



THE IMPACT OF THE EXECUTION ON THE OBJECT FIDUCIARY GUARANTEE

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ABSTRACT

Background. Guarantees in the broadest sense are guarantees of a material or immaterial nature. Material collateral for example buildings, land, vehicles, jewelry, securities. Meanwhile, immaterial guarantees include individual guarantees (*borgtocht*). Fiduciary is the transfer of ownership rights to an object based on trust with the condition that the object whose ownership rights are transferred remains in the control of the owner of the object.. The research purpose describes the impact of the execution on the object fiduciary guarantee.

Research Method. This research used Normative Juridical research methods, namely research based on studies literature and based on the general explanation of Article 29 of Law Number 42 of 1999 regarding fiduciary guarantees.

Findings. If the debtor or fiduciary breaches his promise, then it will the execution of the fiduciary guarantee object is carried out, this is because the fiduciary recipient has the same executorial rights as court decisions that have obtained legal force remains on the object of fiduciary guarantee based on the fiduciary guarantee certificate.

Conclusion. The Fiduciary Guarantee Law, in line with Pacta Sunt Servanda, allows for the transfer of ownership rights to an object based on trust.

Keywords: Creditor, Debtor, Executor, Fiduciary, Guarantee.

BACKGROUND

In national economic development, Indonesia is not free from debt receivables, and from this, a guarantee is born which is one component of debt receivables, one of which is collateral Fiduciary Guarantee[1]. Guarantee institutions are used to fill legal gaps in legal institutions' guarantee and at the same time to meet needs which is very rapid and continues to increase for the world effort on the availability of funds to give protection for collateral recipients.

In practice in several institutions and banking, the amount of credit provided depends on the amount of material collateral given by the debtor. This is an obstacle for small entrepreneurs though their business prospects are considered good and productive as well have been given requirements for obtaining credit which is simpler and lighter flower, but they often stumble on material collateral requested by the bank[2].

Various factors become obstacles for the debtor cannot pay the installments on the credit fiduciary system or default, for example, debtors experiencing certain economic problems, so unable to pay, the debtor dies, and collateral is damaged /lost. Legal problems that arise as a result of credit distribution to Fiduciary Recipients are possibly caused by several factors, including factors caused by negligence and intent from the debtor or Fiduciary[3].

Even though the object of the fiduciary guarantee is collateral has met the criteria implied in the credit agreement between fiduciary recipients and fiduciary givers who have agreed to by both parties, however, the possibility of the debtor defaulting (default) is still possible. Even though fiduciary guarantees are regulated in Legislation, namely Law Number 42 of 1999 concerning Fiduciary Guarantees[4].

Eventhough in practice, violations often occur and misunderstandings by society, including when there is a breach of contract or default[5]. In this case, a follow-up that constitutes implementation rules stated in the Law Fiduciary Guarantee is the execution of fiduciary

guarantees. The research purpose describes the impact of the execution on the object fiduciary guarantee

RESEARCH METHOD

This research method used normative legal research, and legal research literature, namely legal research. This is done by examining the materials libraries or secondary materials. The authors propose a legislative approach invitation (statute approach), namely the approach using legislation and regulations[6, 7]. Materials library or secondary materials, by reviewing Law Number 42 of 1999 regarding Fiduciary Guarantees and based on files Application for Registration of Fiduciary Guarantee with Fiduciary Certificate Number W1500951515.Ah.05.01 Year 2023.

FINDINGS

Fiduciary guarantee is a security right for objects moving, both tangible and intangible tangible and immovable objects in particular buildings as intended in Law Number 4 of 1996 concerning rights dependents who remain in control fiduciary, as collateral for repayment certain money that gives priority position to the fiduciary recipient other creditor. Article 4 of the Guarantee Law Fiduciary also expressly states that a Fiduciary guarantee is an *accessoir* agreement of a main agreement that gives rise to an obligation for the parties to fulfill an achievement in the form of giving something, doing something, or not doing something, that can be valued in money. As an agreement *accessoir*, the fiduciary agreement has properties as follows: 1) The nature of dependence on the agreement. Its validity is solely determined by the validity of the main agreement, 2) As a conditional agreement, then only be implemented if the provisions are required in the main agreement have been or have not fulfilled.

A fiduciary guarantee is an agreement *accessoir* of a main agreement that creates obligations for the parties to fulfill an achievement in the form of giving something, which can be valued in money. As an *accessoir* agreement. In Civil Law in Indonesia, arrangements or clauses in the agreement. This is a law for both parties. It's different with fiduciaries in the country others known as developed countries, fiduciaries are not regulated in detail and reasonably can substitute the agreement. The object of fiduciary guarantees is contained in Article 1 number (4) of the Fiduciary Guarantee Law, namely object. Objects are anything that can be owned and transferred, whether registered or not registered, movable or immovable and which cannot be encumbered with rights dependent or mortgage.

Meanwhile, in Article 3, objects not moving must meet the requirements, among others: these objects cannot be burdened with mortgage rights and these objects are not burdened with mortgage rights for movable objects, these objects cannot be encumbered with rights pawn. Objects that are the object of Guarantee. These fiduciaries are:

1. The object must be owned and owned legally transferred;
2. Can be on tangible objects, for example: machines, houses, factory buildings, and vehicles;
3. Can also be used for intangible objects, for example: individual guarantee, guarantee company;
4. Moving objects, for example: vehicles, machines factory, merchandise inventory, and receivables;
5. Immovable objects that cannot be tied with mortgage rights, for example: land and buildings;
6. Immovable objects that cannot be moved tied to a mortgage, for example: factory machines that have been embedded in a factory;

7. Both for existing objects and of objects that will be obtained later. In terms of objects to be obtained then, no deed is needed separate fiduciary burden;
8. Can be based on one unit or type of object;
9. Can also be of more than one type or unit object;
10. Including the results of objects that have become fiduciary object;
11. Also includes the results of insurance claims from objects which is the object of fiduciary collateral; and,
12. Inventory items (inventory, stock trade) can also be an object fiduciary guarantee.

Encumbrance of material goods with collateral fiduciary is created by notarial deed in Bahasa Indonesia which is a fiduciary guarantee deed. The fiduciary guarantee deed, besides stating stated day, and date, also includes (the time) making the deed. The fiduciary guarantee deed must be made by and or before an authorized official. To provide legal certainty, Article 11 of The Fiduciary Guarantee Law states that the fiduciary guarantee is registered with the Office of Fiduciary Registration located in Indonesia.

This obligation even remains in effect though objects burdened with fiduciary guarantees are outside the territory of the Republic of Indonesia. Based on the provisions of Article 11 of Law Number 42 of 1999 concerning Guarantees Fiduciary, then fiduciary registration is carried out at the Fiduciary Registration Office at the domicile fiduciary party. The place for fiduciary registration is at the office of Fiduciary registration under the auspices Ministry of Law and Human Rights, and can be done through a registered Notary Office with the electronic system in the Fiduciary Application Online. Apart from that, the Fiduciary Registration Office also records the Fiduciary Guarantee in the Register Book Fiduciary.

DISCUSSIONS

Execution is a situation where goods or the object which is the object of collateral is requested by the creditor as the owner of the rights to the debt agreed by the guarantee provider to pay off debts owned by creditor. Execution of fiduciary guarantees is confiscation and sale of objects that are the object of collateral fiduciary[8]. In article 29 of Law Number 42 In 1999, there were 3 (three) ways of executing objects fiduciary guarantee[9], namely:

1. If the debtor or fiduciary is injured promises, execution of things that become. The object of fiduciary guarantees can be carried out with method;
2. Implementation of the executorial title as follows referred to in Article 15 paragraph (2) by Fiduciary Recipient;
3. Sale of objects that are the object of collateral fiduciary over the authority of the Fiduciary Recipient itself through public auction as well take repayment of receivables from the proceeds sale;
4. Underhand sales are carried out based on an agreement between the Giver and Fiduciary Recipient if this is the case the highest price can be obtained to benefit the parties.

Implementation of sales as intended in paragraph (1) letter c is carried out after passing within 1 (one) month after being notified written by the Fiduciary Giver and Recipient to interested parties and announced in at least 2 (two) letters news circulating in the area concerned[10]. There are several principles of execution in the Agreement Fiduciaries, including:

- a. A ruling that has gained force permanent law
- b. Decisions are not carried out voluntarily
- c. The decision that is executed is condemnatory in nature month."

Executorial action or better known with execution essentially being action carry out or carry out decisions court. According to Article 195 HIR (*Herziene Inlandsch Reglement*) the meaning of execution is implementing the judge's decision by the court. Matter this shows that creditor receivables are overlapping on all of the debtor's assets without exception. Execution of fiduciary guarantees is regulated in article 29 of Law Number 42 of the year 1999 concerning Fiduciary Guarantees[11–13].

The contribution of this research is that the Fiduciary Guarantee Charges are not registered at the notary's office but has been agreed by both parties so does not have a notarial deed or Fiduciary guarantee certificate, then in Implementation Execution must be through a court decision[14] which has permanent legal force, so in the process of carrying out the execution can run orderly and smoothly. For the sake of creating internal order implementation of Fiduciary Guarantee execution, preferably the fiduciary party or Fiduciaries are obliged to obey the rules which have been stipulated in Law Number 42 of 1999 concerning Guarantees Fiduciary.

CONCLUSION

The imposition of Fiduciary Guarantees in Law Number 42 of 1999 is explained in Article 5, namely that it is made by notarial deed in Indonesian and is a deed Fiduciary Guarantee. Execution of Fiduciary Guarantees based on Article 29 of Law Number 42 of 1999 concerning Fiduciary Guarantees utilizes executorial title, namely execution which is based on a Fiduciary Guarantee certificate which has been issued by the Ministry of Law and Human Rights.

Conflict of Interest

The author declares there is no conflict of interest with the publication of this paper.

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