

Legal Analysis of the Supreme Court Decision Number 2319 K/Pid, Sus/2024 Concerning Fiduciary Guarantees in Muamalah Fiqh

Mumtazul Fikri*

Universitas Islam Negeri Ar-Raniry Banda Aceh, Indonesia

Email: 200102158@student.ar-raniry.ac.id

Shabarullah

Universitas Islam Negeri Ar-Raniry Banda Aceh, Indonesia

Email: shabarullah@ar-raniry.ac.id

*Corresponding author

Abstract

This research analyses Supreme Court Decision No. 2319 K/Pid.Sus/2024, which imposes a penalty for breach of the fiduciary guarantee agreement in the case of unauthorised transfer of collateral objects. This research aims to examine aspects of positive law and Islamic law related to the practice of fiduciary guarantees in Indonesia and assess the suitability of the verdict with the principles of justice in Islam. Using a descriptive-normative qualitative method and a content analysis approach, this study found that the Supreme Court not only upheld positive legal norms stipulated in Law No. 42/1999, but also considered moral and Sharia principles that emphasise trustworthiness and the prohibition of *khiyanah*. The decision provides legal certainty for financial institutions and protection for creditors and debtors, and on the other hand, shows the importance of harmonisation between national law and the principles of Islamic law in the Indonesian legal system.

KEYWORDS: Fiduciary, Islamic Jurisprudence, Positive Law, and Supreme Court Decision

Introduction

The 1945 Constitution stipulates that the purpose of the Indonesian state is to protect all people and achieve common welfare. To realise this, a good economy supported by a strong legal system is required. The rule of law is key because it ensures that all parties are subject to the law fairly and without discrimination.¹ In Indonesia's pluralistic society, the rule of law maintains order, protects human rights, and provides legal certainty. The law also guarantees individual rights such as property rights, freedom of speech, and decent work. Without the rule of law, justice can be disrupted, and trust in the state decreases.² Therefore, Indonesian law in Indonesia must continue to adapt, maintain its integrity, and remain free from influence by specific interests. The rule of law is the foundation for creating justice, prosperity, and strengthening the nation's life.

The rule of law in Indonesia must accommodate social, cultural, and religious norms while upholding justice and integrity. The legal system needs to continuously adapt to remain independent and objective. The rule of law underpins justice, prosperity, and public trust in the law. In line with that, sustainable economic growth is also essential in national development and requires substantial financial support from the government and the private sector, primarily through debt activities.³

Financial institutions play an essential role in economic growth by providing funds to individuals and companies. Interrelated social, cultural, and economic aspects influence a society's progress.⁴ Social aspects create stability through equitable social relations and systems; culture shapes patterns of interaction and readiness for change. In contrast, economic aspects improve welfare through access to public services, job creation, and

¹Mohamad Ichsanudin AdnanMohamad Ichsanudin Adnan, "Pengertian Supremasi Hukum Beserta Tujuan Dan Prinsipnya," 16 Dec 2022 16:36 WIB, 2022, <https://tirto.id/pengertian-supremasi-hukum-beserta-tujuan-dan-prinsipnya-gyRo>.

²YUDIAN WAHYUDI, "Dokumen Ini Telah Ditandatangani Secara Elektronik Yang Diterbitkan Oleh Balai Sertifikasi Elektronik (BSrE), BSSN," no. 28 (2023): 3–4.

³Agung Rifqi Pratama, "SISTEM EKONOMI INDONESIA DALAM PERSPEKTIF PANCASILA DAN UNDANG-UNDANG DASAR NEGARA REPUBLIK INDONESIA TAHUN 1945 Amanat Dalam Alinea Keempat Pembukaan Undang-Undang Dasar Negara Perekonomian Yang Merata Serta Berkeadilan Sosial . Tujuan Pembentukan" 4 (1945): 304–32, <https://doi.org/10.25123/vej.3067>.

⁴Nani Hartati, "Peran Bank Dan Lembaga Keuangan Dalam Pengembangan Ekonomi : Tinjauan Literatur" 1, no. 2 (2023): 35–44.

innovation. These two aspects support each other in promoting development and community welfare.⁵ To achieve sustainable progress, social, cultural, and economic factors must be managed and balanced. In economic growth, businesses need sufficient capital. Funding is essential to promote development and welfare, which is generally obtained through credit loans. In practice, some institutions provide financing services, one of which is a collateral system as a condition of the loan.⁶

Fiduciary guarantees have become the public's first choice in credit transactions because the process is quick, easy, and provides legal certainty. This guarantee overcomes the limitations of pawning, because what is pledged is the title to the object, not the object itself. This makes it easier for debtors who own only one valuable item, such as a motorbike, to access financing without losing it. Although not expressly regulated, fiduciary guarantees are rooted in the concept of pawn, which is regulated in the Qur'an and Hadith.

Fiduciary security is the transfer of ownership rights to an object based on trust, but the object remains under the owner's control.⁷ Regulated in Law No. 42 of 1999, a fiduciary aims to provide security over tangible and intangible property. The fiduciary was created to address the limitations of pawning, primarily to support the financing of small and medium enterprises.⁸ The relationship between creditor and debtor in a fiduciary relationship is based on trust, where the debtor retains control of the collateral object as long as it fulfils its obligations. By default, the creditor can execute the collateral object without going through court proceedings, as the fiduciary certificate has executive power. Fiduciary registration is essential to provide legal certainty and protection to creditors. Meanwhile, the debtor can still use the collateral object for productive activities to pay off debts.⁹

⁵I Gede Astra Wesnawa, "CHARACTERISTICS OF ECONOMIC AND SOCIO-CULTURAL SOCIETY IN THE MANAGEMENT OF LAND BASED BOUNDARY AREAS NYAMABRAYA VALUES" 15, no. 2 (2017): 146–56.

⁶"<https://lbpengayoman.unpar.ac.id/mengenal-jaminan-fidusia/> Di Akses Pada Tanggal 6 Februari 2025," n.d.

⁷Muhammad Achyar, Chairul Fahmi, and Riadhus Sholihin, "ISLAMIC LAW REVIEW OF MONOPOLY PRACTICES IN MODERN ECONOMICS," *Al-Mudharabah: Jurnal Ekonomi Dan Keuangan Syariah* 5, no. 2 (2024): 288–308.

⁸Rudy M K Mamangkey, Vicky F Taroreh, and A Latar Belakang, "Lex Privatum Vol.XI/No.2/Feb/2023," no. 2 (2023).

⁹Muhamad Rivansyah Gunawan, "Prosedur Eksekusi Objek Jaminan Fidusia Dalam Perjanjian Kredit Kendaraan Bermotor" 15 (2022): 296–309.

A properly executed fiduciary agreement balances the rights and obligations of the creditor and debtor, provides legal protection, and reduces the potential for conflict. Its success depends mainly on the integrity and good faith of both parties. Debtors can still use the collateral, while creditors get legal certainty over their rights. After the debt is paid off, the creditor must return the ownership rights to the debtor.¹⁰ However, violations of fiduciary obligations remain common, especially with movable objects, because of different interpretations of Article 1, Paragraph 1 of the Fiduciary Guarantee Law. Although ownership rights transfer, the debtor still controls the goods, creating opportunities for abuse by parties who do not act in good faith.¹¹

The author feels the need to examine the violation of the object of fiduciary guarantee to prevent legal uncertainty and find the right solution. Fiduciary security is a form of collateral commonly used in financing agreements in Indonesia, as regulated in Law No. 42 of 1999. This regulation protects the creditor without requiring physical possession of the collateral, so the debtor can still use it. Fiduciary enforcement also involves registration with the Fiduciary Registration Office, which results in a certificate with executive power, enabling the creditor to execute the security object without litigation, making it efficient and effective.¹²

With legal awareness and transparent implementation of agreements, the risk of abuse and legal conflicts in fiduciary guarantees can be minimised, maintaining good relations between creditors and debtors and strengthening legal certainty. Fiduciary guarantee disputes are often heard in the Supreme Court. Hence, an in-depth study of the fiduciary regulation and its relevance to fiqh muamalah is essential for a comprehensive understanding.¹³ Fiduciary guarantees provide legal protection for creditors without depriving the debtor of physical control of the collateral, so that the debtor can still use the

¹⁰Celina Tri Siwi K, "Aspek Hukum Benda Tidak Bergerak Sebagai Obyek Jaminan Fidusia" 1, no. 2 (2017): 13–22, <https://doi.org/10.22225/jn.2.1.150.13-22>.

¹¹Faudhinia Adinda Purbarani and Oksidelfa Yanto, "PASAL 372 KITAB UNDANG-UNDANG HUKUM PIDANA DIKAITKAN DENGAN PASAL 35 UNDANG-UNDANG NOMOR 42 TAHUN 1999 TENTANG FIDUSIA (Studi Kasus Pada PT . Prima Parama Mobilindo)," 1999, 71–79.

¹²UUJF, "Undang-Undang No 42 Tahun 1999 Tentang Jaminan Fidusia," *Jdih*, no. 1 (1999): 1–5.

¹³Jaminan Fidusia and Yang Dialihkan, "PERLINDUNGAN HUKUM TERHADAP KREDITUR ATAS OBJEK JAMINAN FIDUSIA YANG DIALIHKAN DEBITUR (Studi FIF Group Cabang Lombok Tengah)," 2019.

goods for economic activities. This instrument balances the interests of creditors and debtors and facilitates dispute resolution through legal channels without compromising the debtor's human rights.¹⁴

Ivan Rusvansyah Trisya, a member of the Sukabumi City DPRD, was caught in a legal case for allegedly pawning a car that was still subject of a fiduciary guarantee to another party. The car resulted from a financing agreement with PT Mandiri Utama Finance, and ownership has not yet fully transferred to Ivan because it is still in the installment period. This action violates Article 36 jo: Article 23, paragraph (1) of Law Number 42 of 1999 on Fiduciary Guarantee. At first instance, in the Sukabumi District Court, Ivan was found not guilty and acquitted of all charges. However, the public prosecutor did not accept the verdict and appealed to the Supreme Court. The prosecutor argued that the court of first instance had misjudged the evidence. After re-examining all relevant facts and documents, the Supreme Court held that Ivan was legally and convincingly proven to have pawned the car without the creditor's permission, even though the vehicle was still an object of fiduciary guarantee. The Court considered that the defendant's actions had fulfilled the elements of a criminal offence as set out in the prosecutor's indictment. Finally, the Supreme Court cancelled the acquittal of the Sukabumi District Court. It sentenced Ivan to 1 year and 3 months imprisonment and a fine of Rp10,000,000, with the provision that if the fine is not paid, it will be replaced by 1 month imprisonment. In addition, the evidence was returned to PT Mandiri Utama Finance, and the defendant was also charged with court costs of Rp 2,500. This decision was read in a Supreme Court session on June 14, 2024.¹⁵

The Supreme Court's decision in a fiduciary guarantee case is not only based on positive law, but also considers the principles of justice and legal certainty to protect the rights of debtors and creditors in a balanced manner. In addition, the decision must be based on the principles of muamalah fiqh, given that Indonesia is predominantly Muslim. The Supreme Court ensures that the fiduciary guarantee mechanism is based on Sharia principles,

¹⁴Tryana Pipit Mulyah, Dyah Aminatun, Sukma Septian Nasution, Tommy Hastomo, Setiana Sri Wahyuni Sitepu, "HAK CIPTA SEBAGAI OBJEK JAMINAN FIDUSIA DALAM PERJANJIAN KREDIT BANK," *Journal GEEJ* 7, no. 2 (2020).

¹⁵Direktori Putusan et al., "PUTUSAN NOMOR 2319 K/PID, SUS/2024," 2024.

especially regarding the halalness of transactions and property rights, to balance positive law and the values of justice in muamalah.¹⁶

Research Methods

This research uses a qualitative approach with descriptive-normative research. This approach was chosen to describe and analyse Supreme Court Decision Number 2319 K/PID in depth.SUS/2024 related to fiduciary guarantees, viewed from the perspective of muamalah fiqh. This research aims to understand how the legal considerations in the verdict reflect the application of positive legal norms and Sharia principles in fiduciary-based financing transactions. The type of research used is *content analysis*, a qualitative method that examines the content of legal documents to find the meaning, values, and principles contained therein. In this context, the researcher thoroughly explores the contents of Supreme Court Decision Number 2319 K/PID.SUS/2024, with a focus on the aspects of default and the execution of the collateral object, and relates it to the provisions of Law Number 42 of 1999 concerning Fiduciary Guarantees and the rules of muamalah fiqh.¹⁷

The data sources in this research consist of primary data and secondary data. Primary data comes from primary documents: Supreme Court Decision Number 2319 K/PID.SUS/2024 and Law Number 42 of 1999 on Fiduciary Guarantee. The research objectives processed this data to obtain relevant and meaningful information. Secondary data is obtained from supporting literature, such as books, scientific journals, previous research results, and other reading sources related to fiduciary guarantee law and muamalah fiqh. This secondary data complements and strengthens the primary data analysis.¹⁸

¹⁶Fikrotul Jadidah, “Perlindungan Hukum Bagi Kreditur Terhadap Pelaksanaan Eksekusi Jaminan Fidusia (Analisis Putusan Mahkamah Konstitusi No 18/Puu-Xvii/2019),” *Iblam Law Review* 2, no. 2 (2022): 17–37, <https://doi.org/10.52249/ilr.v2i2.69>.

¹⁷T. Le, J. K., & Schmid, *Praktik Inovasi Metode Penelitian. Metode Penelitian Organisasi*, 2022.

¹⁸“Penelitian Kepustakaan Adalah Serangkaian Kegiatan Yang Berkenaan Dengan Metode Pengumpulan Data Pustaka, Membaca, Dan Mencatat Serta Mengolah Bahan Penelitian,” n.d.

RESULTS AND DISCUSSION

Fiduciary Concept in the Perspective of Positive Law and Muamalah Jurisprudence

1. Definition and Legal Basis of Fiduciary

A fiduciary is a security agreement explicitly regulated by Law No. 42/1999 on Fiduciary Guarantee.¹⁹ Article 1, point 1 explains that a fiduciary transfers an object's ownership rights based on trust, provided that the object whose ownership rights are transferred remains in the owner's possession.

In other words, in a fiduciary relationship, the fiduciary transfers legal ownership to the beneficiary. Still, physical control (physical object) remains in the hands of the fiduciary. This is done based on trust that the fiduciary will fulfil its obligations as agreed, usually in the form of debt repayment. Fiduciary emerged as a legal solution in financing activities, especially in transactions that require collateral but do not allow physical delivery of the pledged object. The existence of a fiduciary arrangement gives the fiduciary (usually the debtor) flexibility to continue using the collateral goods of maintain business or economic activities, such as motor vehicles, production machinery, or accounts receivable.²⁰

In general, fiduciary security objects include movable objects, both tangible, such as vehicles, heavy equipment, or office equipment, and intangible, such as accounts receivable, intellectual property rights, and shares. In addition, immovable objects that cannot be encumbered by mortgage rights, such as buildings on land owned by other parties, can also serve as objects of fiduciary guarantee. Law No. 42/1999 requires that every fiduciary agreement be made in writing in a notarial deed and registered at the Fiduciary Registration Office to strengthen the fiduciary's legal position. Once registered, the fiduciary beneficiary will obtain a Fiduciary Guarantee Certificate that has executorial power - that is, if the debtor defaults, the fiduciary beneficiary can directly execute the object of the guarantee without going through the judicial process first.

¹⁹UUJF, "Undang-Undang No 42 Tahun 1999 Tentang Jaminan Fidusia."

²⁰Marulak Pardede, "Implementasi Jaminan Fidusia Dalam Pemberian Kredit Di Indonesia," *Implementasi Jaminan Fidusia Dalam Pemberian Kredit Di Indonesia*, 2006, 1–88.

The primary legal basis governing fiduciaries in Indonesia is Law No. 42/1999 on Fiduciary Guarantee.²¹ Before this law, fiduciary practice was already known in the business world, but it remained unwritten and based only on jurisprudence and evolving customs. This created legal uncertainty for the parties involved in the fiduciary agreement, especially in enforcing the guarantee in the event of default. With the enactment of Law No. 42/1999, fiduciary is officially recognised as a form of material security that stands outside the pawn and mortgage systems. This law provides comprehensive arrangements, ranging from the definition, deed-making process, registration, and execution mechanism of fiduciary guarantees.

2. Fiduciary in the Perspective of Muamalah Jurisprudence

In muamalah fiqh, the concept of fiduciary guarantee can be studied through Islamic principles relating to trust, entrustment, and other relevant contracts. Although fiduciary is a product of modern positive law, studying it from an Islamic perspective is essential to assess its compatibility with Sharia principles.

In Islam, amanah is a commendable trait that implies trust and responsibility for what others entrust to you. In economic and muamalah practices, amanah is often associated with a deposit contract or wadi'ah, which transfers goods from one party to another to be stored, guarded, and returned when requested.²² Fiduciary duty is when the fiduciary continues to hold the goods (even though ownership has legally been transferred to the fiduciary). This is similar to the concept of trust. The goods are entrusted to be looked after and not misused until the obligation (usually a debt) is repaid. Therefore, the fiduciary relationship contains a strong element of trust, which Islam views as a major moral and religious responsibility in Islam.²³

Fiduciary in positive law has similarities with the *Rahn* contract in Islamic fiqh. Rahn is a security contract in which the debtor (rahin) hands over goods to the creditor (murtahin) as collateral for a debt. The goods are in the creditor's possession until the debt is repaid. If the debtor fails to pay, the creditor may sell the goods to cover the debt. Meanwhile, in fiduciary,

²¹UUJF, "Undang-Undang No 42 Tahun 1999 Tentang Jaminan Fidusia."

²²M. Sulaiman, M., & Abdullah, "Konsep Amanah Dalam Perspektif Ekonomi Islam: Studi Kasus Akad Wadi'ah," *Jurnal Ekonomi Dan Bisnis Islam* 5, no. 2 (2019): 123-135.

²³Dkk Rika Widianita, "PENERAPAN JAMINAN FIDUSIA DALAM PRESPEKTIF HUKUM ISLAM," *AT-TAWASSUTH: Jurnal Ekonomi Islam* VIII, no. I (2023): 1-19.

although the legal title to the goods passes to the creditor, the goods remain in the physical possession of the debtor. This shows that a fiduciary is based on trust, with the same purpose as Rahn: to guarantee debt repayment.²⁴

The difference lies in the position of the goods. In Rahn, the creditor holds the goods as real collateral. In a fiduciary, the goods remain in the hands of the debtor for business continuity, but still have legal force because they are officially registered and have a guarantee certificate.

Some contemporary scholars consider that fiduciary guarantees are sharia-compliant as long as they do not contradict basic Islamic principles, such as justice, honesty, and the prohibition of usury. In practice, as long as the fiduciary only serves as collateral and does not contain elements of excessive benefit-taking by the creditor (for example, harmful interest), then the contract is acceptable. The National Sharia Council - Indonesian Ulema Council (DSN-MUI) has also issued several fatwas related to financing and collateral in the Islamic economic system, which allow the use of movable and immovable collateral as long as it is in accordance with Sharia principles. Therefore, if the fiduciary practice is carried out to safeguard the rights and responsibilities of each party and does not violate the principle of prohibiting exploitation or usury, then its legality in muamalah fiqh is acceptable.²⁵

Analysis of Supreme Court Decision Number 2319 K/Pid.Sus/2024

1. Brief Chronology of the Case

In this criminal case, the parties involved consisted of the defendant Ivan Rusvansyah Trisya bin RM. Ruchiansyah, a member of the Sukabumi City DPRD. He was born in Sukabumi on July 4, 1981, at Jalan Ciaul Pasir, Subangjaya Village, Cikole Sub-district, Sukabumi City. The Public Prosecutor in this case was from the Sukabumi City District Attorney's Office, who acted to prosecute the defendant based on the criminal act charged against him. In addition, other parties played a role in the process of proving this case, such as PT Mandiri Utama Finance as the creditor and

²⁴Tri Ayu Riwayani, *Perbandingan Hukum Jaminan Fidusia Menurut Undang-Undang Nomor 42 Tahun 1999 Dengan Hukum Rahn Tasjili Menurut Fatwa Nomor 68/DSN-MUI/III/2008*, 2015.

²⁵Dharmasisya, "Komparasi Pengalihan Objek Jaminan Fidusia Dalam Undang-Undang Nomor 42 Tahun 1999 Tentang Jaminan Fidusia Dan Fatwa Dsn-Mui Nomor 68 / Dsn-Mui / Iii / 2008," *Dharmasisya "Jurnal Program Magister Hukum FHUI 2*, no. 2 (2021): 45.

holder of the right to fiduciary guarantee, as well as Eriesa Ismia Dewi, who is the wife of the defendant and also the provider of fiduciary guarantee in the form of one unit of motorised vehicle. Another party mentioned was Adiansyah Permana alias Uhe, who received the car from the defendant as a pawn.

The background of the legal issues in this case stems from a vehicle financing agreement entered into between the defendant Ivan Rusvansyah Trisya and PT Mandiri Utama Finance on January 10, 2020. In the agreement, the defendant obtained a financing facility for a one-unit Honda Civic HB Turbo E CVT car in 2019. The vehicle was used as the object of a fiduciary guarantee and was officially registered through a fiduciary deed and a fiduciary certificate. In accordance with applicable regulations, the vehicle's BPKB is in the possession of PT Mandiri Utama Finance. In contrast, the defendant used the vehicle during the instalment period, which lasted for 60 months, starting in January 2020.

Problems arose when the defendant stopped paying instalments from January 2022 (24th instalment) until the end of the agreement. In his inability to pay, the defendant unilaterally pawned the vehicle to another party, namely Adiansyah Permana alias Uhe, without the consent or knowledge of PT Mandiri Utama Finance. This action is considered a violation of the provisions of Article 36 in conjunction with Article 23, paragraph (1) of Law Number 42 of 1999 concerning Fiduciary Guarantees, because the goods that are the object of collateral may not be transferred or pawned by the debtor without the consent of the fiduciary recipient.

In his legal position, the Sukabumi District Court initially found the defendant not guilty in a decision dated October 13, 2023. The court stated that the Public Prosecutor did not prove, legally and convincingly, that the defendant committed the criminal offence as charged. As a result, the defendant was acquitted of all charges. However, the Public Prosecutor did not accept this decision and appealed to the Supreme Court.

The Supreme Court then considered that the decision of the Sukabumi District Court was erroneous because it did not carefully consider the legal facts revealed in the trial. After reviewing the evidence and testimonies, the Supreme Court stated that the defendant had knowingly pawned a vehicle still under a fiduciary guarantee. The defendant was deemed to understand that the car was not wholly owned because the instalment obligations had

not been settled, but still made a transfer of ownership in the form of a pawn. Therefore, the Supreme Court cancelled the acquittal decision of the court of first instance and sentenced the defendant to 1 year and 3 months imprisonment as well as a fine of Rp10,000,000.00 (ten million rupiah) with a subsidiary of 1 month imprisonment if the fine is not paid.²⁶

This case demonstrates the importance of respecting fiduciary agreements and protecting creditors' rights in Indonesia's civil and criminal legal systems, and it shows that breaches of formalised agreements can lead to criminal sanctions.

2. Supreme Court Legal Considerations

Based on the Supreme Court Decision Number 2319 K/Pid.In Sus/2024, the Supreme Court at the cassation level gave different legal considerations from the court of first instance. In this case, the Supreme Court argued that the actions of the Defendant, Ivan Rusvansyah Trisya, had been proven to have fulfilled the elements of a criminal offence as stipulated in Law Number 42 of 1999 on Fiduciary Guarantees. The judge stated that the Defendant had knowingly transferred or pawned the goods that became the object of the fiduciary guarantee, namely one unit of Honda Civic HB Turbo E CVT car, to a third party without the permission of the creditor, in this case PT Mandiri Utama Finance.

In considering this case, the Supreme Court considered that the previous legal judgment by the Sukabumi District Court was incorrect in its application of the law.²⁷ The judge stated that the court of first instance had ignored the legal facts revealed at trial, including evidence of the existence of a legal financing relationship between the defendant and PT Mandiri Utama Finance, as well as the fact that the vehicle was still under fiduciary security when the defendant pawned it. Therefore, the Supreme Court found an error in assessing the evidence and applying procedural law, so it felt authorised and obliged to overturn the acquittal and hear the case directly.

In handing down its decision, the Supreme Court referred to several legal provisions as the juridical basis. Foremost was Law No. 42/1999 on

²⁶Putusan et al., "PUTUSAN NOMOR 2319 K/PID, SUS/2024."

²⁷ Chairul Fahmi, *Hukum dan Fenomena Sosial* (Banda Aceh: Aceh Justice Resource Centre, 2015), //ruangbaca-fsh.ar-raniry.ac.id%2Findex.php%3Fp%3Dshow_detail%26id%3D3123%26keywords%3D.

Fiduciary Guarantee, specifically Article 36 in conjunction with Article 23 paragraph (1), which expressly prohibits the transfer, mortgaging, or leasing of fiduciary guarantee objects without the written consent of the fiduciary. In addition, the judges also considered Article 244 of Law Number 8 of 1981 on Criminal Procedure. However, the article states that acquittal verdicts cannot be appealed, so the Supreme Court referred to Constitutional Court Decision Number 114/PUU-X/2012, which noted that the provision no longer applies. This provides a legal basis for the Supreme Court to examine the public prosecutor's cassation request against an acquittal verdict.²⁸ Furthermore, the Supreme Court also analyses the form of the criminal offence and the legal elements contained in the defendant's actions. In this case, the criminal offence falls into the category of a specific criminal offence in the fiduciary field, namely the transfer of a security object without permission. The defendant knew the car had not been paid off and was still in the creditor's possession as collateral, but he pawned it to another person. This act was committed knowingly and intentionally, thus fulfilling the element of "intentionality" in criminal law.²⁹

The criminal elements analysed include: first, the act of transferring or mortgaging the fiduciary object; second, the object is still legally registered in the fiduciary agreement that has not finished its financing period; and third, the act is carried out without the permission of the fiduciary recipient. All of these elements were proven to be fulfilled based on the facts in the trial, documentary evidence of the financing contract, the subpoena letter, and the defendant's confession. With the fulfilment of all these elements, the Supreme Court stated that the defendant was legally and convincingly guilty of committing a criminal offence as stipulated in Article 36 in conjunction with Article 23 paragraph (1) of the Fiduciary Guarantee Law.

Finally, based on these considerations, the Supreme Court imposed a prison sentence of one year and three months and a fine of ten million rupiah on the defendant. This verdict also overturned the Sukabumi District Court's earlier acquittal.

²⁸Putusan et al., "PUTUSAN NOMOR 2319 K/PID, SUS/2024."

²⁹ Chairul Fahmi, "The Impact of Regulation on Islamic Financial Institutions Toward the Monopolistic Practices in the Banking Industrial in Aceh, Indonesia," *Jurnal Ilmiah Peuradeun* 11, no. 2 (May 30, 2023): 667–86, <https://doi.org/10.26811/PEURADEUN.V11I2.923>.

3. Implications of the Decision for Fiduciary Practice

This decision significantly impacts business actors, especially finance companies or financial institutions that use the fiduciary scheme as collateral for credit facilities. In this case, PT Mandiri Utama Finance suffered losses because the vehicle that was the object of the fiduciary guarantee had been pawned by the debtor (Ivan Rusvansyah Trisya) to another party without authorisation. The Supreme Court ruled that the act was a criminal offence, not just a civil default.³⁰ This decision reinforces the legal position of financing institutions that violations of their rights to fiduciary objects are not only a matter of contractual default, but are also criminally actionable. This gives financial institutions additional legal power to collect from or discipline disobedient debtors and deter debtors who try to misuse fiduciary collateral. In the long run, this will increase security in the financing system and support legal certainty in business practices.

This decision also provides tangible form of legal protection for both parties bound by the fiduciary agreement: the grantor and the fiduciary.³¹ For the fiduciary grantor (in this case, the defendant's wife as the vehicle owner), the fiduciary agreement legally protects their assets, including against the debtor's actions that violate the provisions. As for the fiduciary beneficiary (PT. Mandiri Utama Finance), this decision affirms that the creditor's rights to the fiduciary object are protected and guaranteed by criminal law if the debtor acts unlawfully.³² This protection is even stronger because the Supreme Court stated that as long as the collateral object is still in the financing coverage and legally registered at the Fiduciary Registration Office, any transfer or mortgaging without the written permission of the fiduciary recipient can be criminally charged. This provides legal certainty and ensures justice for the aggrieved party.

This decision also has the potential to become an essential new reference (jurisprudence) in the handling of fiduciary cases. Previously, many similar cases were treated as civil matters (default), especially when the debtor

³⁰Putusan et al., "PUTUSAN NOMOR 2319 K/PID, SUS/2024."

³¹ Chairul Fahmi, "Transformasi Filsafat Dalam Penerapan Syariat Islam (Analisis Kritis Terhadap Penerapan Syariat Islam Di Aceh)," *Al-Manabij: Jurnal Kajian Hukum Islam* 6, no. 2 (1970), <https://doi.org/10.24090/mnh.v6i2.596>.

³² Ida Friatna, Chairul Fahmi, and Azka Amalia Jihad, "A Challenge and Development of Corporate Zakat Distribution on Shari'ah Commercial Banks in Nanggroe Aceh Darussalam," *Al-Ammwal: Jurnal Ekonomi Dan Perbankan Syari'ah* 17, no. 1 (May 9, 2025): 63–76, <https://doi.org/10.70095/alamwal.v17i1.18465>.

argued that he could not pay and transferred the fiduciary object for economic reasons. However, in this case, the Supreme Court held that the debtor's act of knowingly pawning a vehicle that had not been paid off and remained a fiduciary guarantee was a criminal act. In addition, the Supreme Court also utilised the Constitutional Court Decision No. 114/PUU-X/2012 to accept and examine cassations of acquittals from district courts. This shows that the cassation judge actively corrected the *judex facti*'s (first-instance judge) flawed legal reasoning. Therefore, this decision not only resolves individual cases but also broadens the scope of law enforcement and can serve as a reference in similar cases in the future.

Analysis of Fikih Muamalah on the Supreme Court Decision

1. Judgement in the Perspective of Islamic Law

The principle of justice (*al-'adl*) is a key pillar in the Islamic legal system. In the context of muamalah, justice includes not only formal equality between the parties, but also protecting the rights of the weak (*mustadh'afin*), eliminating elements of injustice, and fulfilling obligations under the agreed contract.³³ Therefore, the Supreme Court's decision must be tested based on these Islamic values of justice. If the decision disproportionately favours one party or ignores the principle of *maslahat* (public good), it may be contrary to the principles of sharia justice.³⁴ In muamalah fiqh, a fiduciary contract can be analogous to the concept of *rahn* (pawn) or *kafalah* (guarantee), depending on the structure of the contract. Breaches of the agreement, such as transferring the object of collateral without permission or defaulting on payment obligations, are forms of *khiyanah* (betrayal) prohibited in Islam. Such actions require an assessment of the elements of good faith (*niyyah*) and the implementation of contractual obligations per Sharia principles. In

³³ Chairul Fahmi, Sri Wahyuni, and Laila Muhammad Rasyid, "THE ROLE OF COURTS IN RESOLVING CASES OF BANKRUPTCY OF ISLAMIC BANK CUSTOMERS," *JURISTA: JURNAL HUKUM DAN KEADILAN* 6, no. 2 (October 1, 2023): 1–22.

³⁴ Idris Siregar, "Prinsip Prinsip Dasar Muamalah Dalam Islam Idris Siregar Ukok Kurnia Meliala Hasibuan Hazriyah Nilai-Nilai Keadilan , Transparansi , Dan Tanggung Jawab Sosial . Prinsip-Prinsip Dasar Seperti Konteks Meningkatnya Minat Terhadap Ekonomi Syariah Di Berbagai," *Jurnal Ilmu Pendidikan, Bahasa, Sastra Dan Budaya (MORFOLOGI)* 2, no. 4 (2024).

this context, the Supreme Court should consider the moral-spiritual aspects of the parties' legal actions.³⁵

2. The Relevance of the DSN-MUI Fatwa on Guarantees

DSN-MUI Fatwa No. 68/DSN-MUI/VI/2008 on Rahn Tasjily and other fatwas related to collateral provide an essential foundation for Islamic financial institutions to carry out transactions in accordance with sharia principles. The fatwa stipulates that the lender may not utilise the collateral except with the consent and without harming the owner of the goods. The fatwa also stipulates that the collateral contract must not be accompanied by elements of usury, *gharar* (uncertainty), and *zulm* (injustice).³⁶ Therefore, understanding the fatwa's content and basis is essential to evaluate legal compliance with Sharia principles. The suitability of the Supreme Court's decision with the DSN-MUI fatwa can be assessed through normative and juridical-comparative approaches. Suppose the court decision does not refer to the fatwa that has become a guideline in Islamic financial institutions. In that case, a potential disharmony between positive and Islamic law may arise. This discrepancy can impact the doubts of Sharia business actors about legal certainty and weaken the legitimacy of the national Sharia financial system. Therefore, judges must pay attention to the fatwa's provisions when deciding on Sharia cases.

3. Islamic Law Solutions in Fiduciary Cases

From a fiduciary perspective, settlement of fiduciary disputes can be done through mutually agreed peaceful approaches (*sulh*), deliberation, or arbitration (*tahkim*). This settlement prioritises the principles of *maslahat* and justice without resorting to lengthy and expensive litigation. In addition, *fiqh* advocates a restorative approach in which the injured party is compensated proportionally, and the offender can correct their mistake through a new

³⁵Rini Fatma Kartika, "Jaminan Dalam Pembiayaan Syariah," *Kordinat* XV, no. 2 (2016): 229–52.

³⁶ Chairul Fahmi, Audia Humairah, and Ayrin Sazwa, "MODEL OF LEGAL DISPUTE RESOLUTION FOR BUSINESS CONTRACT DEFAULT," *JURISTA: Jurnal Hukum Dan Keadilan* 7, no. 2 (December 23, 2023): 242–63, <https://doi.org/10.22373/JURISTA.V7I2.228>.

contract or reconstruction of a fairer contract. Sharia mediation institutions can offer an alternative solution grounded in Islamic principles.³⁷

Strengthening sharia-based legal norms is necessary to prevent future discrepancies between positive law and sharia. This strengthening can be done by revising laws to better accommodate sharia transactions, training judges in muamalah fiqh, and integrating DSN-MUI fatwas as an official legal reference in sharia economic cases. In addition, it is necessary to establish a consultative institution that can bridge the interpretation of positive law and Islamic law to create a harmonised national legal system responsive to Sharia values.³⁸

Linkages between Positive Law and Muamalah Jurisprudence

The relationship between Indonesian positive law and fiqh muamalah is a reality that cannot be ignored in the national legal system, especially in developing Islamic economic law. Positive law, as a product of a modern state, has a normative foundation in the constitution, legislation, and public policy. In contrast, fiqh muamalah is derived from the Qur'an, Hadith, ijma', and qiyas, which are manifestations of Islamic teachings in the socio-economic field. Although these two legal systems have different sources, methodologies, and objectives, they share common ground in their primary purpose of law: to create justice, order, and benefit for society.³⁹

The need for harmonisation between national law and Sharia law is critical in the context of Indonesia, where the majority of the population is Muslim. Harmonisation is intended to avoid clashes between the general provisions of positive law and the specific principles of Islamic law, especially in sharia-based economic transactions such as financing, guarantees, and other contracts. In practice, cases often arise in which judicial institutions decide solely on civil law without considering fatwas or Islamic law principles

³⁷Arifatul Uyun and Abdul Mujib, "Penyelesaian Sengketa Jaminan Fidusia Dalam Praktik Gadai," *Al-Adl: Jurnal Hukum* 14, no. 2 (2022): 285, <https://doi.org/10.31602/al-adl.v14i2.6149>.

³⁸Riwayani, *Perbandingan Hukum Jaminan Fidusia Menurut Undang-Undang Nomor 42 Tahun 1999 Dengan Hukum Rahn Tasjili Menurut Fatwa Nomor 68/DSN-MUI/III/2008*.

³⁹Najikha Akhyati, "Tinjauan Hukum Positif Dan Fikih Muamalah Terhadap Praktik Memberikan Kembali Uang Belanja Berupa Permen," *J-Alif: Jurnal Penelitian Hukum Ekonomi Syariah Dan Budaya Islam* 8, no. 2 (2023): 105, <https://doi.org/10.35329/jalif.v8i2.4736>.

formulated by the National Sharia Council of the Indonesian Ulema Council (DSN-MUI). This can lead to legal uncertainty for Sharia business actors and reduce the value of substantive justice, which is the spirit of Islamic law itself.⁴⁰

In this position, the Supreme Court becomes very strategic as the highest judicial institution with the authority to provide legal interpretation and form jurisprudence that can be used as a reference by the lower courts. The Supreme Court must show sensitivity to the socio-religious context behind the cases it handles, especially when they involve Sharia principles. For example, in a fiduciary dispute between an Islamic financing institution and a customer, the Supreme Court should not only rely on Law No. 42/1999 on Fiduciary Guarantee, but also pay attention to the DSN-MUI fatwa that regulates the provisions of rahn (pawn) and the conditions for its validity in Islam. Thus, the Supreme Court can bridge the normative values of national law and the moral values of muamalah fiqh.⁴¹

The implications of the relationship between positive law and muamalah fiqh directly impact legislation and the direction of national legal reform. To create a legal system that accommodates Sharia values, the government and lawmakers need to strengthen regulations through Sharia-based legal reform. This can be realised through synchronisation between sectoral laws and applicable Sharia provisions, and making DSN-MUI fatwas a secondary source of law in Sharia finance cases. With this step, Indonesia creates a plural and responsive legal system and strengthens the legitimacy of Islamic economic institutions that continue to grow in the community. In addition, legal reform must also be accompanied by strengthening the capacity of human resources in the judiciary. Judges, prosecutors, and advocates need to be equipped with a comprehensive understanding of muamalah fiqh, so that the law enforcement process is not only formal-legalistic, but also reflects the substance of the value of justice according to sharia. Legal education institutions are also expected to integrate the study of

⁴⁰Riwayani, *Perbandingan Hukum Jaminan Fidusia Menurut Undang-Undang Nomor 42 Tahun 1999 Dengan Hukum Rahn Tasjili Menurut Fatwa Nomor 68/DSN-MUI/III/2008*.

⁴¹MH. Ronni Rahmani, SHI., "Eksekusi Jaminan Fidusia Dalam Penyelesaian Sengketa Ekonomi Syariah Pasca Putusan Mahkamah Konstitusi Nomor 18-Puu-Xvii-2019 Tentang Pengujian Uu No 42 Tahun 1999 Tentang Jaminan Fidusia," 2019, 1–24.

Islamic law into the curriculum so that the legal scholars produced are sensitive to legal developments based on religious values.⁴²

Thus, the relationship between positive law and muamalah fiqh is not a form of conflict, but rather an opportunity to build a national legal system that is more balanced, equitable, and in line with the characteristics of Indonesian society. This integrative effort between the two legal systems is a tangible form of the spirit of Pancasila and the 1945 Constitution, which guarantees freedom of religion and upholds social justice for all Indonesian people.

Conclusions

Supreme Court Decision Number 2319 K/Pid.Sus/2024 shows that fiduciary guarantees are essential in the Indonesian legal system for protecting creditor rights and ensuring legal certainty in financing. In the Ivan Rusvansyah Trisya case, the Supreme Court confirmed that the unauthorised transfer of fiduciary objects is a criminal offence, not just a civil default. This strengthens the legal position of financial institutions against non-compliant debtors. From the perspective of muamalah fiqh, a fiduciary can be analogous to the Rahn (pawn) contract and the principle of trust as long as it does not contain elements of usury, gharar, or injustice. The defendant's action of pawning the collateral without permission is a form of khiyanah prohibited in Islam. Thus, the Supreme Court's decision is considered in line with the principles of justice in Islam. Furthermore, integrating positive law and muamalah fiqh is crucial in practicing Islamic economics in Indonesia. This decision is a concrete example of the need to harmonise national law with Sharia values to create a legal system that is fair, responsive, and reflects the identity of Indonesia's Muslim-majority society. Strengthening sharia regulations, training legal officers, and recognizing DSN-MUI fatwas must be continuously developed to support a just and moral legal system.

⁴² Chairul Fahmi, "Analysis Of Legal Aspects On Capital Investment Fraud In Indonesia," *Proceeding of International Conference on Sharia Economic Law (ICoShEL)* 1, no. 1 (September 9, 2024): 79–95.

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