

LEGAL CONSEQUENCES OF NOT DELETING A REGISTERED FIDUCIARY SECURITY IN THE ONLINE SYSTEM IN BALI PROVINCE

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Article Info

Received: 2025-01-07

Revised: 2025-03-12

Accepted: 2025-03-16

Keywords:

Fiduciary Guarantee

Deletion

Online System

Abstract

This research analyzes the legal consequences of not removing Fiduciary guarantees registered in the online system in the province of Bali. The implementation of the elimination of Fiduciary guarantees registered in the online system is the obligation of Fiduciary recipients as creditors, this provision is regulated in Article 16 paragraph (2) of Government Regulation Number 21 of 2015 concerning Procedures for Registration of Fiduciary Guarantees And the cost of making a Fiduciary Guarantee Deed. However, in practice there are still fiduciary recipients, namely creditors who do not fulfill their obligations to abolish the fiduciary guarantee after the fiduciary giver, namely the debtor, has fulfilled all his achievements. There is no sanction that regulates related if the Fiduciary recipient does not eliminate the Fiduciary guarantee which results in this obligation being disobeyed. The study of this research is related to the implementation of the elimination of Fiduciary guarantees registered in the online system and the legal consequences of the negligence of the Fiduciary recipients for not notifying the Fiduciary guarantee deletion to the Minister registered in the online system. The method used is an empirical legal research method. The analytical knife of legal issues in this thesis is the theory of legal effectiveness, the theory of legal certainty and the theory of legal protection. The results that can be concluded in this study are if the Fiduciary recipient, his proxy or his representative does not notify the removal of the Fiduciary guarantee, then the Fiduciary guarantee concerned cannot be re-registered.

I. Introduction

The Indonesian nation is still carrying out development in various fields, including economic development, which has experienced significant growth. However, many sectors of economic development still need improvement, one of which concerns business capital. In the business world, capital is essential, and without it, economic and business activities cannot function properly. Business capital can be obtained in various ways, one of which is through credit facilities provided by banks and non-bank financial institutions. These credit facilities serve as a crucial pillar for businesses to strengthen their capital structure and sustain their operations.

Bank-provided credit facilities generally require collateral as an additional guarantee. The term "collateral" originates from the word "jamin," which means "to guarantee" or "to be responsible for," implying an obligation. Collateral can be provided by a third party, meaning that the third party guarantees the creditor that the debtor's obligations will be fulfilled if the debtor fails to meet their debt obligations. Alternatively, collateral can be provided in the form of assets equivalent to the borrowed amount.

Collateral is a crucial aspect when a debtor enters into a credit or loan agreement. It serves as a safeguard during the provision of funds for credit extended to the debtor and is expected to protect the interests of all parties, particularly the creditor. When an asset owned by the debtor is used as credit collateral, a binding agreement, known as a security agreement or collateral encumbrance agreement, is established. This security agreement is considered an accessory agreement (*accessoir*), meaning it follows the principal agreement, which is the credit agreement. Without the principal agreement, the security agreement would not exist. In general, credit collateral in banking can be categorized into three types:

- a. Movable Assets are objects that can be transferred from one place to another. According to Law No. 42 of 1999 on Fiduciary Security, movable assets consist of tangible and intangible objects, which include:

- a) Tangible Movable Assets are objects that have a physical form and can be visibly identified, such as motor vehicles, jewelry, securities, and household equipment.
- b) Intangible Movable Assets are assets that do not have a physical form but still hold value, such as checks, bonds, and shares.
- b. Immovable Assets include land and objects attached to the land, such as buildings, offices, residential houses, hotels, apartments, and others.
- c. Personal and Corporate Guarantees refer to guarantees provided either by individuals (personal guarantee) or by a company (corporate guarantee) to ensure the fulfillment of a debtor's obligations.

In banking practice, the process of securing credit collateral depends on the type of collateral involved. Immovable assets, such as land, are secured through mortgage rights, while movable assets are secured through the Fiduciary process.

Among the various collateral mechanisms, Fiduciary Security is the most commonly used by banks as a security instrument for movable assets. According to Article 1, Clause 1 of Law No. 42 of 1999 on Fiduciary Security, Fiducia is the transfer of ownership rights over an object based on trust, with the provision that the object whose ownership rights have been transferred remains under the control of the original owner.

Currently, Fiduciary Security is regulated under Law No. 42 of 1999 on Fiduciary Security, which serves as a legal framework aimed at providing legal protection to parties involved in bank credit agreements.

According to Article 11, Paragraph (1) of Law No. 42 of 1999, any asset encumbered with Fiduciary Security must be registered, and the registration process is carried out at the Fiduciary Registration Office. Furthermore, Article 13, Paragraph (1) states that the application for fiduciary security registration must be submitted by the fiduciary recipient, their authorized representative, or their proxy, along with a fiduciary security registration statement. The fiduciary security registration statement must include:

- a. Identification of the fiduciary grantor and fiduciary recipient
- b. Date, number of the Fiduciary Security deed, name, and domicile of the Notary who drafted the Fiduciary Security deed
- c. Details of the principal agreement secured by the fiduciary security

- d. Description of the object that serves as the fiduciary security
- e. Guaranteed value
- f. Value of the object that serves as the fiduciary security

According to Article 14, Paragraph (1) of Law No. 42 of 1999 on Fiduciary Security, once a fiduciary security is registered at the Fiduciary Registration Office, the office will issue and hand over the Fiduciary Security Certificate to the fiduciary recipient on the same date as the submission of the registration application.

In addition to regulating the registration of fiduciary security, Law No. 42 of 1999 also governs the termination of fiduciary security. Article 25, Paragraph (1) states that fiduciary security is terminated due to the following reasons:

- a. The extinguishment of the debt secured by the fiduciary security.
- b. The release of fiduciary security rights by the fiduciary recipient.
- c. The destruction of the object serving as the fiduciary security.

When the debtor has fulfilled all obligations to the creditor, the fiduciary recipient (creditor) must notify the termination of fiduciary security as referred to in Article 25, Paragraph (1) by submitting a statement confirming the extinguishment of debt, the release of fiduciary rights, or the destruction of the object secured by the fiduciary security. This provision is explicitly regulated in Article 25, Paragraph (3) of Law No. 42 of 1999 on Fiduciary Security.

Currently, the manual registration and termination process of fiduciary security through the Fiduciary Registration Office has been replaced by an online fiduciary security registration system. The implementation of this online system is reinforced by several regulations, including:

- Minister of Law and Human Rights Regulation No. 9 of 2013 on the Implementation of Electronic Fiduciary Security Registration.
- Minister of Law and Human Rights Regulation No. 25 of 2021 on the Procedures for Registration, Amendment, and Termination of Fiduciary Security.
- Government Regulation No. 21 of 2015 on the Procedures for Fiduciary Registration and the Cost of Fiduciary Security Deeds.

The implementation of electronic technology in the registration and termination of fiduciary security brings both positive and negative impacts. However, technological

advancements have significantly benefited society by making human activities easier, faster, and more practical. The use of technology by the government is fundamentally aimed at improving public services, reducing bureaucratic processes, and promoting good governance through simplified government practices to enhance transparency and accountability in public institutions.

An observation by the Regional Office of the Ministry of Law and Human Rights in Bali Province has identified an issue where fiduciary recipients often fail to delete fiduciary security records, whether intentionally or unintentionally. Data collected from 2017 to 2021 in Bali Province shows that 514,222 fiduciary security registrations were recorded, but only 118,686 fiduciary security deletions were processed. This significant gap between the number of registered and deleted fiduciary securities highlights an issue in fiduciary management.

Furthermore, investigations at several Notary Offices in Bali revealed that many fiduciary securities remained active despite their credit terms having already expired. The data collected indicates that several fiduciary securities that should have been terminated were still registered in the system, raising concerns about administrative efficiency and legal certainty.

According to Law No. 42 of 1999 on Fiduciary Security, the fiduciary security object that has been registered by the fiduciary recipient (creditor) must be deleted once the fiduciary grantor (debtor) has fully met their obligations. However, in practice, there remains a gap where, despite the debtor fulfilling their obligations, the creditor fails to perform their duty by not submitting a request for fiduciary security deletion from the system.

When reviewing Law No. 42 of 1999 on Fiduciary Security, Minister of Law and Human Rights Regulation No. 25 of 2021 on Procedures for Registration, Amendment, and Termination of Fiduciary Security, and Government Regulation No. 21 of 2015 on Fiduciary Security Registration Procedures, it becomes evident that there are no specific provisions or sanctions imposed on fiduciary recipients (creditors) who fail to delete fiduciary security records.

This lack of regulatory enforcement allows many creditors to neglect their obligations, as there are no consequences for failing to process the deletion of fiduciary security records. This regulatory gap contributes to the ongoing issue where many fiduciary securities remain active despite being settled, leading to administrative

inefficiencies and potential legal uncertainties.

Based on the background of the issues presented above, the author finds it intriguing to conduct further research on the problems related to the deletion of fiduciary security, leading to the study titled: "Legal Consequences of the Non-Deletion of Fiduciary Security Registered in the Online System in Bali Province." This research will focus on:

1. The implementation of fiduciary security deletion in the online registration system.
2. The legal consequences of the fiduciary recipient's negligence in failing to notify the Minister regarding the deletion of fiduciary security in the online system.

2. Research Method

This study employs empirical legal research, which focuses on examining the gap between "das sollen" (the ideal law) and "das sein" (the law in practice). This gap refers to discrepancies between legal provisions and their real-world implementation, differences between theoretical legal principles and actual legal facts, or situations of legal uncertainty that require academic exploration. In empirical legal research, different types of approaches can be used, including: Research on the effectiveness of law, which examines whether legal provisions are properly enforced and Research on "living law", which identifies how legal norms function within society. This study aims to determine whether the implementation of normative legal provisions in actual legal events aligns with existing regulations and whether these laws function effectively within society.

3. Results and Discussion

The globalization process has transformed society into a global system, where the world has become more interconnected, transparent, and aware of each other. Information technology and electronic media serve as symbols that integrate global systems across social, economic, and cultural aspects. Information technology encompasses systems that collect, store, produce, process, and transmit information efficiently and rapidly to society. These information and technology systems are widely utilized across various sectors, including trade, business, transportation, industry, entertainment, tourism, and even government services to enhance public service delivery.

However, a significant issue arises as many fiduciary recipients (creditors) fail to notify the deletion of fiduciary security even after the fiduciary grantor (debtor) has fully met their obligations. This neglect leads to serious disadvantages for debtors, as their fiduciary security remains registered despite the debt being settled. The discrepancy between regulations and real-world implementation creates obstacles in executing fiduciary security deletions effectively.

Based on interviews conducted with a creditor as a fiduciary recipient, one of the main reasons for not deleting fiduciary security is the lack of awareness among fiduciary recipients themselves. Additionally, there is no regulation imposing sanctions on creditors who fail to notify the Minister about the deletion of fiduciary security.

Even though the Fiduciary Security Law requires fiduciary recipients (creditors) to notify the deletion, it does not specify any penalties for failing to do so. This legal gap leads creditors to neglect their obligations, assuming that once the debtor repays the debt, their interest in the fiduciary security ends.

Similarly, in an interview with I Made Prima Praja Sarjana, he highlighted that the lack of clear legal consequences (in the form of sanctions) is a key reason why fiduciary recipients do not proceed with the deletion. He suggested that if strict sanctions were imposed, creditors would immediately delete fiduciary security once the debtor settles their obligations. However, in practice, creditors often wait until the debtor explicitly requests the deletion for personal or business reasons before notifying the Minister to remove the record.

A. Deletion of Fiduciary Security Registered in the Online System

It has been found that many Fiduciary recipients (creditors) fail to notify the removal of Fiduciary security after the Fiduciary provider (debtor) has fulfilled all of their obligations to the creditor as the Fiduciary recipient, causing significant harm to the debtor. This discrepancy between regulations and actual practices in the field poses an obstacle to the implementation of Fiduciary security removal.

Based on an interview with one of the creditors as the Fiduciary recipient, they explained that one of the reasons Fiduciary recipients do not proceed with the removal of Fiduciary security is the lack of awareness on their part. Additionally, another reason is the absence of sanctions imposed on Fiduciary recipients for failing to notify the

Minister about the removal of Fiduciary security. Although the Fiduciary Security Law requires Fiduciary recipients to notify the Minister of such removal, there are no specific regulations regarding sanctions for non-compliance. This lack of clarity regarding sanctions leads creditors, as Fiduciary recipients, to neglect the removal process. Furthermore, the absence of sanctions results in creditors tending to assume that once the debtor's debt is fully repaid, their interests are considered fulfilled.

According to I Made Prima Praja Sarjana, he also outlined several reasons why Fiduciary recipients do not proceed with the removal of Fiduciary security. One key reason is the lack of strict legal consequences in the form of sanctions if creditors, as Fiduciary recipients, fail to remove the Fiduciary security. He suggested that if strict sanctions were in place, creditors would likely proceed with the removal as soon as the debtor has fully repaid their debt. This could explain why creditors often neglect to notify the authorities about the removal.

Additionally, the lack of awareness among Fiduciary recipients regarding their obligation to report the removal of Fiduciary security is another contributing factor. Creditors tend to assume that once a debtor has repaid their debt, their own interests are fulfilled. As a result, they usually only notify the Minister for removal when the debtor explicitly requires it for their personal interests.

A. Legal Consequences of the Fiduciary Recipient's Negligence in Failing to Notify the Minister About the Removal of Fiduciary Security Registered in the Online System

The removal of Fiduciary security is an obligation of the Fiduciary recipient to prevent repeated Fiduciary security, which could significantly disadvantage the debtor. Repeated Fiduciary security occurs when an asset that has already been registered as Fiduciary security cannot be re-pledged or re-registered as Fiduciary security because the previous Fiduciary recipient has not removed the existing security.

Repeated Fiduciary security is prohibited because once an asset is burdened with Fiduciary security, its legal ownership has transferred to the Fiduciary recipient, even though the debtor may still possess it.

Currently, the registration and removal of Fiduciary security are conducted online, eliminating the possibility of repeated Fiduciary security. In the online system, if

an attempt is made to re-register an asset still recorded as Fiduciary security, the system will automatically reject the registration. The Fiduciary provider can only pledge the asset again after the previous Fiduciary security has been removed by the Fiduciary recipient, ensuring that the asset is free from any prior Fiduciary security records.

The purpose of removing Fiduciary security is to release the asset that serves as the object of Fiduciary security from any encumbrance. As long as the Fiduciary recipient has not processed the removal and the certificate of Fiduciary security remains valid, the asset in question remains legally bound as Fiduciary security.

Legal consequences arise from actions taken to achieve a legally regulated outcome. Legal consequences encompass all effects resulting from legal actions performed by legal subjects on legal objects or other outcomes determined by law due to specific events. In the context of Fiduciary security, the failure to remove the security can lead to continued restrictions on the asset's legal status, limiting the debtor's ability to use it freely, despite fulfilling their obligations.

The legal consequences of failing to remove Fiduciary security registered in the online system impact several aspects, namely:

1. Legal Consequences for the Fiduciary Provider (Debtor)

- The debtor remains burdened by the Fiduciary security even after fulfilling their obligations, restricting their ability to use the asset freely.
- The debtor may face difficulties in reusing the asset as collateral for future financial transactions.
- In cases where the asset needs to be transferred or sold, the unresolved Fiduciary security may create legal complications.

2. Legal Consequences for the Fiduciary Recipient (Creditor)

- The creditor may be seen as acting in bad faith if they fail to remove the Fiduciary security despite the debtor's full repayment.
- If the failure to remove the security causes losses to the debtor, the creditor may face civil liability claims.
- Prolonged non-compliance with removal obligations may lead to regulatory scrutiny or potential future sanctions if legal reforms are introduced.

3. Legal Consequences for the Object of Fiduciary Security

- The asset remains legally bound by the Fiduciary security, preventing its reuse in other financial or legal transactions.
- The online system will automatically reject any attempt to register the same asset for new Fiduciary security until the previous security is officially removed.
- The asset's status remains unclear, potentially leading to disputes or legal uncertainties in future ownership claims.

To avoid these issues, it is crucial for Fiduciary recipients to fulfill their obligation to notify the removal of Fiduciary security in a timely manner.

The legal consequence of failing to remove Fiduciary security for the Fiduciary provider (debtor) is that they will be unable to re-pledge the secured asset. According to Article 17(2) of Government Regulation No. 21 of 2015, if the Fiduciary recipient, their proxy, or their representative does not notify the removal of Fiduciary security as stipulated in Article 16, the related Fiduciary security cannot be re-registered. Similarly, Article 20(2) of Ministerial Regulation No. 25 of 2021 concerning Procedures for Registration, Modification, and Removal of Fiduciary Security states that if the applicant does not notify the removal of Fiduciary security as referred to in Article 19, the related Fiduciary security cannot be re-registered. As a result, if the debtor later wishes to enter into a new Fiduciary security agreement using the same asset, they will be unable to register it.

According to I Gede Prima Praja Sarjana, a Functional Legal Educator at the Ministry of Law and Human Rights, the legal consequence for the Fiduciary provider in such cases is that the secured asset cannot be re-registered for future Fiduciary security. Since the object remains recorded and encumbered as Fiduciary security, the debtor cannot register it again. With the online registration system, repeated Fiduciary security cannot occur—if an asset is still registered as Fiduciary security, any attempt to re-register it will be automatically rejected by the central online administration system of the Ministry of Law and Human Rights.

The legal consequence of failing to remove Fiduciary security for the Fiduciary

recipient (creditor) is that the juridical ownership of the Fiduciary security object remains with the Fiduciary recipient. As a result, the debtor (Fiduciary provider) cannot re-pledge the asset in the future because its juridical ownership is still under the control of the previous Fiduciary recipient. In this situation, the Fiduciary provider suffers losses due to the Fiduciary recipient's inaction. Ideally, once the debtor has fully repaid their debt, the Fiduciary recipient must return the juridical ownership of the asset to the Fiduciary provider. This should be done by fulfilling their obligation to notify the Minister of the Fiduciary security removal within a maximum period of fourteen (14) days from the date the debt is fully repaid.

The removal of Fiduciary security is mandatory to release the secured asset from encumbrance. As long as the Fiduciary recipient fails to remove the security and the certificate of Fiduciary security remains valid, the asset remains legally bound as Fiduciary security. Consequently, the debtor cannot freely use or re-pledge the asset until the security is officially removed.

The legal consequence of failing to remove Fiduciary security for the object of Fiduciary security is that the asset remains legally registered as Fiduciary security and cannot be re-registered for a new Fiduciary agreement. According to Article 17(2) of Government Regulation No. 21 of 2015, if the Fiduciary recipient, their proxy, or representative fails to notify the removal of Fiduciary security as required under Article 16, the Fiduciary security in question cannot be re-registered. If the removal is not processed, the secured asset remains recorded as Fiduciary security in the system. This leads to a significant impact:

- If the Fiduciary provider (debtor) attempts to re-register the asset for a new Fiduciary agreement, the system will automatically reject the registration because the asset is still listed as existing Fiduciary security.
- The debtor loses the ability to use the asset freely, especially for obtaining new financing.
- The legal status of the asset remains encumbered, preventing any transfer or re-pledging.

Thus, the Fiduciary recipient's failure to notify the removal not only affects the

debtor but also directly impacts the legal status of the secured asset, restricting its further use in financial transactions.

4. Conclusion

The implementation of Fiduciary security removal registered in the online system follows Article 16(2) of Government Regulation No. 21 of 2015 concerning Procedures for Fiduciary Security Registration and Fees for Creating Fiduciary Security Deeds. This regulation states that the Fiduciary recipient (creditor) is required to notify the Minister regarding the removal of Fiduciary security within a maximum period of 14 days after the debt secured by the Fiduciary has been fully repaid.

However, based on data analysis in this study, the implementation of Fiduciary security removal in the online system has not been effective. This is due to the failure of some Fiduciary recipients to fulfill their obligation of notifying the removal of Fiduciary security, even after the Fiduciary provider (debtor) has fully repaid their debt.

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