Execution Guarantee Fiduciary Consequence Debtor Default on Agreement
Credit

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Abstract
The result of the reformulation of the ideal of legal certainty is that there is a conflict regarding the meaning of legal certainty between debtors and creditors. Based on the definition of legal certainty according to Utrecht, debtors and creditors in practice cannot yet understand the limits of permissible and prohibited acts and there is still legal insecurity which causes arbitrariness. Many debtors are still embezzling fiduciary collateral objects, while many creditors are also carrying out forced withdrawals of fiduciary collateral objects. This analysis method uses a qualitative approach, namely to analyze the data used for normative aspects with a descriptive analysis method, namely describing the data in as much detail as possible regarding individuals and other symptoms. The aim of this method is to obtain and provide an overview of the data that has been obtained and relate them to each other with the aim of obtaining the truth. The fiduciary guarantee deed at least contains information regarding the identity of the parties entering into the fiduciary guarantee agreement, including the day, date and time, making a deed, data on the main agreement that is guaranteed by fiduciary, a description of the building which includes identification of the building and an explanation of the proof of ownership, the value of the guarantee and the value of the object that is the object of the fiduciary guarantee (Article 6 of Law No. 42 of 1999 concerning Fiduciary Guarantees). Moving on from this phenomenon, the author is interested in discussing this problem with the topic of the problem: What legal violations occurred in the practice of executing fiduciary guarantee objects after the enactment of Law Number 42 of 1999 concerning Fiduciary Guarantees. If the object of the collateral is a movable object, it can be bound by a fiduciary agreement. The success or failure of this form of fiduciary guarantee depends solely on the bona fides and good faith of the debtor.

1. Introduction
In order to increase national development which focuses on the economic and business sectors, quite large capital support is required. This capital can be obtained from various sources, one of which comes from loan or credit facilities provided by banks. The activity of borrowing and borrowing money or what is better known as credit in daily life practice is not something foreign, in fact the term credit is not only known by urban communities, but also extends to rural communities.
Credit generally functions to facilitate business activities, and especially for economic activities in Indonesia, it plays an important role in its position, both for production businesses and private businesses that are developed independently because they aim to improve the standard of living in society (Bahsan, 2008).

Funds lent by banks in providing credit facilities to debtors are funds originating from customer deposits which must be returned along with interest in accordance with the agreed agreement. To obtain certainty about the return of Constitution Number 18/PUU-XVII/2019, Constitutional Court Decision Number 2/PUU-XIX/2021, and Constitutional Court Decision Number 71/PUU-XIX/2021. The implementation of fiduciary guarantee execution auctions at KPKNL in the last 3 years (2019-2021) has been in accordance with regulations as evidenced by the absence of lawsuits against fiduciary guarantee execution auctions in court.

Constitutional Court Decision Number 18/PUU-XVII/2019, Constitutional Court Decision Number 2/PUU-XIX/2021, and Constitutional Court Decision Number 71/PUU-XIX/2021 only affect the pre-auction stage so that good administration at KPKNL results in the absence of lawsuit when the auction has taken place.

Compliance with the implementation of the auction with the underlying regulations does not guarantee that there will be no obstacles at each stage of the auction, both at the pre-auction, auction implementation and post-auction stages at KPKNL, the pre-auction stage is the preparation and administration stage before the auction. Regarding the auction for the execution of fiduciary guarantees at KPKNL, 2 (two) obstacles were found at that stage, namely the low frequency of auction requests and incomplete auction requirements documents.

The problem with the low frequency of auction requests is caused by the existence of alternative execution methods which are actually regulated in Law Number 42 of 1999 concerning Fiduciary Guarantees. There are still a lot of underhand sales main preference in executing fiduciary guarantee objects because it is more effective and efficient than through public auction. Moreover, the Constitutional Court’s decision means that execution through public auction is not the main option for finance companies (Supramono, G., 2009)

The problem is that the required documents are incomplete. The required documents in question are a statement of ownership of the object and an agreement to acknowledge breach of contract and that the object has been handed over voluntarily. This document is an additional document that must be available after the Constitutional Court Decision. The reasons why the finance company cannot complete the two letters are:

a. the collateral object has been seized by the operator;
b. the collateral object cannot be controlled in full 83 (eighty three),
c. there is a conflict between the execution of fiduciary guarantees and other executions, and
d. Difficulty in reaching an agreement due to breach of contract. This has led to many auction cancellations due to non-compliance with the formal legality of the auction subject and object.

The auction implementation stage is the bidding stage and determining the auction winner. Regarding the auction for the execution of fiduciary guarantees at KPKNL, 2 (two) obstacles were found at that stage, namely the auction had no takers (TAP) and the bidding competition was not tight enough. The problem with the no takers auction (TAP) at KPKNL is caused by several reasons, namely:

(1) the price or limit value is too high,
(2) the condition of the item is not very good,
(3) lack of marketing, and
(4) other legal issues such as lawsuits over plans to carry out fiduciary guarantee execution auctions.
Barriers to less tight bidding competition. Even though the goods sold continue to sell, the fiduciary goods that are executed are less popular with the public. Apart from auction factors that have no takers (price, condition of goods, marketing, and other legal issues), another thing that causes a lack of competition is the bad stereotype in society which assumes that execution goods are problematic items and too risky to spend more money on to buy it (Panggabean, HP., 2012).

The post-auction stage is the administration stage after the auction is held. In the auction for the execution of fiduciary guarantees at KPKNL, 1 problem was found at that stage, namely that the goods were not in suitable condition. The problem with the goods not being in suitable condition is caused by the nature of the movable goods themselves which are easily damaged, the time span from receiving the documents to the sale of the object, and auction participants who do not participate (aanwijzing). Reformulation of Article 15 paragraph (2) and paragraph (3) of Law Number 42 of 1999 concerning Fiduciary Guarantees Post Constitutional Court Decision Number 18/PUU-XVII/2019, Constitutional Court Decision Number 2/PUU-XIX/2021, and Court Decision Constitution Number 71/PUU-XIX/2021.

Reformulation is carried out by reviewing, exploring and reshaping the law in accordance with the legal ideals initiated by Gustav Radburch. Laws are made to fulfill the ideals of justice (philosophical), expediency (empirical), and legal certainty (juridical). The result of the reformulation of the ideals of justice is that there is a conflict of justice between debtors and creditors (Fuady, M., 2000).

Based on justice according to Aristotle, debtors are disadvantaged based on equality-based justice because previously they were not given the opportunity to defend themselves, while creditors are disadvantaged due to the Constitutional Court’s decision because distributive justice is disturbed due to defects in proportionality treatment because only creditors bring cases to court (Fuady, M., 2000).

The result of the reformulation of the ideal of utility is that there is a conflict of utility between the debtor and the creditor. Based on the flow of utilitarianism according to Bentham, debtors feel bad value due to executorial power which causes excess happiness for creditors but more suffering for debtors. On the other hand, after the Constitutional Court’s decision, creditors experienced poor values due to weak executorial powers and this resulted in legal loopholes for debtors to escape from collateral objects.

The result of the reformulation of the ideal of legal certainty is that there is a conflict regarding the meaning of legal certainty between debtors and creditors. Based on the definition of legal certainty according to Utrecht, debtors and creditors in practice, we are unable to understand the limits of permissible and prohibited acts and there is still legal insecurity which causes arbitrariness. Many debtors are still embezzling fiduciary collateral objects, while many creditors are also carrying out forced withdrawals of fiduciary collateral objects (Fuady, M., 2000).

The reformulation of these ideals caused the author to construct Article 15 paragraph (3) of Law Number 42 of 1999 concerning Fiduciary Guarantees and it should read "If the debtor and creditor agree on the existence of a breach of contract, the Fiduciary Recipient has the right to sell the object which is the object of the Fiduciary Guarantee on its own authority."

Not constructing Article 15 paragraph (2) to maintain the legal ideals felt by creditors. By adding the word "agree" it will accommodate the debtor’s goal of justice, the creditor’s goal of benefit, and the goal of legal benefit for both. This is also supported by the Constitutional Court Decision Number 71/PUU-XIX/2021 which limits the meaning of the authorized party in the Elucidation to Article 30 of Law Number 42 of 1999 to being limited to district courts (Fuady, M., 2000).
2. Research Methods

This analysis method uses a qualitative approach, namely to analyze the data used for normative aspects with a descriptive analysis method, namely describing the data in as much detail as possible regarding individuals and other symptoms. The aim of this method is to obtain and provide an overview of the data that has been obtained and relate them to each other with the aim of obtaining the truth. The data collection method used in this research is literature study. This literature study is useful for obtaining data in the form of legal theories, principles, doctrine and legal rules produced from primary legal materials and secondary legal materials.

3. Research Result and Discussions

3.1. Reasons Why the Fiduciary Guarantee Law Does Not Provide a Material Guarantee System

The understanding of collateral law to date appears inconsistent. Where Civil law reform is carried out not through codification but through partial renewal. On this, lawmakers are careful because renewal in a way Partial This contain danger. Rate danger the there is on part law guarantee, like Constitution right liability and fiduciary law, which are not in one system (Usman, R., 2011).

In other words, there is the possibility that these collateral rights will clash. So such caution must be emphasized in renewal partial law. We have seen this danger in this legal reform, especially in mortgage law and guarantee law fiduciary, namely there is a conflict regarding the object of object guarantee (Usman, R., 2011).

Viewed from facet system, birth Constitution right dependents And Constitution guarantee fiduciary give rise to impact on law object And guarantee national. The exit second invite invite This is on moment public Not yet own knowledge about principles law object And law guarantee, caused Not yet he took it out Constitution about law object and laws about guarantee right (Usman, R., 2011).

In deed guarantee fiduciary at least load information the identities of the parties entering into the fiduciary agreement are included day, date and time of making the deed, data on the main agreement guaranteed by fiduciary, description about building Which covers identification building the And explained regarding the proof of ownership, the guarantee amount and the value of the object which is the object of fiduciary guarantee (Article 6 Law no. 42 of 1999 About Guarantee Fiduciary). (Heriawanto, BK., 2019)

In the explanation of Article 6 sub (C) Law no. 42 of 1999 About Fiduciary Guarantee about description about the thing that is the object Fiduciary guarantee is one of the conditions that must be included in the deed fiduciary guarantee, which states that the description of the object becomes the object of fiduciary collateral is simply done by identifying the object, and explained about proof of ownership.

Matter This become so important If object That move hand in relationship in the event of execution or auction, re-guarantee of the same collateral object and where the right to the building must be proven its ownership And registered so that audience general can know as fulfillment principle publicity And specialty Which embraced in loading fiduciary guarantee. What then becomes the problem is that we have been there No know certification to building as sign proof right on building Which legitimate Which give authority owner building Fortake legal action against the building, and for that reason it cannot be done is known by audience general Because of course No registered in register general (Subekti, 2008).

Proof of ownership of the object that is the object of fiduciary collateral can be: documents and objects, How with proof ownership building/house in on land person other. "Status This building does not have its own identity book as proof of title land form certificate. In matter This Constitution
Norm conflicts are also found in Article 15 paragraph (3) and Article 29 paragraph (1) Constitution No. 42 Year 1999 About Guarantee Fiduciary in essence arrange implementation execution Which held by creditor Alone Which known as parate executie contrary to Article 29 paragraph (1) b, (1)c, and Article 31, confirmed in Article 32 of Law no. 42 of 1999 Regarding Fiduciary Guarantees, which essentially regulates the implementation of execution with permission giver Fiduciary or through public auction nor court fiat. (Rufaida, K.K., 2019)

Parate execution aims to provide convenience to creditors fiduciary recipient when the fiduciary debtor defaults, the creditor can sell the fiduciary collateral object themselves without intermediary or approval from court. According to Subekti state that: Parate execute is run it yourself or take for yourself what is rightfully yours, in the sense of without intermediary judge, Which addressed on something goods guarantee For furthermore sell own thing the.

Meanwhile, Order opinion, the execution was carried out himself by holder of security rights (pledges and mortgages) without assistance or interference hands of the district court, but only based on the assistance of the auction office country only. In connection with the existence of a conflict of norms in the Articles of the Law Invite No. 42 Year 1999 About Guarantee Fiduciary, important For It is known that there is a hierarchy of statutory regulations as regulated in Law Number 10 of 2004 concerning the Formation of Legislative Regulations.

According to JW Harris, “There are four legal principles in systematizing legal rules according to their levels. The legal principles in question are exclusion, subsumption, derogation and the principle of non-contradiction.” If there is a conflict of norms between a higher regulation and a lower regulation that regulates the same material, then based on the principle of lex superiori derogate legi inferior the higher legal rule has validity (Ashibly, 2018)

Norm conflicts may also occur between general regulations and specific regulations that regulate the same material. If this happens then the special regulations will have effect based on the principle of lex specialis derogate legi generali. Norm conflicts can also occur if there are old and new legal regulations that regulate the same material. If the promulgation of a new regulation does not revoke the old regulation which regulates the same material while both conflict with each other, then the new regulation will have effect based on the principle of lex posteriori derogate legi priori (Ashibly, 2018).

In Law no. 42 of 1999 concerning Fiduciary Guarantees is not a conflict of norms that can be resolved based on these three principles, but norms in articles of the same legal rule that contradict each other or in one law there are articles that conflict. bring up conflict norm so that violate principles non-contradiction. JW Haris emphasized What what is meant by principle Non Contradiction who wrote it as following:

*By non-contradiction is meant that principle in accordance with which is legal science rejects the possibility of describing a legal system in such a way that one could affirm the existence of a duty and also the non-existence of a duty covering the same act situation on the same occasion.*
Can means more not enough as following:

“By non-contradiction it means that the principles follow, science a law that rejects the possibilities that explain something legal system in a way that one can assert its existence A obligation, And also non-existence A task, covers situational action Which The same at the incident Which The same”.

In the legal theory that Haris means, it is a manufacturing error articles in something rule law Which each other contradictory so that giving rise to normal conflict must be avoided. As has been discussed previously, Also according to Bruggink, connection Which each other opposite (tegenspraak) in where in logic connection sort of This Which called Contradictory relationships must not occur in a statutory regulation. This matter clearly did not receive adequate attention from the legislators. Invite No. 42 of 1999 About Fiduciary Guarantee (Ashibly, 2018)

3.2 Problems with Various Regulations on the Execution of Fiduciary Security Objects (Legal Violations in the Execution of Fiduciary Security Objects)

On initially, provision law about institution guarantee fiduciary in Indonesia only base on jurisprudence just. However remember Institution Fiduciary guarantees are increasingly being used in business and government activities finally intervened by making regulations in the form of laws to provide legal certainty and legal protection for both parties creditors as well debtor party (Fuady, Munir., 2013)

Currently, fiduciary institutions have received internal regulation Law Number 42 of 1999 concerning Fiduciary Guarantees. In law The law has stipulated provisions that must be fulfilled and obeyed in do agreement guarantee fiduciary, including among them is provisions requiring registration of fiduciary collateral objects at the Office Registration Fiduciary (Chapter 11 paragraph (1) jo Chapter 12 paragraph (1) Constitution Number 42 of 1999). Since its promulgation on September 30 1999, in the practice of granting credit with fiduciary guarantees that should refer to in Law Number 42 of 1999 concerning Fiduciary Guarantees apparently There are still many violations occurring, as one example is still Lots party bank nor Banking (finance) Which No register object guarantee fiduciary to the Fiduciary Registration Office (Fuady, Munir., 2013).

Move on from phenomenon That, writer interested discuss problem with the problem topic: What are the legal violations? occurred in the practice of executing the objects of fiduciary guarantees after the enactment of the Law Law Number 42 of 1999 concerning Fiduciary Guarantees. When that becomes The collateral object is a movable object so it can be bound by an agreement fiduciary guarantee. The success or failure of this form of fiduciary guarantee depends solely on the success or failure of this form of fiduciary guarantee depending on bona fides and faith both debtors (Bahsan, M., 2007).

The definition of fiduciary as regulated in the provisions of Article 1 number 1 Constitution Number 42 Years 1999 is “diversion right ownership something object on base trust with provision that object Which its ownership redirected the still in owner’s control object”.

Based on definition the, There is 3 (three) characteristic fiduciary that is:

1. Redirection right ownership of a object;
2. On base trust;
3. Object That still in mastery owner object

Furthermore, in Article 1 number 2 of Law Number 42 of 1999 arranged about understanding Guarantee Fiduciary that is right guarantee on object moving both tangible and intangible and moving objects who cannot be burdened with mortgage rights as regulated in the Law Law Number 4 of 1996 concerning Mortgage Rights that remain in control of the fiduciary, as collateral for the repayment of certain debts give position Which takes priority to recipient
fiduciary to creditor other (Kusumaningtyas, RF., 2016). As for Which can made object guarantee fiduciary isas follows: (Kusumaningtyas, RF., 2016)

a. Tangible moving objects such as merchandise, inventory (objects in stock), machine tools, motor vehicles etc.;

b. Object move Which No tangible including share, receivables;

c. Things don’t moves that cannot be tied to mortgage rights, for example building owned by debtor Which stand in on land owned by personanother or land right use from the party other.

To loading with guarantee fiduciary must fulfill provision:

1. Must be made with a Notarial deed and in Indonesian (Article 5 Constitution Number 42 Years 1999);

2. Deed guarantee fiduciary at least load:
   a. Identity party giver And fiduciary recipient;
   b. Data main agreement Which guaranteed fiduciary;
   c. Description about object Which become object guarantee fiduciary;
   d. Guarantee value; and the value of the object that is the object of collateral fiduciary (Art 6 Law Number 42 Year 1999).

   Every object encumbered with fiduciary collateral must be registered at Fiduciary Registration Office. The parties who are required to register are: the fiduciary recipient (creditor) or their proxy or representative. Registration Office The fiduciary will record the fiduciary guarantee in the Fiduciary Register Book on the date Which The same with date reception application guarantee registration fiduciary (Hafidah, Noor., 2017)

   Date recording guarantee fiduciary on Book List Fiduciary is considered as date birth guarantee fiduciary. Since its implementation Constitution Number 42 Year 1999 about Guarantee Fiduciary, inits implementation Still there is violations law Good Which done by party creditor (recipient fiduciary) nor by party debtor (fiduciary). Violations often committed by creditors is as following:

3.2.1. Creditors do not register fiduciary collateral objects at the Fiduciary Registration Office.

   This violation is usually carried out by banks and commercial banks the loan value is small. In this case the bank is ready to bear the risk if bad credit occurs. Many people don’t have banking (finance). registering its fiduciary guarantee for reasons of efficiency in dealing with competition with Banking other. Chapter 11 paragraph (1) Law Invite Number 42 Year 1999 Already arrange that object Which burdened with guarantee fiduciary must be registered (Hafidah, Noor., 2017).

   For fiduciary guarantees that are not registered, the provisions are: in Constitution No 42 Year 1999 About Guarantee Fiduciary No apply, in other words for the provisions in the Law to come into force Law No. 42 of 1999 concerning Fiduciary Guarantees must be fulfilled the fiduciary collateral is registered. Creditors who do not register objects fiduciary guarantees at the Fiduciary Registration Office cannot enjoy the benefits benefit from the provisions in the fiduciary law such as for example rights preferred or rights take precedence (Kamello, H.T., & SH, M., 2022).

   Another consequence of not registering a fiduciary guarantee object is that if the debtor defaults then the creditor cannot immediately do so execution to guarantee fidus age. However must go through lawsuit in a way civil in court based on provision Book Constitution Law Civil (Civil Code). If Already There is decision court Which has obtains permanent legal force then execution can be requested against its collateral object fiduciary (Paparang, F., 2014).

3.2.2. Fiduciary Registration is Carried Out After the Debtor Defaults.

   Violation This Still Lots done by Banking (finance) for the reasons stated above. At the time of the debtor Starting from default, the new finance company registered the fiduciary guarantee
object in order to fulfill the requirements for carrying out execution against object of fiduciary guarantee. The trigger for this financial institution’s action was due to: Constitution about Guarantee Fiduciary No arranged provision about the expiration of the fiduciary guarantee registration so that the Fiduciary Registration Office does not have reason for reject application registration fiduciary. Which agreement the credit signed in a long time (usually 2-3 years before registered). (Raharjo, Handri., 2009)

Even though there are no regulations regarding the expiration date for registering fiduciary guarantees, However, in Article 14 sub 3 of Law Number 42 of 1999 concerning Fiduciary guarantees have been regulated that fiduciary guarantees are born on the same date with the date of registration of the fiduciary guarantee as recorded in the Book List of Fiduciaries. Therefore, if there are several credit agreements made year which then but registration fiduciary guarantee new done later then the validity of the fiduciary guarantee is when it is registered, not when agreement credit signed or on moment signing deed notarial. The consequences is events law that happened before registration guarantee fiduciary No applies provisions in Law Invite about Guarantee Fiduciary. (Winarno, J., 2013).

4. Conclusion

The reason why fiduciary law does not provide a material guarantee system is that the understanding of guarantee law currently seems inconsistent. Where civil law reform is carried out not through codification but through partial renewal. In this regard, lawmakers are careful because this partial reform contains dangers. This level of danger is found in some guarantee laws, such as the mortgage law and the fiduciary guarantee law, which are not in the same system. Problems with various regulations for the execution of fiduciary collateral objects (legal violations in the execution of collateral objects. Moving on from this phenomenon, the author is interested in discussing these problems with the topic of the problem: What legal violations occurred in the practice of executing fiduciary collateral objects after the enactment of Law Number 42 1999 concerning Fiduciary Guarantees. If the object of the collateral is a movable object, it can be bound by a fiduciary guarantee agreement. The success or failure of this form of fiduciary guarantee depends solely on the bona fides and good faith of the debtor.

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