



Socio Juridical Review Of The Criminal Action Of Embraction Of Fiduciary Objects (Case Study Of Kabila District, Bone Bolango District)

Hadrian Abdjul

Faculty Of Law, Universitas Negeri Gorontalo, Indonesia. E-mail: hadrianabdjul02@gmail.com

Abstract: This research aim to find out Socio - a juridical review of the crime of embezzlement of Fiduciary Guarantee objects. This study raises two issues, namely how the socio-juridical review of the crime of embezzlement of Fiduciary Guarantee objects and what are the causative factors. This study uses an empirical legal research method with a sociological jurisprudence approach. The results of this study indicate that the socio-juridical review of the crime of embezzlement of Fiduciary Guarantee objects in Kabila District, Bone Bolango Regency is based on the socio-juridical scope, namely, first the law, Second, state institutions that function to form or make and enforce the law, and Third, the interactive relationship between the formal legal system and the legal order of society. Factors causing the crime of embezzlement of Fiduciary Guarantee objects, namely First, economic factors, where the provision of fees is one of the reasons KN is willing to lend his identity to be used in Fiduciary Guarantee agreements by AHI. The second is the social environmental factor, where the friendship relationship that exists between the perpetrators of embezzlement of Fiduciary Guarantee objects is one of the reasons KN is willing to lend his identity to be used by AHI in the Fiduciary Guarantee agreement.

Keywords: Socio-Juridical Review; Embezzlement; Objects of Fiduciary Guarantees

@2023-Abdjul. H.

Under the license CC BY-SA 4.0

How to cite (Chicago Style):

Abdjul. H. " Socio Juridical Review Of The Criminal Action Of Embraction Of Fiduciary Objects (Case Study Of Kabila District, Bone Bolango District)" *Estudiante Law Journal* 4, no. 2 (February 2022): 244-258

1. Introduction

Law is a reflection of the complex life of society. The rapid development of society, technology and information today has caused people to think again about law by refocusing their attention on the interaction between law and society where the law is applied.¹ The law is for humans, so that people expect benefits from implementing or enforcing the law. Don't let this happen, in the implementation or enforcement of this law there will be unrest in society.²

Indonesia as a rule of law country certainly has goals that are clearly stated in the 1945 Constitution of the Republic of Indonesia which states that "the state aims to protect the entire Indonesian nation and all of Indonesia's bloodshed, promote public welfare, educate the nation's life, participate in peace efforts. world based on freedom, lasting peace and social justice³ , As a legal state, Indonesia has always wanted a concrete form of a national legal system that serves national interests and is rooted in Pancasila and the 1945 Constitution.⁴

The definition of law itself, according to Mochtar Kusumaatmadja is the whole of the principles and rules governing relations between humans in society. In the discussion panel of the Indonesian Law Council, Mochtar Kusumaatmadja explained further that law is the whole of the principles and rules that govern human life and also includes institutions, and processes that embody the enactment of *these* rules in society as a reality.⁵

In law there are legal subjects and objects. Legal subject is everything that according to law can be a supporter (can have) rights and obligations. This legal subject, in the Legal Studies dictionary is referred to as "people" or "supporters of rights and obligations". Thus, legal subjects have the authority to act according to procedures that have been determined and justified by law.

Meanwhile, what is meant by a legal object is anything that is beneficial to a legal subject, and can become an object in a legal relationship. According to legal terminology, legal objects are also called "objects or goods", whereas according to law objects or goods are all goods and rights that can be owned and have economic value, and can be distinguished as follows :

- 1) Tangible and intangible objects (Article 503 of the Civil Code):

¹ Nur Fitriyani Siregar, "Efektivitas Hukum," *Al-Razi* 18, no. 2 (2018): 1-16.

² Sutrisno Sutrisno, Fenty Puluhalawa, dan Lusiana Margareth Tijow, "Penerapan Asas Keadilan, Kepastian Hukum Dan Kemanfaatan Dalam Putusan Hakim Tindak Pidana Korupsi," *Gorontalo Law Review* 3, no. 2 (2020): 168-87.

³ Djamaludin Habi, Lisnawaty W. Badu, dan Jufryanto Puluhalawa, "Herd Immunity VS Human Rights," *Estudiante Law Journal* 3, no. 3 (2021): 372-88.

⁴ Glaidy Angelina Nayoan, Moh Rusdiyanto U. Puluhalawa, dan Jufryanto Puluhalawa, "Analisis Kewenangan Penyidik Pegawai Negeri Sipil Bea Dan Cukai Dalam Penyidikan Tindak Pidana Di Bidang Kepabeanan," *Journal of Comprehensive Science (JCS)* 2, no. 4 (2023): 892-906.

⁵ Amiruddin Pabbu dan Rahman Syamsuddin, "Pengantar Ilmu Hukum," *Jakarta: Mitra Wacana Media*, 2014.

- a) Tangible objects, namely everything that can be achieved or seen and touched by the five senses. For example houses, tables, horses, coconut trees, and so on; And
 - b) Intangible objects, namely all kinds of intangible objects in the form of all kinds of rights attached to an object. For example copyrights, trademark rights, land rights, and so on.
- 2) Movable and immovable objects (article 504 of the Civil Code):
- a) Movable objects, namely any object that moves, because:
 - 1) Its nature can move on its own like animals (chicken, buffalo, horse, goat, and so on);
 - 2) Can be moved such as chairs, tables, shoes, books and so on; And
 - 3) Movable objects due to statutory provisions or provisions, namely usufructuary rights over land and houses, sero rights, promised interest rights, and so on.
 - b) Immovable objects, namely any object that cannot move by itself or cannot be moved because:
 - 1) Its immovable nature, such as mountains, gardens, and what is erected on the ground , including what is contained therein;
 - 2) According to its purpose, any object connected with an object that is immovable, such as a bathroom sink, tiles, printing equipment placed in a warehouse, and so on; And
 - 3) Determination of laws, namely rights to immovable objects and ships whose tonnage/ weight is 20 M3.

In criminal law, an act is said to have violated the law and can be subject to sanctions if it fulfills two elements, namely the presence of an actus reus element or an essential element of crime (physical element) and means rea (mental element), namely a state of mind. Zainal Abidin Farid further stated that actus reus is an element of an offense, while mens rea includes the responsibility of the maker.

The principle of legality as a measure of a crime determines the element of an act that can be punished, that is the principle of legality or nullum crimen sine lege and nulla poena sine lege. This principle is more suitable for written criminal law. The principle of legality determines that the elements of an act can be punished based on written legal rules that stipulate criminal sanctions. Criminal law has the general objective of keeping our society safe. Its specific purpose is to punish people who have committed crimes, and to help prevent crimes from happening in the future. However, in order for the law to be able to work effectively certain conditions must be met so that the law has an influence on the attitude or behavior of humans who are the subject of the law itself.

This can be seen through the application of Law no. 42 of 1999 concerning Fiduciary Guarantees (UUJF), in which article 23 paragraph (2) of the law states that a fiduciary giver can transfer objects that are used as fiduciary guarantees, as long as there is written approval from the fiduciary recipient. However, if you do not obtain written approval from the fiduciary recipient (in this case a finance company), then based on

the provisions of Article 36 of the Fiduciary Law, you will be subject to imprisonment for a maximum of 2 (two) years and a fine of up to Rp. 50,000,000.- (fifty million rupiah). Article 23 paragraph (2) and Article 36 of this UUJF read as follows.

Article 23 paragraph (2):

“A Fiduciary Giver is prohibited from transferring, pawning, or renting to other parties Objects that are objects of a Fiduciary Guarantee that are not supplies, except with prior written approval from the Fiduciary Recipient.”

Article 36:

“A Fiduciary Giver who transfers, mortgages, or leases Objects which are objects of the Fiduciary Guarantee as referred to in Article 23 paragraph (2) which is carried out without the prior written consent of the Fiduciary Recipient, shall be punished with imprisonment for a maximum of 2 (two) years and a fine of up to 50,000,000 (fifty million) rupiah a lot.”

In addition, in Law no. 42 of 1999 concerning Fiduciary Guarantees also contains criminal threats for anyone who falsifies information (forgery) so that a Fiduciary agreement occurs through Article 35 which reads as follows.

Article 35:

“Anyone who intentionally falsifies, changes, removes or in any way provides misleading information, which if it is known by one of the parties does not result in a Fiduciary Guarantee agreement, shall be punished with imprisonment for a minimum of 1 (one) year and a maximum of 5 (five) years and a minimum fine of IDR 10,000,000 (ten million rupiah) and a maximum of IDR 100,000,000 (one hundred million rupiah).”

Even though it has been regulated through Law no. 42 of 1999 concerning Fiduciary Guarantees, in Gorontalo Province itself, especially in the Kabila District, Bone Bolango Regency, criminal acts involving objects of fiduciary guarantees are still rife. In the sub-district which has 4 sub-districts and 8 villages which are the jurisdiction of the Kabila Sector Police, misappropriation in the form of transferring fiduciary guarantee objects without written approval from the fiduciary receiving party, not least leads to a crime of embezzlement of fiduciary collateral objects. This is based on information submitted by members of the Criminal Investigation unit of the Kabila Police, where in the 2019-2020 period the Kabila Police handled 3 cases of embezzlement of Fiduciary Guarantee objects.⁶

The Polri organization is structured in stages from the central level to the regional level. The National Police organization at the central level is called the Headquarters of the Indonesian National Police (Mabes Polri); while the Polri organization at the regional level is called the National Police of the Republic of Indonesia Region (Polda) at the provincial level, the State Police of the Republic of Indonesia Resort (Polres) at

⁶ “Wawancara dengan Teguh Tri Oetomo, S.H. tanggal 4 Agustus 2021 di Kantor Kepolisian Resor Kabila Kab. Bone Bolango,” t.t.

the district/city level, and the State Police of the Republic of Indonesia Sector (Polsek) in the sub-district area.⁷

This case of embezzlement of fiduciary guarantee objects is of course very detrimental to the fiduciary recipients (creditors), so that from what has been described above, prospective researchers are interested in researching this problem.

2. Research Method

This type of research is empirical legal research using the Sociology of Jurisprudence approach. This research is descriptive in nature, which generally aims to accurately describe the characteristics of an individual, condition, symptom or certain group. This study uses data collection techniques through document studies, interviews, and observation. The data used by prospective researchers are primary data and secondary data. Primary data is obtained from the research field directly and comes from the first source in the research field, such as respondents and informants who are directly related to the research. Secondary data was obtained and sourced from a review of literature studies in the form of literature, scientific papers (results of research), laws and regulations, documentation from various agencies and data that has been documented in legal sources that have something to do with the problem to be studied.

3. Socio-juridical review of the crime of embezzlement of fiduciary guarantee objects

Based on the facts that the researchers found in the field, a socio-juridical review can be described regarding the crime of embezzlement of fiduciary guarantee objects in Kabila District, Bone Bolango Regency, Gorontalo Province based on its scope, namely the law that is the object of study (both written and unwritten laws), institutions state institutions whose function is to form or create and enforce law, and the interactive relationship between the formal legal system (as supported by state authorities) and the legal order of society (which is based on the foundations of community morality) as follows.

3.1 Law

The law functions for justice, certainty and expediency. In the practice of administering law in the field there are times when there is a conflict between legal certainty and justice. Legal certainty is concrete in nature, tangible, while justice is abstract in nature so that when a judge decides a case by applying the law alone, there are times when the value of justice is not achieved. So, when looking at a problem regarding the law at least justice is a top priority. Because law is not solely seen from the point of view of written law, there are still many rules that live in society that are

⁷ Mohamad Rizky Alhasni, Lisnawaty Wadju Badu, dan Novendri Mohamad Nggilu, "Menakar Peran Kepolisian Dalam Mencegah Tindak Pidana Pencabulan Terhadap Anak di Bawah Umur," *Jurnal Legalitas* 12, no. 2 (2019): 110–23.

able to regulate people's lives. However, if the purpose of law is solely for justice, then the difficulty faced is the nature of justice itself which is subjective, highly dependent on the subjective intrinsic values of each person. In socio-juridical terms, a variety of laws with formal legality and social legitimacy are discussed in a relationship that may be functional and synergistic, or may even be dysfunctional and controversial. Thus, the implementation of the legal system must pay attention to the constitution and laws that live in society.

Fiduciary, according to its origin, comes from a word that means trust. In accordance with the meaning of this word, the legal relationship between the debtor (fiduciary giver) and the creditor (fiduciary receiver) is a legal relationship based on trust. The fiduciary grantor trusts that the fiduciary beneficiary will return the property rights of the goods that have been handed over after repayment of the debt. On the other hand, the fiduciary trusts that the fiduciary will not misuse the collateral in his or her possession. The institution of fiduciary guarantees was already known and enforced in Roman society. There are 2 (two) forms of fiduciary guarantees, namely *fiducia cum creditore* and *fiducia cum amico*. Both arise from an agreement called *pactum fiduciae* which is then followed by a transfer of rights or *in iure cessio*.⁸

Fiducia cum creditore is a transfer of property rights from the debtor to the creditor because of the debtor's debt and the transfer of property rights is carried out based on the principle of trust as a guarantee of the debtor's debt. Meanwhile, *Fiducia cum amico* is a transfer of property rights from one person to another based on trust to be temporarily entrusted without any debt from the entrustor. *Fiducia cum amico* is also known as temporary entrustment of goods. *Pactum fiduciae* means an agreement based on the principle of trust. *In iure cessio* This means that the transfer of ownership rights of an object which was originally a transfer of property rights on the principle of trust.⁹

The fiduciary agreement is made in writing with the aim that the fiduciary creditor, in his interest, will demand the easiest way to prove the transfer of his guarantee to the debtor. The most important thing about making a fiduciary agreement in writing is to anticipate things that are unexpected and beyond human power, such as the death of the debtor, before the creditor obtains his rights. Without a valid fiduciary deed, it will be difficult for the creditor to prove its rights to the debtor's heirs.¹⁰

In the practice of implementation in the community, the binding of collateral objects using fiduciary security institutions is often used by banks and motor vehicle (car) financing companies in a credit agreement. In principle, in a credit agreement either by a bank or by a finance company, the binding of collateral objects using a fiduciary

⁸ H. Tan Kamello dan MS SH, *Hukum jaminan fidusia suatu kebutuhan yang didambakan* (Penerbit Alumni, 2022).

⁹ Al Mutakkim, "Pelaksanaan Fidusia Sebagai Jaminan Kredit Ditinjau Dari Segi Pengamanannya Dalam Praktek Di Pt. Batavia Prosperindo Finance Samarinda," *Journal of Law (Jurnal Ilmu Hukum)* 3, no. 2 (2014): 106–24.

¹⁰ Gunawan Widjaja, "Pemahaman Konsumen Tentang Pinjaman Online (Pinjol) Di Jakarta," *Pkm: Jurnal Pengabdian Kepada Masyarakat* 2, no. 2 (2022): 89–93.

guarantee institution is with the aim of securing the assets of the bank/company given to the debtor through a credit agreement from the risk that the debtor will not be able to repay his debts to the bank or finance company. Thus, it can be said that the binding of collateral objects using a fiduciary security institution is an *accessoir* agreement, where the credit agreement is first implemented as the main agreement. Forms of Banking Crimes Based on the Law on Banking¹¹

- 1) Criminal Acts Related to Licensing
- 2) Criminal Offenses Related to Bank Secrecy
- 3) Criminal Offenses Relating to Bank Supervision
- 4) Criminal Offenses Related to Business Activities
- 5) Criminal Offenses Relating to Affiliated Parties

Fiduciary guarantee is one of the material guarantees known in positive law. The government, in an effort to deal with violations of Fiduciary Guarantees which can result in losses to creditors, has issued a legal product, Law of the Republic of Indonesia Number 42 of 1999 concerning Fiduciary Guarantees (UUJF) . Even though a fiduciary agreement is a private act in civil terms, the Fiduciary Guarantee Act also regulates criminal acts and regulates criminal sanctions contained in Articles 35 and 36 of the UUJF. This means that criminal sanctions are still needed in private matters even to regulate public order and public safety.

UU no. 42 of 1999 concerning Fiduciary Guarantees is a form of balancing in the midst of a very large and continuously increasing need in the business world for the availability of funds, because it cannot be denied that criminal acts of embezzlement of fiduciary guarantee objects are still found. Based on positive law, the crime of embezzlement is a crime against objects that cause material harm to the victim, the crime of embezzlement originates from the existence of trust given but misused due to lack of honesty. The crime of embezzlement is regulated in Article 372 of the Criminal Code, and Article 36 Jo. Article 3 paragraph (2) RI Law No. 42 of 1999 concerning Fiduciary Guarantees. The following is a statement made by PT. Mandala Multi Finance Gorontalo Branch:

“This law really helps us, because it provides ease and certainty as well as legal protection for parties related to fiduciary guarantees, especially in this case it can be explained the form of mutual help in the community which causes losses for our party”¹²

In accordance with the statement above, based on the information contained in the court decision where Defendant I, namely KN, was asked for help by Defendant II, namely AHL, to lend Naya 's name in applying for a motorbike loan at PT Mandala Multi Finance Branch Gorontalo with the provision that Defendant II will fulfill his

¹¹ Johannes Ibrahim Kosasih dan M. SH, *Akses Perkreditan dan Ragam Fasilitas Kredit dalam Perjanjian Kredit Bank* (Sinar Grafika (Bumi Aksara), 2021).

¹² “ Abd. Sapril T. Badu, Head Marketing PT. Mandala Multi Finance Cabang Gorontalo, wawancara pada tanggal 27 Januari 2022.” t.t.

insurance payment obligations every month, however this was not done by Defendant II and the motorcycle unit was deliberately transferred to another party. Actions that apply in this community as a form of mutual help that bring harm to other parties. This kind of culture of mutual help in Gorontalo society, whether it is realized or not, will cause harm if one party does not fulfill its obligations, so that the existence of this UUJF in practice is very much needed. This is in line with the statement from the police.

"This law related to fiduciary guarantees is to accommodate the needs of the community regarding the regulation of fiduciary guarantees as a means to assist business activities and can provide legal certainty to interested parties."¹³

The legal indicators referred to in this study are Law no. 42 of 1999 concerning Fiduciary Guarantees (UUJF). In Law no. 42 of 1999 concerning Fiduciary Guarantees, the criminal provisions are regulated in Articles 35 and 36 which explain that Everyone who deliberately falsifies, changes, removes or in any way provides information misleadingly, which if it is known by one of the parties does not create a Fiduciary Guarantee agreement, shall be punished with imprisonment for a minimum of 1 (one) year and a maximum of 5 (five) years and a fine of a minimum of Rp.10,000,000.- (ten million rupiah) and a maximum of Rp.100,000,000.- (one hundred million rupiah)). Related to this indicator, the following is the researcher describing the results of interviews with the police.

"When viewed from a regulatory perspective, in this case Law No. 42 of 1999 concerning Fiduciary Guarantees, everything related to a Fiduciary agreement is contained therein. Starting from the scope, rights and obligations of creditors and debtors, procedures for registration of Fiduciary Guarantees, transfers, to the elimination of Fiduciary Guarantees. In relation to the criminal acts committed by the two suspects, we have charged them with Articles 35 and/or 36 of Law no. 42 of 1999 jo. Article 55 paragraph (1) 1st of the Criminal Code."¹⁴

Based on the results of the research that the researchers conducted, it was found that each perpetrator was charged based on the provisions stipulated in Articles 35 and/or 36 of Law no. 42 of 1999 concerning Fiduciary Guarantee jo. Article 55 paragraph (1) 1st of the Criminal Code, as submitted by the police. This is evidenced by the decision of the Gorontalo City District Court which tried the case, in its decision stating that the actions of the two suspects were legally and convincingly proven guilty of committing a crime as stipulated in Article 35 of Law No. 42 of 1999 concerning Fiduciary Guarantee jo. Article 55 paragraph (1) 1st of the Criminal Code. In the following, the researcher presents the results of interviews with PT. Mandala Multi Finance Gorontalo Branch as the creditor who is the victim in this case.

¹³ "Febri Sucahyana Lahati, penyidik Polsek Kabila, wawancara pada tanggal 25 Januari 2022.," t.t.

¹⁴ "Febri Sucahyana Lahati, penyidik Polsek Kabila, wawancara pada tanggal 25 Januari 2022."

" Indeed in Law No. 42 of 1999 concerning Fiduciary Guarantees, it has regulated in its articles all provisions regarding Fiduciary agreements, and from the start we often convey this to prospective debtors regarding these provisions.¹⁵ "

Through the results of the interview above, it can be seen that Law no. 42 of 1999 concerning Fiduciary Guarantees has always been used as a legal basis in regulating all forms of fiduciary agreements. PT. Mandala Multi Finance Gorontalo Branch as the creditor also always refers to this Law in implementing the provisions of the fiduciary agreement. In addition, when a criminal act related to a fiduciary agreement occurs, the police always handle it based on the provisions in force in the Fiduciary Guarantee Law.

3.2. State institutions that function to form or make and enforce the law

Embezzlement of objects of fiduciary guarantees is basically a criminal act, and therefore the institution tasked with dealing with it is the police institution. Embezzlement of fiduciary collateral objects occurs because the debtor transfers the fiduciary object to another party without notification to the creditor and does not fulfill disadvantaged by the debtor reports to the authorities, namely the police. In this regard, the following is a statement from the police :

" Handling cases of embezzlement is our duty as mandated by our constitution regarding the duties and authorities of each section which has been explained in the Regulation of the Chief of Police of the Republic of Indonesia Number 23 of 2010 concerning Organizational Structure and Work Procedures at the Level of Resort Police and Sector Police , where The Polres is tasked with carrying out the main duties of the Polri in maintaining security and public order, enforcing the law, as well as providing protection, protection and service to the community and carrying out other Polri duties within the jurisdiction of the Polres, in accordance with statutory provisions. "

In addition , in the context of fiduciary guarantees, POLRI as a state instrument whose duty and role is to maintain public security and order, law enforcement, protection, protection and service to the community, has the authority to provide security assistance for the implementation of court decisions or the execution of fiduciary guarantees. Execution of Fiduciary Guarantees has the same binding legal force as a court decision that has permanent legal force, so it requires security from the Indonesian National Police. therefore a Regulation of the Head of the State Police of the Republic of Indonesia Number 8 of 2011 concerning Safeguarding the Execution of Fiduciary Guarantees was formed.

Based on an analysis of the role of POLRI as a state instrument whose duty and role is to maintain public security and order, law enforcement, protection, protection and service to the community, its role is also to provide assistance in securing the

¹⁵ " Abd. Sapril T. Badu, Head Marketing PT. Mandala Multi Finance Cabang Gorontalo, wawancara pada tanggal 27 Januari 2022."

implementation of court decisions or execution of fiduciary guarantees. Article 15 paragraph 2 UUJF explains that a fiduciary guarantee certificate has the same executorial power as a court decision that has permanent legal force, so it requires security from the Police. Therefore, the Regulation of the Head of the National Police of the Republic of Indonesia Number 8 of 2011 concerning Safeguarding the Execution of Fiduciary Guarantees was formed.

The purpose of establishing Regulation of the Head of the State Police of the Republic of Indonesia Number 8 of 2011 concerning Safeguarding the Execution of Fiduciary Guarantees is the implementation of the execution of Fiduciary guarantees in a safe, orderly, smooth and accountable manner as well as protecting the safety and security of Fiduciary Guarantee Recipients, Fiduciary Guarantee Providers and/or the public from acts that can cause loss of property and/or life safety . This is in accordance with a statement from the police :

" Regulations regarding fiduciary guarantees do not further stipulate related to the authorized party to be asked for assistance in the execution of fiduciary guarantees. Therefore, POLRI has the authority to provide security assistance for the implementation of court decisions or the execution of fiduciary guarantees. Execution of Fiduciary Guarantees has the same binding legal force as a court decision that has permanent legal force, so it requires security from the Indonesian National Police. therefore a Regulation of the Head of the State Police of the Republic of Indonesia Number 8 of 2011 concerning Safeguarding the Execution of Fiduciary Guarantees was formed. "¹⁶

Based on the explanation in above, it can be clearly seen regarding the structure that functions as a support for authority in the implementation of handling cases of embezzlement of fiduciary collateral objects , both in terms of criminal acts of embezzlement and securing fiduciary objects.

3.3. Interactive relationship between the formal legal system and the legal order of society

Law enforcement is a direct reflection of the interactive relationship of the legal system itself, which in the context of criminal law is implemented through the criminal justice system which broadly consists of at least four components, namely the police, prosecutors, courts and correctional facilities. The four components have been regulated in Law no. 8 of 1981 concerning Criminal Procedure Code (KUHAP). Meanwhile, the term law enforcement officer in its narrow sense only refers to the police. Based on this brief explanation, what is meant by law enforcers whose job is to run the legal system includes law enforcement institutions and apparatus (persons). Law enforcement officials who are involved in the process of upholding the law broadly consist of witnesses, police, legal advisers, prosecutors, judges, and correctional officers.

¹⁶ "Febri Sucahyana Lahati, penyidik Polsek Kabila, wawancara pada tanggal 25 Januari 2022."

In addition, institutions or individuals related to law enforcement also include parties concerned with their duties or roles, namely those related to reporting or complaint activities, investigations, prosecutions, proofs, imposition of sentences and imposition of sanctions, as well as efforts to reinstatement (resocialization).) against the convict. In this discussion, the researcher focuses more on the legal order of society, which refers to what is known as legal awareness and community compliance with the law. Community legal awareness and compliance with the law will then be observed regarding its implications for law enforcement which is the focus of discussion in this study. In the following, the researcher presents the results of an interview with the Kabila Police Criminal Investigation Unit regarding community legal awareness.

“To encourage public awareness of the law, we, the police, through Bhabinkamtibmas, are working with the local village government to continue to work on this. This is done in ways such as socializing and building emotional closeness with the community.”¹⁷

Based on observations in the field, the Kabila Sector Police through their Bhabinkamtibmas conducted outreach to the community in order to develop individuals who are aware of their rights and obligations before the law. This is realized through formal and informal communication with the community in the jurisdiction of the Kabila Sector Police, and is encouraged by good cooperation with local government officials and by establishing emotional closeness with the community. In the following, the researcher also presents the results of interviews with creditors, namely PT. Mandala Multi Finance Gorontalo Branch as an addition to further understand this.

“ Consumers basically know what is allowed and what is not allowed. What's more, the crime of embezzlement involving fiduciaries is not the only time this has happened.”

Based on the results of the interviews above, it can be seen that the community is positioned or seen as a community that already has legal awareness, especially regarding fiduciary agreements. However, legal awareness by the community has not been accompanied by legal compliance. Society's compliance with the law actually integrates with cultural factors, but this is deliberately differentiated because the discussion raises the issue of a system of values which is the core of culture, namely spiritual or non-material.

The cultural component plays an equally important role in criminal law enforcement. There are times when the level of law enforcement in a society is very high, because it is supported by the culture of society through very high community participation in efforts to prevent crime, report and make complaints about the occurrence of crimes in the surrounding environment and cooperate with law enforcement officials in

¹⁷ “Aipda Feriyanto Rahim, S.H., CPLC, Kanit Reskrim Polsek Kabila, wawancara pada tanggal 25 Januari 2022.” t.t.

crime prevention efforts, even though the structural and substantive components are not very good, the community does not even want the formal procedure to be implemented properly. Based on this, the following researchers present the results of interviews with Kabila Sector Police investigators.

“When a criminal incident occurs, the community usually reports it to the local government apparatus first, or several times they coordinate directly with us.”¹⁸

Based on these findings, in reporting an alleged criminal incident, the community tends to report it first to the local government. This community report is then forwarded to the police by the local government for further follow-up. In the following, the researcher presents the results of interviews with PT. Mandala Multi Finance Gorontalo Branch as an addition.

“The culture of the people of Gorontalo originates from the good values that exist in Islam.”

Based on the results of the interviews above with the informants and supported by several findings in the field, it can be seen that from the participation of the community, namely the victims in carrying out the crime of embezzlement of fiduciary collateral objects by submitting reports to the Kabila Sector Police, indicating that the culture of enforcement law has run well in society. Likewise with the general public in the jurisdiction of the Kabila Sector Police, where the community already has a culture of law enforcement as seen through reports from the public to the police through local government apparatus when it is known that a criminal incident has occurred, and being cooperative. The legal culture that develops in this society is also driven by the good values contained in religious teachings.

4. Factors causing the crime of embezzlement of Fiduciary Guarantee objects

Based on the results of research in the field, the factors that cause the occurrence the crime of embezzlement of the Fiduciary Guarantee object is as follows.

4.1. Economic Factor

The relationship between inequality and crime has become an important concern. There are several basic theories that serve as references for the relationship between inequality and crime rates, crime occurs when social control weakens due to poverty, family instability, population mobility, and so on. Based on this description, the following researchers present the results of interviews with the Kabila Police investigators.

¹⁸ “Aipda Feriyanto Rahim, S.H., CPLC, Kanit Reskrim Polsek Kabila, wawancara pada tanggal 25 Januari 2022.”

"The vehicle unit that is the object of the Fiduciary Guarantee was embezzled by being transferred to another party without permission from the Finance company as the victim."¹⁹

Based on the information above, it can be seen that economic factors contributed to the perpetrators to commit the crime of embezzlement of Fiduciary Guarantee objects. This is evidenced by the involvement of Sdra. KN by Sdra. AHI was given a fee of Rp. 500,000 so that Sdra. KN is willing to lend his identity to be used in Fiduciary Guarantee transactions.

4.2. Social Environmental Factors

Fundamentally, the environment is a combination of physical and non-physical conditions, the scope of which includes all things and circumstances that cover human existence and its surroundings which ultimately affect the continuity of human life itself. Based on that, the state of environmental quality is closely related to human existence and all its activities.

All of these behaviors are learned in social interactions with other people through the process of communication. So based on this theory, social environmental factors which allow for the occurrence of a social interaction is one of the supporters of the occurrence of a crime. In this discussion, the social environment referred to refers to the friendly relations that exist between the perpetrators of embezzlement of Fiduciary collateral objects. In the following, the researcher presents your statement. AHI alias Bimbo based on the dossier copy of the person concerned.

"I need to explain that at that time I offered Lk. Ulu to use his name to apply for credit to PT. Mandala Finance because there is a friend of mine named Lk. Jufri wants to apply for credit at. PT. mandala Finance but where the name is damaged/can't apply again to any Finance party, then at that time Lk. Ulu agreed to lend his name to apply for a loan from PT. Mandala Finance, after the Motor Unit which has Lk. Ulu submitted the credit, namely in the form of 1 (one) unit of Yamaha Aerox motorbike that had left the dealer where the motorbike was handed over to me and then I handed it over again to Lk. Jufri borrowed the name."²⁰

In addition, the following is the researcher's statement. KN alias Ulu based on the BAP copy of the person concerned.

"At that time Sdra. Bimbo called me with the intention of borrowing my name to apply for a motor vehicle loan, after that I told Sdra. Bimbo to come to my house and talk about it, and then a few minutes later Sdra. Bimbo came to my house, where at that time Sdra. Bimbo told me that one of his friends whose name I don't know wants to get a car loan using my and my wife's names."

¹⁹ "Febri Sucahyana Lahati, penyidik Polsek Kabila, wawancara pada tanggal 25 Januari 2022."

²⁰ "Hasil Berita Acara Pemeriksaan tersangka Sdra. AHI, pada tanggal 30 September 2019.," t.t.

Also as a support, the following is the researcher presenting a copy of the decision of the Gorontalo District Court which tried the perpetrators.

“The actions of Defendant I KN alias Ulu were influenced by the words of Defendant II AHI alias Bimbo to borrow his name as an applicant in applying for a motorcycle purchase loan for Defendant II AHI alias Bimbo.”

Based on the explanation above, it can be seen that the social environment has contributed to the embezzlement of Fiduciary collateral objects.

5. Conclusion

The socio-juridical review of the crime of embezzlement of Fiduciary Guarantee objects in Kabila District, Bone Bolango Regency is based on the socio-juridical scope, namely first law, where the application of the legal system must pay attention to the constitution and laws that live in society, so that Law no. 42 of 1999 concerning Fiduciary Guarantees is a form of balancing to accommodate the needs of the community regarding guarantee arrangements. The two state institutions whose function is to form or create and enforce the law, where the institution highlighted is the police. Third, the interactive relationship between the formal legal system and the legal order of society, The discussion focuses on finding answers about the level of public awareness and compliance with the law.

Factors causing the crime of embezzlement of Fiduciary Guarantee objects, namely First, economic factors, where the provision of fees is one of the reasons KN is willing to lend his identity to be used in Fiduciary Guarantee agreements by AHI. The second is the social environmental factor, where the friendship that exists between the perpetrators of embezzlement of Fiduciary Guarantee objects is also the cause for AHI's use of the KN identity.

References

- “Abd. Sapril T. Badu, Head Marketing PT. Mandala Multi Finance Cabang Gorontalo, wawancara pada tanggal 27 Januari 2022.” t.t.
- “Aipda Feriyanto Rahim, S.H., CPLC, Kanit Reskrim Polsek Kabila, wawancara pada tanggal 25 Januari 2022.” t.t.
- Alhasni, Mohamad Rizky, Lisnawaty Wadju Badu, dan Novendri Mohamad Nggilu. “Menakar Peran Kepolisian Dalam Mencegah Tindak Pidana Pencabulan Terhadap Anak di Bawah Umur.” *Jurnal Legalitas* 12, no. 2 (2019): 110–23.
- “Febri Sucahyana Lahati, penyidik Polsek Kabila, wawancara pada tanggal 25 Januari 2022.” t.t.
- Habi, Djamaludin, Lisnawaty W. Badu, dan Jufryanto Puluhulawa. “Herd Immunity VS Human Rights.” *Estudiante Law Journal* 3, no. 3 (2021): 372–88.
- “Hasil Berita Acara Pemeriksaan tersangka Sdra. AHI, pada tanggal 30 September 2019.” t.t.

- Kamello, H. Tan, dan MS SH. *Hukum jaminan fidusia suatu kebutuhan yang didambakan*. Penerbit Alumni, 2022.
- Kosasih, Johannes Ibrahim, dan M. SH. *Akses Perkreditan dan Ragam Fasilitas Kredit dalam Perjanjian Kredit Bank*. Sinar Grafika (Bumi Aksara), 2021.
- Mutakkim, Al. "Pelaksanaan Fidusia Sebagai Jaminan Kredit Ditinjau Dari Segi Pengamanannya Dalam Praktek Di PT. Batavia Prosperindo Finance Samarinda." *Journal of Law (Jurnal Ilmu Hukum)* 3, no. 2 (2014): 106–24.
- Nayoan, Glaidy Angelina, Moh Rusdiyanto U. Puluhulawa, dan Jufryanto Puluhulawa. "Analisis Kewenangan Penyidik Pegawai Negeri Sipil Bea Dan Cukai Dalam Penyidikan Tindak Pidana Di Bidang Kepabeanan." *Journal of Comprehensive Science (JCS)* 2, no. 4 (2023): 892–906.
- Pabbu, Amiruddin, dan Rahman Syamsuddin. "Pengantar Ilmu Hukum." *Jakarta: Mitra Wacana Media*, 2014.
- Siregar, Nur Fitryani. "Efektivitas Hukum." *Al-Razi* 18, no. 2 (2018): 1–16.
- Sutrisno, Sutrisno, Fenty Puluhulawa, dan Lusiana Margareth Tijow. "Penerapan Asas Keadilan, Kepastian Hukum Dan Kemanfaatan Dalam Putusan Hakim Tindak Pidana Korupsi." *Gorontalo Law Review* 3, no. 2 (2020): 168–87.
- "Wawancara dengan Teguh Tri Oetomo, S.H. tanggal 4 Agustus 2021 di Kantor Kepolisian Resor Kabila Kab. Bone Bolango.," t.t.
- Widjaja, Gunawan. "Pemahaman Konsumen Tentang Pinjaman Online (Pinjol) Di Jakarta." *Pkm: Jurnal Pengabdian Kepada Masyarakat* 2, no. 2 (2022): 89–93.