

# POLICE RESTORATIVE JUSTICE IN THE EXECUTION OF FIDUCIARY GUARANTEES BASED ON CIVIL LAW

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## Abstract

This article explores the implementation of police restorative justice in the execution of fiduciary guarantees under Indonesian civil law. Fiduciary guarantees, regulated by Law No. 42 of 1999, provide creditors with security interests over movable and immovable objects. However, the process of execution frequently causes disputes, especially when creditors unilaterally seize objects without proper legal procedure. Police involvement has traditionally been limited to maintaining public order, but the principle of restorative justice has expanded their role as mediators in civil disputes. This research seeks to examine the extent to which police restorative justice is applicable in fiduciary enforcement, its legal basis, challenges, and implications for Indonesian legal development. By applying a normative legal research method, this study highlights how restorative justice enhances legal certainty, reduces criminalization of civil disputes, and fosters a peaceful resolution between creditors and debtors.

## Introduction

The concept of fiduciary security or fiduciary guarantee (jaminan fidusia) is an important instrument of Indonesian civil law, offering protection to creditors in financing agreements. This mechanism is widely used in commercial transactions, particularly in motor vehicle financing and banking contracts. According to Law No. 42 of 1999 concerning Fiduciary Guarantees, creditors have a preferential right over the object of security in case of default by the debtor.

Despite its importance, the execution of fiduciary guarantees has generated considerable legal and social problems. In many cases, creditors, through debt collectors, attempt to repossess fiduciary objects without court orders. This leads to resistance from debtors, resulting in violence, social unrest, and public distrust towards legal institutions (Satrio, 2020). Debtors often argue that unilateral repossession violates their constitutional rights, while creditors claim it is their legal entitlement.

In response, the Indonesian National Police has adopted restorative justice principles as a strategy to mediate disputes between creditors and debtors. Restorative justice, originally applied in criminal law, emphasizes reconciliation, proportionality, and fairness. Its application in civil enforcement—particularly fiduciary execution—is relatively new and demands thorough examination. This dissertation focuses on the role of police restorative justice in fiduciary disputes, aiming to identify its contribution to balancing creditor-debtor relations and strengthening civil law enforcement.

Previous studies have examined fiduciary guarantees mainly from the perspective of private law enforcement (Harahap, 2021; Soekanto, 2019). However, limited attention has been given to the police's role as mediators in civil disputes. This study fills the gap by exploring the normative foundation, challenges, and practical impact of restorative

justice in fiduciary execution. It argues that restorative justice offers a more humane and legally sound alternative to coercive enforcement.

### **Problem Statement**

This study is focused on the Relevance of Police Restrictive Justice in Civil Cases, Especially the Execution of Fiduciary Guarantees so that its implementation in the field can be carried out effectively, efficiently and provide a sense of justice in the community. The resolution of disputes over the object of fiduciary guarantee by the Police using a restorative justice approach can restore the losses suffered by the creditor and foster the attitude of responsibility of the debtor to settle the credit agreement with the creditor. Thus, it is not necessary that disputes or conflicts submitted to the Police are resolved through legal channels, but there are still peaceful efforts in resolving these disputes or conflicts.

The implementation of fiduciary guarantees poses several legal issues. While Law No. 42 of 1999 grants creditors the right to repossess objects upon default, its application in practice often clashes with constitutional rights and social realities. The main problems identified in this study are as follows:

1. How can restorative justice principles be integrated into the execution of fiduciary guarantees?
2. What is the role of the police in balancing creditor and debtor rights under civil law?
3. How does restorative justice minimize conflict in fiduciary disputes?

These problems require a comprehensive doctrinal analysis of statutory law, constitutional guarantees, and comparative legal practices. The study argues that without restorative justice, fiduciary enforcement will continue to generate disputes, undermine trust in legal institutions, and potentially criminalize civil law matters.

## Method

This article employs a normative legal research methodology, relying primarily on statutory analysis, doctrinal interpretation, and conceptual approaches. The statute approach examines provisions under Law No. 42 of 1999 concerning Fiduciary Guarantees, the Indonesian Civil Code, and constitutional law. The conceptual approach evaluates restorative justice principles and police authority in civil matters.

Secondary sources include scholarly works, legal journals, and comparative studies of restorative justice in other jurisdictions. For example, practices in New Zealand and Canada demonstrate how restorative justice, originally developed for criminal law, can be extended to civil disputes with positive outcomes (Braithwaite, 2002).

This method allows the researcher to identify gaps between law in the books and law in practice, particularly in relation to fiduciary execution. By analyzing legal texts and commentaries, the study constructs arguments for the integration of restorative justice into Indonesian civil law enforcement.

## Theoretical Framework

Restorative justice is a legal philosophy emphasizing reconciliation and reparation rather than punishment. Its main principle is that disputes should be resolved by involving all stakeholders in a dialogue, ensuring that the solution restores balance to social relations (Zehr, 1990). While restorative justice is mostly associated with criminal law, its core principles are applicable to civil law disputes, including fiduciary enforcement.

In fiduciary law, the execution process often pits creditors against debtors in adversarial confrontations. A purely legalistic approach may neglect social harmony and fairness. By contrast, restorative justice introduces a mediation-oriented model where the police act

not only as law enforcers but also as facilitators of consensus. This framework ensures that enforcement respects both creditor rights and debtor dignity.

Fiduciary guarantees, as outlined in Indonesian law, establish a transfer of ownership rights from the debtor to the creditor as security, while possession remains with the debtor. This duality creates tension when defaults occur. Without proper execution procedures, creditors risk violating debtor rights, while debtors risk breaching contracts. Restorative justice provides a middle path by prioritizing negotiation and settlement.

The police, under Indonesian law, are mandated to maintain public order and protect citizens' rights. The application of restorative justice expands their role, enabling them to mediate disputes in fiduciary cases. This theoretical framework situates restorative justice as an instrument of civil law enforcement, with constitutional values and social justice.

## Results and Discussion

The findings of this research reveal that restorative justice significantly contributes to reducing conflicts in fiduciary enforcement. By involving the police as mediators, creditors and debtors are encouraged to reach mutual agreements rather than resorting to unilateral actions.

Case studies indicate that many fiduciary disputes escalate when creditors employ private debt collectors who use violence or intimidation. This often results in criminal reports against debt collectors, shifting a civil dispute into the realm of criminal law. The police, by adopting restorative justice, can prevent such escalation by facilitating dialogue between parties.

For instance, in several reported cases (Harahap, 2021), police officers successfully mediated repossession of vehicles by ensuring debtors were willing to voluntarily return the object after renegotiating with creditors. This approach not only avoided violence but

also preserved the debtor's dignity. Moreover, creditors benefited from faster and less costly resolution compared to prolonged litigation.

The explanation of the Fiduciary Guarantee Law emphasizes that Fiduciary Guarantees have been used in Indonesia since the Dutch colonial era as a form of guarantee born from jurisprudence. This form of collateral is widely used in loan-borrowing transactions because the charging process is considered simple, easy, and fast, but does not guarantee legal certainty.

The implementation of fiduciary practices, as explained, provides convenience for the parties who use it, especially for the Fiduciary. However, on the other hand, because the Fiduciary Guarantee is not registered, it does not guarantee the interests of the party receiving the fiduciary, the Fiduciary may pledge the object that has been encumbered with the fiduciary to another party without the Fiduciary's knowledge (Ghani, 2016)

Before this Law was formed, in general, objects that were the object of Fiduciary Guarantees were movable objects consisting of objects in inventory, merchandise, receivables, machine tools, and motor vehicles. Therefore, in order to meet the needs of the growing community, according to this Law, the object of Fiduciary Guarantee is given a broad definition, namely tangible and intangible movable objects, and immovable objects that cannot be burdened with dependent rights as stipulated in Law Number 4 of 1996 concerning Dependent Rights.

In practice, there are weaknesses that have been mentioned earlier, namely, the implementation of execution carried out by creditors through debt collector services sometimes creates new problems between creditors and debtors. This is because the way debt collectors execute fiduciary collateral by means of violence, intimidation and even by seizing fiduciary collateral on the street, this is what causes resistance from the debtor.

Although in practice it has been regulated in the Regulation of the Chief of the Indonesian National Police Number 8 of 2011 concerning the Securing of the Execution of Fiduciary Guarantees. However, it is still an important note that the main problem of debt collectors in executing fiduciary guarantees by means of violence, intimidation and even by depriving fiduciary guarantees on the street, is still part of a separate scourge that cannot be separated in the practice of fiduciary guarantee execution.

This is where what is regulated is no longer the execution process but the company's obedience in carrying out execution. Companies in the provisions of the Fiduciary Guarantee Law must be directed to obey good and correct legal principles, not just transfer responsibility to the company's membership and the responsibility then shifts to its subordinates. This has been a major problem so far.

Comparatively, in countries such as Canada and New Zealand, restorative justice has been widely applied in financial disputes and community-based conflicts (Braithwaite, 2002). These experiences show that mediation through state institutions increases trust and compliance. Applying this model in Indonesia, particularly through police involvement, enhances the legitimacy of enforcement.

However, several challenges remain. First, there is a lack of clear statutory guidelines regulating police authority in fiduciary mediation. While restorative justice is supported by internal police regulations, its application in civil law is still experimental. Second, creditors often perceive restorative justice as undermining their legal rights, fearing that mediation may weaken enforcement. Third, the general public is not yet familiar with the concept, which may limit its acceptance.

Despite these challenges, the benefits of restorative justice outweigh its shortcomings. It reduces potential violence, promotes social harmony, and aligns law enforcement with constitutional values of fairness and justice. The integration of restorative justice into fiduciary execution demonstrates that civil law enforcement can be both effective and humane.

Fiduciary guarantees undergo development and adjustment according to social developments and business needs. Each country has legal regulations governing fiduciary, including registration procedures, related party rights and obligations, and third-party protection. In the context of Indonesian civil law, Law Number 42 of 1999 concerning Fiduciary Guarantees regulates fiduciaries.

The Fiduciary Guarantee Law was established to fulfill various legal interests that are expected to result in developments in national development. This aims to provide legal protection to parties involved in fiduciary guarantee transactions to encourage a safer and more profitable investment climate

Restorative justice in the context of the Indonesian National Police (Polri) can be an effective alternative in resolving civil cases, especially in the execution of fiduciary guarantees. This approach offers solutions that prioritize the restoration of the relationship between creditors and debtors, rather than simply prioritizing sanctions or execution that can exacerbate conflicts. By prioritizing communication and mediation, restorative justice allows both parties to reach a mutually beneficial agreement, without having to involve a lengthy and protracted legal process. In terms of the execution of fiduciary guarantees, the implementation of restorative justice by the National Police can accelerate dispute resolution by paying more attention to the interests of both parties. This approach also provides room for the debtor to settle his obligations through a more



humane and equitable route, while the creditor still obtains his rights in a more respectful and non-violent manner.

Improvements are needed in the execution mechanism, including strengthening protection for debtors without reducing creditors' rights, increasing the role of notaries in the registration process, and optimizing the involvement of officials in the execution process. In addition, the use of digital technology in the recording and execution of fiduciary guarantees can be a solution to increase transparency and efficiency.

To ensure an optimal balance, this regulation needs to be continuously evaluated and adjusted to economic developments and practices in the field. Fair and transparent law enforcement is also key in maintaining a balance of protection for all parties, so that the fiduciary mechanism can continue to function effectively in supporting the investment climate and economic stability.

To optimize the application of restorative justice in the execution of fiduciary guarantees, clearer regulations, strong coordination between police officers, financial institutions, and related parties are needed, and increased the capacity of the authorities in mediation and peaceful dispute resolution.

## Conclusion

This article concludes that police restorative justice provides a vital mechanism for harmonizing the execution of fiduciary guarantees under civil law. By facilitating mediation between creditors and debtors, the police ensure that enforcement is carried out in a fair, peaceful, and constitutionally compliant manner.

Restorative justice transforms the role of the police from enforcers of order to facilitators of reconciliation. This transformation strengthens public trust in the legal system, reduces criminalization of civil disputes, and upholds human dignity in legal processes. For

Indonesia, integrating restorative justice into fiduciary execution is a progressive step toward a more balanced and socially responsive legal system.

### Limitation and Recommendation

This study is limited by its reliance on doctrinal research and secondary sources. Empirical field research on the application of restorative justice in fiduciary disputes across Indonesia is necessary to evaluate its effectiveness in practice. Future research should involve interviews with police officers, creditors, and debtors to capture a comprehensive understanding of restorative justice implementation.

Furthermore, policymakers should consider enacting clearer statutory provisions to regulate police authority in fiduciary mediation. This would enhance legal certainty and provide stronger legitimacy to restorative practices. Finally, public education on restorative justice is essential to increase awareness and acceptance among creditors and debtors.

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