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IMPLEMENTATION OF ONLINE FIDUCIARY SECURITY REGISTRATION IN MINISTER OF LAW AND HUMAN RIGHTS REGULATION NUMBER 9 OF 2013

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ABSTRACT

¹⁶ In Minister of Law and Human Rights Regulation Number 9 of 2013, online registration of fiduciary guarantees has been regulated. The purpose of writing this article is to gain an understanding of the implementation of this system. In addition, another objective is to gain a better understanding of the online fiduciary registration process, as well as the supporting components and barriers that occur during the process. This research utilizes a ⁷ statutory and factual approach. A guarantee of legal certainty has been provided through the registration of collateral with the object of fiduciary ⁷ guarantee through computer media and the internet. One of the barriers to registering fiduciary guarantees electronically and connected to the internet is slow internet speed and interruptions. Many financing institutions do not register fiduciary guarantees due to the high cost of making the deed and registering it. As a result, creditors will not have preference rights over unregistered fiduciary guarantees.

Kata Kunci: Implementasi, Pendaftaran, Jaminan Fidusia, online

INTRODUCTION

In security law, there are two types of security: general security and specific security. General security and debt guarantee do not provide certainty about when the debt will be repaid because the creditor does not have a right of precedence. As a result, the creditor remains as a concurrent creditor against other creditors. Although the fiduciary guarantee registration system basically aims to ensure that the object of collateral has been registered in order to obtain credit, ensuring that you can execute the collateral bound by fiduciary guarantee and then take advantage of ¹⁷ the sale of the collateral to pay off the debtor's debt is not something easy.

In terms of fiduciary guarantee registration, registration is very important because it is a requirement stipulated in the Fiduciary Guarantee Law as a condition for the birth of a fiduciary ² guarantee. Registration is carried out as an integral part of the process of a fiduciary guarantee agreement and provides legal certainty for the parties, both the fiduciary grantor and the party receiving the fiduciary guarantee. To encumber an object with a fiduciary guarantee, a deed known as a Fiduciary Deed of Guarantee must be drawn up by a notary public. This deed must contain the following information: ⁵ identity of the fiduciary grantor and beneficiary, data on the underlying fiduciary agreement, description of the object of the fiduciary guarantee, pledge value and ⁵ the object of the fiduciary guarantee.

To ensure that the fiduciary guarantee has legal status and legal certainty, the guarantee must be registered. Fiduciary Guarantee registration can be done online through an integrated electronic platform. Laksana Arum N., 2017. Problems arise with the enactment of these

provisions. The change in the fiduciary registration system, which switches from manual fiduciary registration at the Fiduciary Office to an online integrated electronic system, poses challenges in implementation despite the advantages of manual fiduciary registration. In the real world, many banks use the words "fiduciary pledge" in their financing agreements even though they are not notarized or registered at the Fiduciary Registration Office to obtain a certificate. Nonetheless, technological advances and a system shift by the Ministry of Law and Human Rights have made it easier to register fiduciary guarantees at the Fiduciary Office, although online registration can only be done by notaries. (Nizar Apriansyah ; 2018)

Thus, although the fiduciary guarantee deed is made notarially before a notary, the registration of the fiduciary guarantee is not done online. This is contrary to the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia No. 9 of 2013 on the implementation of electronic registration of fiduciary guarantees and Regulation of the Minister of Law and Human Rights No. 10 of 2013 on the Procedures for Registering Fiduciary Guarantees. (Junyandrasari, A., and Wiryawan ;2020)

If banks are not qualified to sign the Fiduciary Deed of Guarantee in accordance with the credit agreement, they do not need to do so. This is due to the lack of clarity in the Fiduciary Registration obligation articles of the Fiduciary Guarantee Law. As a result, new banks often perform Fiduciary Registration when the debtor seems to have done nothing, such as paying installments or instalments not on time (Ariawan I, Putrawan S. ; 2022). The implementation of an electronic Fiduciary Registration administration system is intended to keep pace with the increasing number of applications for Fiduciary Registration. It also aims to reduce potential violations such as illegal fees and other forms of corruption, collusion, and nepotism (KKN). But after the electronic system took effect, there were some problems that arose. These are not only related to the technicalities of registration, but also related to the validity of the electronically registered fiduciary guarantee.

RESEARCH METHOD

This research uses normative research. Normative research is a type of legal research in which scientific logic is used to find the truth from a normative perspective. Normative juridical research is a type of legal research that uses library data. Normative juridical research is the main focus of this research. Basic research data is considered secondary data in this research. This research uses a statutory approach, a factual approach, and a legal concept analysis approach. Research problems are studied through legal interpretation and argumentation based on the theory of principles and relevant legal concepts.

According to the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 9 of 2013 concerning the implementation, primary, secondary, and tertiary legal materials are used in this research. Primary legal materials are legal materials that have binding force, namely written and unwritten legal principles and regulations relating to the subject of research. and Regulation of the Minister of Law and Human Rights Number 10 of 2013 concerning Procedures for Electronic Registration of Fiduciary Guarantees because fiduciary guarantees are considered invalid if they are not and the Cost of Making a Fiduciary

Guarantee Deed and Law Number 42 of 1999 concerning Fiduciary Guarantees. Secondary legal materials explain primary legal materials, which include literature, books, articles, papers, and other written legal materials.

RESULTS AND DISCUSSION

1. Legal certainty of online fiduciary guarantee registration

There are no procedural rules or fiduciary processes because the legal institution originates from practice and is not regulated in laws and regulations. It is not surprising that before the Fiduciary Law was enacted, there were no rules governing mandatory registration.⁸ The absence of mandatory registration is considered a shortcoming and weakness of the Fiduciary legal institution. In addition to creating legal uncertainty, the absence of Fiduciary Registration makes the Fiduciary Guarantee lack publicity, which makes it difficult to monitor. In practice, this condition leads to unhealthy things, such as the existence of multiple Fiduciaries without the knowledge of their creditors. Furthermore, the Fiduciary Law stipulates that every Fiduciary Guarantee must be registered with an authorized official. (Gunawan W. and Ahmad Yani; 2007)

The legal belief that online registration of fiduciary guarantees is based on jurisprudence. There are no procedural rules or fiduciary processes because legal institutions originate from practice and are not regulated in laws and regulations. It is not surprising that before the Fiduciary Law was enacted, there were no rules governing registration obligations. (Handini I.H., et al; 2017). The absence of a registration obligation is considered a shortcoming and weakness of the Fiduciary legal institution. In addition to creating legal uncertainty, the absence of Fiduciary Registration makes the Fiduciary Guarantee lack publicity, which makes it difficult to monitor. In practice, this condition leads to unhealthy things, such as the existence of multiple Fiduciaries without the knowledge of their creditors. Furthermore, the Fiduciary Law stipulates that every Fiduciary Guarantee must be registered with the authorized official.

The objectives of the Fiduciary Guarantee registration system are as follows: 1. To provide legal certainty to interested parties, especially other creditors, regarding the assets that have been encumbered with the Fiduciary Guarantee; 2. To create a Fiduciary Guarantee bond for the creditor who receives it; 3. Because the Fiduciary grantor continues to own the asset that is the Object of the Fiduciary Guarantee based on trust, it gives precedence or preference to the Fiduciary recipient's creditors compared to other creditors; 4. Fulfills the principle of publicity.

Based on Article 5 paragraph (1) of the Fiduciary Guarantee Law,²³ "The encumbrance of an object with a Fiduciary Guarantee shall be made by a Notarial Deed in the Indonesian language and shall constitute a Fiduciary Guarantee Deed", any law that intends to encumber an object with a Fiduciary Guarantee must be evidenced by a notarial deed. Therefore, this notarial deed serves as the main requirement for the enactment of the Fiduciary Guarantee Act on fiduciary guarantee agreements concluded by one party (J. Satrio; 2002). Circular Letter of the Directorate General of AHU No. AHU-06.OT.03.01 of 2013 on the Implementation of the Fiduciary Guarantee Registration Administration System¹² is the legal basis for the establishment and implementation of this system. The fiduciary guarantee registration administration system

includes the process of registering fiduciary guarantees and issuing Fiduciary Guarantee Certificates that can be done online through an electronic system owned by the Directorate General of Public Law Administration.

2. Impact of Failure to Register Fiduciary Guarantee Electronically

The Ministry of Law and Human Rights launched the Electronic Fiduciary Registration Administration System in 2013. The purpose of issuing Regulation of the Minister of Law and Human Rights of the Republic of Indonesia No. 9 of 2013 on the Implementation of Electronic Registration of Fiduciary Guarantees and Regulation of the Minister of Law and Human Rights of the Republic of Indonesia No. 10 of 2013 on Procedures for Electronic Registration of Fiduciary Guarantees is evidence of this. (Budi, N., & Atu Dewi, A., ; 2020)

According to the Fiduciary Guarantee Law, goods encumbered by a Fiduciary Guarantee must be registered. If the item is not registered, it will not get the benefits of registration, including:

- a. Has a right of precedence, or preference, with regard to the proceeds of execution. This is clear from its relationship with Article 1132 BW, which states that creditors share in the proceeds of the execution of the debtor's property, but with the Fiduciary Guarantee, creditors have preference over the proceeds of the sale of certain property belonging to the debtor.
- b. Execution of the Fiduciary Guarantee object can be carried out with a grosse of the Fiduciary Guarantee certificate, as provided for in Article 29 paragraph (1) sub an of the Fiduciary Guarantee Law, or with the executorial title of the Fiduciary Guarantee certificate, as provided for in Article 15 paragraph (2) of the Fiduciary Guarantee Law. The executorial power of a Fiduciary Guarantee certificate is the same as a court decision that has obtained permanent legal force. Thus, if the debtor or fiduciary is in default, the fiduciary beneficiary can automatically execute the object of the fiduciary guarantee without having to wait for a court decision. (Endi Suadnyani, N, 2016).

As for the reason that the Fiduciary Guarantee is not registered, the bank as the creditor and the debtor will be jointly liable for all costs associated with the preparation of the Fiduciary Guarantee Deed and its registration. However, not all debtors who apply for credit have good financial capabilities; most of them come from the middle to lower income brackets.

Registration of the Fiduciary Guarantee is not always smooth, especially for short-term loans, where the creditor must register with the Fiduciary Registration office according to Article 13 paragraph (1) of the Fiduciary Guarantee Law. Delays in applying for the Fiduciary Guarantee Registration can be caused by the busyness of the party obliged to register, queuing problems, and cost problems. The fee is highly dependent on the value of the collateral. The same fee for collateral with a small value will definitely be considered more expensive than for collateral with a large value. The Government Regulation on Fiduciary Registration regulates how the debtor should pay the registration fee.

If the creditor has not registered, then, as previously discussed, the Fiduciary Guarantee has not been validly created. As a result, the creditor may suffer losses due to the aforementioned barriers to registration. Lawmakers took this into consideration when choosing

a new method to register health insurance, namely through the internet. As explained in the brief explanation of the Government Regulation on Fiduciary Registration, the Fiduciary Registration Office conducts Fiduciary Guarantee registration manually. This method presents several challenges, such as the inability to provide one-day service as the number of incoming applications far exceeds the capacity of available human resources and facilities. To solve this problem, the guarantee registration system should be made electronic. (Putra, Fani Martiawan K. ;2019)

When a Fiduciary Guarantee is registered, the fiduciary beneficiary becomes a preferred creditor or has the right of precedence to settle its debt from the proceeds of the execution of the object that is the Object of the Fiduciary Guarantee. If the fiduciary commits a breach of contract to pay off the debt secured by the object of the Fiduciary Guarantee, the fiduciary beneficiary can immediately execute the Fiduciary Guarantee Object without having to go through the court and without any other conditions. (Gautama, K., & Suantra, I, 2018)

An important requirement for the implementation of the Fiduciary Guarantee is to conduct fiduciary registration. According to Article 11 paragraph (1) of the Fiduciary Guarantee Law, "objects encumbered with a Fiduciary Guarantee must be registered," and the notarial deed must be made in Indonesian. As a result of not registering the Fiduciary Guarantee, when credit defaults, the agreement with the Fiduciary Guarantee is only an underhand deed that does not have the executorial power to directly execute the goods in the consumer's possession. In addition, the consumer has the right of preference, compared to other creditors, to get first repayment of his debt taken from the proceeds of the sale of the debt collateral. The problem that arises is that the financing institution cannot directly execute the debtor's collateral object when the debtor does not pay installments within a certain period of time or does not pay it off. The registration of the Fiduciary Guarantee is very important because it affects legal certainty. As a result, the purpose of registration is to protect the creditor as a fiduciary recipient from debtors who do not fulfill their promises.

3. Current Problems with Fiduciary Guarantees

The results of the author's analysis of the fiduciary guarantee system since Law No. 42 of 1999 was enacted show that there are several points that are weaknesses of the Law. The points of weakness of the Fiduciary Guarantee Law are the findings of this research. These facts become obstacles for the fiduciary guarantee system, especially in practice. There are several obstacles, namely.

Problems with the Fiduciary Guarantee Trust Basis: Property rights have precedence over other creditors to collect repayment of their debts from the proceeds of the execution of the object that is the fiduciary guarantee if the Fiduciary or Debtor defaults or fails to fulfill the promise. The separatist creditor is also the fiduciary beneficiary. Laws such as Law No. 4 of 1992 on Housing and Settlements and Law No. 16 of 1985 on Flats regulated fiduciary institutions prior to Law No. 42 of 1999 on Fiduciary Guarantees. Since the Law came into effect, many issues have arisen regarding the fiduciary institution, including the following:

- a. Legal certainty regarding the collateral if it is not registered, as the collateral remains owned by the debtor.

- b. Lack of publicity; by not registering the fiduciary security object used as fiduciary collateral, third parties will not know whether or not the fiduciary security object is being encumbered.
- c. Re-fiduciary; in the absence of registration of the fiduciary collateral object used as fiduciary security, it can be

CONCLUSION

By registering the fiduciary guarantee, the purpose is to give the parties, namely the fiduciary grantor, the debtor, and the creditor beneficiary, the legal power and confidence to give and receive the fiduciary. In addition, the beneficiary of the fiduciary guarantee is legally protected with a certificate showing that the fiduciary guarantee has been registered. The purpose of fiduciary guarantee registration is to provide the public with access to information about the state of the secured property. Even if the property encumbered by the fiduciary guarantee is located outside the territory of the Republic of Indonesia, this registration obligation still applies.

As a result of not registering the fiduciary guarantee, when there is bad credit ⁴ on the fiduciary guarantee, the fiduciary guarantee agreement is only an underhand deed that does not have the executorial power to directly execute the goods in the consumer's possession. The problem that arises is that the financing institution cannot directly execute the debtor's collateral object when the debtor does not pay installments within a certain period of time or does not pay it off.

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