



Criminal Liability of Debtors Who Are Co-Defendants in Judgment No. 18/Pid.B/2023/Pn.Cbn

Article	Abstract
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Introduction

Criminal acts are a form of “deviant behavior” inherent in every society and pose a threat to the social order, both at the individual and collective levels. In line with this, Ancel describes criminal acts as “a human and social problem,” while Alper refers to them as “the oldest social problem”—a phenomenon that has consistently captured the public’s attention across eras and nations.¹ A criminal offense is a fundamental basis for imposing a sentence on a person who has

¹ Rizal Sanrego, “Ketentuan Tindak Pidana Sebagai Kejahatan Dan Pelanggaran Dalam Undang-Undang Pidana Khusus,” *Journal Terekam Jejak 3* (2025), <https://doi.org/https://doi.org/10.5281/>.

committed a criminal act, based on that person's liability for the act they have committed.²

As a country governed by the rule of law, Indonesia guarantees its citizens access to justice in accordance with applicable laws through the judicial branch via the courts.³ Within the context of criminal law, the concept of criminal liability plays a crucial role as the basis for determining whether an individual can be subject to criminal sanctions for their actions. Criminal liability, which involves the relationship between an unlawful act and the perpetrator, evolves alongside societal dynamics and the ever-changing needs of the law.⁴ Criminal liability is a person's liability for a criminal offense they have committed. Criminal liability arises because a criminal offense has been committed by an individual. Criminal liability is, in essence, a mechanism established by criminal law to respond to violations of the "social consensus" regarding a particular act.⁵

The basis for the existence of a criminal offense is the principle of legality, while the basis for the criminal liability of the perpetrator is the principle of fault. This means that the perpetrator of a criminal offense will only be punished if he or she is at fault for committing that offense. When a person is deemed to be at fault for committing a criminal offense is a matter of criminal liability. A person is considered to have acted with fault when committing a criminal act; from a societal perspective, they are subject to censure for that act.⁶ The theory of criminal liability underlying this regulation emphasizes the concepts of *actus reus* (unlawful act) and *mens rea* (mental element) as essential requirements for criminal punishment.⁷

As in the practice of fiduciary security; fiduciary security is a conventional product used specifically to provide protection for creditors. When a debtor defaults, the creditor may seek compensation from the debtor through the enforcement of the fiduciary security. With fiduciary registration, the enforcement of the collateral can be carried out immediately without waiting for a court ruling. Such conditions make it easier for financial institutions to recover compensation from financing provided to customers.⁸

Article 23(2) of Law No. 42 of 1999 on Fiduciary Security (UUJF) states that a grantor of fiduciary security is prohibited from transferring, pledging, or leasing to another party any property that is the subject of fiduciary security and is not inventory, except with the prior written consent of the grantee of fiduciary security. As in the case addressed in Judgment No. 18/Pid.B/2023/Pn.Cbn, the case originated from a financing application for the purchase on credit of one unit of a Honda New Brio Satya vehicle submitted by the defendant. The application was subsequently approved after undergoing several stages of the process, until the vehicle was obtained by the

² Hartanto, *Memahami Hukum Pidana* (Yogyakarta: Penerbit Lintang Pustaka Utama, 2019).

³ Syaibani Ihza Ibrahim, "ANALISIS LEGAL STANDING PEMOHON DALAM PUTUSAN MAHKAMAH KONSTITUSI NOMOR 90/PUU-XXI/2023," *Khuluqiyya: Jurnal Kajian Hukum Dan Studi Islam*, September 19, 2024, <https://doi.org/10.56593/khuluqiyya.v6i2.135>.

⁴ Dkk Titit Fridawati, "Perkembangan Teori Pertanggungjawaban Pidana Di Indonesia: Kajian Pustaka Terhadap Literatur Hukum Pidana," *JIMMI: Jurnal Ilmiah Mahasiswa Multidisiplin 1* (2024): 317–28.

⁵ Husnaini Marsudi Utoyo, Kinaria Afriani, Rusmini, "Sengaja Dan Tidak Sengaja Dalam Hukum Pidana Indonesia," *Lex Librum : Jurnal Ilmu Hukum 7* (2020): 75–85, <https://doi.org/http://doi.org/10.5281/zenodo.4291791>.

⁶ Aknes Susanty Sambulele, "Tanggung Jawab Pelaku Penyertaan Dalam Tindak Pidana (Pasal 55 Dan 56 KUHP)," *Lex Crimen 2*, no. 7 (2013): 3106.

⁷ Muhammad Syarif Hidayatullah Akbar, Tofik Yanuar Chandra, and Mohamad Ismed, "Pertanggungjawaban Pidana Pelaku Tindak Pidana Penggelapan Dalam Jabatan Dariperspektif Hukum Pidana Indonesia," *SINERGI : Jurnal Riset Ilmiah 2*, no. 8 (August 23, 2025): 3916–26, <https://doi.org/10.62335/sinergi.v2i8.1738>.

⁸ M. Yasir, "Aspek Hukum Jaminan Fidusia," *SALAM: Jurnal Sosial Dan Budaya Syar-I 3*, no. 1 (June 25, 2016): 75–92, <https://doi.org/10.15408/sjsbs.v3i1.3307>.

defendant. After receiving the car, the defendant transferred it that same afternoon to PT J Trust Olympindo Multi Finance without prior written notice.

Any act involving the transfer of a fiduciary collateral object without written notice constitutes a criminal offense. The commission of a criminal offense necessitates criminal liability. Criminal liability arises from the attribution of objective blame to the act declared a criminal offense under applicable criminal law, which is subjectively attributed to the perpetrator who meets the requirements to be subject to criminal punishment for said act.⁹ Therefore, this study will examine the criminal liability of the person who acted as the fiduciary and was involved in Judgment No. 18/Pid.B/2023/Pn.Cbn.

Research on criminal liability of debtors or grantors of fiduciary rights has been conducted by previous researchers, including Siti Alfisyahrin Lasor et al., who discussed the transfer of fiduciary objects by debtors to third parties without the creditor's knowledge. Irma Ramadani et al., who discussed the analysis of Criminal Liability for Identity Forgery by a Fiduciary Grantor (Case Study of the Makassar District Court Decision No. 1097/Pid.Sus/2019/PN.MKS). Based on these two previous studies, the researcher discusses criminal liability for the fiduciary grantor or creditor who is also a co-conspirator in Judgment No. 18/Pid.B/2023/PN.Cbn.

Research Method

The type of research used in this study is normative legal research. Normative legal research is research that examines or analyzes legal materials such as legislation, court decisions/rulings, contracts/agreements, legal theories, and the legal opinions of scholars. Another name for normative legal research is doctrinal legal research, also known as literature review or document analysis.¹⁰ According to Ahmad Mukti Fajar ND and Yulianto, normative legal research is legal research that views law as a system of norms. The system of norms in question pertains to the principles, norms, and rules found in legislation, court decisions, agreements, and legal doctrines or teachings.¹¹ The statutory approach is a method that examines the laws and regulations relevant to the issue under discussion or review.¹² The case approach is a method that examines court decisions that have become final and binding.¹³

Criminal Responsibility

In criminal law, the term "delict" is known by several terms, such as criminal act, criminal incident, or criminal offense. In the Kamus Besar Bahasa Indonesia (Great Dictionary of the Indonesian Language), the definition of "delict" is defined as "an act that is punishable because it constitutes a violation of criminal law." The word "delik" originates from the Latin word "delictum," which is referred to as "strafbaar feit" in the Dutch Wetboek Van Strafbbaar feit. In German, it is called "delikt," in French "délit," and in Dutch "delict." In the Indonesian Dictionary, the definition is defined as follows: "An act that is punishable because it involves a violation of criminal law."¹⁴

⁹ Sambulele, "Tanggung Jawab Pelaku Penyertaan Dalam Tindak Pidana (Pasal 55 Dan 56 KUHP)."

¹⁰ Muhaimin, *Metode Penelitian Hukum* (Mataram: Mataram University Press, 2020).

¹¹ Muhaimin.

¹² Bachtiar Bachtiar, *Metode Penelitian Hukum* (Pamulang Tangerang Selatan: Unpam Press, 2019).

¹³ Bachtiar.

¹⁴ Joko Sriwidodo, *Kajian Hukum Pidana Indonesia "Teori Dan Praktek"* (Yogyakarta: Kepel Press, 2019).

According to Wirjono Prodjodikoro, a criminal offense is an act for which the perpetrator may be subject to criminal punishment. This perpetrator may be considered the legal subject of the criminal offense.¹⁵

According to Simons' formulation, a criminal offense must consist of a human act; that act must be unlawful; it must be committed by a person who is criminally responsible; and that person must be subject to prosecution. Holding someone criminally liable means attributing the punishment that objectively exists for the criminal act subjectively to the perpetrator. Criminal liability is determined based on the perpetrator's fault and not merely on the fulfillment of all elements of the criminal offense. Thus, fault is positioned as the determining factor for criminal liability and is not merely viewed as a mental element within the criminal offense. A person is deemed to have fault, which is a matter concerning criminal liability.¹⁶

Criminal liability can be defined as criminal responsibility; in Dutch, it is known as "toerekenbaarheid," and in English, as "criminal responsibility" or "criminal liability." Criminal liability involves imposing punishment on the perpetrator for acts that violate prohibitions or result in prohibited circumstances. Criminal liability therefore concerns the process of imposing punishment for a criminal act upon the perpetrator.

According to Roeslan Saleh, criminal liability is defined as the attribution of objective blame to a criminal act and the subjective fulfillment of the conditions for criminal punishment due to that act. Objective blame means that the act committed by a person is indeed a prohibited act. The indicator is that the act is against the law, both in the sense of violating formal law and material law. Meanwhile, subjective culpability refers to the person who committed the prohibited act. Even if a prohibited act has been committed by a person, if that person cannot be held accountable because there is no fault on their part, then criminal liability cannot exist. Specifically regarding objective culpability and subjective culpability, Sudarto states that it is not sufficient for a person to be punished merely because they have committed an act that is contrary to the law or unlawful (objective culpability).¹⁷

Thus, even though the act meets the legal definition of a crime and is unjustifiable, it does not yet satisfy the requirements for criminal punishment. For criminal punishment to be imposed, there must be an additional requirement: the person who committed the act must be at fault and guilty (subjective culpability). That person must be held accountable for their act; in other words, the act can only be attributed to that person. More specifically, Sudarto states that for a person to bear criminal liability meaning the perpetrator is held criminally responsible several conditions must be met, namely:

- a. The commission of a criminal offense by the perpetrator;
- b. The presence of an element of fault, whether intentional or negligent;
- c. The presence of a liable party;
- d. The absence of an exculpatory defense.

¹⁵ Marsudi Utoyo, Kinaria Afriani, Rusmini, "Sengaja Dan Tidak Sengaja Dalam Hukum Pidana Indonesia."

¹⁶ Aryo Fadlian, "Pertanggungjawaban Pidana Dalam Suatu Kerangka Teoritis," *Jurnal Hukum Positum* 5 (2020): 10–19, <https://doi.org/https://doi.org/10.35706/positum.v5i2.5556>.

¹⁷ Marsudi Utoyo, Kinaria Afriani, Rusmini, "Sengaja Dan Tidak Sengaja Dalam Hukum Pidana Indonesia."

Criminal liability primarily refers to the state of the perpetrator at the time of committing the criminal act. It also involves establishing a connection between the perpetrator's state and the act itself, as well as the appropriate penalty to be imposed. Thus, the analysis proceeds in two directions:

- a. Criminal liability is situated within the context of the factual requirements for criminal punishment and thus serves a preventive function.
- b. Criminal liability is the legal consequence of the existence of those factual requirements and is therefore part of the repressive aspect of criminal law. Criminal liability relates to the conditions that constitute the basis for criminal punishment and the legal consequences arising from them.

The concept of criminal liability pertains to the mechanisms that determine whether a perpetrator can be prosecuted, and thus has a significant impact on judges.¹⁸ The judge must consider all of these aspects, whether presented in a positive or negative light. The judge must take them into account, even if the prosecutor has not proven them. Conversely, when the defendant raises a defense based on grounds that negate guilt, the judge is obligated to delve deeper into the matter. In this case, the judge is obligated to further investigate what the defendant has presented as the specific circumstances of the incident, which the defendant now raises as grounds for negating guilt. Furthermore, even if the defendant does not raise a defense based on grounds for exculpation, it is still necessary to ensure that such grounds were not present in the defendant at the time of committing the criminal act. The judge remains obligated to ensure that no grounds for exculpation existed in the defendant, even if a defense based on such grounds was not raised.¹⁹

Fiduciary Guaranty

The term "fiduciary" derives from the Latin word "fides", meaning "trust." Consistent with this meaning, the legal relationship between the debtor (the grantor) and the creditor (the grantee) is one based on trust. The grantor trusts that the grantee will return ownership of the property that has been transferred once the debt is repaid. Conversely, the fiduciary recipient trusts that the fiduciary grantor will not misuse the collateral in their possession.²⁰

Furthermore, the term "fiduciary" derives from the Latin word "fiducia," which, according to legal dictionaries, means "trust." In Indonesian, the term "fiduciary" refers to the transfer of ownership rights in trust, while in Dutch legal terminology it is also known as "fiduciare eigendom overdracht." "Fiduciary" originates from the word "fides," which means "trust." Trust implies that the grantor believes the transfer of ownership is not intended to actually make the creditor the owner of the collateral, and if the underlying fiduciary agreement is fulfilled, the collateral will revert to the grantor's ownership.²¹

¹⁸ Sanusi, Irma Maulida, and Dessy Ika Putri, "Penegakan Hukum Dalam Tindak Pidana Penipuan Penawaran Kerja Berbasis Media Elektronik (Whatsapp)," *HUMANI (Hukum Dan Masyarakat Madani)* 14, no. 1 (2024): 133–43.

¹⁹ Kornelia Melansari D. Lewokeda, "Pertanggungjawaban Pidana Tindak Pidana Terkait Pemberian Delegasi Kewenangan," *Mimbar Hukum* 14 (2019): 183–96.

²⁰ Marulak Pardede, *Implementasi Jaminan Fidusia Dalam Pemberian Kredit Di Indonesia* (Jakarta: Badan Pembinaan Hukum Nasional, 2006).

²¹ Yasir, "Aspek Hukum Jaminan Fidusia."

In his book *Civil Law Related to Fiduciary Security Law*, Marhainis uses the term “Agreement in Trust,” derived from the words *Fiduciair Eigendom Overdracht*, or abbreviated as *f.e.o.*, which is also referred to as “transfer of ownership in trust.” According to him, the term *Fiduciair Eigendom Overdracht* (*f.e.o.*) is commonly encountered in society, particularly in the banking sector, where a customer applies for a loan from a bank, and movable property is used as collateral; however, the collateral the movable property is not physically transferred by the owner to the lender (the bank) but remains under the owner’s control and continues to be used by the owner. Thus, *Fiduciair Eigendom Overdracht* contains two elements of a pledge because the collateral consists of movable property, while at the same time it contains an element of a mortgage because the collateral is not transferred by the debtor to the creditor. Based on the above terminology, the concept of fiduciary collateral according to Marhainis is such that it appears as though the debtor has surrendered the collateral to the creditor and as though the ownership of the property is held by the creditor; consequently, the creditor returns the property to the debtor. This is what gives rise to the concept of “fiduciair eigendom overdracht” (transfer of ownership in trust).

The provision in Article 1(1) of Law No. 42 of 1999 on Fiduciary Security (UUJF) states that a fiduciary security is the transfer of ownership rights to an item on a fiduciary basis, provided that the item whose ownership rights have been transferred remains in the possession of the owner of the item. From the wording of Article 1(1) of the UUJF, the following elements of a fiduciary arrangement can be identified:

- a. The transfer of ownership of an item;
- b. Is carried out on a fiduciary basis;
- c. The item remains in the possession of the owner.

In general, a fiduciary transfer is the transfer of ownership rights in trust. From this definition, it can be understood that a fiduciary transfer is the transfer of ownership rights in trust over a property whether movable or immovable, particularly buildings that cannot be encumbered with a lien from the debtor to the creditor; based on a debt agreement as collateral for the debtor’s debt to the creditor; however, the property whose ownership rights have been transferred remains under the control of the property owner, but no longer as the owner but as the borrower.

Fiduciary is one of the property rights that serves to provide security for the fulfillment of the creditor’s rights under the principal agreement, and as an agreement, fiduciary constitutes a legal act subject to the provisions of Book III of the Civil Code -Law on Obligations (*verbinten*is); therefore, all provisions relating to fiduciary agreements are subject to the general provisions governing obligations and agreements in general.²² A fiduciary pledge is a method of transferring ownership rights from the owner (debtor) to the creditor based on a principal agreement (debt agreement); however, only the legal title is transferred, and the creditor holds it in trust (as security for the debtor’s debt), while the physical possession of the collateral remains with the debtor. Ownership rights to the collateral are transferred to the creditor/fiduciary recipient, while the physical collateral remains under the control of the debtor/fiduciary grantor.

²² Benny Krestian Heriawanto, “Pelaksanaan Eksekusi Objek Jaminan Fidusia Berdasarkan Title Eksekutorial,” *Legality: Jurnal Ilmiah Hukum* 27 (2019): 54–67.

As stipulated in Article 1, paragraphs 1 and 2 of Law No. 42 of 1999 on Fiduciary Security, a fiduciary security is the transfer of ownership rights to an item on a fiduciary basis, provided that the item whose ownership rights have been transferred remains in the possession of the owner. A fiduciary security is a security right over movable property, whether tangible or intangible, and immovable property, particularly buildings that cannot be encumbered with a mortgage as referred to in Law No. 4 of 1996 on Mortgages, which remains in the possession of the grantor of the fiduciary security, as collateral for the repayment of a specific debt that is given priority to the beneficiary of the fiduciary security over other creditors.²³ Section 23(2) of the Fiduciary Law states that a grantor of a fiduciary interest is prohibited from transferring, pledging, or leasing to another party any property that is the subject of a fiduciary interest and is not inventory, unless the transferee has given prior written consent.

Legal Certainty

Regarding the function of law, various experts have expressed their views on how law plays a role in maintaining order and security in society. One prominent theory is that put forward by Gustav Radbruch, who analyzed the purposes of law. According to Radbruch, the purposes of law can be categorized into three distinct schools of thought: the utilitarian perspective, which emphasizes that law must be beneficial; the legal positivist perspective, which focuses on the principles of legal certainty and predictability; and finally, the natural law perspective, which centers on the concept of substantive justice. These three primary purposes of law have undergone significant evolution and change within the field of legal scholarship. Nevertheless, the most prominent issue today remains the tension between the pursuit of legal certainty and the pursuit of substantive justice.²⁴ The importance of legal certainty is fundamentally a principle that protects every individual from the abuse of power, thereby requiring the government to ensure the safety of every citizen. This principle is closely linked to formal legal mechanisms and the government's obligation to enforce them in accordance with applicable laws.²⁵

Legal protection for every individual can be achieved through the enforcement of the law under certain circumstances. The law must be obeyed without exception; this idea is often referred to as "fiat justitia et pereat mundus" (let justice be done, though the world perish). This principle is the ultimate goal of legal guarantees. Legal guarantees serve as a safeguard against arbitrary behavior, meaning that a person can anticipate receiving their rightful due in a given situation. Society seeks legal guarantees because they enhance stability. The law is responsible for creating legal guarantees because its purpose is to maintain social stability. On the other hand, society expects benefits from the application or enforcement of legal rules. The law exists for the benefit of society; therefore, the application or enforcement of the law should produce positive results or benefits for society. The law must not be equated with justice. The law inherently has a broad scope, applies to all, and is consistent. Anyone who commits theft must face consequences, meaning that all thieves must be punished, regardless of their identity. Legal certainty is closely

²³ Andi Wahyu Agung Nugraha, "Prinsip-Prinsip Hukum Jaminan Fidusia Dalam Perspektif Undang-Undang Nomor 42 Tahun 1999 Tentang Jaminan Fidusia," *Lex Privatum* VI (2018): 108–18.

²⁴ Dino Rizka Afdhali, "Idealitas Penegakkan Hukum Ditinjau Dari Perspektif Teori Tujuan Hukum," *Collegium Studiosum Journal*, 2023.

²⁵ Nyoman Gede Remaja, "Makna Hukum Dan Kepastian Hukum," *Kertha Widya: Jurnal Fakultas Hukum Unipas 2* (2014): 1–26, <https://doi.org/https://doi.org/10.37637/kw.v2i1.426>.

linked to the principles of legal positivism. According to legal positivism, statutes are the sole source of law, while the role of the judiciary is limited to enforcing statutes regarding specific incidents.²⁶

In this regard, legal clarity is essential for maintaining order and security in a society, as legal provisions are binding and apply to all individuals. However, in practice, when legal clarity is linked to justice, these two concepts often conflict with one another. This occurs because, on the one hand, legal certainty may disregard principles of justice, while on the other hand, efforts to achieve justice may disregard principles of legal certainty.

As stated by Sudikno Mertokusumo, legal certainty serves as a guarantee that the law will be applied, that individuals entitled to rights under the law can access those rights, and that rulings will be enforced. Although there is a close relationship between legal certainty and justice, the law itself is not the same as justice. The law is universal, binding on all, and consistent; conversely, justice is personal, subjective, and varies.²⁷

Criminal Liability in Judgment No. 18/Pid.B/2023/Pn.Cbn

The case in Judgment No. 18/Pid.B/2023/PN.Cbn began when a defendant named Tarmidi, alias Midi bin Warja, applied for financing at the Cirebon branch of PT J Trust Olympindo Multi Finance, located at Jalan Dr. Cipto Mangunkusumo No. 26, Blok Berry Green No. 3A, Cirebon Super Blok, Cirebon City, on or around June 18, 2019. The loan application was used to purchase a Honda New Brio Satya on credit. The details of the car are as follows: License Plate: E 1362 VR, red, 2016 model; Chassis Number: MHKDD1750GJ710161; Engine Number: L12B31824172; Vehicle Registration Certificate (STNK) in the name of Wahyudi, address: RT 002, RW 009, Majalengka Village, Majalengka Regency. Following a review of the financing application conducted by PT J Trust Olympindo Multi Finance Cirebon Branch regarding the completeness of the financing application documents. On June 20, 2019, at 1:00 PM, the defendant Tarmidi signed Financing Agreement No. 0400038015-001 with a principal debt of Rp 157,182,000.00 (One hundred fifty-seven million one hundred eighty-two thousand rupiah) with a monthly installment of Rp 3,082,000.00 (Three million eighty-two thousand rupiah) for forty-eight months, effective from the due date of July 20, 2019, until September 20, 2021, and received one unit of a Honda New Brio Satya with license plate number E 1362 VR.

Subsequently, at 5:00 p.m. WIB, the defendant Tarmidi personally handed over a Honda New Brio Satya with license plate number 1362 VR to Rian Hidayat, also known as Rian, without the knowledge or written consent of PT J Trust Olympindo Multi Finance's Cirebon Branch. Tarmidi, also known as Midi, made payments only up to the eighth installment. Due to payment difficulties, PT J Trust Olympindo Multi Finance recommended applying for a payment relief program in light of the COVID-19 pandemic. Following the relief, Tarmidi, also known as Midi, made payments as usual, but this was only done during the months of June, October, and November.

Tarmidi's missed installments prompted PT J Trust Olympindo Multi Finance to visit his home, represented by Zulkarnaen, the Head Collector, and Ade Aip, a Collector, to collect the debt.

²⁶ Hasaziduhu Moho, "Penegakan Hukum Di Indonesia Menurut Aspek Kepastian Hukum, Keadilan Dan Kemanfaatan," *Jurnal Warta* 13 (2019), <https://doi.org/https://doi.org/10.46576/wdw.v0i59.349>.

²⁷ Budi Astuti and Muhammad Rusdi Daud, "Kepastian Hukum Pengaturan Transportasi Online," *Al-Qisth Law Review* 6, no. 2 (February 14, 2023): 205, <https://doi.org/10.24853/al-qisth.6.2.205-244>.

Upon meeting Tarmidi, also known as Midi, they discovered that Tarmidi had applied for financing to purchase a Honda New Brio Satya, but the application was made solely in his name on behalf of another person, Rian Hidayat. Due to Tarmidi's (alias Midi's) act of transferring ownership of one unit of the Honda New Brio Satya without prior written consent from PT J Trust Olympindo Multi Finance, the company suffered a loss of 192,795,818.00.

With regard to this case, the actions taken by Tarmidi, also known as Midi, constitute a criminal offense. This violates Article 23(2) of the Fiduciary Law, which states that a grantor of a fiduciary interest is prohibited from transferring, pledging, or leasing to another party any property that is the subject of a fiduciary interest and does not constitute inventory, except with the prior written consent of the beneficiary of the fiduciary interest. The provisions contained in Article 23 paragraph (2) of the UUJF, regarding criminal sanctions, are regulated in Article 36 of the UUJF, which states that in violation of the prohibition on the transfer of property serving as the subject of a fiduciary guarantee, a grantor of a fiduciary guarantee who transfers, pledges, or leases property serving as the subject of a fiduciary guarantee as referred to in Article 23 paragraph (2) of the Fiduciary Law without prior written consent from the fiduciary beneficiary shall be punished by imprisonment for a maximum of 2 (two) years and a fine of up to Rp 50,000,000 (fifty million rupiah). In addition, Tarmidi, alias Midi, was charged with complicity in accordance with Article 55(1)(1) of the Criminal Code, which states that those who commit, order, or participate in the commission of an act are liable. From the perspective of the aforementioned provision, the debtor's act of transferring the collateral subject to a fiduciary security interest without having obtained the creditor's consent constitutes a legal violation.²⁸

What Tarmidi, also known as Midi, has done constitutes a criminal offense; therefore, criminal liability must apply. Criminal liability is a person's accountability for the criminal offense they have committed. To be precise, the person is held accountable for the criminal offense they have committed. Thus, criminal liability arises because a criminal offense has been committed by an individual. Criminal liability is, in essence, a mechanism established by criminal law to respond to a violation of the "social consensus" regarding a specific act.

Generally, criminal law holds a person criminally liable for an act that has been defined by statute. In other words, a person can be held criminally liable if they have committed a criminal act. A person who has fulfilled all the elements of a criminal offense, as defined in criminal law, is referred to as a perpetrator of a criminal offense. Several legal scholars define the perpetrator or the person who commits such a criminal offense as follows.

As stated in Judgment No. 18/Pid.B/2023/Pn.Cbn, Tarmidi, alias Midi, was charged in the first count with violating Article 36 of the Fiduciary Law in conjunction with Article 55 of the Criminal Code. This is because Tarmidi alias Midi transferred a vehicle, a Honda Brio Satya, which was subject to a fiduciary pledge, to Rian; thus, Tarmidi alias Midi violated Article 36 of the Fiduciary Law, which states that a grantor who transfers, pledges, or leases the pledged property without the prior written consent of the grantee shall be punished by imprisonment for two months and a fine of fifty million rupiah.²⁹ As provided in Article 23(2) of the Fiduciary Law, the grantor of a fiduciary interest is prohibited from transferring, pledging, or leasing to another

²⁸ Sriono Sriono, "Tanggung Jawab Pemberi Fidusia Terhadap Benda Jaminan Fidusia Dalam Perjanjian Kredit," *JURNAL ILMIAH ADVOKASI* 7, no. 2 (September 15, 2019): 149–59, <https://doi.org/10.36987/jiad.v7i2.1563>.

²⁹ Presiden Republik Indonesia, "Undang-Undang No 42/1999 Tentang Jaminan Fidusia," *Jdih*, no. 1 (1999): 1–5, file:///C:/Users/User/Downloads/UU Nomor 42 Tahun 1999.pdf.

party any property that is the subject of a fiduciary interest and is not inventory, except with the prior written consent of the beneficiary of the fiduciary interest.³⁰

With regard to the elements in that section that are related to or may give rise to criminal penalties—namely, transferring, pledging, or leasing—one of the actions taken by Tarmidi, alias Midi, in this case was transferring. The explanation of “transferring” is that the provisions regarding the transfer of fiduciary collateral are set forth in Article 19(1) of the Fiduciary Law, which states that the transfer of rights to a receivable secured by a fiduciary interest results in the legal transfer of all rights and obligations of the fiduciary beneficiary to the creditor. The transfer of the fiduciary security as referred to in paragraph (1) is registered by the new creditor with the fiduciary registration office.³¹

Thus, based on these provisions, any transfer that does not obtain the consent of the fiduciary beneficiary—whether executed by authentic deed or private agreement—may be classified as a criminal offense. The term “transfer,” as defined in the Explanatory Notes to Article 21 of the Fiduciary Security Act, includes, among other things, selling or leasing in the course of business activities. The concept of a criminal act related to the transfer of a fiduciary security object is regulated in Article 36 of the Fiduciary Security Act, which stipulates that a grantor who transfers, pawns, or leases an object that is the subject of a fiduciary security as referred to in Article 23 Paragraph (2) without the prior written consent of the fiduciary beneficiary, shall be punished with imprisonment for a maximum of 2 (two) years and a fine of up to Rp. 50,000,000 (fifty million) rupiah.³²

In the reasoning and disposition of Judgment No. 18/Pid.B/2023/Pn.Cbn, the defendant Tarmidi, alias Midi, was also classified as an “accomplice”; this is noteworthy because Tarmidi was the principal perpetrator in the transfer of the fiduciary collateral yet was deemed an “accomplice.” In the Criminal Code, participation in a criminal act is often termed “deelneming,” a concept of great importance regarding the criminal liability of each individual for the criminal act. The roles of each person in a criminal act are not always the same; consequently, the severity of their criminal liability varies. It is possible that in “deelneming,” only one person or a few people are required to bear full criminal liability, while others are only held partially liable.³³ The criminal offense committed by Tarmidi, also known as Midi, has fulfilled the elements set forth in Article 55(1)(1) of the Criminal Code, namely a person who commits, orders the commission of, or participates in the commission of.

Deelneming according to doctrine is classified into two types, namely, first, independent deelneming, where the responsibility of each participant is valued individually. Second, non-independent deelneming, where the responsibility of one participant is contingent upon the actions of another participant.³⁴ Participation or involvement by lawmakers has been regulated in

³⁰ Undang-Undang Nomor 42 Tahun 1999 tentang Jaminan Fidusia

³¹ Sriono, “TANGGUNG JAWAB PEMBERI FIDUSIA TERHADAP BENDA JAMINAN FIDUSIA DALAM PERJANJIAN KREDIT.”

³² Husnul Hamka, “Pemidanaan Pengalihan Objek Jaminan Fidusia Tanpa Persetujuan Penerima Fidusia,” *Pilar: Philosophia Law Review* 3 (2023): 1–13, <https://doi.org/https://doi.org/10.56591/pilar.v3i1.19320>.

³³ Siswantari Pratiwi, “Delik Penyertaan Dalam Kitab Undang-Undang Hukum Pidana (KUHP),” *Binamulia Hukum* 11, no. 1 (March 10, 2023): 69–80, <https://doi.org/10.37893/jbh.v11i1.307>.

³⁴ Chant S. R. Ponglabba, “Tinjauan Yuridis Penyertaan Dalam tindak Pidana Menurut Kuhp,” *Lex Crimen* VI (2017): 31–37, <https://ejournal.unsrat.ac.id/v3/index.php/lexcrimen/article/view/16951/16484>.

Articles 55 and 56 of the Criminal Code. In the Criminal Code, there are two forms of participation as follows:

- a. The perpetrator (*made dader*) article 55 of the Criminal Code, which consists of the one who commits (*plegen*), the one who orders to commit (*doen plegen*), the one who participates in committing (*mede plegen*), the one who intentionally causes (*uitlokken*).
- b. Accomplice (*mede plichtigheid*) Article 55 of the Criminal Code, accomplices consist of those who intentionally provide assistance at the time the crime is committed, those who provide the means or information to commit the crime (before the crime is committed).³⁵

In relation to the defendant Tarmidi alias Midi in Decision 18, Tarmidi alias Midi is a pleger. A pleger is a person who materially and personally clearly commits an act that perfectly fulfills all elements of the criminal offense. A pleger is someone whose actions have met every element of the criminal offense as stipulated in the violated criminal law article. Therefore, in principle, he is a person who, whether acting alone or in connection with others, can be subjected to criminal sanctions. Of course, if at the time of committing the criminal act, his guilt can be proven.³⁶

According to the doctrine of criminal law, pleger is distinguished from dader. Pleger is a person who becomes an actor in an accomplice situation who can be punished the same as the perpetrator, whereas dader is the maker of a criminal act or a person who fulfills all elements of the crime and the maker who has the qualification as a defendant distinguished from the qualification as an accomplice. Even who a pleger is not someone who participates (*deenemer*), it is understandable why he needs to be called an actor alongside other parties who participate or are involved in the criminal act he commits and will be punished together with him as an actor. Meanwhile, the manner of participation and responsibility for it are also determined by its connection to the criminal act committed by the principal perpetrator. Thus, a pleger is a person who fulfills all elements of the crime, including when it is carried out thru other people or their subordinates.

According to Zamhari Abidin, *plegen* (to commit) is carried out by oneself, instruments (tools), and natural forces (*natuurkracht*). Pleger as the perpetrator is the person who personally carries out an act that meets the definition of a crime and is considered most responsible for the offense.³⁷ If the criminal offense formulation is constructed materially, then whoever causes the consequence as stated in the criminal offense formulation must be determined by the causal doctrine. According to R. Soesilo, those who commit (perpetrator) are individuals who alone have acted to realize all the elements or components of a criminal event.³⁸ In other words, a pleger is someone who fulfills all the elements present in the formulation of the characteristics of a criminal offense in each article.³⁹

³⁵ Youngky Fernando dan Asti Wasiska, "Tindak Pidana Dan Unsur-Unsurnya Versus Deelneming Delicten/Tindak Pidana Penyertaan versus Pertanggungjawaban Tindak Pidana," *Manazir: Jurnal Ilmiah Universitas Ibnu Chaldun 1* (2023): 57–71, <https://jurnal.uic.ac.id/manazir/article/view/157/91>.

³⁶ Chant S. R. Ponglabba, "Tinjauan Yuridis Penyertaan Dalam tindak Pidana Menurut KUHP"

³⁷ Siswantari Pratiwi, "Delik Penyertaan Dalam Kitab Undang-Undang Hukum Pidana (KUHP)."

³⁸ Ike Indra Agus Setyowati, "Pembantuan Dan Penyertaan (Deelmening) Dalam Kasus Perkosaan Anak," *Media Iuris* 1, no. 2 (July 4, 2018): 281, <https://doi.org/10.20473/mi.v1i2.8831>.

³⁹ Maliyanto Effendi, Moh. Zeinudin, and Miftahul Munir, "Konsep Penyertaan Tindak Pidana Dan Penggelapan Dengan Pemberatan Berdasarkan Interpretasi Hukum," *ADIL: Jurnal Hukum* 12, no. 2 (January 12, 2022), <https://doi.org/10.33476/ajl.v12i2.2113>.

The provision of Article 55 of the Criminal Code first mentions who commits or carries out the criminal act completely. Even tho a perpetrator (*pleger*) is not a participant (*deelnemer*), it is understandable why they need to be mentioned. The perpetrator, alongside other parties who participate or are involved in the crime that has been committed, will be punished together with him as the perpetrator (*dader*), while the manner of participation and responsibility toward it is also determined by their connection to the crime committed by the main perpetrator. Therefore, the perpetrator (*pleger*) is a person who fulfills all elements of the crime (also in the form of attempts or preparations), including when carried out thru other people or subordinates of the main perpetrator or them. So what Tarmidi alias Midi has done has fulfilled the elements contained in Article 36 of the UUJF in conjunction with Article 55 paragraph (1) number 1.

The unique aspect of Decision 18/Pid.B/2023/Pn.Cbn is that the defendant Tarmidi alias Midi, who also participated, did so alone. Meanwhile, Rian, who is Tarmidi alias Midi's brother-in-law, is neither a defendant nor part of the accomplices. If we look at the formulation of Article 55 and Article 56 of the Criminal Code, participation is an act committed by several people or more than one person. At the very least, Rian was part of the accomplices, specifically as an instigator or encourager. Because Rian could not submit a financing application for the purchase of a Brio Satya car, Tarmidi, also known as Midi, used his name to apply for financing for the purchase of a Brio Satya car. In the end, after obtaining the Brio car, it was immediately transferred to Rian without written knowledge from PT JTrust Olympindo Multi Finance.

In this context, an instigator consists of two or more people, one of whom acts as the instigator (*actor intellectualis*) and the other as the instigated party (*actor materialis*). The mechanism involves the instigator encouraging another person to commit a criminal act. An instigator is a person who incites another person to commit a criminal act, whereby that other person is moved to comply with the incitement because they are influenced or tempted by the efforts made by the instigator, as specified in Article 55, paragraph 1.

According to Samosir, based on the wording of Article 55(1)(2) of the Criminal Code, the elements of incitement consist of using certain methods, with the person being incited acting with intent (*opzet*), to commit a criminal act. Because the person being incited acts with intent (*opzet*), that person can be held criminally liable. If we rely on Simamora's opinion above, inciting someone to commit a criminal act involves an element of intent. It is impossible for a person acting as an instigator to be negligent, because the entire sequence of criminal acts is carried out based on their will, consciously, and through physical gestures conveyed to the perpetrator. Thus, the author concludes that "*uitlokking*" cannot be associated with negligence in the commission of a criminal act. Therefore, the ruling should identify two perpetrators: Tarmidi, alias Midi, as the "*pleger*," and Rian as the "*uitlokker*" or instigator.

Conclusion

Based on the explanation above, it can be understood that what Tarmidi alias Midi has done constitutes a criminal offense. This is based on his act of transferring the fiduciary collateral object in the form of a Honda New Brio Satya car to Rian without prior written consent from PT JTrust Olympindo Multi Finance. The act is contrary to Article 36 of the Fiduciary Security Law (UUJF), which prohibits the fiduciary giver from transferring, pledging, or renting out the object of fiduciary security without prior written consent as referred to in Article 23 paragraph

(2) of the UUJF, punishable by imprisonment for a maximum of two years and a fine of up to fifty million rupiah. In addition, the actions taken by Tarmidi alias Midi in collaboration with Rian are in violation of Article 55 paragraph (1) number 1 of the Criminal Code, which states that those who commit, order, or participate in the commission of a criminal act are punished as perpetrators of that crime. In this case, Tarmidi alias Midi is a pledgor. However, he cannot be considered as an accomplice because Tarmidi alias Midi is the debtor, so the accomplices should be those who receive the transfer of the fiduciary guaranty object from the debtor. And Rian, Tarmidi alias Midi's brother-in-law, should be considered an instigator or encourager.

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