

ONLINE FIDUSIAN WARRANTY IMPLEMENTATION IN THE PANDEMIC PERIOD

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Submission date: 25-May-2021 02:44PM (UTC+0700)

Submission ID: 1593750090

File name: ARTICLE_MR._HIDAYAT_NEW.doc (79K)

Word count: 4868

Character count: 25949

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ABSTRACT

With so many business developments, facilitators have emerged who offer credit to companies or individuals. Meanwhile, if you hear the word credit, it is not far from accounts receivable, where accounts receivable or other transactions cannot be based on the principle of trust alone. Therefore, it must be accompanied by a guarantee that convinces the interested parties, both the debtor and the creditor, in the form of a fiduciary guarantee. The definition of fiduciary according to article 1 number (1) of Law Number 42 of 1999 reads "fiduciary is the transfer of ownership rights to an object based on belief with the stipulation that the object whose ownership rights are transferred remains under the control of the owner of the object". Meanwhile, the definition of fiduciary security according to article 1 point (2) is "fiduciary security is the right to movable objects, both tangible and intangible and immovable objects, especially buildings that cannot be encumbered with Mortgage Rights as referred to in Law Number 4 of 1996, concerning Mortgage Rights (Law No.4 of 1996 concerning Mortgage Rights) which remains under the control of the Fiduciary, as collateral for the settlement of certain debts, which gives the Fiduciary priority over other creditors ". Fiduciary agreements are generally set out in the form of a notary deed with the aim of providing legal certainty. In practice, the use of this fiduciary guarantee institution is very often used by companies, banks or individual interests, with the aim of securing assets in a credit agreement. Thus, the binding of an object with a fiduciary guarantee prior to the existence of a credit agreement as the principal agreement. In the activities of these accounts payable, it is also not uncommon if there is no event of default where there must be an execution of the goods that are the object of the fiduciary security.

Keywords: implementation, execution, assurance, fiduciary

INTRODUCTION

In Indonesia, the development of fiduciary is quite encouraging for its users because it was originally regulated in jurisprudence and then received recognition in Law Number 16 of 1985. The regulation of fiduciary institutions in the Law on Flats (UURS) is still vague, but sufficient to provide legal certainty in particular. Regarding understanding and fiduciary objects In UURS, fiduciary is defined as collateral in the form of the transfer of rights to objects based on trust and agreed upon as collateral for the repayment of creditors' receivables. This formulation does not yet reveal the material characteristics of a fiduciary institution, for example the position of fiduciary creditors to other creditors (preferred creditors). Apart from that, it is not explained that the nature of the handover which is the characteristic feature of fiduciary, namely the transferred object remains with the fiduciary, nor does it mention what is transferred to the creditor because this is also an important element of fiduciary, namely ownership in the form of non-material rights.

It is also not clearly stated what objects are delivered, but it can be understood that what is meant is including flats and ownership rights to apartment units established on land use rights

over State land. The development of the Fiduciary legislation in Indonesia was very slow and it was only promulgated on September 30, 1999 regarding the roll-out of reforms in Indonesia, namely law number 42 of 1999 concerning the Fiduciary Guarantee. Fiduciary is known in the world of credit, especially motor vehicle credit. As long as the motorized vehicle is still not paid off, the actual ownership rights are still in the hands of the bank or lease that provides the financing. Although basically the motorized vehicle is purchased by the creditor (lender), the ownership right is still in the hands of the debtor (loan recipient) until the debt is paid off.

Therefore, fiduciary is used as collateral if at any time the creditor cannot pay his debt, the debtor can take the motorized vehicle as a substitute or compensation for the creditor's failure to pay his obligations in accordance with applicable laws. In its development, fiduciary guarantees can now be registered online to reduce long lines. Previously, fiduciary registration was carried out manually at the counter of the fiduciary registration office at the regional offices of the Ministry of Law and Human Rights of the Republic of Indonesia in each province. Initially, the registration process for this fiduciary guarantee had to be carried out by a notary public. However, after the online system was implemented, now fiduciary security registration is not specifically done by a notary. Fiduciary guarantees are required by financial institutions that provide financing or loans. Meanwhile, institutions that apply for fiduciary guarantees to guarantee their business are not only limited to banks or leasing, but also other institutions, such as cooperatives and other financing institutions.

Online fiduciary was introduced since early 2013 which can be accessed through the website <https://fidusia.ahu.go.id/>. Applications for fiduciary security can now come from notaries, corporations, retailers and regional offices. Corporations in question are finance companies such as leasing and banking institutions such as commercial banks and rural banks, both of which adhere to sharia and conventional principles. Meanwhile, retail refers to individuals, legal entities (PT, foundations, cooperatives and associations), and non-legal business entities (CV, firma). With this online fiduciary, management of business guarantees that require fiduciary security can be done in one day (one day service). Starting from the certificate registration process to printing the certificate, it can be done alone or by a representative of its attorney.

After fulfilling these requirements and registering, we will get a username and password. By using that username and password, we can only apply for fiduciary registration online. As with conventional fiduciary registration, the documents that must be prepared are the basic agreement and fiduciary guarantee deed. After being registered, then you will get a fiduciary certificate. Online fiduciary is considered a transparent monitoring solution because it can be accessed not only by notaries as in the past. This also protects creditors in order to avoid multiple guarantees. With such transparency, each party's rights and obligations can be protected as both a creditor and a debtor. One of the advantages of this online fiduciary certificate is that it is equipped with a QR Code feature which serves as a guideline for whether the fiduciary certificate is genuine and registered at the Directorate General of General Legal Administration (Dirjen AHU). This QR Code is proof of the authenticity of a fiduciary certificate even though it can be printed independently, but it cannot be faked, let alone

manipulated. The entire registration and data collection process through online fiduciary is carried out in real time. Its function is to be able to find out the data that is updated at that time anytime and anywhere as long as there is internet access. In addition, this process provides a guarantee of legal certainty for the issued fiduciary certificate.

For the state, non-tax state revenue from online fiduciary certificates has increased. The banking and financial business sector has also been helped by the existence of modern guarantee management services with a very easy and fast process. It should also be noted that the practice of executing vehicles in arrears cannot be carried out on the road without following the mechanisms stipulated in Law No. 42 of 1999 concerning fiduciary guarantees. The mechanism is, creditors must provide a warning letter, first, second, and so on, then have the right to execute after a 30-day deadline from the expiry date, accompanied by a fiduciary certificate and power of attorney for execution from the lease or banking institution (creditor).

RESEARCH METHOD

This type of research used in this writing is a type of normative legal research which only examines the laws and regulations. Sources of data used in this paper are primary data in the form of laws and legal literatures and several cases related to the Fiduciary Guarantee in Indonesia. This type of approach in writing is a statutory approach (The Statute Approach). This study uses a qualitative method with a literature review approach (library research), which is collecting data or scientific papers related to the object of research or collecting library data. This study explores the implementation of the Fiduciary Guarantee Law in Indonesia. The author uses some of the latest materials, including the latest manuscript on Fiduciary Security in Indonesia, the latest data on Fiduciary cases, organizational websites (professional, health and government), formal news (online). As well as conducting analytic interpretations with strict verification, the aim is to see the suitability of the manuscripts with the context of the current case (Gentles et al., 2016; Schyren, 2015).

RESULTS AND DISCUSSION

The Covid-19 pandemic that has attacked Indonesia since the first quarter of 2020, has forced all aspects of life to change and make innovations. In the ranks of government, the Ministry of Law and Human Rights (Kemenkumham) is also doing the same thing. The way to survive in the midst of a pandemic is to never stop learning, stay productive, creative, and innovative. The implementation of fiduciary practices, as it has been explained that the Fiduciary Guarantee makes it easy for parties who use it, especially for the Fiduciary Giver. On the contrary, because the Fiduciary Guarantee does not guarantee the Execution of the Fiduciary Guarantee. However, it is still an important note that the main problem of how debt collectors execute fiduciary collateral by means of violence, intimidation and even seizing fiduciary collateral on the road, is still a separate scourge that cannot be separated in the practice of executing fiduciary guarantees.

This is where the execution process is no longer regulated, but the company's obedience in carrying out the execution. Companies in the provisions of the Fiduciary

Guarantee Law must be directed to comply with good and correct legal principles, not just transferring responsibility to company membership and accountability then transferring to subordinates. This has been the main problem so far. Before this Law was enacted, in general, objects that were objects of Fiduciary Security were movable objects consisting of items in inventory, merchandise, receivables, machine tools, and motorized vehicles. Therefore, in order to meet the needs of the growing community, according to this Law the objects of the Fiduciary Guarantee are given a broad and broad meaning, namely movable objects, tangible or intangible, and immovable objects that cannot be encumbered with security rights as stipulated in Law Number 4 of 1996 concerning Mortgage Rights.

In the practice of executing fiduciary security, it should be noted that in general companies or financial institutions in carrying out sales of movable goods to consumers by using an agreement that includes a fiduciary guarantee for objects of fiduciary collateral in the form of Proof of Motor Vehicle Ownership (BPKB), however it turns out In practice, many of the agreements made by these companies are not made in a Notarial Deed (Akta Notary) and are not registered at the Fiduciary Registration Office to obtain a certificate containing the irah irah "For Justice Based on One God." although in writing the said financing institution in entering into a financing agreement includes the words guaranteed by fiduciary 6. Financing institutions provide movable goods requested by consumers (such as motorbikes or industrial machines) and then on behalf of consumers as debtors (credit / loan recipients). As a consequence, the debtor submits to the creditor (credit provider) on a fiduciary basis. This means that the debtor as the owner of the goods becomes the provider of fiduciary duty to the creditor who is the recipient of the fiduciary. A simple practice in fiduciary guarantees is that the debtor / party who owns the property submits financing to the creditor, then both parties agree to use the fiduciary guarantee against the debtor's property.

The execution process of the Fiduciary Guarantee institution allows fiduciary providers to control the pledged object, to carry out business activities financed from loans using fiduciary guarantees. Initially, objects that become fiduciary objects are limited to the assets of movable objects that are tangible in the form of equipment. However, in subsequent developments, objects that become fiduciary objects include immovable property, as well as immovable objects. In the implementation of financing between creditors and debtors, sometimes there are defaults or broken promises. So, when the debtor breaks the promise, the creditor can execute the object that has been guaranteed through a fiduciary guarantee. According to Subekti, what is meant by execution is an attempt by the party won in a decision to get what is due to him with the help of legal force, forcing the defeated party to carry out the decision.

Objects of which the object of fiduciary security consists of trading goods or securities that can be sold on the market or on the stock exchange, the sale of which can be made at those places in accordance with the prevailing laws and regulations. Any promise to carry out the execution of objects that are the object of fiduciary security in a manner that is contrary to the above provisions is null and void. Any promise that gives the fiduciary the authority to own objects that become the object of fiduciary security if the debtor fails to promise, is null

and void. If the execution exceeds the guarantee value, the fiduciary must return the excess to the fiduciary. If the results of the execution are not sufficient to pay off the debt, the debtor is still responsible for the outstanding debt. However, the execution by creditors through debt collector services sometimes creates new problems between creditors and debtors. This is due to the way debt collectors execute fiduciary collateral by means of violence, intimidation and even seizing collateral, fiduciary is on the road, this is what causes resistance from the debtor. The implementation of fiduciary practices, as it has been explained that the Fiduciary Guarantee makes it easy for parties who use it, especially for the Fiduciary Giver. On the other hand, because the Fiduciary Guarantee is not registered, it does not guarantee the interests of the party receiving the fiduciary, the Giver of Fiduciary may guarantee objects that have been burdened with fiduciary to other parties without the knowledge of the Fiduciary.

In practice, there are weaknesses that have been mentioned earlier, namely, the execution by creditors through debt collector services sometimes creates new problems between creditors and debtors. This is because the way debt collectors execute fiduciary collateral by means of violence, intimidation and even seizing fiduciary collateral on the road, this is what causes resistance from the debtor. Safeguarding the Execution of Fiduciary Guarantee. However, it is still an important note that the main problem of how debt collectors execute fiduciary collateral by means of violence, intimidation and even seizing fiduciary goods on the road, are still part of a separate scourge that cannot be separated in the practice of executing fiduciary guarantees. This is where the execution process is no longer regulated, but the company's obedience in carrying out the execution. Companies in the provisions of the Fiduciary Guarantee Law must be directed to comply with good and correct legal principles, not just transferring responsibility to company membership and accountability then transferring to subordinates. This has been the main problem so far

Fiduciary guarantees are absolute, material rights are absolute because they can be defended to anyone who holds these property rights and can sue if anyone interferes with their rights in enjoying these rights. However, not everything that has absolute nature is a material right. Every material right has the nature of "droit de suite" which means that the right always follows objects wherever and in the hands of whoever the object is. The execution in this civil case is carried out based on the request of the party that is declared victorious by the Judge's Decision, starting with a warning given by the Head of the District Court to the party who is declared a loser to carry out the decision voluntarily within days and given a due date. Furthermore, the court will also carry out an execution based on the sound of the dictum of the decision, if the dictum lists the handover of an item, the clerk and bailiff in the court will give the object of execution to the party who is declared to have won directly or indirectly. If said object is a movable object, then the handover shall be carried out in person and the delivery shall be carried out legally by signing the execution report which is attended by witnesses at the place of execution.

In principle, the execution of the Fiduciary Guarantee is of a special nature, considering that previously the object has been agreed upon by the debtor, however the condition of the

Fiduciary Security object, even though the object is a means of earning a living, will still be executed. The reason why the execution of this fiduciary guarantee arose because the party giving the fiduciary was in default, so the fiduciary did not keep his promise to the fiduciary recipient himself. In the execution of this fiduciary guarantee object execution, the fiduciary / debtor gives the objects which are used as objects in his fiduciary guarantee. Article 11 of Law No.42 of 1999 concerning Fiduciary Security stipulates that all objects in the territory of the Republic of Indonesia, both inside and outside, must be registered at the Fiduciary Registration Office. The purpose of this registration is to provide special protection in a fiduciary bond between the parties concerned and concerned, and certainly to provide legal certainty. There are other purposes in granting the first priority or preference of the recipient of the fiduciary guarantee to the creditor.

The identity of the fiduciary giver and recipient must contain the full name, place of residence, religion, status and occupation. Basic agreement data where all matters relating to the agreement and the debt guaranteed by fiduciary, for objects that are used as the principal of the fiduciary guarantee, it is sufficient to identify the objects and notify the proof of ownership of the said objects. Fiduciary registration financing is adjusted to the amount of the guarantee value. If the guarantee value is less than IDR 50,000,000, the registration fee is IDR 50,000. Due to the size of this registration fee is 1 per mile of credit score. Fiduciary security is born on the same date as the date when fiduciary security is recorded in the Fiduciary Register Book

The credit relaxation policy will continue in the next few months. The relaxation policy adopted by the government during the Covid-19 pandemic can be used by debtors and creditors to restructure the contracts they previously made. Financial Services Authority Regulation No. 11 / POJK.03 / 2020 concerning National Economic Stimulus as a Countercyclical Policy on the Impact of the Spread of Coronavirus Disease 2019 authorizes banks to establish policies that support economic growth stimulus for debtors affected by the spread of Covid-19. One of them is the credit or financing restructuring policy. The conditions of the Covid pandemic have actually made it difficult to fulfill the contents of the agreement. In normal conditions before the pandemic period, many reports had been received, especially if there was no relaxation or restructuring during the pandemic. Complaints received by the Indonesian Consumers Foundation (YLKI) in 2019, for example, reached 1,871. Most of the complaints, namely 46.9 percent, were related to financial services (banks, electronic money, insurance, leasing, and online loans). Bad credit is a scattered portion of cases of financing problems, or commonly referred to as leasing.

There are many factors that cause bad credit on motor vehicle financing. The Chief Executive of the YLKI Executive Board, stated that at least three causes were recorded. First, basically consumers do not have the financial ability to buy motorized vehicles on credit. It's just that consumers are seduced by promotions or advertisements from the dealer. In addition, consumers do not read the contract agreement in detail, and most consumers find it difficult to understand the language used in the agreement. The arrangement of fiduciary guarantees in the practice of providing credit is somewhat different from other, somewhat complicated, guarantee systems. The fiduciary guarantee system is rather easy because what is guaranteed is

trust and usually the guaranteed object remains and can be enjoyed by the guarantor. In fiduciary, the mechanism and process of providing credit is simpler than bank credit. The credit granting mechanism only focuses on two, namely the charging mechanism and the registration mechanism, because in principle the fiduciary agreement is only based on trust, so the prospective credit recipient is not overburdened by technical aspects like the credit agreement in general. That is why in addition to being easy, it carries risks if one of the parties is not in good faith.

In its journey, fiduciary has undergone significant developments. This development, for example, concerns the position of the parties. In ancient Roman times, the position of the fiduciary recipient was as the owner of the goods being diffused, but now it is accepted that the fiduciary recipient is only the holder of the guarantee. The customary law system and the western civil law system are very dominant in influencing the development of the national guarantee law, among others, that in the Customary Law there are two groups of objects, namely land objects and non-land objects, while Western civil law, namely civil law which is regulated in the Book of Law Civil Code (BW) divides objects in moving objects, immovable objects and intangible objects, this difference greatly affects the guarantee institution for the types of objects mentioned above.

Before the fiduciary guarantee received recognition in the jurisprudence as mentioned above, the provision of a movable property guarantee, without releasing the collateral concerned from the power of the guarantor was actually known and recognized by the law in the past, but not in the form of the transfer of property rights in a manner. trust, but in the form of a harvest / oogstverband bond. In order to maintain the legal vacuum, Article 2 of the Transitional Rules of the 1945 Constitution was formulated, with these articles in effect, among others, guarantee law based on western law regulated in the Civil Code and Guarantee law based on customary law, in addition to guarantee law based on law. Islam, however in practice the use of guarantee law is dominated by the provisions stipulated in the Western Civil Code (BW), although locally in certain areas there is also a guarantee law based on local customary law and Islamic law, so that in the development of the formation the national guarantee law the effect of the aforementioned legal system colors the guarantee law in Indonesia. Furthermore, the granting of fiduciary guarantees, based on custom and jurisprudence, has in recent times been an everyday occurrence in the banking world, although most of it is still in the form of additional guarantees of principal guarantees set forth in other forms of guarantees.

Lending must go through accurate and in-depth analysis and be followed by a valid agreement and good supervision. However, the settlement of bad credit does not always run smoothly. In general, the occurrence of bad credit is caused by a decrease in the ability or results of the Debtor's business. Usually the constraints experienced by the Creditor when confiscating collateral are: 1). Collateral is unknown by the creditor. 2). Collateral has been transferred. 3). Collateral is declared lost by the Debtor. 4). Collateral is sold under the hood or without a BPKB. 5). There is resistance from the debtor, in this case the debtor is not willing to voluntarily hand over collateral. Article 1155 of the Civil Code states that: "If the

parties have not agreed otherwise, then the debtor is entitled if the debtor or the pledge provider fails to promise, after a period of time determined previously, or if a grace period has not been determined, after a warning has been made, to pay, order to sell the pledged goods in public according to local customs and on the prevailing principles, with the intention of taking full payment of the amount due, along with interest and fees from the sales income. If the pledged goods consist of trading goods or securities that can be traded on the market or on the market, then the sale can be made at these places, provided that the broker is an expert in the trading of goods.

In the event of bad credit, the Creditor can take steps to save you through three stages, namely: 1). Rescheduling (Rescheduling), 2). Reconditioning requirements, and 3). Restructuring. If the aforementioned efforts are unsuccessful, creditors can seek settlement efforts through litigation or non-litigation channels. Settlement through non-litigation channels based on Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution (Arbitration Law and APS) can be done by: 1). Consultation is an action that is "personal" between a certain party (client) and another party who is the consultant, where the consultant provides his opinion to the client according to the needs and needs of his client. 2). Negotiation is a process of bargaining or an effort to reach an agreement with another party through a process of interaction, dynamic communication with the aim of obtaining a solution or a way out of an ongoing problem. Negotiation is an alternative method of dispute resolution that is very precise, simple, and beneficial to both parties (win-win solution). Mediation is a way of resolving disputes through the negotiation process to obtain agreement between the parties, assisted by a mediator. 3). Conciliation is the mediator who will act as conciliator with the agreement of the parties by working out an acceptable solution.

CONCLUSION

Fiduciary can be defined as one of the parties who has tied himself up and gives the right of ownership to his movable object to the party concerned who will be granted this right. Meanwhile, the definition of fiduciary security according to article 1 point (2) is "fiduciary security is the right to movable objects, both tangible and intangible and immovable objects, especially buildings that cannot be encumbered with Mortgage Rights as referred to in Law No.4 of 1996 concerning Security rights that remain in the control of the Fiduciary, as collateral for the settlement of certain debts, which give the Fiduciary priority over other creditors ". This Fiduciary binding agreement originates from the existence of accounts receivable between the creditor and the debtor where this agreement aims to anticipate if the creditor is in default to pay off its debts.

This fiduciary agreement is usually stated in the form of a notary deed, in order to convince the parties concerned in entering into an agreement. Fiduciary Security Execution is an activity to confiscate and sell objects that are the object of fiduciary security. The execution in this civil case is carried out based on the request of the party that is declared victorious by the Judge's Decision, starting with a warning given by the Head of the District Court to the party who is declared a loser to carry out the decision voluntarily within days and

given a due date. In principle, the execution of the ⁴Fiduciary Guarantee is of a special nature, considering that previously the object has been agreed upon by the debtor, however the condition of the Fiduciary Security object, even though the object is a means of earning a living, will still be executed. Fiduciary registration is carried out directly by the fiduciary recipient or anyone authorized to represent the implementation of registration at the Fiduciary Registration Office.

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