Banggai District Attorney's Office for legal process more continue. In case this, his actions fulfil criteria violation in Article 36 of the Law Number 42 of 1999 concerning Guarantee Fiduciary, which regulates that giver fiduciary who diverts object guarantee fiduciary without agreement written can ensnared with criminal imprisonment of up to two years and a fine of up to Rp. 50,000,000.

Case in Manado, Two perpetrators secured by Satreskrim Manado Police because allegedly divert object guarantee fiduciary without agreement written from recipient fiduciary. Case This seen from Article 36 of the Law Number 42 of 1999 concerning Guarantee Fiduciary, which states that diversion object guarantee fiduciary without permission written can charged criminal prison maximum of two years and a fine up to IDR 50,000,000. Second action perpetrator This show How embezzlement fiduciary happen when object guarantee diverted without agreement, which violates existing regulations.

Case in Jakarta, In 2017, Polda Metro Jaya received 594 reports, most of which were large (506 reports) related act criminal fraud and embezzlement, including diversion object guarantee fiduciary without agreement written from recipient fiduciary. Case This reflect violation of Article 36 of the Law

Number 42 of 1999 concerning Guarantee Fiduciary, which prohibits diversion object guarantee fiduciary without permission written from recipient fiduciary. Implementation Constitution this is very relevant in context embezzlement fiduciary, because action the involving transition or sale the thing that should be No may transferred without agreement entitled party.

Case in Semarang, in 2019, Central Java Police revealed practice fraud involving diversion object guarantee fiduciary in the form of vehicle motorized without agreement written from recipient fiduciary . Case This show application of Article 36 of the Law Fiduciary, which with firm arrange that diversion object guarantee fiduciary without agreement written is act criminal offences that can be convicted with punishment imprisonment and fines . Action criminal This No only harm recipient fiduciary but also creates loss for party creditors who have depend on agreement fiduciary For protect right they to guarantee .

Case in West Java, in March 2020, the West Java Regional Police handled case fraud related diversion of 342 vehicles motorized which is object guarantee fiduciary, which is carried out without agreement written from recipient fiduciary. This action violate provisions of Article 36 of the Law Number 42 of 1999 concerning Guarantee Fiduciary, which regulates that giver fiduciary who transfers, pledges, or rent object fiduciary without permission written can ensnared with punishment criminal prison up to two years and a fine maximum Rp. 50,000,000. Case This is example clear implementation the law that governs embezzlement object fiduciary in valid agreement.

As with Hamka's research (2023) , results study This show that diversion object guarantee fiduciary without agreement recipient fiduciary can cause accountability criminal to giver fiduciary . His actions violate provision law about management and transfer object guarantee fiduciary potential charged sanctions criminal, according to with existing provisions in Constitution Guarantee Fiduciary and the Criminal Code (KUHP), in order to protect right injured party in agreement.

Constitution Number 42 of 1999 concerning Guarantee Fiduciary and the Criminal Code (KUHP) provides protection to rights parties involved in agreement fiduciary. Articles in the Criminal Code, such as Articles 372, 374, and 378, stipulates sanctions criminal for act embezzlement and fraud that can happen in diversion object guarantee fiduciary without permission or use cheat trickery . Therefore that 's important for ensure that every transaction fiduciary done with full transparency and consent For prevent abuse and protect interest parties involved.

3.2 Considerations in Judging Case Fiduciary

In discussion about judge's consideration in to judge case fiduciary, important for understand that the judge has a crucial role in assess and decide related cases with guarantee fiduciary. The judge's considerations are not only focus on provisions applicable law, but also on the evidence presented by both split parties, validity document guarantee fiduciary, and whether agreement the has fulfil principles regulated law in Constitution (Ramadhan, 2023). Judges must consider factors like whether diversion object guarantee fiduciary done in accordance legitimate procedures , whether There is detrimental violation party others, and the extent of action the relate with element criminal or civil (Ridho, 2024). A fair and correct judge's decision is very dependent on understanding comprehensive to regulation legislation that regulates guarantee fiduciary as well as wise interpretation to the facts revealed in trial.

Court Judge is officials who have authority for operate task power judiciary, namely check, decide and complete case good related with criminal and also civil at the level First (Hermawan et al., 2021). In running his duties, the judge is responsible answer for ensure that the judicial process walk in a way fair, appropriate with applicable law, and give objective decision based on evidence and facts revealed in trial. The judge's decision is expected can create justice and certainty law for all parties involved in case the.

The judge's basis in take existing decisions in Constitution Number 48 of 2009 concerning Power Judiciary. Articles in Constitution This arrange principles that must be upheld by the judge in operate his duties, including dig and follow values laws that live in society, have integrity and personality that is not despicable, and comply code ethics and guidelines the behavior of judges. Principles This become base for judges in give fair and objective decisions in every matters, including case fiduciary.

Article 5

- (1) Judges and constitutional judges must dig, follow, and understand values law and a living sense of justice in public.

- (2) Judges and constitutional judges must own integrity and personality that is not reprehensible, honest, fair, professional, and experienced in the field law.
- (3) Judges and constitutional judges must comply with the Code of Ethics and Guidelines Judge's Behavior.

Article 5 of Law Number 48 of 2009 concerning Judicial Power regulates the obligation of judges to explore, follow, and understand the legal values that exist in society, and ensure that their decisions reflect a sense of justice. In addition, judges must have integrity, an impeccable personality, and be competent in the legal field. Judges are also required to comply with the code of ethics and guidelines for the conduct of judges so that the judicial process takes place with professionalism, justice, and objectivity, which are very important in trying fiduciary cases or other cases.

Criminal Procedure Code is runway the law that governs procedure justice criminal law in Indonesia. The Criminal Procedure Code aims to For ensure that the judicial process walk in a way fair and transparent, with give right to defendant For defend yourself and make sure that decision judges are based on valid evidence (Lohanda & Kansil, 2024). One of the matter important things to set in the Criminal Procedure Code is standard proof that must be fulfilled by prosecutors and judges in decide a case criminal, which is reflected in Article 183.

Constitution Number 8 of 1981 concerning Criminal Procedure Law (KUHP):

Article 183: "Judges shall not may to drop criminal to somebody except if with at least two tools valid evidence He to obtain belief that a act criminal truly happened and that the accused is guilty do it."

Article 183 of the Criminal Procedure Code (KUHP) confirms that that the judge did not may to drop criminal to somebody except with at least two tools valid evidence that proves that act criminal truly happened and the defendant was guilty do it. In the context of case fiduciary, article This arrange that before the judge can decide somebody guilty in act criminal embezzlement object guarantee fiduciary, must There is sufficient and valid evidence to support the judge's belief about truth action said, for ensure fair and appropriate decision with law.

In addition to the regulations legislation, jurisprudence also often made into reference by judge in take decision. According to R. Soebekti, jurisprudence is judge's decisions or the court that has permanent and confirmed by the Supreme Court as court cassation, or decisions issued directly by the Supreme Court which has to obtain strength law still (Simanjuntak, 2019). Jurisprudence This become reference important in ensure consistency and fairness in implementation law by judge.

In addition to the regulations legislation and jurisprudence, doctrine law also becomes source important in taking judge's decision. Doctrine law is opinion or view expert applicable law in interpretation law and can made into consideration if the judge does not find clear answer from law, agreement international, or jurisprudence (Adhyaksa, 2024). Doctrine This can acknowledged as source law formal If has reflected in consistent judge's decision, giving guidelines in implementation future law.

In deciding case fiduciary, judges often referring to the decisions court previous (jurisprudence) and expert opinions law (doctrine) as material consideration. Jurisprudence give guide consistency in implementation law, while doctrine help judges understand principles more laws deep, especially when Constitution or existing regulations No give clear solution. Both source This play a role important For ensure fair and appropriate decision with development applicable law.

There is a number of example case fiduciary which is resolved by the judge using jurisprudence and doctrine, in Decision Supreme Court No. 2278 K/PID.SUS/2015, stated that giver fiduciary who transfers, mortgages, or rent the thing that becomes object guarantee fiduciary without agreement written from recipient fiduciary can charged criminal in accordance with provisions of Article 36 of the Law Number 42 of 1999 concerning Guarantee Fiduciary (Court, 2024).

Temporary that, according to expert opinion law, fiduciary is diversion right ownership a object on base trust, with provision that the right thing his ownership diverted the still in mastery giver fiduciary (Yasir, 2016). Jurisprudence and doctrine This become runway important in understanding and application law fiduciary, ensuring that violation to provision fiduciary can charged sanctions criminal and provide clarity about principle base fiduciary.

In the verdict this, the Supreme Court decided that Defendant Sri Rahayu was proven do mortgage object guarantee fiduciary without agreement written from recipient fiduciary. Object guarantee fiduciary involved is vehicle motorized which has registered in accordance with provision law. In considering case In this case, the judge referred to Article 36 of the Law Number 42 of 1999

concerning Guarantee Fiduciary, which with firm state that diversion or mortgage object guarantee fiduciary without agreement written from recipient fiduciary is act criminal. Judge's considerations in matter this covers understanding to obligation giver fiduciary for comply existing rules, as well as protection rights recipient fiduciary as the party that has position more tall in matter engagement fiduciary.

On the verdict this, court military decide that defendant, a TNI soldiers, proven do act criminal divert object guarantee fiduciary without agreement written from recipient fiduciary. Object guarantees involved is vehicle motorized used for operational. Judge in case this consider context the laws that apply among them apparatus military, with look at that regulation related guarantee fiduciary applicable without except, including for member military. The judge's considerations are based on the objectives Constitution fiduciary which is for protect rights recipient fiduciary and prevent action oppose detrimental law party recipient.

In the verdict this, the South Jakarta District Court decided that PT. ABC as giver fiduciary has divert three units of vehicles motorized which becomes object guarantee fiduciary without agreement written from PT. XYZ Finance as recipient fiduciary. The judge considers that action the contradictory with provisions of Article 36 of the Law Number 42 of 1999 which regulates about prohibition divert object guarantee fiduciary without agreement recipient fiduciary. In his considerations, the judge focused on the protection law to recipient fiduciary and ensure that rights recipient fiduciary prioritized with return object guarantee the as step enforcement fair law.

As Burhanudin's research (2022), the basis judge's consideration in case act criminal forgery, alteration, deletion, or giving information in a way misleading, as reflected in Decision Number: 119/ Pid.Sus /2021/ PN. Met, can seen from three aspects. In terms of juridical, the judge considers that perpetrator has proven in a way valid and convincing do act criminal. In philosophical, the punishment imposed considered as step for repair behavior defendant through the criminal process. While in a way sociologically, the judge considers factor ballast, such as losses incurred for party others, and mitigating factors, such as fact that defendant Not yet Once sentenced criminal as well as attitude the manners shown during trial. Consideration This give description comprehensive for judges in to drop verdict on the case fiduciary, where the aspect justice and impact social participate taken into account.

Judge's considerations in to judge case fiduciary covers various aspects, good juridical, philosophical, and sociological, for ensure fair and appropriate decisions with values living justice in society. The judge does not only referring to the provisions applicable law, but also pay attention to impact social from action defendant as well as potential repair behavior through criminalization. With the judge's consideration process in case fiduciary aiming for give solution comprehensive and priority law justice Good for injured party and also for defendant.

Substance of Obstruction of Justice set up in Criminal Code in various countries, including in Indonesia through the Criminal Code Criminal Code (KUHP) and law criminal special . Article relevant articles as acts of obstruction of justice include articles 216 to 222 of the Criminal Code, which regulate sanctions criminal for parties who obstruct the legal process . One of them important article is Article 221 of the Criminal Code states that "everyone who does action obstructing legal process must convicted and threatened with criminal maximum nine years in prison month, or fine as much as the amount is Rp. 4.500.00 (four thousand five hundred rupiah)".

4. CONCLUSION

Based on results Research and discussion that has been described, then conclusion in study this is as following: Action criminal embezzlement committed by the giver fiduciary in diversion object fiduciary happen when giver fiduciary transfer, pawn, or rent object that becomes guarantee fiduciary without agreement written from recipient fiduciary. This is contradictory with provision the law that governs that diversion object fiduciary must done with agreement from recipient fiduciary, and violation to provision this can charged sanctions criminal based on Constitution Number 42 of 1999 concerning Guarantee Fiduciary. Judge's considerations in to judge case fiduciary involving aspect juridical, philosophical, and sociological. In juridical, the judge assesses whether act criminal fiduciary has proven in accordance with the existing evidence. In philosophically, the judge considered that the sentence imposed aiming for repair behavior the accused, meanwhile in a way sociologically, the

judge also takes into account impact social issues caused by actions defendant as well as factors that can lighten up or burdensome in decide fair punishment.

As a suggestion, to prevent act criminal embezzlement committed by the giver fiduciary in diversion object fiduciary, necessary existence more supervision strict to implementation guarantee fiduciary. Recipient fiduciary should also strengthen mechanism agreement written and recorded in every transaction diversion object guarantee fiduciary, and increase understanding about related rights and obligations with fiduciary between the parties related, including through training or more socialization intensive. Related suggestions judge's consideration in to judge case fiduciary is so that judges are more put forward principle justice restorative, with consider No only aspect law, but also the impact social issues that arise consequence action the accused. The judge should also pay attention to aspect rehabilitative for the defendant, gave chance for repair, and drop proportional punishment with consider aggravating and mitigating factors, as well as push settlement dispute through a more approach humanist.

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