



TRACKING DEVICES ON COLLATERAL VEHICLES BY FINANCIAL INSTITUTIONS INVADES CUSTOMER PRIVACY ACCORDING TO PRIVACY PROTECTION LAW

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Abstract

Financial institutions expect financing to be returned on time and adhere the terms of the agreement. Financial institutions profit from the ability to handle non-performing loans (NPL). The lower the level of NPL, the lower the risk and the higher the profit made by the financial institution. One way to mitigate risk is the capacity to take over the collateral for financing. One of the collaterals for financing is in the form of a vehicle. This vehicle is guaranteed by Fiduciary security. If consumer default occurs, financial institutions can seize the collateral and use it to pay off the loan. Financial institutions employ a variety of strategies to ensure that collateral is quickly located in the event of a default. One method is to use technology to install a tracking device. This study scrutinizes the use of tracking devices by financial institutions from the perspective of consumer privacy protection. This normative legal research concludes that collaterals with Fiduciary security are property of financial institutions prior to settlement. However, the installation of tracking devices on collateral vehicles might invade customer privacy. The customer has the option to object the installation of the device on the vehicle.

Keywords: *fiduciary security, tracking device, privacy*

A. Background

Fox Logger is a company offering GPS to track two-wheeled vehicles. This technology can assist the leasing industry in lowering the risk of losing motorcycles.¹ Financial institutions distribute financing through vehicles with

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¹ Leo Dwi Jatmiko, "Perusahaan Ini Tawarkan Alat Pelacak Kendaraan Sepeda Motor - Otomotif Bisnis," *Bisnis.Com*, 2021, <https://otomotif.bisnis.com/read/20210325/273/1372266/perusahaan-ini-tawarkan-alat-pelacak-kendaraan-sepeda-motor>.

Fiduciary security.² The collateral vehicle cannot be taken over.³ Fox Logger is an Internet of Things company that offers vehicle tracking with GPS.⁴

The United States Department of State released a report that the PeduliLindungi application used in Indonesia violates human rights related to the privacy of data.⁵ The PeduliLindungi application tracks Covid-19 cases in Indonesia.⁶ In the PeduliLindungi application, personal data is stored such as vaccine status, Covid-19 test history, ID number, telephone number, and location visited.⁷

Currently, drone technology or unmanned aircraft are being developed. Drones have been deemed a threat to privacy and security.⁸ The Minister of Transportation has issued a regulation on the use of drones. Drones used for shooting and mapping purposes must obtain a permit from the authorized institution.⁹ Iran has banned the use of private drones in Tehran. The local residents believe that drone has violated their privacy.¹⁰

Customer privacy protection is not well regulated. Privacy protection is governed by a number of laws, notably Consumer Protection Law No. 8 of 1999. The relationship between the consumer and the creditor is not, however, clearly

² Suwinto Johan, "Implementation Fiduciary Registration According to Finance Ministry, Police, and Financial Services Authority (OJK)," *The Winners* 22, no. 2 (2021): 183–89, <https://doi.org/10.21512/tw.v22i2.7064>.

³ Suwinto Johan, "Determinants of Credit Decision in Consumer Financing: An Empirical Study on Indonesia Auto Financing," *Indonesian Journal of Business and Entrepreneurship* 4, no. 3 (2018): 291–98, <https://doi.org/10.17358/ijbe.4.3.291>.

⁴ Angga Laraspati, "Startup Ini Punya Sistem Pelacak Kendaraan Yang Kreditnya Macet," *Detik.Com*, 2019, <https://finance.detik.com/fintech/d-4818709/startup-ini-punya-sistem-pelacak-kendaraan-yang-kreditnya-macet>.

⁵ Tommy Patrio Sorongan, "Heboh! AS Pantau PeduliLindungi RI, Disebut Melanggar HAM?," *CNBC Indonesia*, 2022.

⁶ Syifa Ilma Nabila Suwandi et al., "Analisis Privasi Data Pengguna Contact Tracing Application Pengendalian COVID-19 Di Indonesia Berdasarkan PERPRES RI No. 95 Tahun 2018 Tentang Sistem Pemerintahan Berbasis Elektronik," *Teknologi Jurnal Ilmiah Sistem Informasi* 11, no. 1 (2021): 46–58, <https://doi.org/10.26594/teknologi.v11i1.2174>.

⁷ Maulana Ramadhan, "Apa Alasan Laporan AS Sebut Aplikasi PeduliLindungi Melanggar HAM? Halaman All - Kompas," *Kompas.Com*, 2022.

⁸ Rahmad Fauzan, "Drone Berisiko Ancam Privasi Dan Keamanan, Kaspersky Luncurkan Layanan Antidrone - Teknologi Bisnis," *Bisnis Indonesia*, 2019.

⁹ Kominfo, "Memotret Menggunakan Drone Di Indonesia Harus Ada Izin," *KOMINFO*, 2015, https://kominfo.go.id/index.php/content/detail/3415/Kominfo+%3A+Pengguna+Intern+et+di+Indonesia+63+Juta+Orang/0/berita_satker.

¹⁰ BBC New Indonesia, "Iran Larang Drone Pribadi Mengudara Di Teheran - BBC News Indonesia," *BBC News Indonesia*, 2017.

regulated by these legislation.¹¹ The use of personal data can be categorized as violating human rights.¹²

This study discusses the installation of tracking devices on collateral vehicles or other collaterals by financial institutions within the framework of consumer privacy protection. Is this tracking device allowed by law? There is a dearth of research depicting data privacy and the attentiveness of financial institutions in collaterals. This study considers customers and financial institutions in the description.

The use of technology such as CCTV, drones, audiovisual recordings as well as the Global Positioning System (GPS) has been a common thing among us.¹³ They are easy to obtain and use. They positively impact our lives. However, they possess a negative impact, too, in terms of privacy threats.

Referring to Law Number 19 of 2016 concerning amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions (EIT), wiretapping is prohibited. Offenders are threatened with criminal sanctions. This can be done at the request of the police, prosecutors, or other authorized agencies.¹⁴ However, based on the Constitutional Court Decision Number 20/PUU-XIV/2016 that the Close Circuit Television Recorded (CCTV) recording is legal evidence in a court case. The use of CCTV for public reasons, such as banks, hotels, airports, military warehouses, factories, and warehousing, is not illegal and cannot result in criminal charges, even if the individual being recorded does not consent.¹⁵

¹¹ Wa Ode Zamrud and Muhammad Syarifuddin, "Perlindungan Hukum Terhadap Data Pribadi Konsumen Pengguna Jasa Ojek Online," *Jurnal Ilmu Hukum Kanturuna Wolio* 3, no. 2 (2022): 157–71, <https://doi.org/10.55340/jkw.v3i2.787>.

¹² Ika Cahyo Purnomo and Anggraeni Endah Kusumaningrum, "Aplikasi Digital Pencegahan Covid-19 Dan Penghormatan Terhadap Hak Asasi Manusia," *Jurnal Hukum, Politik Dan Ilmu Sosial (JHPIS)* 1, no. 1 (2022): 121–43, <https://doi.org/10.55606/jhpis.v1i1.1735>.

¹³ Iswidodo, Taufik Firmanto, and Muhammad Amin, "Pelaksanaan Tugas Polri Mendukung Penerapan Protokol Kesehatan Di Masa Pandemi Covid-19," *Fundamental: Jurnal Ilmiah Hukum* 10, no. 2 (2021): 179–94, <https://doi.org/10.34304/jf.v10i2.56>.

¹⁴ Steve Jelly Walintukan, Dientje Rumimpunu, and Rudy R. Watulingas, "Akibat Hukum Bagi Pelaku Penyadapan Ilegal (Intersepsi) Menurut Undang Undang Telekomunikasi Serta Undang Undang Informai Dan Transaksi Elektronik," *Lex Crimen* 11, no. 1 (2022): 5–14.

¹⁵ Susanto, "Perlindungan Hukum Terhadap Perekam Kamera Tersembunyi Ditinjau Dari Undang Undang Nomor 11 Tahun 2008 Tentang Informasi Dan Transaksi Elektronik Dan Putusan Mahkamah Konstitusi Nomor 20/PUU-XIV/2016 Tanggal 07 September 2016," *Teknologi Informasi ESIT* XII, no. 01 (2018): 91–102; Maya Rayhani, Suriyadi, "Legalitas Penggunaan Alat Bukti CCTV Untuk Dijadikan Alat Bukti Yang Sah Dalam Proses Peradilan Pidana Umum & Khusus Setelah Adanya Putusan Mahkamah Konstitusi Republik Indonesia Nomor 20/PUU-XIV/2016," *Langsat* 6, no. 1 (2019): 75–86.

CCTV footage can be used as additional evidence as regulated in Criminal Procedure Code Article 184.¹⁶ There are limited restrictions controlling CCTV or privacy, particularly in East Java.¹⁷ A special law governing the right to privacy must be enacted immediately to serve as a clear protection mechanism.¹⁸

Drones have had both positive and negative effects on people's lives. One of the benefits of adopting technology such as CCTV in counter-terrorism is that it serves as a protective tool, investigation tool, and daily reinforcement in dealing with terrorism.¹⁹ The regulation on the use of drones is limited to administrative sanctions. Thus, regulations with criminal sanctions are very necessary. Drones have been widely used in preventing crimes ranging from spying, drug trafficking, to terrorism strikes.²⁰ Drones have been used in terrorist strikes in several countries. Drone attacks on Very Very Important Persons (VVIPs) and nationally vital objects existed.²¹

Some social media accounts that publish based on records of someone's activities may be considered violating personal privacy.²² Employees publicizing company policies via audio and visual recordings might have a detrimental impact on the firm since the competing companies will easily find out the company's plans and strategies.²³ Fintech companies also use personal data to collect bills from customers.²⁴ This has led to the misuse of private data which

¹⁶ Takasya Angela Tanawu Khristanto, "Kedudukan Hukum CCTV Sebagai Alat Bukti Elektronik Setelah Terbitnya Putusan Mahkamah Konstitusi Nomor 20/Puu-Xiv/2016 Tanggal 07 September 2016," *To - Ra Jurnal Hukum: Hukum Untuk Mengatur Dan Melindungi Masyarakat* 6, no. 2 (2020): 145–55.

¹⁷ Andieka Rabbani et al., "Studi Empiris Peraturan Daerah Mengenai Cctv Terkait Privasi Data Di Kota-Kota Jawa Timur," *JBMI (Jurnal Bisnis, Manajemen, Dan Informatika)* 17, no. 1 (2020): 80–87, <https://doi.org/10.26487/jbmi.v17i1.9586>.

¹⁸ Marina Abdul Manap, "Perkembangan Undang Undang Privasi Di England Dan Malaysia: Satu Tinjauan," *Journal Law and Governance* 3, no. 1 (2020): 1–17, <https://doi.org/10.1016/j.sciaf.2019.e00146>.

¹⁹ Gega Ryani Chaya Kurnia, "Peran Kamera Pengawas Closed-Circuit Television (CCTV) Dalam Kontra Terorisme," *Kajian Lembaga Ketahanan Republik Indonesia* 9, no. 4 (2021): 100–116.

²⁰ Mukhlis Al Huda, "Penguatan Pengaturan Pesawat Udara Tanpa Awak (Drone) Melalui Undang-Undang," *Iblam Law Review* 1, no. 2 (2021): 103–20, <https://doi.org/10.52249/ilr.v1i2.26>; Moody R Syailendra et al., "Personal Data Protection Related to Operation of Unmanned Aircraft (Drone) in Indonesia," *Advances in Social Science, Education and Humanities Research* 605 (2021): 318–22.

²¹ Muhammad Zaenuddin Firmansyah and Puspitasari Puspitasari, "Pemanfaatan Drone Sebagai Bagian Dari Kontra Terorisme," *Nakhoda: Jurnal Ilmu Pemerintahan* 20, no. 1 (2021): 43–58, <https://doi.org/10.35967/njip.v20i1.148>.

²² Yunus Winusa and Muhammad Rayhan Bustam, "Pelanggaran Privasi Di Akun Instagram Lambe Turahyang Diakibatkan Oleh Voyeurism (Pendekatan Psikoanalisis)," *Mahadaya* 1, no. 2 (2021): 257–64.

²³ Suwinto Johan, "Knowing Company Secrets Through Employee Posts on Social Media," *Diponegoro Law Review* 6, no. 2 (2021): 203–16, <https://doi.org/10.14710/dilrev.6.2.2021.203-216>.

²⁴ Suwinto Johan, "Financial Technology Company's Debt Collection Method," *Unnes Law Journal* 8, no. 1 (2022), <https://doi.org/10.15294/ulj.v7i1.52173>.

has created legal problems.²⁵ In Indonesia, financial institution customers continue to experience inadequate protection.²⁶

The type of collateral and the guaranteed price are specified in the credit agreement. Guarantee benefits for financial institutions in providing legal certainty to creditors and generating security for financing transactions. Financial institutions face risks when making loans if the debtor fails to make payments or develops bad credit. The financial company will take over the collateral. Although the agreement to provide collateral in the form of a Fiduciary security is an *accessoir* agreement, collateral is an inseparable unit.

According to Article 16 Paragraph (2) of POJK 38 of 2018, to mitigate the financing risk is by imposing Fiduciary security, encumbrance right, or collateral mortgages from financing. Collateral in this study refers to goods/services that are financed. Financial institutions that conduct financing with the imposition of Fiduciary security must register Fiduciary security with the Fiduciary registration office within one month of the financing agreement as referred to in Article 30 Paragraph (1) POJK Number 38 of 2018.

Execution of collateral by a financial company must meet the following conditions the debtor is proven to be in default, the debtor has been given a warning letter, and the financial institutions has a Fiduciary security certificate, encumbrance certificate, and/or mortgage certificate as regulated in Article 50 Paragraph (1) POJK Number 38 of 2018.

Fiduciary security has executorial rights as stated in Article 15 Paragraph (1) and Paragraph (2) of Law Number 42 of 1999, the Fiduciary Security Certificate includes the words “FOR THE SAKE OF JUSTICE BASED ON THE ALMIGHTY GOD”. The Fiduciary Security Certificate has the same executorial power as a court decision with permanent legal force. If the debtor is in breach of contract, the Fiduciary recipient has the right to sell the object of the Fiduciary security on his own authority.

Receivable is the right to receive payments. Objects are everything that can be owned and transferred, either tangible and intangible, registered or unregistered, movable or immovable that cannot be encumbered as referred to in Article 1 Paragraph (4) of Law Number 42 of 1999. Based on Law Number 42 of 1999, a Fiduciary Grantor is an individual or corporation that owns the object of Fiduciary security. Fiduciary Recipient means any individual or corporation having receivables, which are secured by Fiduciary Security. Debt is defined as any liability stated or can be stated in monetary terms in either Indonesian or

²⁵ Hendrawan Agusta, “Pertanggungjawaban Khpm Dalam Proses Ipo Jika Terdapat Fakta Material Yang Tidak Diungkap,” *Masalah-Masalah Hukum* 49, no. 1 (2020): 48–60, <https://doi.org/10.14710/mmh.49.1.2020.48-60>.

²⁶ Suwinto Johan and Ariawan Ariawan, “Consumer Protection in Financial Institutions,” *Legality : Jurnal Ilmiah Hukum* 29, no. 2 (2021): 173–83, <https://doi.org/10.22219/ljih.v29i2.16382>.

other currencies, either directly or indirectly. Creditors are parties who have receivables due to an agreement or law.

B. Identified Problems

Based on the foregoing, the following research problems are proposed for this study: Who is the owner of the collateral for financing with a Fiduciary security under the Fiduciary Law? Does the installation of the tracking device require customer approval? Can financial institutions utilize tracking evidence as court evidence if a customer defaults?

C. Research Methods

This study is normative legal research. It examines literature or secondary source of data. Normative legal research includes research on existing legal norms and principles as well as systematics of regulations and legislation, horizontal and vertical synchronization between existing laws and regulations related to credit agreements between financial institutions and customers. The context of this study is the ownership and installation of tracking devices. This study uses a statutory approach by researching the regulations as a whole regarding financing agreements and ownership of the collateral.

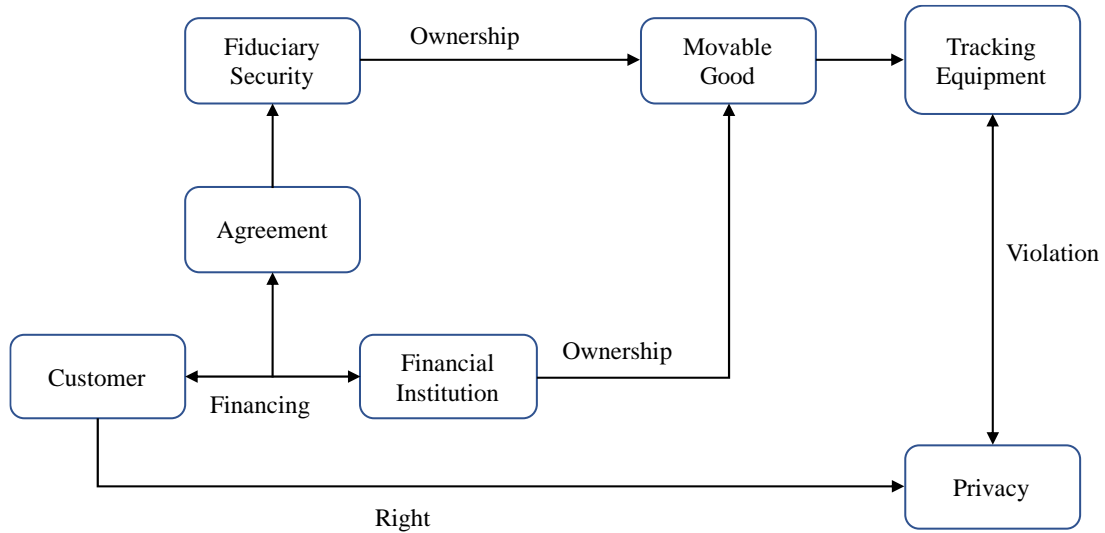
The sources of data are primary legal materials, secondary legal materials, and other legal supporting materials.²⁷ The primary legal materials used are the 1945 Constitution of the Republic of Indonesia, applicable laws, and other regulations related to the research topic. The secondary legal materials used are literature reviews in the form of books, journal articles, papers from seminars/conferences, and other scientific articles. Tertiary legal materials explain primary legal materials and secondary legal materials from the internet as well as other sources.²⁸ The research framework is depicted in Figure 1. This study delves into Fiduciary security, vehicle ownership, and the installation of tracking devices that violate customer privacy.

Loan agreements are the basis for all action between financial institutions and customers. In the case of movable property, fiduciary backs up the customer's assurance. Financial organizations may violate clients' rights to privacy by monitoring movable assets they guarantee. Figure 1 illustrates how it works.

²⁷ Mahmud Peter Marzuki, *Penelitian Hukum: Edisi Revisi*, Revisi (Jakarta: Kencana Prenada Media Grup, 2017), <https://opac.perpusnas.go.id/DetailOpac.aspx?id=1409842>.

²⁸ Suwinto Johan, "Sanksi Administratif Denda Pendekatan Laporan Keuangan Atas Pelanggaran Persaingan Usaha Tidak Sehat," *Masalah-Masalah Hukum* 51, no. 1 (2022): 20–28, <https://doi.org/10.14710/mmh.51.1.2022.20-28>.

Figure 1. Theoretical Framework



D. Research Findings and Discussion

1. Owner of the Goods for Financing which are the Object of Fiduciary security under the Fiduciary Law

Based on Article 1 Paragraph (1) of Law Number 42 of 1999, Fiduciary is any trust-based transfer of ownership rights over goods with the provision that such goods remain under the owner's control. Fiduciary security is security right on movable objects, either tangible and intangible or immovable goods, especially buildings that cannot be encumbered with security rights as referred to in Law Number 4 of 1996 concerning encumbrance rights, which remain in the control of the Fiduciary Grantor, as collateral for the settlement of certain debts, which gives priority to the Fiduciary Recipient over other creditors, as referred to in Article 1 Paragraph (2) of Law Number 42 of 1999.

Collateral are goods owned by the customer and offered as collateral to a financial institution, in this case, a financial company. Financial companies become the owner of this collateral. However, this collateral remains in the name of the owner or customer but the status of the collateral is the property of a financial institution. The financial institution has the right to the goods on this basis. Yet, the customer is the legal owner of the goods.

Vehicles with Proof of Ownership (BPKB) on behalf of the customer are controlled by financial institutions. This control makes the financial institution the owner of the vehicle. With the customer's consent, financial institutions can install something on the vehicle. The customer is the owner of the vehicle after the settlement. If the customer is able to pay off the

debt, the customer is entitled to the vehicle. If, on the other hand, the customer desires to change the shape, color, or function of the vehicle, he must first acquire consent from a financial institution.

The installation of the tracking device requires the consent of both parties. Customers and financial institutions must grant consent for the installation of tracking devices because tracking tools are not installed by a single party.

2. Installation of Tracking Devices Requires Customer Consent

The tracking device is a tool to find out the location of the collateral. It follows the activities of the customer. The customer route will be monitored by the financial institutions as the creditor. Because this involves client privacy, customer approval is required. The installation of the tracking device is individual, as stipulated in the Constitutional Court Decision Number 20/PUU-XIV/2016. Customers' private activities become information for financial institutions. As a result, the information must get the customer's approval.

If financial institutions install devices without the customer's knowledge, the customer has the right to submit an objection. The installation of tracking device can be done on the vehicle before handing over the vehicle to the customer. After the handover, the vehicle will be in the control of the customer. The installation of a tracking device should not invalidate the vehicle manufacturer's warranty on vehicle quality or interfere with the system or core security of the vehicle. Hence, the installation of tracking devices must be with the knowledge and consent of the customer.

Installation of tracking devices can be done as a standard service. However, the dealer or seller must disclose that the vehicle is equipped with a location tracking device. The customer must know who receives location information.

3. Tracking Evidence Can Be Used as Court Evidence for Financial Institutions, if the Customer is in Default

Financial institutions can track the whereabouts of collateral with a tracking device. Financial institutions can find collateral easily when default occurs. Customers can, however, dispose of or remove the tracking device from their vehicle so that financial institutions do not detect the collateral. If the consumer does this and has agreed to the installation of a tracking tool, the financial institution can classify this as a default. The customer intentionally does not pay off his obligations by eliminating the collateral. However, if the customer has allowed the installation of the tracking device and the tracking device is broken as a result of circumstances other than the customer's conduct, the financial institution or finance company cannot file a claim of default against the customer.



When a customer defaults, the financial institution almost never pursues civil action against the customer. The financial institution will search for the collateral until it is found. Involving civil law in billing is rarely carried out. If an attempt to embezzle collateral or data fraud is discovered when applying for finance, criminal law might be used. The tracking data can be used in case of embezzlement of collateral.

E. Conclusion

Collaterals can be executed by financial institutions in the case of customer defaults. The location of collateral is crucial for moving collateral. Financial institutions will discover the location in a variety of ways, including the installation of a tracking device for the location of the vehicle. The installation of a tracking device can be classified as a violation of customer privacy if the customer does not consent. As a result, the installation must obtain customer approval; if the customer declines, the financial institution will be unable to install the tracking device. This study has limitations, such as a lack of perspectives from business actors in financial institutions and customers. Future research can be developed by including the perceptions of business actors through focus group discussions. It is expected that the perspectives of business actors and customers can be presented thoroughly.

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