

Juridical review of the execution of debtor's fiduciary collateral objects in default

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ABSTRACT

Fiduciary is a process of transferring ownership rights to an object based on trust with the provision that the object whose ownership rights are transferred remains in the power of the object owner. As for fiduciary guarantees, which are guarantees for the rights of tangible or intangible movable objects, immovable objects such as buildings. In this case, the building cannot be subject to mortgages as stated in Law Number 04 of 1996 concerning mortgages which are stated to remain in the power of the fiduciary giver as collateral for the settlement of certain debts, where the priority position is the fiduciary recipient against other creditors. On this occasion, the author will discuss a discussion entitled, "Juridical Review of the Execution of Guarantees x Fiduciary x Debtors x Defaults". In this discussion, the research method that is used to fulfill related material is the normative legal research method which uses data collection techniques from written sources such as books and heritage studies as well as other supporting sources. Looking at the title, it is conveyed regarding the execution of fiduciary guarantees, where this can be done if the debtor or fiduciary giver deviates from the promise, in this case the execution is carried out by implementing executorial title as stated in Article 15 of Law Number 4 of 1996 concerning mortgages. Sales proceeds are obtained by obtaining the highest price so that it will benefit both parties based on applicable law. The purpose of writing this journal is to know the procedure for executing fiduciary collateral objects, to find out whether creditors can transfer the ownership rights of collateral objects to third parties, to find out whether debtors can transfer property rights to collateral objects during the guarantee period, to know the role of the police in securing the execution of fiduciary collateral objects

Keywords: Default, fiduciary guarantee, juridical review

1. INTRODUCTION

Juridical review comes from the word Yuridish which means according to law or views from a legal perspective. In this sense, it can be said that a juridical review studies carefully, examines with the aim of understanding or it can also be said as a view or opinion regarding a problem from a legal perspective. Juridical review can also be applied in various ways, one of which is in the execution of a default debtor's fiduciary object. The fiduciary guarantee in question is the guarantee right over movable objects both tangible and intangible, immovable objects such as buildings that are not burdened with mortgage rights as stated in Law Number 4 of 1996 concerning mortgage rights remain in the power of the fiduciary giver as a liability for repayment of debt, which gives a position where fiduciary recipients of other creditors take precedence. The fiduciary giver is obliged to

surrender the object that becomes the fiduciary guarantee in the context of executing the fiduciary guarantee. This is clearly regulated in the Law of the Republic of Indonesia Number 42 of 1999 which contains:

"The fiduciary giver is obliged to submit x objects that become x fiduciary guarantee objects in the context of implementing q fiduciary guarantees."

On the basis of existing law, if the fiduciary giver does not hand over the object that has become a fiduciary guarantee when the execution is carried out, the fiduciary recipient has the right to take the object that is a fiduciary object. In this, it can also include the authorities as stipulated in the Elucidation of Article 308 of the Constitution. This is because the police of the Republic of Indonesia in question are state employees who play an important role in maintaining security and public order, enforcing the law, protecting, protecting, and serving the community. For this

reason, fiduciary recipients can ask for assistance from the Republic of Indonesia Police in securing the execution of fiduciary guarantees.

As for the burden associated with fiduciary guarantees: 1. the identity of the fiduciary giver and recipient; 2. principal agreement data guaranteed by fiduciary; 3. a description of the objects that are the object of fiduciary guarantees 4. guarantee value; 5. the value of objects that are objects of fiduciary guarantees. Fiduciary guarantees must be registered by the fiduciary recipient to the Fiduciary Recipient Office and then the Fiduciary Registration Office will issue and submit a Fiduciary Guarantee Certificate to the fiduciary recipient. This is of course based on the principles of justice and Belief in the One and Only God. The certificate in question has a 'binding' legal force that is the same degree as a court decision that 'has a permanent legal force'. Based on this, the Republic of Indonesia National Police Regulation Number 8 of 2011 concerning Safeguarding the Execution of Fiduciary Guarantees was formed. Discussing about the Police, the scope of the Police in securing the execution of Fiduciary Guarantees which was mentioned earlier, is to protect the safety and security of the Parties (Fiduciary Givers and Recipients) and the general public against actions that harm safety.

In Article 20 PERKAPOLRI Number 8 of 2011, it is stated:

"In the event that the execution respondent feels that he has paid or paid off his obligations to another officer appointed by the execution applicant, which results in a dispute at the time or is being carried out, then Polri personnel who carry out security through the following actions: a. hold a persuasive approach between the applicant and the respondent through deliberations; b. ask politely and humanely to the respondent, to show supporting documents or proof of payment or settlement; c. securing the execution environment to prevent escalation of security; And d. if the respondent has valid proof of payment or settlement, Polri personnel; 1. postpone or stop the execution; 2. bring and hand over officers assigned by the applicant to Polri investigators for further handling; And 3. bringing the respondent and the execution applicant to the nearest police station for further handling. "

Based on the law stated above, that the police of the Republic of Indonesia do not have authority within the scope of Civil Law.

2. METHODS

A. Types and Nature of Research

The type and nature of the research used is normative legal research method. This research method is used in accordance with what is stated in the laws and regulations or applicable legal norms which are realized by examining the principles or legal theories.

B. Sources of Legal Materials

The sources of legal materials used in this research are from library materials or based on secondary data consisting of

of primary legal materials, secondary legal materials and tertiary legal materials. 1. Primary Legal Materials, consisting of Law Number 42 of 1999 concerning Fiduciary Guarantees in the Civil Code. 2. Secondary Law Materials consist of books by scientific works, magazines and the internet related to research. 3. Tertiary Legal Materials, namely those that provide an explanation of primary legal materials and secondary legal materials such as the Big Indonesian Dictionary (KBBI) and others.

C. Data Collection Technique

The data collection technique used by the author is by studying books, journals, and reviewing library materials and other supporting sources related to the research topic.

D. Data Analysis

Data analysis used in this research is to manage the data and then analyze it to answer the problems in this study.

3. RESULT AND DISCUSSION

A. Procedures for Executing Fiduciary Collateral Objects) Defaulting Debtors

Discussing defaults, there are civil law experts who categorize defaults into 4 circumstances, namely: 1. absolutely does not comply, 2. not cash meets achievement, 3. late to fulfill (achievement), 4. Falsely fulfill the achievement. Therefore, the debtor can be said to be in a state of default if he has received/reprimanded from the authorities to fulfill his responsibility to pay off his debt as stipulated in Article 1238 of the Criminal Code which states:

"The debtor is negligent if he has been declared negligent by a warrant or by a deed of the same kind or for the sake of his own engagement, if this stipulates that the debtor must be deemed negligent after the allotted time has passed."

Relating it to the execution of fiduciary guarantees, the forms of execution of fiduciary guarantees in Law Number 42 of 1999 concerning Fiduciary Guarantees are as follows: 1. By fiat execution (using the title executorial), namely by means of a court order, 2. By parate execution, namely by selling (without the need for a court order) before a public auction, 3. Sold privately by the creditors themselves; 4. Even though it is not stated in the Law, of course the creditor can take the usual execution procedure through an ordinary lawsuit to court. Article 15 of Law Number 42 of 1999 concerning Fiduciary Guarantees states that, in a fiduciary guarantee certificate which includes the words "For the sake of Justice Based on Belief in One and Only God". (has acquired full force, law, Some deeds that have executorial titles are commonly referred to as grosse deed, namely: 1. Mortgage deed (according to Article 224) 2. Deed of Debt acknowledgment (based on Article 224) 3. Mortgage Deed (based on Law Number 4 of 1996 concerning Mortgage Rights on Land and Land-Related Objects)

4. Fiduciary Deed (based on Fiduciary Law Number 42 of 1999 concerning Fiduciary Guarantees).

In addition, fiduciary guarantees can also be executed in parate execution (executed without going through a trial). by: selling the fiduciary object privately, provided that the conditions are fulfilled, namely: 1. Done based on an agreement between the giver and the fiduciary recipient 2. If by means of underhand selling the highest price is achieved which benefits the parties 3. Notified in writing by the fiduciary giver and/or recipient to interested parties 4. Announced in at least 2 (two) newspapers circulating in the area concerned 5. Implementation of the sale is carried out after the expiration of (one) month after being notified in writing

B. Creditors Can Transfer Property Rights to the Object of Fiduciary Guarantee to Third Parties 12

The government's efforts in reducing the uncertainty of the protection of creditor's interests, the government accommodates the customs that apply as fiduciary in society into the law. Number 42, 1999 concerning Fiduciary Guarantee. Article 1 paragraph 1 of Law Number 42 of 1999 concerning Fiduciary Guarantee states that fiduciary is the transfer of ownership rights of an object based on the provision that the object whose ownership rights are transferred but in the control of the owner of the object. Because based on the description explicitly the explanation that there is a transition of property rights from the debtor (who owes the guarantee of the guarantee of XFIDUSI) to the Crediting (which is in debt-receipt of fiduciary guarantees). The transition of these rights is part of a legal effort to protect fiduciary interests if the physical mastery of the fiduciary guarantee object.

The creditor can carry out the Guarantee Efidus as a means of implementing his receivables by selling a bargage that becomes the Object of the Guarantee. So that it does not mean that the ownership rights of creditor attempt the collateral of the NUMBERS is an absolute property and therefore the creditor cannot have the object but sells it. For the validity of the transfer of rights in legal constructions relating to fiduciary guarantees must meet several requirements, namely:

1. There is a Zakelijk agreement
2. There is a title for the transfer of rights
3. The existence of the authority to control objects from people who hand over objects
4. Certain way to surrender, namely by means of constitutum possessorium which contains the meaning of the delivery of ownership of objects without handing over the physical object at all.

According to Munir Fuady, fiduciary granting is carried out through a process known as constitutum possessorium consisting of three phases, namely:

1. Obligatoir Agreement Phase

In the assurance process the philosopher begins with an obligatoir agreement. This Obligatoir Agreement can be in the form of a money loan agreement with a fiduciary guarantee between the fiduciary party (debtor) and the fiduciary recipient (creditor).

2. The Phase of the Material Agreement

After the Obligatoir agreement as stated above, then followed

by a material agreement. This material agreement is in the form of submission of property rights from debtors to creditors carried out by constitutum possessorium. What is meant by constitutum possessorium is the submission of ownership rights without submitting physical objects

3. Borrowing Phase Use

In this phase a borrowing agreement is made, where the object that is used as a fiduciary object whose property rights have moved. The creditor emergency lent by the debtor. This means that after being bound by fiduciary guarantees, the object that is the fiduciary object is physically controlled by the debtor.

C. Debtors Can Divert Fiduciary Objects in Fiduciary Guarantees

The practice of granting fiduciary objects used as fiduciary guarantees submitted by rights (his property to creditors is mentioned in detail. The mention/not only aimed at the number or unit and type, but usually detailed further such as the brand of the size of the quality and so on. carried out to minimize the occurrence of prolonged disputes in the future. At certain banks or the provision of fiduciary guarantees carried out with a deed under the hand there is a form of form that is available with the mention of detailed mention of guaranteed objects. The transfer of rights to debt is the transfer of receivables carried out with authentic deeds or deeds under the hand intended by diverting, among others, including by selling or renting out in the context of business activities. Transfer of debt rights with fiduciary guarantees can be diverted by fiduciary recipients to new fiduciary receipts (new creditors). It is this new creditor to register regarding the switching of fiduciary guarantees at the Fiduciary Registration Office with this existence (Cession), then/all rights/dan, Long Fiduciary Recipients/Recipients switch to new fiduciary recipients and transfer rights to the receivables are notified to the debtor. Article 19 The Fiduciary Guarantee Law stipulates that the transfer of rights to receivables guaranteed by fiduciary guarantees results in shifting by law, all rights and obligations of fiduciary recipients to new creditors. The transition was registered by a new creditor to the Fiduciary Registration Office.

Legitimate or not the debtor in the object of objects in the fiduciary guarantee period in legal construction relating to the guarantee of the human must meet several requirements, namely:

1. The Zakelijk Agreement
2. There is a title for the transfer of rights
3. There is an authority to master the bends of the person who handed over objects

In this transition, the method of submission used is by constitutum possessorium which contains the meaning of the ownership of objects without submitting physical objects at all. In Article 2 paragraph (1) to (4) Law Number 42 of 1999 concerning Fiduciary Guarantee is said that:

- 1) Giver. Fiduciary can divert inventory objects that are the object of fiduciary guarantee with the ways and procedures commonly carried out in trading efforts.
- 2) The provisions as referred to in paragraph (1) do not apply if there has been an appointment injury by the debtor and

and for the third party fiduciary giver.

- 3) Objects that are the object of fiduciary guarantees that have been diverted as referred to in paragraph (1) must be replaced by fiduciary giving with equal objects.
- 4) In the event that the fiduciary giver is injured, the results of the transfer and / or bills arising from the transfer as referred to in paragraph (1), for the sake of law become the object of fiduciary guarantee from the object of the fiduciary guarantee that is diverted.

In Article 230 (2) Law Number 42 of 1999 concerning Fiduciary Guarantee It is said that fiduciary providers are prohibited from diverting or leasing to other parties that are objects of fiduciary guarantees that are not inventory objects, except with prior written approval from fiduciary recipients.^{3h} So it can be concluded that the debtor is prohibited from diverting, mortgaging or leasing objects that are fiduciary objects, because fiduciary guarantees remain related to object holders who are said to be the object of fiduciary guarantee. The exception of this provision is that the debtor can divert the object of inventory which is the object of fiduciary guarantee. If the fiduciary giver or debtor is diverting fiduciary objects during the fiduciary guarantee and diverting the fiduciary guarantee object without written approval from the fiduciary recipient, the fiduciary giver will be subject to Article 36 of Law Number 42 of 1999 concerning Fiduciary Guarantee where the Fiduciary Giver is diverted, mortgaged or rent out objects that are the object of fiduciary guarantee carried out without prior written approval from the fiduciary recipient, sentenced to a maximum imprisonment of 2 (two) years and a maximum fine of Rp.50,000,000 (fifty million rupiah) in accordance with listed in Article 23 paragraph 2.kk

D. The Role of the Police in Securing Fiduciary Execution

As discussed earlier, related to the duties of the police. Based on Article 13 of the Police Law listed. "The main tasks" of the Indonesian National Police are:

- a. Maintaining public security and order
- b. Enforce the law
- c. Providing protection, protecting, and service to the community.

As for Article 1 number (11) Regulation of the Head of the Republic of Indonesia National Police Number 8 of 2011 concerning Security of Execution of Fiduciary Guarantees Security of Execution is: "Police actions in order to provide security and protection for the execution of the execution of the execution of the execution (execution) when the execution is carried out." And in securing the process of executing the fiduciary guarantee, it is still within the scope of the authority of the police as a state tool. However, the police mentioned in the regulation of the police chief The Republic of Indonesia Number 8 of 2011 concerning Security of the Execution of Fiduciary Guarantees, the police no longer have the right to interfere in civil problems between the giver and fiduciary recipient. Based on Article 20 of the Regulation of the Head of the National Police of the Republic of Indonesia Number 8 of 2011 it can be analyzed that the police have acted beyond their authority as a tool of state security and order, law enforcement, protection, protector, and service to the community.

As for the police that surpasses its authority:

1. The action is included in the scope of planning that is not yet not a matter of the authority of the police.
2. The police action is no longer an image of imitation of the implementation of fiduciary executive execus, but it will be too far away in interfering in the existing problems. In this context, the police are said to have exceeded the limit because it has entered the civil scope, namely the legal relationship between the parties in terms of debt with the guarantee of the Legal Association of Legal Affairs by the Law.

Actions according to legal provisions are those that can include a fiduciary certificate discussed previously which contains "DemiKe Justice based on the God Almighty". With this certificate; fiduciary, if the provider feels that he has fulfilled its responsibilities, then it is given*rights; for the path of the law through the Dippenggatu Penangatan which is based on, Article 283/163 which states: "Whoever says has a right or put forward an act to strengthen his rights or to refute the rights of others, must prove the existence of the act". In handling, if the provider of humanity brings problems to the court hearing, then the people who engaged in conveying the events that became the basis of the civil rights affirmation or could be said as a defender to refute the other party. The existence of the delivery of these events, of course, cannot meet the complete requirements. Therefore, evidence is also needed that is legitimate in the eyes of the law so that the truth can be guaranteed. Through the explanation given, it can be said that the party must accompany the events and evidence juridically. With this provision, the police do not have the authority to take an action if there is a situation where the request execution feels that he has paid or fulfilled its obligations. This is of course in accordance with Article 20 and if the police decide the truth of the attached evidence, it will certainly violate Article 229 of the UUJF. Based on the understanding that has been presented, the law can be processed when registering guarantees; fiduciary by creditors or their proxies or deputy. In this case, the power can be given to the notary related to the making of a fiduciary guarantee deed. Registration; fiduciary guarantee in question aims to:

1. To provide legal certainty to the interested parties
2. To give an introduction to the right to fiduciary recipients of other creditors.

Registration of fiduciary guarantees must be based on the laws and regulations that apply as stated in the explanation of Government Regulation Number 86 of 2000 concerning Procedures for Registration of Fiduciary Guarantees and the Costs for Making Fiduciary Guarantees. After the registration of the JaminansFidusia, if there is a default of the debtor or injury to the agreed promise, then the execution of the object that has become a fiduciary guarantee can be imposed as mentioned earlier. The execution in question can be done with the executorial title. This method is based on the "DemiKe Justice based on the omnipotent" which is stated in the fiduciary guarantee certificate. The IRAH has an important power that is the executorial which means that its position is strong in the Creditors of the Employers who aim to execute objects that have become guaranteed fofidation. In its implementation it does not require a court decision because of the existence of the irrahs that have been stated in the fiduciary guarantee certificate. In other conditions where the creditor as a fiduciary holder, he has

the right to take objects that have been used as fiduciary guarantees which are certainly based on the law, with the aim of repaying debtor debt. In this case, the Certificate of Fofidation of Fofidation also has a large strength or can be said to be the same as the decision of the Legislative Council which is permanent, if the fiduciary guarantee holder meets the terms and conditions of the applicable law.

4. CONCLUSION

Based on a completed journal, the author can conclude that: Procedure in executing fiduciary objects of debtors who default in Law Number 42 of 1999 concerning Fiduciary Guarantee, namely as follows: In fiat execution (by using the executorial title), namely through a court determination; Parate execution, namely by selling (without the need for court determination) in front of the general auction; Sold under the hand by the creditor itself; Even though it is not mentioned in the law, but of course the creditor can take the usual execution procedure through an ordinary lawsuit to the court. Creditors can transfer property rights to the object of fiduciary guarantee to third parties because the fiduciary guarantee certificate has, executorial power, whose status is the same as a court decision that has permanent legal force. Debtors can divert fiduciary objects during the fiduciary guarantee must meet several requirements, namely there is a Zakelijk agreement that there is a title for the transfer of rights and the existence of an authority to control objects from people who surrender objects. In handling the execution of fiduciary guarantees must be based on registration of fiduciary guarantees and also a fiduciary guarantee certificate containing "for the sake of justice based on the Almighty God." In the implementation of the dispute resolution process related to debtors who default, the police are not entitled to go through far because they are out of authority. Therefore, it must be completed in accordance with applicable laws and regulations.

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