
APPLICATION OF THE EXECUTION OF FIDUCIARY GUARANTEES ON MOVABLE OBJECTS TO DEFENDANT CREDITORS: (Analysis of Decision Number 70/Pdt.GS/2020/Pn Palembang)

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ABSTRACT

In the difficult economic situation due to the Covid-19 outbreak, many people carry out credit transactions to meet their daily needs. In these credit transactions, many debtors are late in paying installments due to declining economic factors. The execution process often becomes a dispute, because the creditor has defaulted by not fulfilling his obligations and executing the fiduciary guarantee without showing the documents related to the guarantee. The research method applied is normative juridical, this type of research is descriptive qualitative which aims to describe and analyze various formal regulations in the context of fiduciary guarantees. The data source applied is data originating from the results of literature research relating to fiduciary guarantees. The data collection technique applied is a normative research method, namely by collecting various types of legal materials ranging from primary legal materials, secondary legal materials, to tertiary legal materials. The data analysis method applied is a qualitative method and is presented descriptively. The results of the research are contained in the conclusion which shows that Decision number 70/Pdt.GS/2020/PN.Plg which granted part of the plaintiff's demands shows that in the execution of fiduciary guarantees on movable objects against defaulting creditors, there are various types of violations committed by creditors against statutory regulations - valid invitation. The debtor's legal protection in this case is still relatively weak and detrimental to the plaintiff, because the sanctions imposed on creditors are still limited to administrative sanctions. Meanwhile, protection for creditors in this case is still relatively weak, because creditors only receive repressive legal protection.

Keywords: Fiduciary Guarantee, Execution, Default**INTRODUCTION**

The background to this writing is that in the difficult economic situation due to the Covid-19 outbreak, many people carry out credit transactions to meet their daily needs. In these credit transactions, many debtors are late in paying installments due to declining economic factors.¹

Fiduciary guarantee is a type of guarantee that is usually requested by parties or financing institutions in credit activities. Fiduciary guarantee is a form of guarantee given over the ownership rights of goods or assets owned by a certain party to another party (creditor) as security for payment of a debt or obligation. In a fiduciary guarantee, the owner of the goods (debtor) gives the creditor the right to obtain profits from the sale or use of the goods if there is a violation of the payment agreement.² The legal basis for fiduciary guarantees is regulated in Law no. 42 of 1999.³

In practical application, the execution of collateral often causes problems, one of which is the act

¹ Vincent Fabian Thomas. (2020, October 18). *Ekonomi Sulit, Kredit Bermasalah di Masa Pandemi Potensial Melonjak*. Tirto.Id. <https://tirto.id/ekonomi-sulit-kredit-bermasalah-di-masa-pandemi-potensial-melonjak-f52s> diakses 23 September 2022

² J. Satrio, 2020, "Hukum Jaminan dan Hak Kebendaan", Bandung.

³ Abi Asmana. (2021, July). *Eksekusi Dalam Perkara Perdata : Pengertian, Bentuk, Serta Tahapan Pelaksanaan Eksekusi Dalam Perkara Perdata*. Legal Studies. <https://legalstudies71.blogspot.com/2021/07/eksekusi-dalam-perkara-perdata.html> diakses 23 September 2022

of withdrawing the object of fiduciary collateral which is considered by the debtor to be a unilateral withdrawal of fiduciary collateral because the creditor has defaulted.⁴

Creditor default occurs when the party providing the loan or credit does not fulfill its obligations according to the terms agreed in the agreement. This event can occur in several situations, such as not registering the object of collateral, charging debt collector service fees to the debtor when executing collateral that was not previously agreed upon, not providing the funds that have been promised, not providing the required notification to the party receiving the credit, or not complying. other requirements related to credit.⁵

In the context of fiduciary guarantees, Article 29 paragraph (1) UUJF interprets that if the debtor breaks his promise, the party providing the financing (recipient of the guarantee) has the right to execute the object that is the object of the fiduciary guarantee.⁶

One example of a collateral dispute case in Indonesia is decision case number 70/Pdt.GS/Pn. Plg, the plaintiff made a financing agreement with the defendant and used the plaintiff's car as collateral in the financing agreement, which required the plaintiff to make monthly installment payments of IDR 9,800,000. During the 24 month period, the financing agreement was effective until the 8th installment but in the next installment the plaintiff defaulted, because the plaintiff experienced difficulties due to the impact of Covid-19 and the plaintiff had tried to approach the defendant regarding these obstacles and asked for a temporary suspension and promised to pay all arrears but the defendant continues to collect them. The defendant sent a debt collector to execute the collateral but the defendant did not show proof of fiduciary registration/fiduciary certificate and charged the plaintiff with an additional debt collector service fee of Rp. 14,000,000 without the plaintiff's consent. This made the defendant appear to be looking for profit, so the defendant's action in carrying out the execution of collateral withdrawals it is not in accordance with the correct procedures and is contrary to the law.

Based on the description above, the author was encouraged to carry out research on decision number 70/Pdt.GS/2020/Pn Palembang. Therefore, the author raised the title about "Application of the Execution of Fiduciary Guarantees to Movable Objects Against Defaulting Creditors (Analysis of Decision Number 70/Pdt.GS/2020/Pn Palembang)"

The author formulates the problem as follows: (1) What is the analysis based on the decision regarding the implementation of the execution of fiduciary guarantees on movable objects against defaulting creditors, (2) What is the legal protection for debtors and creditors in the execution of fiduciary guarantees on movable objects.

RESEARCH METHODS

The research method applied is normative juridical legal research, this type of research is descriptive qualitative which aims to describe and analyze various formal regulations in the context of fiduciary guarantees.⁷The data source applied is data originating from the results of literature research

⁴ Resty Femi Lombogia, *PERKEMBANGAN LEMBAGA JAMINAN FIDUSIA DI INDONESIA* 2013, <https://ejournal.unsrat.ac.id/index.php/lexprivatum/article/view/3058>.

⁵ Indra Setiawan. (2021, February 1). *Wanprestasi Dalam Perjanjian Pinjaman Online* | Indra Satriani. Indrasatrianis.Com. <https://www.indrasatrianis.com/2021/02/01/wanprestasi-dalam-perjanjian-pinjaman-online/> diakses 23 september 2022

⁶ Koto, I., & Faisal, F. (2021). Penerapan Eksekusi Jaminan Fidusia Pada Benda Bergerak Terhadap Debitur Wanprestasi. *Journal of Education, Humaniora and Social Sciences (JEHSS)*, 4(2), 774–781. <https://doi.org/10.34007/jehss.v4i2.739> hlm. 778

⁷ Vidya Prahassacitta. (2019). *PENELITIAN HUKUM NORMATIF DAN PENELITIAN HUKUM YURUDIS*. Business-Law.Binus.Ac.Id. <https://business-law.binus.ac.id/2019/08/25/penelitian-hukum-normatif-dan-penelitian-hukum-yurudis/> di akses 21 september 2022

relating to fiduciary guarantees.⁸The data collection technique applied is a normative research method, namely by collecting various types of legal materials ranging from primary legal materials, secondary legal materials, to tertiary legal materials.⁹The data analysis method applied is a qualitative method and is presented descriptively.¹⁰

RESULTS AND DISCUSSION

1. Analysis Based on the Decision Regarding the Implementation of the Execution of Fiduciary Guarantees on Movable Objects Against Creditors in Default

Chronology of Case Decision Number 70/Pdt.GS/2020/PN Plg is that the plaintiff made a financing agreement with the defendant and used the plaintiff's car as collateral in the financing agreement, which required the plaintiff to make monthly installment payments of IDR 9,800,000. During the 24 month period, the financing agreement was effective until the 8th installment but in the next installment the plaintiff defaulted, because the plaintiff experienced difficulties due to the impact of Covid-19 and the plaintiff had tried to approach the defendant regarding these obstacles and asked for a temporary suspension and promised to pay all arrears but the defendant continues to collect them. The defendant sent a debt collector to execute the collateral but the defendant did not show proof of fiduciary registration/fiduciary certificate and charged the plaintiff with an additional debt collector service fee of Rp. 14,000,000 without the plaintiff's consent. This made the defendant appear to be looking for profit, so the defendant's action in carrying out the execution of collateral withdrawals is not in accordance with the correct procedures and is contrary to the law.

The basis of the Plaintiff's lawsuit is that the plaintiff (debtor) feels that the defendant (creditor) executed the fiduciary guarantee illegally. This is based on several legal rules that regulate the implementation of fiduciary guarantee objects, such as Article 29 UUJF which explains the mechanism for withdrawing fiduciary guarantees if the debtor does not fulfill its achievements, as well as Constitutional Court Decision No. 18/PUU-XVII/2019 which confirms that executorial title cannot be immediately held unless there is a decree for execution from the court. In addition, because the credit agreement was not made in the presence of a notary, it is considered a private deed and before the execution is carried out, you must file a lawsuit to obtain a decision that has permanent legal force.

The execution of Fiduciary Guarantees is not provided with a Letter of Assignment in sending the debt collector who is the delegate. This violates the appeal from POJK No.11/pojk.03/2020 in connection with the occurrence of Covid-19 regarding leeway and relaxation. The execution of Fiduciary Guarantees does not involve the Police in applying for confiscation, contrary to National Police Chief Regulation No. 8 of 2011 concerning Securing the Execution of Fiduciary Guarantees.

In handing down the verdict, the judge considered that the plaintiff's lawsuit could be partially granted because there were violations of several legal bases governing the execution of fiduciary guarantees by the defendant. This is based on Article 15 UUJF which regulates the withdrawal of fiduciary guarantees, MK Decision no. 18/PUU-XVII/2009, OJK Regulation no. 35 of 2018 article 65, and Minister of Finance Regulation Number 130/PMK.010/2012 concerning Registration of Fiduciary Guarantees for Finance Companies.

The author's analysis of the chronology of the dispute above is that the execution of collateral which is not accompanied by legal documentation other than that which can be classified as a criminal

⁸ Rezkia, S. M. (2022, September 7). *Contoh Data Sekunder, Pengertian dan Contohnya Yuk Belajar B...* <https://dqqlab.id/contoh-data-sekunder-pengertian-dan-contohnya-yuk-belajar-bersama-dqqlab> diakses 18 september 2022

⁹ Ariawan, I. G. K. (2013). METODE PENELITIAN HUKUM NORMATIF. *Jurnal Hukum*, Vol. 1 No. 1. hlm 23.

¹⁰ Fadli, M. R. (2021). *Memahami desain metode penelitian kualitatif*. 21(1), hlm 35. <https://doi.org/10.21831/hum.v21i1>

act of confiscation (Article 368 of the Criminal Code) is also illegal (onrechtmatige daad). As a result, the creditor's execution of the dispute object is legally invalid.

In this way, the author agrees with the decision of the judge at the Palembang District Court that in general, the decision states that PT. Astra Sendaya Finance has violated the law regarding the registration of fiduciary guarantees for motor vehicle consumer financing with fiduciary charges. In the implementation of the execution of fiduciary guarantees in the dispute over the decision, there were violations of various laws and regulations relating to fiduciary guarantees. Therefore, the decision stated that PT. Astra Sendaya Finance is guilty of violating the law in the registration process and execution of fiduciary guarantees.

2. Legal Protection for Debtors and Creditors in the Execution of Fiduciary Guarantees on Movable Objects

Debtor legal protection is the rights owned by the party who borrows money or the party who has debt to be protected by law. This legal protection aims to prevent abuse or violation of rights by creditors and provide opportunities for debtors to obtain equal protection and rights in the debt settlement process.¹¹

UU no. 8 of 1999 concerning Consumer Protection, interprets consumer protection as an effort to protect consumers from business practices that are detrimental to consumers.¹² The UUPK explains the handling of disputes juridically by prioritizing the subjective considerations of the panel of judges in judicial decisions, as stated in Article 45 paragraph (2).¹³

In the context of fiduciary execution, a fiduciary certificate has the same executorial power as a court decision which has permanent legal force. This means that creditors can execute fiduciary guarantees directly without going to court first. However, it is important to remember that fiduciary execution must meet the requirements set out in the Law, such as the existence of a valid fiduciary agreement, a clear and executable collateral object, as well as appropriate and transparent notification and announcements to related parties before the execution takes place.¹⁴

Debtor rights have been regulated in POJK. The following are the debtor's rights: (1) The right to obtain complete information regarding the credit contract or agreement; (2) The right to refuse or accept a credit offer, as well as the right to withdraw a credit application that has been submitted; (3) The right to obtain information and information regarding the amount of debt, including interest and other costs that must be paid; (4) The right to pay off debts at the agreed time, as well as the right to renegotiate the terms of debt repayment if financial difficulties occur; (5) The right to obtain protection from collection actions that are detrimental or invade the debtor's privacy; (6) The right to claim compensation resulting from creditor actions that violate the debtor's rights.¹⁵

According to the author, in this case the state is obliged to provide protection for consumers against illegal taking and confiscation of goods. The essence of legal protection for debtors is to provide protection for debtors to use their credit facilities safely, without being harmed and in line with applicable regulations. In order to guarantee consumer protection and avoid practices that are detrimental to debtors, it is necessary to establish clear guidelines regarding sanctions for creditors who fail to register fiduciary guarantees in accordance with applicable regulations. This is similar to the principle of legal certainty which is part of consumer protection.

¹¹ Siswandi, L. (2019). KREDITUR DAN DEBITUR DENGAN HAK PERLINDUNGAN HUKUM DALAMPERJANJIAN KREDITTANPA AGUNAN. *DiH: Jurnal Ilmu Hukum*, Vol.15 No.1, 87–94.

¹² Tami Rusli, *PENYELESAIAN SENGKETA ANTARA KONSUMEN DAN PELAKU USAHA MENURUT PERATURAN PERUNDANG-UNDANGAN*, n.d.

¹³ Undang – Undang Perlindungan Konsumen pasal 45 ayat (2)

¹⁴ Kelik, E. S., & Guruh, R. P. (2020). EKSEKUSI SEPIHAK OLEH PERUSAHAAN LEASING MENGGUNAKAN DEBT COLLECTOR TERHADAP OBYEK JAMINAN FIDUSIA. *Jurnal Widya Pranata Hukum*, Vol. 2 No. 2, 1–17.

¹⁵ Natasya, N. (2023). *Hak dan Kewajiban Debitur yang Perlu diketahui - HaloEdukasi.com*. <https://haloedukasi.com/hak-dan-kewajiban-debitur>. Di akses 19 maret 2023

Creditor legal protection is a legal mechanism that provides certainty and protection for creditor rights in the event that the debtor defaults. The aim of creditor legal protection is to ensure that creditors can obtain their rights legally and fairly in the event of default or non-fulfillment of obligations by the debtor.¹⁶

Registration of fiduciary guarantees can be carried out by creditors as a way to protect their rights against obligations that have not been fulfilled by debtors.¹⁷ In the event that the debtor does not pay obligations according to the agreement, the creditor who has registered the fiduciary guarantee has the right to execute the fiduciary guarantee.¹⁸ A fiduciary guarantee that has been registered has legal force that binds the parties involved in the fiduciary agreement.¹⁹

Creditors who have registered fiduciary guarantees can also receive priority payments from the sale of collateral objects if the debtor fails to pay obligations and the fiduciary guarantee is executed.²⁰

According to the author, in this case the petitum granted the claim of the plaintiff (debtor) in part because of the practice of executing the collateral object in the decision case, the defendant (creditor) did not register the fiduciary collateral object, so he would not get the preferential rights and legal protection that he should have.

Legal protection for creditors who do not register fiduciary collateral objects is repressive legal protection aimed at resolving disputes. Even though the UUJF provides provisions regarding registration of fiduciary collateral and sanctions for violators, sometimes these sanctions are less strict in their implementation, so there is a possibility for creditors not to register fiduciary collateral objects.

CONCLUSION

Based on the information presented, it can be concluded that in the case of Decision Number 70/Pdt.GS/2020/PN.Plg, there was a violation in the execution of fiduciary guarantees by the creditor. These violations include executing fiduciary guarantees unilaterally and being proven negligent in fulfilling the requirements of PMK No. 130/PMK.10/2012 concerning registration of fiduciary guarantees, as well as non-compliance with Article 11 paragraph (1) UUJF which requires registration of fiduciary guarantees. Apart from that, when the execution was carried out and facts related to this were discovered, at the time of the execution the debt collector did not show professional certification so this violated OJK regulation No. 35 of 2018 article 65 concerning debt collectors being required to have professional certification.

Legal protection for debtors includes all efforts to empower consumers and defend their rights if they are harmed by creditors. In this dispute case, the plaintiff as the debtor has been harmed by the defendant (creditor) by charging a debt collector service fee of Rp. 14,000,000, this gives the impression of seeking unilateral profit and in the implementation of legal protection it is still weak and detrimental, so that the sanctions imposed on PT. Astra Sendaya Finance Palembang branch is still limited to administrative sanctions. The debtor as a consumer can make a complaint by submitting a complaint to the institution regarding the loss as a consumer.

Legal protection for creditors who do not register fiduciary collateral objects in the case above is only repressive legal protection aimed at resolving disputes, there are no special regulations, no protection of preferential rights, and there are no strict sanctions provisions in the implementation of fiduciary collateral execution.

¹⁶ Andre Purna Mahendra, D. N. S. (n.d.). *PERLINDUNGAN HUKUM BAGI KREDITUR DALAM HAL JAMINAN BERALIH*.

¹⁷ Ibid

¹⁸ Nurmelinda, M. (2021). *PERLINDUNGAN HUKUM BAGI KREDITUR DALAM PERJANJIAN FIDUSIA*. *Jurnal Yustitia*, 7(1), 81–97..

¹⁹ Surinda, Y. (2018). *PERLINDUNGAN HUKUM BAGI PIHAK KREDITUR DALAM PERJANJIAN KREDIT DENGAN JAMINAN FIDUSIA*. <https://doi.org/10.32501/jhmb.v2i1.17>

²⁰ Abdullah, J. (2016). *Jaminan Fidusia Di Indonesia (Tata Cara Pendaftaran Dan Eksekusi)*. *BISNIS : Jurnal Bisnis Dan Manajemen Islam*, 4(2), 115. <https://doi.org/10.21043/bisnis.v4i2.2693>

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