Legal Analysis of Criminal Acts of Embezzlement of Fiduciary Guarantees by Debtors in Consumer Financing Agreements

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Abstract

This study aims to examine the effectiveness of law enforcement against the crime of fiduciary collateral embezzlement by debtors in consumer financing agreements based on Law No. 42 of 1999 on Fiduciary Security and Supreme Court Decision No. 419K/Pid.Sus/2021. Using a normative juridical method with statute, conceptual, and case approaches, the research finds that law enforcement remains ineffective due to the disharmony between Article 36 of the Fiduciary Law and Article 372 of the Criminal Code, resulting in differing criminal sanctions. Judicial disparities indicate weak legal protection for creditors, particularly in the imposition of disproportionate sentences relative to the severity of the offense. Meanwhile, low public legal awareness and limited understanding of fiduciary obligations exacerbate the problem. Therefore, reformulation of criminal provisions under the Fiduciary Law, strengthening of notary responsibilities in the registration process, and improved professionalism among law enforcement officers are necessary to achieve a fair and legally certain fiduciary system in Indonesia.

Keywords: *Creditor, Debitor, Embezzlement, Fiduciary Security, Law Enforcement*

Introduction

The Republic of Indonesia constitutionally declares itself as a Rechtsstaat a state founded upon law as stipulated in Article 1 paragraph (3) of the 1945 Constitution. This provision implies that all aspects of national life, including governance, social relations, and economic activity, must operate under the supremacy of law.[1]. Law in a Rechtsstaat not only functions as a tool of control (social control), but also as an instrument of transformation (social engineering) to create justice, order, and certainty.[2]. Consequently, the rule of law demands that every citizen and institution act within legal parameters, including in the growing field of consumer financing, which has become one of the central pillars of Indonesia's economic development.

In modern economic practice, the use of fiduciary security has become a dominant mechanism for ensuring creditor confidence. Law No. 42 of 1999 on Fiduciary Security defines fiduciary transfer as the transfer of ownership of an object based on trust, with the

[1] Muh. Ridha Hakim, "Tafsir Independensi Kekuasaan Kehakiman Dalam Putusan Mahkamah Konstitusi," *Jurnal Hukum Dan Peradilan* 7, no. 2 (2018): hlm.281.

[2] Satjipto Rahardjo, *Hukum Progresif: Sebuah Sintesa Hukum Indonesia* (Yogyakarta: Genta Publishing, 2020). hlm. 76

object remaining in the possession of the grantor.[3] This legal arrangement facilitates access to credit while maintaining asset usability for the debtor. Yet, the same mechanism that relies heavily on trust also opens the door to misuse, particularly when the debtor unlawfully transfers, sells, or pledges the fiduciary object without the creditor's written consent. Such conduct constitutes fiduciary collateral embezzlement, an offense stipulated in Article 36 of the Fiduciary Law in conjunction with Article 23 paragraph (2).[4]

However, the enforcement of this provision in practice reveals persistent disharmony between the Fiduciary Law and the Indonesian Criminal Code (KUHP), specifically Article 372, which also regulates embezzlement. The difference in statutory penalties—two years under the Fiduciary Law versus four years under the Criminal Code—creates ambiguity in applying the lex specialis derogat legi generali principle and undermines legal certainty for both creditors and debtors. This contradiction reflects what Friedman (1975) identifies as an imbalance between the substance, structure, and culture of law.

A clearer illustration can be found in Supreme Court Decision No. 419K/Pid.Sus/2021, which imposed only seven months imprisonment on a debtor who embezzled a fiduciary object valued at Rp152,000,000. The leniency of the sanction failed to reflect the proportionality principle and weakened the deterrent effect of criminal law.[5] Such inconsistencies suggest that fiduciary enforcement mechanisms have not yet fulfilled their preventive and corrective functions in upholding creditor protection.

Recent research has increasingly examined fiduciary law enforcement from normative and doctrinal perspectives. Butarbutar (2023) identified weaknesses in the application of fiduciary criminal sanctions and argued that lenient sentencing perpetuates moral hazard among debtors.[6] Simanjuntak (2022) emphasized the need for penal policy reform, noting that fiduciary embezzlement represents a form of abuse of trust that blurs the line between civil and criminal liability.[7] Pratama and Nurhidayat (2021) explored the implications of Constitutional Court Decision No. 18/PUU-XVII/2019, finding that the decision significantly limits creditors' executorial rights and introduces procedural uncertainty in the execution of fiduciary deeds.[8] Lestari and Sari (2021) focused on administrative weaknesses in fiduciary registration systems that hinder legal certainty,

[3] A Nugroho, "Penegakan Hukum Terhadap Penggelapan Objek Jaminan Fidusia Berdasarkan Putusan Mahkamah Agung Nomor 419K/Pid.Sus/2021," *Urnal Hukum Dan Pembangunan* 51, no. 3 (2021): hlm. 90–92.

[4] BPK RI, "Undang-Undang No 42 Tahun 1999 Tentang Jaminan Fidusia," JDIH § (1999), https://peraturan.bpk.go.id/Details/45374/uu-no-42-tahun-1999.

[5] Mahkamah Agung, "Putusan Mahkamah Agung Republik Indonesia Nomor 419K/Pid.Sus/2021" (2021).

[6] S.A Butarbutar, "Juridical Review of the Crime of Embezzlement in Fiduciary Guarantee Cases in Indonesia," *Journal of Legal Reform* 12, no. 1 (2023): 45–58, https://doi.org/10.38035/jlph.v5i6.2199.

[7] R Simanjuntak, "Evaluasi Hukum Pidana Terhadap Delik Ekonomi Berbasis Kepercayaan," *Jurnal Hukum Lex Crimen* 11, no. 4 (2022): hlm.55–68.

[8] R. A. Pratama and I Nurhidayat, "The Impact of Constitutional Court Decision No. 18/PUU-XVII/2019 on Fiduciary Security Execution in Indonesia," *Yustisia Jurnal Hukum* 9, no. 3 (2021): hlm.54–69.

while Rahardjo (2021) revisited progressive law theory, asserting that law should prioritize substantive justice rather than rigid formalism.[9]

Despite these valuable contributions, most of the existing studies share several limitations. First, they tend to adopt a purely normative approach without analyzing the judicial reasoning in actual fiduciary embezzlement cases. Second, none have comprehensively evaluated the interplay between criminal law principles (particularly lex specialis and lex posterior) and constitutional jurisprudence following the 2019 Constitutional Court ruling. Third, there is limited discussion on the role of notaries as preventive legal actors whose duties in drafting and registering fiduciary deeds directly affect the validity and executorial strength of fiduciary rights.[10] These gaps leave unresolved questions about the balance between creditor protection and debtor fairness in Indonesia's fiduciary law regime

This study addresses those gaps by offering both a doctrinal reconstruction and a judicial-based analysis of fiduciary embezzlement. The novelty of this research lies in its integrated use of normative and case-based approaches to evaluate how law enforcement institutions interpret fiduciary norms and apply them in practice. Unlike previous studies that describe fiduciary conflicts only conceptually, this research examines Supreme Court Decision No. 419K/Pid.Sus/2021 as empirical evidence of normative disharmony. Through this analysis, the study proposes a reformulation of criminal sanctions within the Fiduciary Law that aligns with proportionality and progressive law theory. The author also introduces a conceptual model of legal harmonization, which connects the fiduciary system's penal dimension (repressive) and administrative dimension (preventive) to establish comprehensive creditor protection.

In addition, this research contributes theoretically by bridging Friedman's legal system theory with Hadjon's concept of legal protection. Friedman's framework explains that ineffective law enforcement arises when legal structure (law enforcers), substance (laws and regulations), and culture (public awareness) fail to function coherently.[11] In contrast, Hadjon distinguishes between preventive and repressive legal protection mechanisms, suggesting that effective fiduciary enforcement depends on both. This study reconstructs both theories into an analytical model that can assess and improve Indonesia's fiduciary legal system post-2019. The proposed reconstruction serves not only to describe but to prescribe—how the law should function to ensure justice and legal certainty in fiduciary relationships

This study employs a normative juridical research design, conducted throughout 2024 using secondary legal data. The research encompasses statutory materials (laws and regulations), case law (court decisions), and doctrinal commentaries. Data were collected through library research and analyzed qualitatively using deductive reasoning. The approaches applied include statute approach, conceptual approach, and case approach. This

[9] P. Lestari and M. D. Sari, "Legal Certainty in Fiduciary Guarantees as Collateral," *Journal of Law and Policy Transformation*, no. 1 (2021): hlm. 23–30.

[10] Ida G. A. K. R. Handayani and I Made M. Hadi, "Civil Law Enforcement for Fiduciary Embezzlement," *Jurnal Ilmiah Hukum Dirgantara* 9, no. 2 (2018): 69, https://doi.org/10.9790/0837-2611052934.

[11] Sudarto, *Hukum Dan Hukum Pidana*…

design ensures that the study remains doctrinally grounded while maintaining empirical relevance through case analysis. The principal argument advanced in this study is that fiduciary collateral embezzlement law enforcement remains ineffective due to three interrelated weaknesses: (1) disharmony between fiduciary and general criminal provisions, (2) inconsistent judicial reasoning in applying penal sanctions, and (3) inadequate preventive legal culture among debtors and notaries. To address these challenges, this research argues for a reformulation of Article 36 of the Fiduciary Law, harmonization of statutory penalties with the Criminal Code, and the establishment of clear sentencing guidelines by the Supreme Court. Strengthening notarial accountability and public legal literacy are also essential components of an integrated fiduciary law enforcement system that upholds substantive justice and legal certainty in Indonesia.

Method

This study applies a normative juridical approach aimed at analyzing legal norms, doctrines, and court decisions concerning fiduciary security and the criminal act of fiduciary collateral embezzlement.[12] The research focuses on legal materials (primary, secondary, and tertiary), including Law No. 42 of 1999 on Fiduciary Security, the Criminal Code (KUHP), and Supreme Court Decision No. 419K/Pid.Sus/2021, which forms the main case analyzed. The research was conducted from January to March 2024 through library study using legislative documents, jurisprudence, and academic publications accessed via official databases of the Supreme Court, Ministry of Law and Human Rights, and major legal journals. Ethical approval was not required since no human participants were involved.

Data collection employed document analysis and literature review to identify, classify, and interpret legal norms related to fiduciary law enforcement. The data were verified through triangulation of legal sources by comparing statutory texts, judicial reasoning, and scholarly opinions to ensure validity and reliability. Qualitative analysis was carried out using deductive reasoning, moving from general legal principles to specific findings on the effectiveness of fiduciary law enforcement.[13] The analytical process was documented systematically to allow replication and further development by subsequent researchers examining similar legal issues in Indonesia.

Discussion

Characteristics of the Crime of Fiduciary Collateral Embezzlement

The crime of fiduciary collateral embezzlement in Indonesia represents a complex intersection between private contractual relations and public criminal law enforcement. Conceptually, fiduciary security arises from a relationship of trust (fiducia) between the creditor and debtor, in which ownership of an object is transferred in title but not in

[12] Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana, 2017). Hlm. 87
[13] Soerjono Soekanto, *Pengantar Penelitian Hukum* (Depok: UI Press, 2015). Hlm.65

possession.[14] According to Article 1 point (1) of Law No. 42 of 1999 on Fiduciary Security, the fiduciary agreement creates a legal situation where the creditor holds the legal title (eigendom), while the debtor retains physical control (bezit) of the object as a fiduciary grantor. Consequently, the misuse or transfer of the object without the creditor's consent disrupts the essence of that trust and fulfills the elements of criminal embezzlement under Article 36 of the Fiduciary Law.

From a juridical standpoint, the key element distinguishing fiduciary embezzlement from ordinary embezzlement under Article 372 of the Indonesian Criminal Code (KUHP) lies in the origin of lawful possession.[15] The debtor originally acquires lawful possession of the object under a financing agreement but loses the right of ownership once the fiduciary deed is executed and registered. When the debtor subsequently transfers, sells, or pawns the fiduciary object, the act demonstrates an intention to unlawfully treat another person's property as their own (animus domini).[16] Thus, the legal qualification of the offense requires proving two cumulative elements: (1) the transfer of an object already registered under fiduciary ownership, and (2) the absence of written consent from the creditor.

According to Moeljatno (2008), embezzlement is characterized by the abuse of a lawful position of control, where possession transforms into unlawful appropriation through intent. In the fiduciary context, this transformation occurs when the debtor—while still in physical control of the collateral—acts as if they possess full ownership. As Simanjuntak (2022) observed, such conduct reflects an abuse of trust (fiducia cum creditore), a fundamental breach that justifies criminalization under modern economic law.[17] The fiduciary embezzlement offense thus carries a dual dimension: a civil breach of contract between the debtor and creditor, and a public offense that threatens the legal order and economic integrity.

The legislator's intention to criminalize fiduciary embezzlement was to reinforce creditor protection in Indonesia's expanding consumer finance sector. Yet, despite its clear legal basis, the application of Article 36 of the Fiduciary Law remains inconsistent. The maximum penalty of two years' imprisonment is notably lighter than that prescribed under Article 372 of the Criminal Code, which sets a four-year maximum sentence. This disparity undermines the principle of lex specialis derogat legi generali because the special law, which should impose stricter regulation, paradoxically provides a lighter sanction. In practice, this inconsistency often results in lenient sentencing and limited deterrence, as evidenced in several district court decisions where offenders were sentenced to less than one year.[18]

[14] BPK RI, Undang-Undang No 42 Tahun 1999 Tentang Jaminan Fidusia.
[15] "Kitab Undang-Undang Hukum Pidana (KUHP) Pasal 372" (n.d.).
[16] Moeljatno, *Asas-Asas Hukum Pidana* (Jakarta: Rineka Cipta, 2008).
[17] Simanjuntak, "Evaluasi Hukum Pidana Terhadap Delik Ekonomi Berbasis Kepercayaan."
[18] Butarbutar, "Juridical Review of the Crime of Embezzlement in Fiduciary Guarantee Cases in Indonesia."

Moreover, the offense carries a specific mens rea element, as the debtor's intent to dispose of the object must be proven beyond doubt. As explained in Supreme Court Decision No. 419K/Pid.Sus/2021, the debtor's deliberate transfer of a fiduciary object to a third party without authorization satisfied the element of "intent to possess unlawfully".[19] However, in judicial reasoning, mitigating factors such as cooperative behavior and restitution of loss often reduce the imposed penalties. While such considerations may serve restorative justice objectives, they weaken the preventive function of criminal sanctions envisioned by the legislator.

From a criminological perspective, fiduciary embezzlement embodies the characteristics of white-collar crime in Indonesia's economic domain. The offense often occurs under formal legal relationships and involves individuals who outwardly appear compliant with legal norms.[20] As Rahardjo (2021) argues, formal compliance without substantive moral responsibility reflects a systemic weakness in legal culture, where law is perceived merely as procedure rather than value.[21] The recurrence of fiduciary embezzlement cases therefore signals not only normative disharmony but also a deeper issue of moral and institutional accountability in Indonesia's financial system.

Consequently, the characteristics of fiduciary collateral embezzlement demonstrate both its legal duality and systemic vulnerability. Legally, the offense is categorized as a formal delict—it is complete upon the unauthorized act of transfer, regardless of whether financial loss occurs.[22] Systemically, it exposes the inadequacy of harmonization between fiduciary law and the general criminal law regime. This analysis confirms that fiduciary embezzlement is not a mere contractual violation but a criminal offense requiring consistent interpretation, proportional sanctioning, and structural reinforcement of law enforcement mechanisms.

Judicial Interpretation and Enforcement Issues in Supreme Court Decision No. 419K/Pid.Sus/2021

The judicial interpretation of fiduciary collateral embezzlement reflected in Supreme Court Decision No. 419K/Pid.Sus/2021 demonstrates a fundamental inconsistency in Indonesia's application of fiduciary law.[23] The case concerned a debtor who transferred a fiduciary object—a financed vehicle—to a third party without obtaining the creditor's written approval. Although such conduct clearly fulfills the elements of fiduciary embezzlement under Article 36 of Law No. 42 of 1999, the Supreme Court imposed a lenient sentence of seven months' imprisonment and a fine of one million rupiah.[31] The

[19] Mahkamah Agung, Putusan Mahkamah Agung Republik Indonesia Nomor 419K/Pid.Sus/2021.
[20] Edwin H. Sutherland, *White Collar Crime* (New York: Holt, Rinehart and Winston, 1983).
[21] Satjipto Rahardjo, *Hukum Progresif: Riwayat , Urgensi , Dan Relevansi*, 2021, https://doi.org/10.22437/ujh.1.1. hlm.159-185.
[22] Sudarto, *Hukum Dan Hukum Pidana*.
[23] Mahkamah Agung, Putusan Mahkamah Agung Republik Indonesia Nomor 419K/Pid.Sus/2021.

Court's reasoning shows a formalistic orientation, emphasizing individual circumstances rather than the systemic objective of protecting the fiduciary security framework.

The ratio decidendi of the decision centered on the fulfillment of mens rea—intentional transfer without authorization—but simultaneously incorporated mitigating considerations, including restitution, cooperation during trial, and expressions of remorse. This reasoning indicates the Court's tendency to adopt a quasi-restorative approach that prioritizes reconciliation over deterrence. Similar judicial tendencies were also identified in Decision No. 1952 K/Pid.Sus/2019 and Decision No. 2540 K/Pid.Sus/2018, where offenders received short-term imprisonment despite clear evidence of unlawful transfer. Such leniency, while appearing humane, undermines the deterrent and preventive functions of criminal law envisioned by the fiduciary regime.

From a doctrinal perspective, the Court's interpretation reveals a disjunction between substantive and procedural justice. As Simanjuntak (2022) observes, judicial practice in fiduciary crimes often reduces the offense to a civil violation, neglecting its public law dimension as a threat to financial integrity.[24] Butarbutar (2023) similarly criticizes the lack of proportional sanctions that fail to restore public confidence in the financing system.[25] Lestari and Sari (2021) further argue that judicial leniency erodes the administrative reliability of fiduciary registration, as creditors perceive the process as legally uncertain and inefficient.[26] In contrast, Handayani and Hadi (2021) highlight that fiduciary law was designed precisely to prevent such ambiguity, ensuring that every registered fiduciary deed possesses executorial power equivalent to a final court judgment.[27]

These academic critiques emphasize that the judicial reasoning in Decision No. 419K/Pid.Sus/2021 diverges from the teleological purpose of the Fiduciary Law—to create a secure and trustworthy lending environment. The light sentencing contradicts the lex specialis derogat legi generali principle, because the special statute should logically impose stricter protection, not weaker. Furthermore, by failing to harmonize the sanction under Article 36 of the Fiduciary Law with the four-year maximum penalty in Article 372 of the Criminal Code, the judiciary has weakened the very ratio legis of the fiduciary regime.[28]

Beyond the statutory contradiction, this decision also reflects the absence of unified judicial policy. As Sitorus (2024) points out, the lack of sentencing guidelines for fiduciary crimes allows excessive judicial discretion, creating disparities across jurisdictions.[29] In

[24] Simanjuntak, "Evaluasi Hukum Pidana Terhadap Delik Ekonomi Berbasis Kepercayaan."

[25] Butarbutar, "Juridical Review of the Crime of Embezzlement in Fiduciary Guarantee Cases in Indonesia."

[26] Lestari and Sari, "Legal Certainty in Fiduciary Guarantees as Collateral."

[27] Handayani and Hadi, "Civil Law Enforcement for Fiduciary Embezzlement."

[28] Izzy Al Kautsar et al., "SISTEM HUKUM MODERN LAWRANCE M . FRIEDMAN : BUDAYA HUKUM DAN PERUBAHAN SOSIAL MASYARAKAT DARI INDUSTRIAL KE DIGITAL," *Jurnal Sapientia et Virtus* 7, no. 2 (2022): hlm.84–99.

[29] R Sitorus, "Consistency of Criminal Sanctions in Fiduciary Law Enforcement in Indonesia," *Jurnal Ilmu Hukum Dan Pembangunan* 54, no. 1 (2024): hlm.13–26.

some cases, identical conduct has resulted in different sanctions depending on the court's interpretation of "intent" and "ownership." This inconsistency contravenes the principle of equality before the law and erodes predictability within Indonesia's criminal justice system. Pratama and Nurhidayat (2021) highlight that post–Constitutional Court Decision No. 18/PUU-XVII/2019, judicial inconsistency has worsened because courts remain uncertain about the boundaries between civil enforcement and criminal liability.[30]

The Court's reliance on mitigating factors also illustrates Indonesia's broader institutional challenge in economic crime enforcement. While restorative justice serves important humanitarian purposes, it cannot substitute deterrence in financial crimes involving trust and contractual integrity. Rahardjo (2021) emphasizes that progressive law demands harmony between procedural flexibility and substantive justice; when leniency compromises deterrence, the law loses its moral authority.[31] Handayani and Hadi (2018) reaffirm that penal enforcement is indispensable to uphold creditor confidence and the integrity of financial institutions.[32] Without it, fiduciary security becomes a mere administrative formality rather than a functional legal guarantee.

The limited deterrence of fiduciary sentencing also correlates with institutional fragmentation among enforcement agencies. Simanjuntak (2022) and Butarbutar (2023) both note that coordination between investigators, prosecutors, and notaries remains weak, leading to inconsistent case classifications and delayed prosecutions. The absence of inter-agency cooperation has created what Friedman (1975) described as a structural gap—where legal norms exist but enforcement mechanisms fail to operationalize them effectively. As a result, many fiduciary embezzlement cases are settled informally rather than prosecuted, undermining the state's obligation to uphold legal certainty.

In synthesis, Decision No. 419K/Pid.Sus/2021 reveals three structural flaws: (1) judicial misinterpretation of fiduciary crimes as mere contractual breaches, (2) disproportionate sentencing that contradicts deterrence principles, and (3) the absence of uniform procedural standards for fiduciary enforcement. Addressing these flaws requires comprehensive reform, including harmonization of sanctions between the Fiduciary Law and the Criminal Code, mandatory sentencing guidelines from the Supreme Court, and capacity-building for notaries and investigators as preventive actors.[33] These measures would align fiduciary law enforcement with Indonesia's broader legal modernization agenda and fulfill its constitutional mandate to deliver justice and certainty in economic relations.

[30] Pratama and Nurhidayat, "The Impact of Constitutional Court Decision No. 18/PUU-XVII/2019 on Fiduciary Security Execution in Indonesia."

[31] Rahardjo, *Hukum Progresif: Riwayat , Urgensi , Dan Relevansi*.

[32] Handayani and Hadi, "Civil Law Enforcement for Fiduciary Embezzlement."

[33] Sudarto, *Hukum Dan Hukum Pidana*...

Evaluation of Legal Effectiveness and Institutional Challenges in Fiduciary Law Enforcement

The effectiveness of fiduciary law enforcement in Indonesia remains constrained by the interaction of three core elements of the legal system—substance, structure, and culture—as elaborated by Friedman.[34] Despite the existence of comprehensive statutory instruments, such as Law No. 42 of 1999, enforcement practice continues to reveal normative disharmony, weak institutional coordination, and a limited legal awareness among both creditors and debtors. Sitorus (2024) identifies this as a systemic enforcement deficit, in which the presence of law is not accompanied by the operational capability of enforcement agencies.

At the substantive level, inconsistencies between Article 36 of the Fiduciary Law and Article 372 of the Criminal Code cause confusion among prosecutors and judges. Although the fiduciary provision should act as a lex specialis, its lighter penalty has resulted in selective enforcement and minimal deterrence. Butarbutar (2023) found that this penal disparity weakens the preventive function of criminal law, while Simanjuntak (2022) stresses that courts often classify fiduciary disputes as civil rather than criminal matters. These interpretive inconsistencies reveal that substantive reform is required to harmonize fiduciary norms with Indonesia's broader penal policy framework.

Institutionally, the structural dimension of enforcement is equally problematic. Investigations are frequently stalled because fiduciary certificates are treated merely as administrative evidence rather than as titles with executorial force. Handayani and Hadi (2021) observed that lack of coordination among the police, prosecutors, and notaries produces fragmented enforcement, with cases often diverted to mediation. The Attorney General's Office (AGO) and Indonesian National Police (INP) have yet to develop clear guidelines for fiduciary-related investigations, leading to procedural uncertainty. Lestari and Sari (2021) argue that this uncertainty reduces creditor confidence and undermines the economic function of the fiduciary system.

The cultural aspect—public and institutional legal awareness—also remains weak. Many debtors still perceive fiduciary objects as personal property, while creditors often rely on non-legal collection methods. Pratama and Nurhidayat (2021) note that after the Constitutional Court Decision No. 18/PUU-XVII/2019, the public interpreted fiduciary execution as optional, fostering resistance to lawful repossession. Rahardjo (2021) explains that this reflects a formalistic legal culture where compliance is driven by coercion rather than internalized justice values. Consequently, fiduciary disputes increasingly escalate to criminal complaints, overburdening the judicial system and diluting the preventive character of the law.

The institutional challenges further extend to notarial governance and administrative control. Hadjon (1987) and Handayani (2021) emphasize that notaries serve as preventive legal actors who ensure the legality and registration of fiduciary deeds.[35] However, insufficient supervision by the Ministry of Law and Human Rights has resulted in inconsistent registration practices, reducing the enforceability of fiduciary certificates. Sitorus (2024) reports that in several provinces, unregistered fiduciary deeds still circulate in financing institutions, creating grey areas of legal protection.

[34] kautsar Et Al., "Sistem Hukum Modern Lawrance M . Friedman : Budaya Hukum Dan Perubahan Sosial Masyarakat Dari Industrial Ke Digital." tt

[35] Philipus M. Hadjon, *Perlindungan Hukum Bagi Rakyat Di Indonesia*, 1987.

In assessing overall effectiveness, fiduciary law enforcement in Indonesia can thus be characterized as partially functional—norms exist, but institutional synergy and legal culture lag behind. Simanjuntak (2022) describes this as a "three-dimensional gap," where substance, structure, and culture fail to align.[36] Bridging this gap requires a multi-level strategy: (1) substantive reform through revision of Article 36 to ensure proportional penalties; (2) structural reform by developing inter-agency protocols and national sentencing guidelines; and (3) cultural reform through continuous legal education for debtors, creditors, and notaries.[37] Such integrative measures would transform fiduciary enforcement from reactive prosecution into a proactive system that balances deterrence, fairness, and social justice—thereby fulfilling the constitutional mandate of legal certainty and the progressive law ideals envisioned by Rahardjo.[38].

Reformulation of Fiduciary Law and Policy Implications

The structural and normative weaknesses identified in previous subsections indicate an urgent need for the reformulation of Indonesia's fiduciary law to restore its deterrent and protective functions.[39] The reform must be grounded in penal policy principles that harmonize proportional punishment with economic justice. Sudarto and Barda Nawawi Arief (2022) emphasize that penal reform should pursue three objectives simultaneously: protecting social interests, rehabilitating offenders, and preventing further violations through legal certainty.[40] Applying this framework, Article 36 of Law No. 42 of 1999 should be revised to raise the maximum sanction, aligning it with Article 372 of the Criminal Code while maintaining flexibility for restorative measures.[41] This proportional alignment would prevent the perception that fiduciary crimes are petty offenses and re-establish their status as serious breaches of trust in economic relations.

A broader reform agenda should also address procedural coherence. Agustiyanto, et.al (2025) highlights that the current fragmentation between the Criminal Procedure Code and administrative mechanisms for fiduciary registration generates overlapping competencies among police investigators, prosecutors, and notaries.[42] To resolve this, a single-window procedural framework should be developed, integrating fiduciary registration, investigation, and execution under the supervision of the Ministry of Law and Human Rights. Such integration would shorten case handling times and reduce discretionary interpretation at each enforcement stage. Sedono (2023) further proposes the adoption of a digital fiduciary database interoperable with the police and judiciary, enabling automatic verification of registered objects and improving evidentiary reliability in criminal proceedings.[43]

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[36] Simanjuntak, "Evaluasi Hukum Pidana Terhadap Delik Ekonomi Berbasis Kepercayaan."

[37] Sitorus, "Consistency of Criminal Sanctions in Fiduciary Law Enforcement in Indonesia."

[38] Rahardjo, *Hukum Progresif: Riwayat , Urgensi , Dan Relevansi*.

[39] BPK RI, Undang-Undang No 42 Tahun 1999 Tentang Jaminan Fidusia.

[40] Barda Nawawi Arief, *Kebijakan Hukum Pidana Dalam Penanggulangan Kejahatan Ekonomi* (Semarang: UNDIP Press, 2022).

[41] Kitab Undang-Undang Hukum Pidana (KUHP) Pasal 372.

[42] Piko Agustiyanto, Abdul Rasyid Saliman, and Husni Tamrin, "Criminalization of the Transfer of Fiduciary Guarantee Objects Without Consent: A Study Result of the Case No. 118/Pid.Sus/2024/PN Pgp," *International Journal of Science and Society* 7, no. 3 (2025): 203–12, https://doi.org/10.54783/ijsoc.v7i3.1505.

[43] Hafidh Pulung Sedono, "Role of Notary in Registration Electronic Fiduciary (Study at Notary Office Weny Masitawati S.H , M.Kn)," *International Significance of Notary* 3, no. 1 (2023): hlm.18–28.

In addition to procedural reform, the substantive re-design of fiduciary enforcement should incorporate a deterrence-based economic model. According to Becker (1968), deterrence effectiveness depends not only on the severity of sanctions but on their certainty and swiftness.[44] In the fiduciary context, raising penalties without ensuring consistent enforcement would not reduce violations; thus, institutional synergy is paramount. Nasution (2023), in a comparative study of ASEAN jurisdictions, notes that Malaysia and Singapore achieve higher compliance not because of harsher penalties, but because of predictable enforcement and clear sentencing benchmarks.[45] Indonesia could adopt similar models through Supreme Court Sentencing Guidelines specific to fiduciary offenses, ensuring proportionality and uniformity nationwide.

At the institutional level, reforms must strengthen coordination among law-enforcement agencies and preventive actors. Harahap (2021) points out that economic-crime units still lack specialized investigators familiar with fiduciary documentation and notarial procedures.[46] Consequently, continuous capacity-building programs are essential for investigators, prosecutors, and notaries to understand the fiduciary framework comprehensively. Sitorus (2024) adds that clear delineation of authority between administrative and penal enforcement would minimize jurisdictional conflicts and accelerate case resolution.[47] Strengthening institutional cooperation is also consistent with Soerjono Soekanto's (2015) theory of legal effectiveness, which requires alignment of legal substance, structure, and culture to achieve practical compliance.[48]

Finally, fiduciary law reform should adopt a progressive-law orientation by embedding social-justice considerations into economic-crime regulation. Putri and Nugroho (2022) argue that criminal-law modernization in financial sectors must move beyond retribution toward restorative-economic justice, balancing deterrence with rehabilitation and stakeholder trust.[49] In this sense, future fiduciary legislation must ensure not only punishment but also mechanisms for loss recovery, mediation, and legal education. When these reforms are institutionalized, fiduciary law will evolve from a fragmented penal norm into an integrated governance system that embodies legal certainty (rechtszekerheid), expediency (doelmatigheid), and justice (gerechtigheid) as envisioned by the 1945 Constitution.

Effectiveness, Legal Protection, and Harmonization in Fiduciary Law Enforcement

An evaluation of Indonesia's fiduciary law enforcement reveals that the legal system has not yet achieved effective, coordinated, and equitable protection for both creditors and debtors. Although the legal framework under Law No. 42 of 1999 on Fiduciary Security provides detailed procedural and substantive guarantees, its implementation has not fulfilled the principles of legal certainty (rechtszekerheid), justice (gerechtigheid), and expediency (doelmatigheid) as envisioned

[44] Gary S. Becker, "Crime and Punishment: An Economic Approach," *Journal of Political Economy* 76, no. 2 (1968): 169–217, https://doi.org/10.1016/S0002-9610(56)80126-8.

[45] M. Nasution, "Comparative Analysis of Collateral Enforcement in ASEAN Countries," *Asian Journal of Comparative Law* 19, no. 3 (2023): 201–18.

[46] T Harahap, "Effectiveness of Law Enforcement in Economic Crimes: An Indonesian Perspective," *Jurnal Ilmu Hukum Nasional* 14, no. 1 (2021): 33–47.

[47] Sitorus, "Consistency of Criminal Sanctions in Fiduciary Law Enforcement in Indonesia."

[48] Soekanto, *Pengantar Penelitian Hukum*.

[49] D. Putri and A. R. Nugroho, "Penal Reform in Financial Offenses: Balancing Deterrence and Restorative Justice," *Jurnal Kebijakan Hukum* 10, no. 2 (2022): 87–103, https://doi.org/10.56087/substantivejustice.v6i1.206.

by the 1945 Constitution. Drawing from Friedman's theory of the legal system and Hadjon's concept of legal protection, it is evident that failures occur simultaneously at the levels of substance, structure, and legal culture.

At the level of legal substance, fiduciary law still suffers from internal disharmony and inconsistency with the Criminal Code. Nasution (2023) notes that the disparity of sanctions between Article 36 of the Fiduciary Law and Article 372 of the Criminal Code creates a paradox in deterrence: a special regulation intended to strengthen creditor protection imposes a lighter penalty than the general provision. This misalignment weakens public confidence and diminishes the preventive purpose of the fiduciary regime. Furthermore, Alfedo (2021) observes that the limited digitalization of fiduciary registration hinders transparency and facilitates fraudulent transfers of fiduciary objects.[50] Consequently, substantive reform must focus on harmonizing penal sanctions and integrating digital verification into the registration process to enhance the law's deterrent and administrative capacity.

From an institutional perspective, the coordination among law enforcement agencies, notaries, and regulatory bodies remains fragmented. Handayani and Hadi (2021) emphasize that the lack of procedural alignment between administrative and penal enforcement mechanisms results in overlapping jurisdiction and inconsistent case handling. The police and prosecutors frequently treat fiduciary disputes as civil breaches, while the Ministry of Law and Human Rights often fails to supervise notarial compliance in fiduciary registration. Harahap (2021) highlights the absence of specialized training for economic-crime investigators as a key reason for weak evidentiary procedures and low conviction rates. Moreover, Sitorus (2024) points out that without inter-agency standard operating procedures (SOPs), law enforcement outcomes depend heavily on the discretion of individual officers, undermining institutional predictability.

The notary's role as a preventive legal actor is equally central to the system's effectiveness. As Hadjon (1987) asserts, preventive legal protection is achieved when legal procedures are designed to minimize disputes before they escalate into litigation. However, in practice, some notaries fail to ensure proper deed registration or neglect to advise clients about the legal consequences of transferring fiduciary objects. Such administrative lapses weaken the executorial title of fiduciary deeds and erode their evidentiary value in court proceedings. Strengthening notarial supervision and linking notarial deeds with an integrated digital database, as proposed by Alfedo (2021), would significantly improve procedural certainty and reduce opportunities for abuse.

The third dimension, legal culture, remains the most challenging barrier to achieving full enforcement effectiveness. Soerjono Soekanto (2015) emphasizes that public obedience to law depends not only on coercive enforcement but also on internalized legal awareness. In Indonesia, fiduciary compliance is still largely instrumental—debtors adhere to contracts out of fear of repossession rather than respect for legal norms. Pratama and Nurhidayat (2021) note that after Constitutional Court Decision No. 18/PUU-XVII/2019, many debtors misinterpreted the ruling as granting them freedom from repossession, creating moral hazard and resistance to lawful enforcement. To address this, Putri and Nugroho (2022) advocate for integrated legal education programs targeting both consumers and financing institutions to strengthen legal literacy and voluntary compliance.

[50] Juan Maulana Alfedo, "Access Rights of the Electronic Fiduciary Registration System for Corporation in Indonesia," *Corporate and Trade Law Review* 1, no. 2 (2021): 154–67, https://doi.org/10.21632/ctlr.1.2.154-167.

Beyond technical and cultural aspects, fiduciary law reform also requires policy harmonization across the legal system. Utama (2024) argues that harmonization between the Criminal Procedure Code and fiduciary administrative mechanisms would prevent conflicting interpretations of procedural authority. Additionally, Barda Nawawi Arief (2022) insists that penal policy in economic law should balance three functions: social protection, economic stability, and justice for offenders. In line with this, harmonization should encompass both horizontal consistency (among laws and institutions) and vertical consistency (between policy intent and judicial implementation). Comparative experiences from Malaysia and Singapore, as studied by Nasution (2023), demonstrate that integrated digital registration, strict procedural timelines, and sentencing benchmarks produce higher compliance and lower recidivism.

In conclusion, the effectiveness of fiduciary law enforcement depends on achieving structural, substantive, and cultural coherence. A unified policy approach should therefore include: (1) revision of Article 36 to align penal sanctions with proportionality and deterrence principles; (2) establishment of an integrated fiduciary monitoring system connecting notaries, law enforcement, and the judiciary; and (3) continuous public legal education to cultivate a culture of compliance. These measures would transform fiduciary law from a fragmented statutory instrument into a coherent legal ecosystem that embodies preventive, corrective, and restorative justice within Indonesia's legal modernization agenda.

Conclusion

The overall analysis demonstrates that Indonesia's fiduciary law enforcement system has not yet achieved full legal effectiveness or institutional coherence. Despite the detailed provisions of Law No. 42 of 1999, inconsistencies between substantive norms, fragmented institutional coordination, and a low level of legal awareness continue to weaken creditor protection. The fiduciary crime remains under-penalized, with judicial practice favoring procedural formalism over substantive justice. This imbalance underscores the need for harmonized penal reform and a shift from reactive prosecution toward proactive legal governance. To address these deficiencies, the study recommends three strategic reforms. First, substantive reform—revision of Article 36 of the Fiduciary Law to ensure proportional and deterrent sanctions aligned with the lex specialis principle. Second, structural reform—the creation of a unified fiduciary enforcement framework integrating notaries, law-enforcement agencies, and judiciary databases under the Ministry of Law and Human Rights. Third, cultural reform—nationwide legal education and socialization programs to strengthen voluntary compliance and internalize fiduciary norms among debtors and creditors. Implementing these reforms would transform fiduciary law into a coherent, preventive, and restorative system that reinforces Indonesia's rule of law and economic justice aspirations

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