Juridical analysis of the auction of fiduciary collaterals on unregistered fiduciary deed: A research study in the Kemenkumham Regional Office, Tanjung Pinang, Indonesia

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Abstract

The development of policies in the area of carrying out basic tasks and functions of fiduciary security in the background by the Strategic Bureaucratic Reform Directive which states the use of information technology is a means of improving performance which is used as a measure of standard services in the hope that accurate data will be achieved, fast and accountable services. Then, issued 2 (two) circular letters of the Directorate General of General Law Administration namely: Circular Letter No. AHU.0T.03.01-01 of 2013, concerning the Process of Requesting Fiduciary Guarantees for the Regional Office of Law and Human Rights which still uses a manual system, and Circular Letter No.AHU.06.OT.03.01 of 2013, concerning the Imposition of the Electronic Fiduciary Guarantee Administration System (Online System) to improve the legal services of fiduciary guarantee registration to the public easily, quickly, cheaply and comfortably.

Keywords: *Auction, Fiduciary Guarantee, Fiduciary Deed*

Introduction

In relation to the existence of collateral with the credit agreement transaction (Sutarno, 2005) between the creditors and the debtors, it is necessary to have a guarantee institution. One of the guarantee institutions used is fiduciary institutions. The guarantee of fiduciary has been used in Indonesia since the Dutch colonial period as one of the forms of guarantee born from jurisprudences (Wijaya, G. and Yani, A, 2000). This form of collateral is widely used in lending and borrowing transactions because the process of charge is simple, straightforward, and fast, although in some cases it is considered to have not experienced significant development, such as concerning the position of the parties.

According to Sri Soedewi Masjchun Sofwan (1997), the guarantee is very important for the security of the refund given to the lender and for its legal certainty. In the Civil Code in Article 1131, it is established that general guarantees have been given by the law of a conclusive and concurrency nature. All material goods of a debtor, whether moving or immovable, both existing and new, will be thereafter, as a guarantee of all their

alliances. Fiducia itself is an old term already known in Indonesian. According to Law No. 42 of 1999 on Fiduciary Guarantee, this is also referred to as the term of transfer of trust, from the debtor to the creditor.

The surrender of property rights in fiduciary is also commonly referred to as the surrender of the *Constitutum Possesorium* (the surrender by extension of its domination) (Roestamy, M, 2009). "Fiduciary construction is the surrender of the rights of the debtor's goods to the creditor while the physical possession of the goods remains on the debtor (*Constitutum Possesorium*) with the requirement that whenever the debtor repays the debt, the creditor must trust the property rights of the goods to the debtor (Fuady, M. 2003; Fadlan, 2020).

The transfer of ownership is made in the manner of *contitutum possesorium* outlined in Article 584 of the Civil Code which states Property rights over materials cannot be acquired by any means other than by consent (ownership), by reason of attachment, by expiration, by inheritance, by law or by the will of the bank, by appointment or surrender based on a civil event to transfer title to a person who has the right to do freedom from these materials. Whereas in Article 62 paragraph (1) of the Civil Code, it states Submission of material moving, except in the case of a body is made by the actual surrender of the material by or on behalf of the owner or by the surrender of a key lock of the building in which the object is located (Wijaya, G., and Yani, A, 2000).

The form of collateral agreements on various collateral institutions in Indonesia's banking practices is always expressed in written form, as reflected in certain forms/models of the Bank or stated in the form of a Notary deed. For the bulk of the law for the sake of certainty, it is commonly stated into the Notary deed. J Satrio demonstrates the benefit of the fiduciary agreement in writing in the following matters: First, the fiduciary holder in his interest will demand the simplest way to prove the surrender to the debtor. It is important to safeguard the possibility that the debtor dies before the creditor can exercise its rights. Without the deed it would be difficult for him to prove his rights to the heirs of the debtor; Secondly, the existence of the deed may include specific promises between the debtor and the creditor that govern their legal relationship. The verbal agreement will not be able to determine carefully in the face of difficult circumstances that may arise; Third, the written agreement of fiduciary is of great benefit to the creditor if it will retain its rights to the third party (Satrio, J, 1992). In the deed of fiduciary agreement is attached a detailed list of goods used as fiduciary guarantees, where it is stated that the appendix containing the goods is an inseparable part of the deed. Frequently the fiduciary agreement is stated into the Notary deed, on large amounts of credit, which the bank feels safer for the strength of the evidence offered in the Notary deed. Further explicitly stated in Article 5, the Fiduciary Law states, among other things, the loading of objects with the Fiduciary Guarantee was made by the notary deed in Indonesian which is the Fiduciary Guarantee Law.

Following the provisions of Article 14 paragraph (3) of Law No. 42 of 1999 on Fiduciary Guarantees, new fiduciary guarantees are born on the same date as the Fiduciary Guarantee is recorded in the Fiduciary Register and creditors will receive a fiduciary guarantee certificate in the spirit of "For Justice based on the Almighty God."

By obtaining a fiduciary guarantee certificate then the creditor/recipient of the fiduciary immediately has the right to a direct execution (parate executie), as in the case of a borrowed loan in banking. The legal power of the certificate is the same as a court decision that has permanent legal force (Subekti, R, 1991). However, in reality, many finance companies do not register the fiduciary in the form of a notarial deed. As quoted in the following article: "During this time, many multi finance motor vehicles did not formally register the guarantee with the fiduciary office of the Ministry of Law and Human Rights.

The multi finance does not charge for the fiduciary charge of a funded motor vehicle. In addition, they charge for fiduciary but do not register, or are commonly known as the term fiduciary. The high costs of making a guarantee deed and the length of the process of fiduciary registration are a reason for many multi finances not to do fiduciary registration "(Surabaya Post, 2020).

In practice, many leasing companies do not make fiduciary agreements under the Notariat and are under control, though the registration of fiduciaries is strictly mandatory for a financing agency or leasing company. "Under the Fiduciary Guarantee Law of Article 1, if the transaction is not entered into and registered, then the fiduciary agreement is legally non-existent and can be considered a general debt agreement. However, the fact is often that these financing companies execute without the fiduciary guarantee agreement.

Literature Review

A theoretical framework is a model that describes how theory relates to important factors known in a given problem (Rumengan, et.al, 2015). In a theory used, it must be clear because of its function (Rumengan, et.al, 2015). This is useful for facilitating research among others as follows: To clarify and refine the scope or construction of the variables to be studied. To formulate hypotheses and design research instruments, predict and discover facts about a matter to be examined. The authors analyze the jurisprudence of the implementation of a policy using the theory of legal system, which is presented by Lawrence Meir Friedman, a law sociologist from Stanford University, that has three main elements of the legal system.

Legal substance

The legal substance can be defined as the actual norms, rules, and behaviors of human beings that exist in that system. In the legal context, there is the term "product" which is a newly drafted and newly made decision which herein is emphasized in law will be made if it is by prior events (Aspan, H, 2017; Fadlan, 2019; Raharja, et. al, 2020). There have been many cases in Indonesia, which are due to the weakening of the system so that the law offenders seem to underestimate the existing law (Aspan, H, 2017; Fadlan, 2019). The substance of the law also includes living law, not just the rules of law (law books).

As a country that still adheres to the Civil Law System or the Continental European system (Aspan, H, 2020; Fadlan, 2020) (although some laws have also adopted the Common Law). In this work, the authors explain some of the basic criteria for auction terms derived from the Dutch language, namely vendu, whereas in English, they are called auction terms (Salim, 2004).

Other terms are translations of Dutch *openbare verkooping*, *openbare veiling*, or *openbare verkopingen*, which means "auction" or "public sale." According to the Indonesian Dictionary, the definition of the term "auction" is defined as the auction is a publicly-traded sale (with an over-bid) led by an auction official. While doing the auction is selling by auction.

The theory of pure law on positive law is that the law must be morally, economically, socially, culturally, and positively and negatively governed and the order and structure of the legal hierarchy. The definition of a financing institution following Article 1 point 2 of the Decree of the President of the Republic of Indonesia Number 61 of 1988 on the Funding Agency is: "The body of a business that conducts financing activities in the form of providing funds or capital goods without drawing funds directly from the public."

The above regulations have been amended by the Regulation of the Minister of Finance of the Republic of Indonesia No. 84 / PMK.012 / 2006 of the Financing Company ie. "Business entities outside banks and non-bank financial institutions are specifically established to carry out activities that are part of the financial institution's business." Not only that, in the Decree of the Minister of Finance of the Republic of Indonesia No. 448/KMK.017/ 2000 on Financing Companies, provides an understanding of financial institutions as a financing activity carried out in the form of providing funds for consumers to purchase goods for which payments are made in installments or periodically by consumers.

According to Abdulkadir Muhamad (2004), the financial institution is a business entity that has wealth in the form of financial assets. Wealth in the form of financial assets is used to conduct business in the financial services, whether providing funds to finance productive and consumer needs, as well as non-financing financial services. For financing, this motor vehicle as collateral is proof of ownership of the vehicle.

With the existence of the BPKB as collateral then the object of the BPKB is the object of the Fiduciary Guarantee. According to Law No. 42 of 1999 regarding the guarantee of Fiduciary Article 1 Paragraph (1) that Fiducia is "the transfer of a right to an object based on a belief the object for which ownership rights are transferred remains in the control of the owner of the object." This is because one of the many reasons why bad loans are to use fiduciary collateral, where the risk of executions of fiduciary collateral is difficult or impossible because of the problems inherent in fiduciary guarantee themselves. By affirming the construction of Law No. 42 of 1999 on Fiduciary Guarantees that the fiduciary guarantee remains in the possession of the debtor or fiduciary guarantor, that the debtor is not late for business and uses the guarantee, can create a healthy and dynamic business and trade climate so that economic actors and entrepreneurs can develop and thrive without neglecting their obligations (Pardede, M, 2006). With the existence of a fiduciary institution, the risk of the settlement of bad debts at financing institutions or finance companies should be resolved quickly by prioritizing the principles contained in the fiduciary law. However, in the event of bad credit lenders often have difficulty executing fiduciary guarantee objects for the repayment of the remaining debt. Many news outlets often have

conflicts between creditors and debtors during the process of executing the fiduciary guarantee even though the fiduciary law requires the fiduciary to hand over the fiduciary guarantee object to the fiduciary for the repayment of the remaining debt.

Further, the regulation of the fiduciary s guarantee auction law on the fiduciary deed not registered with the Ministry of Justice and Right of the Republic of Indonesia should have a legal basis, as it is in accordance with article 1131 of the Civil Code which states: in order to consider whether a person has been harmed, then all goods must be assessed at their cost at the time of separation and must be made in an authentic form, the fiduciary guarantee deed must also be registered. Registration must be made under Chapter III of Part Two of the Law. 42 of 1999 Fiduciary Guarantee.

Therefore, an auction of fiduciary collateral on unregistered fiduciary deeds often occurs, bearing in mind that there is still a signing of the deed that is not performed before a Notary Public is based on the practice of binding the deed done outside the Notary's office, as regulated in Article 5 paragraph (1) of the Law Invite No. 42 of 1999 Fiduciary Guarantee that "fiduciary guarantee deeds must be made in an authentic form". If the Fiduciary Guarantee deed is not signed before a Notary, then the Fiduciary Guarantee deed is the same as a deed under the hand. Therefore, the authors believe that the Fiduciary deed is null and void by law and cannot be registered at the Fiduciary Registration Office to obtain a Fiduciary Certificate because it does not comply with the provisions of Article 5 paragraph (1) of Law No. 42 of 1999 Fiduciary Guarantee.

Legal structure

The legal structure, which is the permanent form framework of the legal system that keeps the process within its boundaries. The structure consists of: the number and size of the court, its jurisdiction (the type of case being examined and the procedural law used), including in this structure also concerning the arrangement of the legislative body. The second theory of Lawrence Meir Friedman: Legal Structure / Legal Institution: In Lawrence Meir Friedman's theory this is referred to as a structural system that determines whether or not the law can be implemented properly.

In connection with fiduciary guarantees, the provisions of Article 30 of the Fiduciary Guarantee Law require the fiduciary (the debtor) to surrender the objects which are the objects of the Fiduciary Guarantee in the execution of Fiduciary Guarantee. Later in the explanation of Article 30 of the Fiduciary Guarantee Law states "In the event that the Fiduciary does not surrender the objects which are the Fiduciary Guarantee's objects at the time of execution, the Fiduciary shall have the right to take such thing as the object of the Fiduciary Guarantee and as may be necessary to request the assistance of the authorities" In this context, the authors interpret that, apart from the development of the law of guarantee, if observed from a legal point of view although it is sometimes advantageous to use foreign models of conception, process and legal institutions, on the other hand it is objectionable as possible, contrary to the awareness of the law of the society in which the law is to be enacted, it is therefore necessary to adopt the original law of the society concerned, and therefore it is imperative that a combination of these concepts, procedures and institutions exist, that the law of guarantee in Indonesia, in addition to being accepted by the indigenous people, it also contributes to International relations. Thus theoretically the development of guarantees laws, particularly Indonesian guarantee institutions would include; the development of its legal substance; development of guarantee institutions; development of objects and their subject matter; the development of its procedures relating to registration, expiration, removal, and execution and in connection with the development of Indonesian law enforcement agencies. In the law of guarantee known as a guarantee in general and specifically, guarantees, in general, are guarantees arising out of the law, whereas guarantees, in particular, are guarantees arising out of either a material agreement or an individual agreement, such specific guarantee agreements the nature of the accessoir to its underlying agreement.

With the existence of a general guarantee, the guarantee law has provided the general creditor protection of the debtors for the repayment of the debtor's debt, but to provide a sense of security, in practice often a guarantee agreement is made, either in the form of a material guarantee agreement or an individual guarantee. This can be examined in Article 1131 and Article 1132 of the Civil Code.

Both arise from an agreement called "pactum fudusiae", which is then followed by the surrender of rights or "in iure cessio". The specific law governing this is Law No. 42, 1999 concerning Fiduciary, but in Indonesian for fiduciary, it is often referred to as "the surrender of the rights of ownership."The definition of fiduciary according to Fiduciary Law Number 42 of 1999 Article 1 point (1) is: Fiduciary is the surrender of ownership rights of an object based on the belief that the property whose ownership has been transferred remains in the possession of the owner. This fiduciary guarantee is the right of guarantee on movable objects, both tangible and intangible, and the immovable objects, especially the building which cannot be encumbered by the security

rights as referred to in Law No. 4 of 1996 concerning Mortgage Rights which remain in the control of fiduciary givers (Fuady, M, 2003).

As collateral for repayment of a particular debt, it provides a fiduciary position to the creditor against other creditors. According to the above definition, in the guarantee of fiduciary, there is a transfer of ownership rights (Badrulzaman, M. D, 1999). The transfer occurs based on trust with the promise of the thing to which the ownership of the property is transferred, but in the possession of the owner. The transfer of ownership of property is done by means of the *constitutum possesorium* (Fuady, M, 2000). This means the transfer of ownership of an item by continuing possession of the item is intended for the benefit of the recipient. This form of diversion has been widely known since medieval France. The transfer of ownership of the property is exercised by way of contitutum possesorium outlined in Article 584 of the Civil Code stating that "The ownership of a property cannot be obtained in any other way, except by acknowledgment (ownership), by reason of termination, by expiration, by inheritance, whether by law or by will and by designation or assignment based on a civil event to transfer the copyright is exercised by a person who has the right to be free of this material."

Whereas Article 62 paragraph (1) of the Civil Code specifies that: "the surrender of a moving object, except in the case of a body, is made by the actual surrender of the material by or on behalf of the owner or by the surrender of keys from the building in which the material is located" (Wijaya, G. and Yani, A, 2000). Having a fiduciary agency should risk the risk of getting a bad credit on a financing institution or a financing company should be able to be resolved quickly by dealing with the consequences contained in the fiduciary law. However, in the event of bad credit, the creditors often have difficulty executing the fiduciary guarantee object for the repayment of the remaining debt. Many news outlets often have conflicts between creditors and debtors during the process of executing the fiduciary guarantee even though the fiduciary law requires the fiduciary providers to hand over the fiduciary guarantee object to the fiduciary recipients for the repayment of the remaining debt.

Legal culture

This legal culture is also understood as a state of mind and social, and a social force that determines how the law is used, avoided, or misused. Friedman further elaborates on the culture of law as attitudes and values related to the law and the legal system, following attitudes and values that positively and negatively influence law-related behavior. As collateral for repayment of a particular debt, it provides a fiduciary position to the creditor against other creditors. According to the above definition, in the guarantee of fiduciary, there is a transfer of ownership rights (Badrulzaman, M. D, 1999). The transfer occurs based on trust with the promise of objects whose ownership rights are transferred, remains in the possession of the owner of the objects.

The transfer of ownership rights is carried out by *constitutum possesorium* (Fuady, M, 2000). This means the transfer of ownership rights to an object by continuing control of the object is intended for the benefit of fiduciary recipients. Binding of movable objects can be made pawned or fiduciary. Movable objects to be mortgaged must be controlled by the creditor while the binding is fiduciary, the physical property of the movable object is still controlled by the debtor, only the ownership rights are given to the creditor (Salim, H. S, 2014). While the notion of the guarantee itself is derived from Zakerheldesstelli's translation or *security of la*.

Based on the material, guarantees are grouped into: First, *Personal Collateral*, is a third-person (borg) who will bear the repayment of the loan money, if the guarantor is unable to return the loan; Second, the *material security*, in this case, provides a part of one's wealth to meet or pay the obligations of creditors. Collateral is one of the elements of credit as if based on other elements can be obtained confidence in the ability of the debtor to repay debt.

Research Methods

In this study, for the purpose of this research, the authors have set the specifications of the Normative Law research. The specification and/or type of research of this thesis is normative legal research while integrating sociological (empirical) legal research using secondary data obtained directly as a primary source, through field research, interviews and primary data as sources/informational materials primary law, secondary law materials, and tertiary law materials. Normative law research is also called doctrinal research, also referred to as library or documentary research. It is called doctrinal law research because research is directed only to written regulations or other legal materials. Library or document studies are done on secondary data available in the library.

Discussion

Transfer of property rights to creditors in fiduciaire eigendoms overdracht is not a surrender of property rights in the real sense as in buying and selling and so forth so that the creditor will not be the full owner (volle eigenaar), he is just a bezitloos eigenaar for collateral items, and because in accordance with the intent and purpose of the agreement regarding the guarantee itself, the authority of the creditor is only in agreement with the authority possessed by a person entitled to the collateral items. Whereas the fiduciary recipient's creditor position is as the collateral holder, while the authority as the owner he has is the authority that is still related to the collateral itself, therefore, his authority as the owner is limited (Tiong, O. H, 1984).

In fiduciary, the debtor through the submission in a constituutm possessorium still controls collateral. Regarding this control, we can also divide it into two parts, first, if the goods are used as inventory, the debtor controls collateral based on the loan agreement with the creditor, the second, if the commodity is merchandise, the debtor controls collateral on *consignati*on basis or consignment.

Related to the provisions of Law No. 42 of 1999 concerning fiduciary collateral, then the following explanation of the fiduciary loading process: 1) The process or stages of fiduciary loading are as follows: a) The first process, by making a principal agreement in the form of a credit agreement; b) The second process, the imposition of objects with fiduciary collateral marked by making Fiduciary Deed of Guarantee, which includes the day, date, time of manufacture, identity of the parties, fiduciary agreement data, description of fiduciary object, guarantee value and value of collateral object fiduciary; c) The third process, is the registration of the AJF at the fiduciary registration office, which will then be issued a Fiduciary Guarantee Certificate to the creditor as the fiduciary recipient; On April 6, 2015, the Indonesian government issued Government Regulation (PP) No. 21 of 2015 concerning Procedures for Registration of Fiduciary Guarantees and Costs for Making a Fiduciary Deed of Guarantee (New PP). This New PP replaces PP No. 86 of 2000 with the same title (Old PP). Registration of Fiduciary Guarantees is carried out by recipients of fiduciary security rights (creditors) at the Ministry of Law and Human Rights, based on the Circular of the Director-General of General Law Administration Number: AHU-06.0T.03.01 dated March 5, 2013, concerning the Application of the Administration System for Fiduciary Security Registration Electronic (Online), namely the change in the registration process flow from the manual process to the online process, to the online payment.

On April 6, 2015 Government Regulation Number 21 of 2015 concerning Procedures for Registration of Fiduciary Guarantees and Costs for Making Fiduciary Deed as Implementing Regulations to Act Number 42 of 1999 Concerning Fiduciary Guarantees replaced Government Regulation Number 86 of 2000 concerning Procedures for Registering Guarantees Fiduciary And Cost of Making Fiduciary Guarantee Deed. In Article 4 of Government Regulation Number 21 of 2015 concerning Procedures for Registration of Fiduciary Guarantees and Costs for Making Fiduciary Deed Guarantee provides a new breakthrough in fiduciary guarantees, but in this Article 4 there is no transitional provision if fiduciary guarantees have not been registered after the 30-day deed term since the signing of the fiduciary guarantee and after Government Regulation Number 21 of 2015 concerning Procedures for Registration of the Fiduciary Guarantee and the Cost of Making this Fiduciary Guarantee Certificate apply. In this case, the fiduciary guarantee legal power as an authentic deed made by the Notary Public has decreased, namely the legal strength of an authentic deed is defeated by the interests of the administrative process of fiduciary guarantee registration (Sadiqah, R., Suharto, R.and Widanarti, H, 2016).

In Government Regulation No. 21 of 2015 concerning Procedures for Fiduciary Guarantee Registration and Costs for Making Fiduciary Deed Guarantees, according to an explanation from the results of an interview with Mr. Lutfi, Fiduciary Security Section, 2020 several new rules have been adapted to developments, including: first, the existence the terms of the fiduciary guarantee registration period, namely the fiduciary guarantee deed must be immediately registered online within a period of no longer than 30 days from the date of making the fiduciary guarantee deed. Secondly, there is an obligation for Fiduciary Recipients, their power of attorney to notify the abolition of the Fiduciary Guarantee and this notification also stipulates a period that is obliged to notify the Minister within a period of no later than 14 (fourteen) days from the date of the abolition of the Fiduciary Guarantee (Sadiqah, R ., Suharto, R.and Widanarti, H, 2016).

Notification of fiduciary abolition is free of charge, so in the absence of any fees charged it is expected that Fiduciary Recipients, their power of attorney or representative can immediately take notice of the removal of the Fiduciary Guarantee; Third, the amount of the cost of making a Fiduciary Guarantee deed is determined based on the value of the guarantee which refers to the amount of the cost of making the deed regulated in Article 36 paragraph (3) of Law Number 30 the Year 2004 concerning the Position of Notary, which at present the law has been amended by Law Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Position of Notary Public. Fourth, the existence of provisions, namely all data filled in Fiduciary Guarantee

Registration Requests, Requests for Improvement of Fiduciary Security Certificates, Requests for Changes to Fiduciary Security Certificates, and Notification of the Elimination of Fiduciary Guarantee Certificates electronically and the storage of physical documents is the responsibility of Fiduciary Recipients, their powers or representatives.

In the opinion of the authors of the implementation of fiduciary guarantee registration, there are obstacles from the new rules that exist in this government regulation, namely the period of registration of fiduciary guarantees and the cost of making a fiduciary deed, namely Article 4 states that the application for registration of fiduciary guarantees as referred to in Article 3 is submitted within a period of no later than 30 (thirty) days from the date the fiduciary guarantee was made. Therefore, there is an obligation to immediately register a fiduciary guarantee that has been signed within a period of no longer than 30 (thirty) days, during which the registration period is not regulated beforehand in Law Number 42 of 1999 concerning Fiduciary Security and its implementing regulations, namely Government Regulation Number 86 of 2000 concerning Procedures for Registration of Fiduciary Guarantees.

This would, of course, affect the status of the fiduciary guarantee law that has not been registered after the government's enactment. Notwithstanding the provisions of article (30) of law No. 42 of 1999 "The fiduciary is obliged to surrender the Object which is the Object of the Fiduciary Guarantee in the execution of the Fiduciary Guarantee Execution". It should be noted that the substance of this article is very clear that the fiduciary is obliged to hand over the securities to the object of the fiduciary guarantee in the event of the execution of the fiduciary guarantee execution. But the reality is that issues often arise when a financing company wants to execute a fiduciary guarantee because the debtor refuses to hand over the object of the fiduciary guarantee. After all, they feel they have a right to the guarantee. There is also rarely conflict between creditors and debtors due to the execution of fiduciary guarantees. Given this situation, the government through the Police of the Republic of Indonesia takes a role in the context of safeguarding fiduciary guarantees.

Therefore, to secure the implementation of the execution of Fiduciary guarantees, the National Police issued the National Police Regulation No. 8 of 2011 which came into force on June 22, 2011, with the aim that the implementation of the Fiduciary Guarantee is carried out safely, orderly, smoothly, and can be accounted for. As for the process of securing the execution of the Fiduciary guarantee stated in Article 7 of the Regulation of the National Police Chief No.8 of 2011 stating that the request for safeguarding the execution must be submitted in writing by the recipient of the Fiduciary Guarantee or his attorney to the Regional Police Chief or the Police Chief where the execution was carried out. The main considerations issued by Perkap No.8 of 2011 include that the Indonesian National Police is a state tool that has the duty and function to maintain public security and order, law enforcement, protection, protection, and service to the community. As a state instrument, the National Police of the Republic of Indonesia has the authority to assist in securing the implementation of court decisions or the execution of Fiduciary guarantees, the activities of other agencies, and community activities.

Executions of the Fiduciary Guarantee have the same binding legal powers as the courts of law which have the force of law, and thus require the protection of the State Police of the Republic of Indonesia. In the event of bad credit and execution or withdrawal of mobile goods as collateral, then under the Police Regulations, it is expected that the implementation of fiduciary guarantee execution is safe, orderly, smooth, and accountable.

Fiduciary givers are prohibited from transferring, mortgaging, or renting out to other parties objects that are objects of Fiduciary Security which are not inventories except with prior approval from Fiduciary Recipients. (Article 23 (2) of the Fiduciary Law) Violations of these provisions are punishable by a maximum imprisonment of 2 years and a maximum fine of Rp 50,000,000 (fifty million rupiahs) following Article 36 of the Fiduciary Law, this is for Fiduciary giver to pay his debt under the agreement, in addition to "making it easier for Fiduciary Recipients to collect if the debtor fails the promise without having to pay attention and assess other cases, including looking for objects that become Fiduciary Guarantee Objects.

The Fiduciary Recipient does not assume any liability for the actions or negligence of the Fiduciary Giver whether arising from contractual relationships or acts that violate the law in connection with the use and transfer of Objects which become Fiduciary Security Objects. (Article 24 of the Fiduciary Law). The burden is passed on to the Fiduciary Giver because the Fiduciary Giver still physically controls the object that is the Fiduciary Object and who uses it and fully obtains economic benefits from the use of the object. "So, it is only natural that the Fiduciary Giver is responsible for all consequences and risks arising in connection with the use of the object. Write-off of Fiduciary Collateral can result from the following: (Article 25 of the Fiduciary Law): a Write-off of debt guaranteed by Fiduciary; b) Waiver of the right to Fiduciary Guarantee by Fiduciary Recipients; c) Destruction of objects that become Fiduciary Security Objects. "If the collateral object is destroyed, while the

object is insured, then the insurance claim is not deleted and becomes a substitute guarantee of the destroyed object" (Wijaya, G, and Yani, A, 2000). And the Fiduciary Recipient immediately notifies the Fiduciary Registration Office of the written-off of the Fiduciary Guarantee within 7 (seven) days after the abolition of the Fiduciary Guarantee, by attaching a statement regarding the write-off of debt, waiver of rights or destruction of the object which became the object of the Fiduciary Guarantee. Then the Fiduciary Registration Office will cross out the recording of the Fiduciary Guarantee from the Fiduciary Register and issue a statement stating the Fiduciary Guarantee Certificate is no longer valid.

Conclusions and suggestions

Conclusion

Once the author has described in detail the basics of this thesis, then the bully can conclude:

That the implementation of registering fiduciary object guarantees by electronic means that is integrated with the internet system has been obtained and guarantees legal certainty with the enactment of Human Rights Ministerial Regulation No. 9/2013 and Permenkum HAM No.10 / 2014 As well as PP No.21 / 2015. By carrying out registration with a computerized system on all fiduciary commitments, the fiduciary recipient has received a guarantee of protection and legal certainty.

That to suppress the process of issuing Fiduciary deeds which are not registered, the launch of Fiduciary Online is a concrete step of renewal that will contribute positively to the strengthening of the Indonesian movable property insurance system. However, it cannot be denied, a series of further policies are needed to perfect the position of Fiduciary Online according to its potential, especially to review mechanisms that are not following market preferences. This is important because the procedure for registering for a Fiduciary guarantee is not a compulsory procedure. This is evident from the history of the low compliance of registration and revocation of Fiduciary registration. There must be a supporting policy that is able to support compliance.

That there are several factors which become Constraints and Constraints including the registration process of Fiduciary Guarantee, namely the Location and Position of the Fiduciary Registration Office The Need for Renewal of Fiduciary Guarantee as an Economic Mover; Barriers to Formal and Non-Formal Regulations, Old Internet Networks / Connections and Online Integral Systems, thus efforts to increase the mobilization of public savings funds through financial institutions, such as banking institutions, non-bank financial institutions, and capital markets, need to be improved.

Suggestions

The suggestions that can be taken are as follows:
It is recommended that firmness in terms of the regulation of registration of the Fiudusia Guarantee be arranged so that there is no overlapping of provisions resulting in legal certainty. Therefore, it is also very necessary to regulate what movable property is possible or which can be bound by a fiduciary guarantee and what is the lowest value of the money loan can use fiduciary guarantees.

It is recommended that problems do not occur when the finance company wants to carry out fiduciary guarantees because the debtor does not want to surrender the fiduciary object because he feels there is already a right to the collateral, it is necessary to be certain about the registration process of Fiduciary Guarantee, this is not an uncommon conflict between creditors and debtors due to the execution of fiduciary guarantees.

It is recommended that after all the requirements are fulfilled, it is stated in the form of a deed and signed by the parties, namely creditors and debtors. If the loading stage has been carried out, the fiduciary guarantee deed must be registered so that the Fiduciary Recipient has the right to overtake and other rights attached to the Fiduciary Recipient according to Law.

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