

Analysis of Fiduciary Guarantee Items Transmitted by Debtors from a Legal Perspective

Original Article

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Abstract

The demand for finance rises in tandem with the expansion of development activities, and the majority of the money required to satisfy these needs may be acquired through borrowing and borrowing activities, one of which is through financial institutions' services. This study aims to determine the status of the debtor transferred in accordance with the terms of the agreement, according to the fiduciary guarantee object. and to find out about the credit settlement attempts that the debtor made. Normative juridical research methodology is employed in the scientific study of fiduciary guarantee law. The study's findings indicate that in order to ascertain the legal standing of the fiduciary guarantee object that the debtor transferred, registration is necessary. This gives the creditor legal certainty regarding the fiduciary guarantee object's legal position, and negotiations with the debtor and other parties who consent to the transfer of the fiduciary guarantee object are used to carry out credit settlement activities. The result shows that because the fiduciary guarantee object transmitted by the debtor only registers a portion of the fiduciary promise, it has a weak legal standing, allowing the debtor to transfer the unregistered fiduciary guarantee object. In an attempt to replace the collateral that was transferred to a third party with an item that belongs to the debtor and has a value equal to the transferred collateral, creditors have applied dispute resolution through a non-litigation settlement method that involves negotiation and mediation between the parties.

Keywords: Dispute, The Parties, Guarantee, Legal Remedies.

1. Introduction

The fiduciary guarantee institution is one of the guarantee institutions frequently utilized in financial institution services. Since the Dutch colonial era, fiduciary assurances have been utilized in Indonesia as a type of guarantee derived from legal precedent. Although it is often seen as lacking legal certainty, since the charging process is seen as simple, rapid, and uncomplicated, this kind of collateral is commonly used in borrowing and borrowing operations. Fiduciaries have undergone substantial changes throughout the years, such as in relation to the parties' position when they engage into agreements with fiduciary directors Tees (Panjukang et al., 2025).

According to Law Number 42 of 1999 concerning fiduciary guarantees (UUJF), fiduciary refers to the transfer of an item's ownership rights based on trust, as long as the owner still has possession of the item whose ownership rights are transferred. Accordingly, granting the creditor property rights from the debtor in line with the fundamental agreement is known as fiduciary; nevertheless, only the rights legally and exclusively held by the creditor in trust are transferred, while the commodities remain under the debtor's control. Knowing what the fiduciary must do in the event of a default is essential in relation to this assurance (Fitrian & Aslami, 2024).



The imposition of fiduciary promises is governed by the Fiduciary Guarantee Law. Therefore, legal certainty is established by imposing material with fiduciary assurances through a notary deed, which is a fiduciary guarantee deed. Law No. 42 of 1999, paragraph 1 of Article 5 (Winarno, 2023). Article 11 of the UJF stipulates that "objects encumbered with fiduciary guarantees must be registered"; this requirement is also necessary to provide interested parties with legal assurance regarding fiduciary guarantee registration. Accordingly, the situation of creditors may be impacted in the case of a debtor default (Siregar, 2025). In contrast to other creditors, the creditor enjoys a privileged position (*droit de preference*) for the settlement of its receivables based on the outcomes of the collateral's execution (Lubis & Harahap, 2023).

Fiduciary guarantees are not guaranteed to be transferred by a debtor just because they are registered, within the terms of the fiduciary guarantee law, Law No. 42 of 1999. UJF Article 23 paragraph (2) permits the transfer of fiduciary guarantees, this includes the clauses listed below: "The fiduciary is not allowed to rent, pawn, or transfer to third parties items that are not inventory but are the subject of fiduciary assurances unless the fiduciary has given prior written approval" (Afandi, 2023).

The objects covered by fiduciary guarantees must be registered with the fiduciary registration office in order for fiduciary guarantees to be created for the fiduciary beneficiaries, provide other creditors with legal assurance about the assets covered by fiduciary assurances, since anybody may visit the registration office, it satisfies the publicity principle and grants other creditors priority rights (Sadewa et al., 2023). The registration application is submitted to the fiduciary registration office on the same day that the fiduciary assurance is entered into the fiduciary registration book. A fiduciary guarantee certificate is issued and given to the fiduciary beneficiary by the fiduciary registration office after fiduciary registration. The fiduciary guarantee was created on the same day that it was recorded in the fiduciary register book, based on this certificate, which is a duplicate of the book containing documentation of the things mentioned in the registration for fiduciary guarantees (Satory et al., 2024). According to the fiduciary assurance certificate, "*Considering the One Godhead as the foundation for justice*", also appears (Markum et al., 2021).

The executory authority of a fiduciary assurance certificate is equivalent to a court ruling with perpetual legal force (Hanim et al., 2023). The fiduciary must submit a registration application to the fiduciary if any of the things specified in the fiduciary guarantee certificate change. The day the change application is received, the fiduciary registration office records the modification in the fiduciary register book and prepares a statement of change, which is a crucial component of the fiduciary certificate (Haroen, 2022).

According to the aforementioned, despite the fact that the object of the fiduciary guarantee had been recorded, a legal event took place when the debtor (fiduciary) transferred it before the receivables were fully repaid. This may obviously be harmful to the fiduciary, or creditor. The target of the fiduciary assurance is often transferred by the debtor without the creditor's consent, even though the laws state that this can-not be done without the creditor's agreement. It means that the creditor may no longer execute an item of collateral as a replacement for the debtor's receivables' repayment when the debtor is having trouble doing so.

2. Methods

By examining the relevant legal norms, a normative legal research technique was used in this study. The three methods used in this normative legal study are the historical, conceptual, and statutory approaches. Library research, which involves looking at different laws, legal experts' opinions, legal theory, and the evolution of fiduciary guarantee law, is the method used to gather legal documents. This study's conclusions and legal concerns are presented using the text analysis approach, also known as content analysis, and are examined prescriptivistically using legal reasoning and logic.

The primary source of data for this study comes from secondary data types, which are derived from literature reviews in the manner in which the researcher examines numerous legal texts and legislation that are relevant to the research issues. The main, secondary, and tertiary legal resources are the sources of the secondary data used in this investigation. The majority of the legal information is found in the Civil Code, Law Number 42 of 1999 concerning Fiduciary Guarantees, and the Republic of Indonesia's 1945 Constitution.

Book and document investigations are among the data collecting techniques employed in this study. Literature studies seek to find secondary data by looking at and analyzing literature materials, which include books, journals, articles, and online libraries pertaining to research problems. Document studies, on the other hand, identify and examine laws, regulations, and legal documents as the primary legal material for this normative legal research. Deductive reasoning and a qualitative, legally normative methodology were used to analyze the data for this study. Research data or materials are categorized for in depth analysis by looking at the guiding principles, values, and main norms they incorporate. This is done after researchers have collected primary, secondary, and tertiary legal resources using the legal inventory technique. The researcher then compares them with other laws to find any similarities or differences between these regulations and laws.

3. Results and Discussion

3.1. The Fiduciary Guarantee Object Transferred by the Debtor Under the Agreement and Its Legal Status

The placement of the fiduciary guarantee object in the fiduciary guarantee agreement necessitates a legally binding agreement beforehand in order to avoid legal vulnerabilities. The goal of fiduciary collateral must be registered in order to provide creditors with legal clarity (Alfitra, 2021). "Fiduciary guarantee encumbered objects need to be registered," in accordance with UUJF Article 11, which regulates fiduciary guarantor registration. The mechanism for registering fiduciary guarantees has the following goals: (Wilianita et al., 2024)

- 1) furnish interested parties with legal clarity about the item that has been burdened with fiduciary promises, particularly other creditors.
- 2) establishing a fiduciary relationship with creditors.
- 3) granting creditors preference over other creditors because the fiduciary retains control over the trust based fiduciary guarantee's purpose.
- 4) by requiring the registration of fiduciary promises, the publicity principle is being fulfilled. The publicity principle has been fulfilled in addition to giving other creditors certainty regarding the things that are covered by fiduciary assurances (Daming & Stindyana, 2022).

This is consistent with the material nature of the fiduciary assurance, or *droit de suite*. The right of difference in this instance serves to provide the material right holder a powerful

position (Zulfikar, 2022). The idea that the collateral belongs to the guarantor and that the guarantor is essentially still permitted to seize possession of the collateral throughout the guarantee is abandoned. The fiduciary guarantee object status was transferred by the debtor. A notary deed (AJF) fulfills the fiduciary duty, and it is subsequently registered with the Fiduciary Registration Office of the Department of Law and Human Rights. This is in compliance with the terms of the Fiduciary Guarantees Law Number 42 of 1999, which state that the fiduciary function itself must be completed in two phases: Fiduciary guarantee registration (regulated by UUJF article 11) and the responsibility of fiduciary (governed by articles 4 to 10 of the UUJF) (Utami et al., 2021).

Utilizing a guarantee with a fiduciary guarantee has become a technique in guaranteeing with fiduciary guarantees, and the debtor must pay the consequences of not being able to receive the loan expenses since there are costs associated with registration. Article 14 paragraph (1) serves as the foundation for the fiduciary's demonstration of his fiduciary guarantee status, which states that the certificate issued the same day that the application for registration is received and article 14 paragraph (3), which states that the fiduciary guarantee's birth according to the UUJF occurs on the date it is entered into the fiduciary register book (Hedistira & Pujiyono, 2020). Government Regulation Number 21 of 2015, Article 3 about the steps for registering a fiduciary guarantee and the price of filing a fiduciary guarantee deed state that the application for fiduciary guarantee registration must be filed 30 days from the date of the fiduciary guarantee deed's execution, at the latest. Registered fiduciary guarantees give creditors legal protection and the position of the collateral object in the event that collateral is executed in a transfer to rescue credit (Bela & Raffles, 2021).

3.2. Credit Settlement Using Fiduciary Assurances Whose Purpose is Conveyed by The Debtor

The resolution of credit with transferred fiduciary assurances can be accomplished through both non litigation and litigation procedures. The use of settlement using nonlitigation measures, such as negotiation and mediation, is given priority in the process of attempts to settle loans due to default (Viswari et al., 2021). When using fiduciary assurances to resolve issues, particularly when they prevent issues from arising via the judicial system. Negotiation or mediation are given priority if the legal process requires a lengthy settlement process and a significant financial investment. Seven days after the last installment's due date, the debtor receives the first summons, which is the first action performed; nevertheless, the debt-or does not act in good faith. It causes the creditor to issue a second summons seven days following the initial one. Nevertheless, the debtor continues to be in arrears and fails to make payments until the second summons is sent, and they continue to ignore the final summons (Boham et al., 2024).

According to Article 27 of UUJF No.42 of 1999, creditors have powerful legal standing and their rights over those of other creditors. However, in order to prevent protracted disputes, mediation is used to try to resolve the issue (Nurmelinda, 2021). Concerning the debtor substituting another object for the third party object of the fiduciary guarantee, according to *droit de suite*, which is the fiduciary guarantee's material nature, the following is confirmed by Article 20 of the UUJF: "The owner's authority over the fiduciary guarantee item is tracked by the fiduciary guarantee, except in cases when the inventory item covered by the fiduciary assurance is transferred". The object's fiduciary rights remain in effect until it is transferred to any recipient, including other parties, due to the nature of the *droit de suite* under fiduciary law. As a result, the holder of the appropriate right of the fiduciary collateral shall get the third party's collateral back.

4. Conclusion

The debtor can transfer the unregistered fiduciary guarantee object because the legal position of the fiduciary guarantee object that the debtor transfers is weak since it only registers a portion of the fiduciary promise. The fiduciary guarantee object's legal status is poor since it does not provide legal protection for creditors or for execution. This is because, although the creditor has registered in accordance with the UUJF's provisions, the creditor does not register the full fiduciary promise when the fiduciary guarantee agreement is executed. taking into account the expenses or losses that the debtor would incur. The nonlitigation settlement approach, which involves mediation and discussion between creditors, debtors, and third parties, has made it possible for creditors to implement the dispute resolution process they have been carrying out. The purpose of negotiation and mediation is to exchange the debtor's property for the collateral that was transferred to a third party, whose value is equal to the transferred collateral object. The creditor has substantial rights over the object of fiduciary guarantee, regardless of its location.

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