LEGAL IMPLICATIONS OF THE UNILATERAL WITHDRAWAL OF FIDUCIARY GUARANTEE OBJECTS BY THE CREDITOR WITHOUT FOLLOWING LEGAL PROCEDURES

Raihan Ainurridho Matondang, Eka N.A.M Sihombing
Email: raihan123@gmail.com

Universitas Muhammadiyah Sumatera Utara

ABSTRACT

The phenomenon of unilateral withdrawal of fiduciary collateral by creditors without proper procedures has become a serious problem in consumer financing practices in Indonesia. Many debtors experience forced repossession of collateral, such as motor vehicles, by debt collectors, who often use unlawful methods. This study aims to analyze the legal procedures for withdrawal of fiduciary collateral according to Law Number 42 of 1999, the legal consequences for creditors who carry out unilateral withdrawals, and the legal remedies debtors can take in dealing with this situation.

The research method used in this study is normative legal with a case study approach. This research analyzes applicable laws and regulations, relevant legal doctrine, and field practices related to the withdrawal of fiduciary collateral. Data was collected through literature review and interviews with relevant parties, such as debtors, creditors, and legal practitioners.

The research results show that unilateral withdrawal of fiduciary collateral by creditors without following legal procedures constitutes a violation that can lead to various legal consequences. Based on the research results, the procedure for withdrawing fiduciary collateral must be carried out in accordance with the provisions stipulated in Law Number 42 of 1999, including registration at the Fiduciary Registration Office and the issuance of a fiduciary collateral certificate. If creditors violate these provisions, they may be subject to criminal and civil sanctions, including claims for compensation from the debtor. The legal consequence for creditors who unilaterally withdraw collateral is the loss of preferential rights over the fiduciary collateral. In this case, the creditor cannot execute the collateral object without going through a legal process. In addition, the act of unlawful withdrawal can potentially give rise to a civil lawsuit by the debtor, who is entitled to compensation for losses suffered due to the unauthorized withdrawal. Debtors have a number of legal remedies that can be taken if they

experience an unauthorized withdrawal of fiduciary collateral objects. They can ask the financing company to show a valid fiduciary collateral certificate, and if they cannot show one, the debtor does not need to hand over the collateral object. Debtors can also report unlawful acts to authorities, such as the Financial Services Authority or the Ministry of Finance, to obtain better legal protection.

Keywords: Fiduciary Guarantee, Object Withdrawal

A. Introduction

Consumer financing agreements contain a debt agreement. The financing provided to the consumer, as the debtor, constitutes a debt equal to the amount of the financing provided, along with interest, as agreed upon by the parties. Given that financing agreements involve a principal obligation in the form of debt, financing services generally require adequate collateral.

In carrying out their functions, financing institutions provide capital services that include several forms, such as: a) leasing; b) purchases with indirect payments; c) meeting financing needs; and d) other financing permitted by the Financial Services Authority. Financing is disbursed through the provision of funds that enable debtors to purchase goods from third-party suppliers. These funds are provided based on a financing contract with the company, which requires the debtor to repay the loan within a certain period, along with interest and additional fees as agreed.[1]

In their operations, financing institutions consistently manage risk by transferring the risk of the financed or collateralized assets through the imposition of Fiduciary Guarantees. Fiduciary guarantees are collateral rights over movable or immovable assets, tangible or intangible, that serve as collateral for debt repayment. For example, in a vehicle financing scheme, temporary ownership of the financed vehicle is transferred to the financing institution until all installments are paid off by the debtor.

The provision of a fiduciary guarantee is an agreement that is accessory to a principal agreement as stated in the explanation of Article 6 letter b of Law No. 42 of 1999 concerning Fiduciary Guarantees and must be made with a notarial deed called a Fiduciary Guarantee deed.

Fiduciary Provider, as collateral for the repayment of certain debts, which gives the Fiduciary Recipient a priority position over other creditors. Article 4 itself states that Fiduciary

[1]Fedhli Faisal. 2024. Execution of Fiduciary Guarantee Objects by Separatist Creditors in Bankruptcy Cases, Collegium Studiosum Journal, VOL. 7 NO. 2, December 2024, page 328.

Guarantee is a supporting agreement and a principal agreement that creates an obligation for the parties to fulfill a certain performance.[2]

The fiduciary provisions above certainly provide clear legal guarantees regarding any issues that arise in the implementation of fiduciary guarantees. However, in reality, many issues still arise from vigilante actions that occur when one party defaults.[3]

According to the Minister of Finance Regulation for financing companies, leasing parties cannot take vehicles by force. This is stated in Article 3 of the Minister of Finance Regulation (PMK) No. 130 / PMK.010 / 2012 concerning Fiduciary Registration for Financing Companies "Financing Companies are prohibited from withdrawing fiduciary collateral in the form of motor vehicles if the fiduciary registration has not issued a fiduciary guarantee certificate and handed it over to the financing company. However, this is different from the practice that occurs in the field, namely debt collectors repossessing motorcycles as credit objects whose credit is in default due to the debtor's lack of knowledge of the law so that many debtors resign to having their motorcycles taken or confiscated.

The taking of goods by debt collectors cannot be taken arbitrarily, but must follow the existing procedures in accordance with the Regulation of the Ministry of Finance No. 10 of 2012. The Constitutional Court Decision Number 18/PUU-XVII/2019 emphasizes that creditors or financing institutions may not immediately withdraw or execute collateral without the consent of the debtor or a court decision, so that this provides more protection for debtors and consumers in the financing industry and avoids arbitrary actions from creditors.

As the recipient of the guarantee, the financing institution has the right to demand the delivery of the collateral if the debtor defaults. Based on Article 27 paragraph (3) of Law Number 42 of 1999 concerning Fiduciary Guarantees, fiduciary creditors still have the right of execution even if the debtor is declared bankrupt. This provision is strengthened by Law Number 37 of 2004 concerning Bankruptcy and PKPU, which states that fiduciary creditors can execute their guarantees as if there were no bankruptcy process.

Thus, the rights of fiduciary creditors are not affected by the debtor's bankruptcy status. However, the fiduciary creditor's right of execution is not absolute. After execution is carried out, the creditor is required to provide a report to the curator regarding the proceeds from the

[2]Diah Sulistyani RS, Muhammad Junaidi, (2019) Execution of Fiduciary Guarantee in the Study of Law Number 42 of 1999 concerning Fiduciary Guarantee Soegianto, IUS Constituendum Journal, Volume 4 Number 2 October 2019, p. 211

[3]Ibid.

sale of the collateral assets. The creditor must also submit the excess proceeds from the sale, after deducting the amount of debt, interest, and related costs, to the curator. Article 59 paragraph (1) of the Bankruptcy and PKPU Law stipulates that fiduciary creditors must execute their rights within a maximum of two months from the start of the insolvency situation. If the creditor does not do so within this time limit, their right of execution is transferred to the curator.

The withdrawal of fiduciary guarantees by several finance companies in Kendari City was not carried out in accordance with the applicable laws and regulations as stipulated in Article 11 of Law No. 42 of 1999 concerning Fiduciary Guarantees in conjunction with Regulation of the Minister of Finance Number: 130 of 2012 in conjunction with Constitutional Court Decision Number: 18/PUU-XII/2019 dated January 6, 2020, one of the considerations and rulings of which states "That the Fiduciary Recipient (Creditor) may not carry out the execution himself but must submit an application to the District Court for its implementation.

Direct execution (parate execution) carried out by financing companies on fiduciary collateral can sometimes result in rejection and conflict because the debtor is unwilling to voluntarily surrender the fiduciary collateral. This refusal occurs because debt collectors resort to forceful seizure, or even violence, of the fiduciary collateral held by the debtor when withdrawing the fiduciary collateral.[4]

Whereas in the Regulation of the Minister of Finance of the Republic of Indonesia Number 130/PMK.010/2012 concerning the registration of fiduciary guarantees for financing companies that carry out consumer financing for motor vehicles with the burden of fiduciary guarantees as regulated in Article 4 that the Withdrawal of fiduciary guarantee objects in the form of motor vehicles by the Financing Company must fulfill the provisions and requirements as regulated in the law regarding fiduciary guarantees and have been agreed upon by the parties in the motor vehicle consumer financing agreement.

B. Research Methods

[4]Robert Bouzen1, Ashibly (2021). “Implementation of Fiduciary Guarantee Execution Against Defaulting Debtors Following the Issuance of Constitutional Court Decision Number 18/Puu-XVII/2019”, Jurnal Ide Hukum, Vol.03 No.02 December, Page 149

A study cannot be called research if it does not have a research method.[5] Research methods are one of the factors of a problem that will be discussed. The study was conducted using secondary data which was analyzed qualitatively using the Desk Research Method. The literature materials used in writing this research are several references originating from research results, studies, and reviews of several writings which are then summarized into a scientific paper.[6]

C. Discussion

1. ProcedureWithdrawal of Fiduciary Guarantee Objects that are Legal According to Law Number 42 of 1999 concerning Fiduciary Guarantees

Guarantee is defined as an effort to ensure that obligations that can be assessed in monetary form, which arise from an agreement general, will be fulfilled.[7]On the other hand, collateral law refers to the overall legal principles governing the interaction between the party providing collateral and the party receiving it, particularly in the context of providing collateral to obtain credit facilities. Collateral law is understood as a set of regulations governing collateral for receivables between a creditor and a debtor. In short, collateral law is the law that regulates aspects related to collateral for receivables.

Based on this explanation, collateral is essentially something provided by a creditor to ensure that an obligation to pay a certain amount of money arising from an agreement can be fulfilled. Meanwhile, collateral law is a collection of legal rules governing the fulfillment of obligations regarding that specific amount of money.

Based on their nature, guarantees are classified into two types: general and specific. A general guarantee is a form of insurance against the creditor, covering all of the debtor's assets. It is called general because its purpose is to provide a guarantee to all creditors as a result of the agreement with the debtor.

The guarantee also covers all of the debtor's assets. Thus, based on the guarantee that has been given[8], the position between creditors is equal, giving no preference to any one of

---

[5] Hanifah, I., Hariyanto, H., Ginting, L., Koto, I., & Syafriana, R. (2026). Legal Protection of Indonesia's Fisheries from Foreign Investment: A Social-State Approach. *Jurnal IUS Kajian Hukum dan Keadilan*, *14*(1).

[6] Simatupang, R. S. A., Hanifah, I., & Mansar, A. (2025). The Concept of Restitution as Legal Accountability in the Crime of Human Trafficking. Pena Justisia: Media Komunikasi dan Kajian Hukum, 24(1), 3554-3462.

[7]Karnelo, Tan. 2024. Fiduciary Guarantee Law, Bandung: PT Alumni, page 46.

[8]Fedhli Faisal, 2024. Execution of Fiduciary Guarantee Objects by Separatist Creditors in Bankruptcy Cases. Collegium Studiosum Journal, Vol. 7 No. 2, December 2024, Page 330.

them. Therefore, each creditor has equal rights in the receivables they own. Therefore, the settlement of liabilities to creditors is equal, meaning there is no priority or preference given to one party over the other. Regarding this general guarantee, Articles 1131 and 1132 of the Civil Code explain.

Article 1131 explains that: “All assets belonging to the debtor, both movable and immovable, including assets currently owned and those to be owned in the future, are used as collateral to fulfill all obligations arising from the agreements that have been made. In other words, all of the debtor's assets, without exception, can be used as collateral to ensure that all financial obligations arising from existing obligations or contracts can be fulfilled. This provides assurance to the lender that they have the right to the debtor's assets in the event of default.”

Article 1132 explains more or less as follows: "The debtor's assets serve as collective collateral for all parties who have provided loans to him. If these assets are sold, the proceeds will be divided proportionally based on the amount of each creditor's receivables. However, this distribution may change if any of the creditors has a legitimate reason to receive priority in the repayment of their receivables."

The general validity of the guarantee is directly mandated by law, eliminating the need for a memorandum of understanding between the parties or specific regulations. This guarantee allows creditors to receive full repayment of unfulfilled debts. Payment of the debtor's obligations comes from the debtor's assets, which are disposed of through sale, and then distributed proportionally according to the size of the creditors' claims. This is the meaning of balance or equality for each creditor, namely that the repayment of their receivables is carried out jointly, without giving priority to one creditor or delaying another.

In addition to the guarantees mentioned above, there are also special guarantees granted to creditors if the debtor fails to fulfill their obligations, as stipulated in Article 1132 of the Civil Code. These special guarantees can arise from an agreement or automatically based on statutory provisions.

Special guarantees formed through agreements are divided into two types: personal guarantees and material guarantees. Personal guarantees involve a third party promising to repay the debtor's debt if the debtor defaults, while material guarantees involve specific assets as collateral for debt repayment, such as pawns, fiduciaries, mortgages, and mortgages.

Fiduciary guarantees, as regulated by Law Number 42 of 1999, are a special type of guarantee. According to Article 1 of this law, fiduciary guarantees are defined as the transfer of ownership rights over an item based on mutual trust, provided that the item remains in the possession of its original owner. In this context, fiduciary guarantees serve as rights over movable objects, including physical and non-physical ones, as well as immovable objects, such as buildings that cannot be encumbered by mortgage rights in accordance with Law Number 4 of 1996. Although these items are used as collateral to pay certain debts, control over them remains with the fiduciary grantor, giving the fiduciary recipient privileges over other creditors. Therefore, both fiduciary and fiduciary guarantees share the same characteristics, namely the transfer of ownership rights while maintaining control of the item by the owner.

The process of establishing a fiduciary guarantee involves two stages: First, the encumbrance stage, which involves the creation of a fiduciary collateral document through an authorized party, namely a notary, using the official Indonesian language. Next, registration. Registration is a mandatory process for objects to be secured by fiduciary guarantees, as both creditors and debtors share a common interest in ensuring legal certainty. In registering, the applicant is the recipient of the fiduciary guarantee, but this is not absolute; it can be authorized by a legal representative or an extension of the agent.[9]

After that, the next step in the registration process is for the authorized party to record the fiduciary collateral in the Fiduciary Register. The next step is to prepare and send the deed to the party receiving the fiduciary on the same day the fiduciary registration documents are received. The effective date of the fiduciary collateral coincides with its registration in the Fiduciary Register.

Once this process is complete, a fiduciary certificate is issued as a copy of the Fiduciary Register, detailing the registration requirements. The fiduciary certificate includes the phrase "For the Sake of Justice Based on the One Almighty God." A fiduciary guarantee registration application must be submitted no later than 30 (thirty) days after the Fiduciary Guarantee deed is drawn up.

A fiduciary guarantee agreement is an accessory agreement or additional agreement. As an accessory agreement, a fiduciary guarantee agreement is bound by and follows the

[9]Fedhli Faisal, 2024. Execution of Fiduciary Guarantee Objects by Separatist Creditors in Bankruptcy Cases. Collegium Studiosum Journal, Vol. 7 No. 2, December 2024, Page 330.

principal agreement. According to Purwahid Patrik, a fiduciary guarantee agreement has the following characteristics:

1. Giving priority to creditors who receive fiduciary guarantees over other creditors. Fiduciary holders have priority rights over other creditors. This priority right applies from the date the fiduciary guarantee object is registered with the Fiduciary Registration Office. This priority right refers to the fiduciary holder's right to receive payment of their debts from the proceeds of the execution or sale of the fiduciary guarantee object.
2. Remains attached to the collateral object, regardless of who controls the object, or known as droit de suite. Fiduciary security continues to follow the collateral object in whoever's hands it passes to, except in the case of the transfer of inventory items that are part of the fiduciary security.
3. Fulfilling the principles of specificity and openness, so that it can bind third parties and provide legal certainty for all parties involved.

These characteristics align with Article 27 of the Fiduciary Guarantee Law, which states that the fiduciary holder has priority rights over other creditors regarding the repayment of debts from the execution of the fiduciary guarantee. This right remains in effect even if the fiduciary grantor goes bankrupt.

2. Legal Consequences for Creditors Who Unilaterally Withdraw Fiduciary Collateral Without Following the Established Procedures

The legal consequences arising from the forced withdrawal of fiduciary collateral through debt collectors against parties who have entered into a credit agreement from the perspective of an installment sale and purchase contract, there is no such thing as a claim for compensation, the installment sale and purchase system; the hire purchase system, and leasing are legal agreement systems whose development is based on "freedom of contract" as the main principle of the law of agreements regulated in Article 1338 in conjunction with Article 1320 of the Civil Code. Specifically, the legislation underlying the cash sale and purchase system and the lease system is the same, both have a legal basis regulated in the Civil Code.

Furthermore, such actions constitute a violation of consumer rights, as stipulated in Article 4 of Law No. 8 of 1999 concerning Consumer Protection, which states:

a. The right to comfort, security and safety in consuming goods and/or services;

b. The right to choose goods and/or services and to obtain said goods and/or services in accordance with the exchange value and conditions and guarantees promised;

c. The right to correct, clear and honest information regarding the condition and guarantee of goods and/or services;

d. The right to have opinions and complaints heard regarding the goods and/or services used;

e. The right to receive advocacy, protection and appropriate efforts to resolve consumer protection disputes;

f. The right to receive consumer guidance and education;

g. The right to be treated or served properly and honestly and without discrimination;

h. The right to receive compensation, damages and/or replacement, if the goods and/or services received do not comply with the agreement or are not as they should be;

i. Rights regulated in other statutory provisions.

With the actions of the leasing party who often arbitrarily withdraw the fiduciary guarantee by force, creating negative impacts in the form of objections or resistance in the field, then to secure the safe and orderly execution of the Fiduciary guarantee, the Indonesian National Police issued Regulation of the Chief of Police No. 8 of 2011 which has been in effect since June 22, 2011. The purpose of issuing Regulation of the Chief of Police No. 8 of 2011 is to organize the safe, orderly, smooth and accountable execution of the fiduciary guarantee; protect the safety of the Fiduciary Guarantee Recipient, Fiduciary Guarantee Provider, and/or the community from actions that can cause loss of property and/or safety of life.[10]

Forced withdrawal of fiduciary guarantees is often experienced by debtors, which often occurs in practice in the field in carrying out the execution of fiduciary guarantees. Leasing companies often involve third parties through debt collectors who usually take the vehicles used by the debtor by force, this kind of thing cannot be justified, if this happens the leasing company can be subject to criminal threats. This action falls into the category of confiscation as regulated in Article 368 of the Criminal Code which reads (1) anyone with the intention of unlawfully benefiting themselves or others, forcing someone with violence or the threat of violence to give something, which is wholly or partly owned by that person or another person,

[10] Faisal Rusyuandi, 2024. Legal Review of the Legal Power of Forced Withdrawal of Fiduciary Guarantee by Leasing Through Debt Collectors Reviewed from Law Number 42 of 1999 Concerning Fiduciary Guarantee (Study of Constitutional Court Decision No. 18/PUU-XVII/2019, Concerning Procedures for Withdrawal of Fiduciary Guarantee Objects). Journal of Legal Science (JIH), Volume 3 Number 1 June 2024, pages 21-30.

or to make debts or write off receivables, is threatened with extortion with a maximum prison sentence of nine years.

In the Civil Law system, the grouping of the Civil Code is referred to as a named agreement or benoemde contracten or nominaat contracten. Meanwhile, the installment sale and purchase agreement and the hire purchase agreement are included in the unnamed agreement (onbenoumde contractem). The following definition of an innominat agreement (unnamed agreement) is an agreement that has not been specifically regulated in the Law. Because it is not regulated in legislation, both the Civil Code and the Commercial Code (KUHD), installment sale and hire purchase are both based on daily practice and court decisions (Jurisprudence)". The system used by the Civil Code or Burgerlijk Wetboek which is hereinafter referred to as B. W is an open system. The open system in the Civil Code allows all agreements including hire purchase to be recognized in accordance with Article 1338 of the Civil Code.

Based on this principle, the parties can use agreements that are not regulated at all in the Civil Code or the Commercial Code or other laws. However, the general provisions of Civil Code Bk. III titles I to IV remain valid, for example regarding the validity of an agreement Article 1320 and Article 1338 related to Civil Code Bk. III, namely the open system or the principle of freedom of contract. Based on this principle of freedom of contract, the hire purchase institution was born as a breakthrough from the cash sale and purchase institution and is a variant of installment sale and purchase. Based on the provisions in the Civil Code, as stated in Chapters or Titles V to XVIII regarding certain agreements, especially in the sale and purchase and lease institutions, this is the initial basis for the emergence of the hire purchase institution. This is based on the construction of sui genesis. This teaching is based on the principle that the more dominant conditions of one institution are whether the conditions are more in the sale and purchase agreement or more in the lease terms.

The leasing company's power to repossess vehicles is due to the fact that the leasing company has financed the goods being paid in installments. Therefore, leasing can be interpreted as corporate financing in the form of providing capital goods with periodic payments by the company using the capital goods, and can purchase or extend the term based on the residual value. In fact, the Ministry of Finance has issued a regulation prohibiting leasing or financing companies from forcibly repossessing vehicles from consumers who are in arrears on vehicle loans. This is stated in the Minister of Finance Regulation (PMK) No.

130/PMK.010/2012 concerning fiduciary registration for financing companies, issued on October 7, 2012.

A key issue is if the leasing company continues to forcibly repossess the vehicle owned by the buyer due to default. The leasing company may be subject to sanctions under Article 368, Article 365, Paragraphs 2, 3, and 4 of the Criminal Code in conjunction with Article 3. The Criminal Code clearly states that the court has the authority to carry out the execution. Therefore, if you want to take the collateral, you must bring an execution order from the district court.

The joint decision of the Three Ministers regarding the legal status of leasing in Indonesia, continues to be questioned and becomes a polemic among Polenik legal experts regarding the existence of leasing in carrying out execution when viewed from the perspective of Indonesian law, because so far the economic aspects are more often highlighted in the technical information provided by the parties concerned, but the legal aspects have not been analyzed in depth. The transferred Fiduciaire eigendoms ovendracht is the ownership right to the object as collateral on the basis of trust, while the object itself remains in the hands of the debtor, so it can still be used for companies and others.

The transfer of ownership rights to the fiduciary, there is a transfer of Constitutum Possessorium (transfer with continued control). In this agreement, namely the transfer of ownership rights, the aim is not ownership of the vehicle but control of the vehicle, With the payment in full from the debtor, the ownership rights return to the original owner and the creditor must return the object. However, if the debtor fails to fulfill the repayment of his debt, the creditor has the right to take the repayment of his receivables from the fiduciary object according to the provisions stipulated in Law No. 42 of 1999. So even though there is a transfer of ownership rights, the creditor only has the right to take repayment from the collateral object as stipulated in Article 1 and Article 2 of Law No. 42 of 1999.

So that the government can provide socialization to the public so that the public is aware of the Constitutional Court decision Number 18 / PUU-XVII / 2019. It requires a high awareness of debtors about their obligations to complete payments on time so that leasing companies are not harmed. To the public if they want to make any transactions, it is recommended to use sharia transactions in sharia financing institutions that have been supervised by a legal entity to avoid bad things in this world and the hereafter. For Companies in withdrawing fiduciary guarantees through debt collectors, they should comply with applicable rules and laws and prioritize the principle of good faith in resolving disputes over collateral objects, and to reduce legal risks, debt collection should be carried out by their own employees, not using third parties in making withdrawals.

Arbitrary treatment carried out by the Fiduciary Recipient by hiring the services of a debt collector to take over goods controlled by the Applicant without going through the correct legal procedures.

There are several instances of coercive action, without showing evidence and official documents, without authority, by attacking personal rights, honor, dignity and respect. Based on case studies in the Kendari District Court, it was still found that the execution of fiduciary guarantees did not pay attention to regulations so that the actions carried out by several finance companies were categorized as unlawful acts.

Unlawful acts are regulated in Book III of the Civil Code, Articles 1365-1380 of the Civil Code, including obligations arising from the law. This means that an obligation is a legal relationship between two people or two parties, based on which party is obliged to fulfill the demands.[11]

Article 1233 of the Civil Code states that an obligation exists by agreement or by law. Therefore, based on its type, obligations are divided into those arising from a contract or agreement and those arising from law. An agreement, on the other hand, is an event in which one person makes a promise to another, or in which two people mutually promise to carry out something.[12]

3. Legal Actions That Can Be Taken by Debtors If They Experience Unlawful Withdrawal of Fiduciary Collateral by Creditors

According to Article 1132 of the Civil Code, the debtor's assets serve as collateral for all lenders. This means that if the debtor defaults and fails to repay the debt, the proceeds from the sale of the debtor's assets are distributed proportionally according to the amount of each creditor's receivables.

Legal protection and creditor interests in UUJF in Article 20 UUJF "fiduciary remains following the object that is the object of fiduciary guarantee in the hands of whoever the object

[11]Bernad Adjie Sudarmono, Limits in Determining the Amount of Immaterial Losses in Unlawful Acts (Study)
Bandung District Court Decision Case Number: 121/Pdt.G/2017/PN.BDG), Undergraduate Program in Law, Faculty of Law, University of
Indonesian Islam Yogyakarta 2020 Page 25

[12]Titin Apriani, The Concept of Unlawful Acts in Criminal Acts, Edition No. 1 Vol. 13, 2019, P. 45.

is, except for the transfer of inventory objects that are the object of fiduciary guarantee". As a property right, fiduciary guarantee has principles including the right to fiduciary guarantee that follows the object (droit de suit), has a primary position (preferential rights) in relation to the existence of other creditors.

The problem relates to repeated fiduciary. Based on Article 23 paragraph 2 of the UUJF, it states that "a fiduciary provider is prohibited from transferring, holding, or renting to another party an object that is the object of a fiduciary guarantee that is not an inventory item, except with the prior written consent of the fiduciary recipient. Furthermore, based on the explanation of Article 23 paragraph 2, the reason for this prohibition is stated because the ownership rights to the object have been transferred to the fiduciary recipient." Meanwhile, based on Article 28, it states that "if the same object becomes a fiduciary guarantee in more than 1 (one) fiduciary guarantee agreement, then the priority rights as referred to in Article27, is given to the party who first registers it with the fiduciary registration office.

Criminal liability leads to the punishment of the perpetrator, if he has committed a crime and fulfills the elements specified in the law. Viewed from the perspective of the occurrence of a prohibited (required) act, a person will be held criminally responsible for these actions if the act is unlawful (and there is no elimination of the unlawful nature or rechtsvaardigingsgrond or justification) for it. Viewed from the perspective of the ability to be responsible, then only a person who is "capable of being responsible can be held accountable.[13]

In the context of a fiduciary agreement, default is not essentially a criminal offense, as there are no provisions stipulating that the inability to fulfill obligations in a debt agreement can be subject to criminal penalties. Article 19 paragraph (2) of Law No. 39 of 1999 concerning Human Rights stipulates that a person may not be imprisoned for the inability to fulfill debt obligations. Therefore, a debtor who is unable to pay his debt cannot be held criminally liable. However, in practice, fiduciary object problems that are not resolved through deliberation are often reported to the police with reference to Article 372 of the Criminal Code concerning Embezzlement or Article 378 of the Criminal Code concerning Fraud. In fact, these two articles differ from the realm of default, which is a civil legal act. To be processed criminally, the

[13] EY Kanter and SR Sianturi, 2018. Principles of Criminal Law in Indonesia and Their Implementation (Jakarta: Storia Grafika, 2018), page 45.

elements of actus reus and mens rea must be fulfilled, so that pure default cannot be punished without evidence of evil actions and intent.

The guarantees provided in consumer financing transactions are essentially similar to those provided for regular bank credit agreements, particularly consumer loans. Therefore, they can be divided into primary, principal, and additional guarantees, which are described as follows:[14]

The guarantees provided in consumer financing transactions are essentially similar to those provided for regular bank credit agreements, particularly consumer loans. Therefore, they can be divided into primary, principal, and additional guarantees, which are described as follows:

1. Main guarantee

As a form of credit, the primary guarantee is the creditor's trust in the recipient (the consumer) that the consumer is trustworthy and capable of repaying their debts. Therefore, the principles of credit granting apply here, for example, the 5 Cs (Collateral, Capacity, Character, Capital, and Economic Condition).

2. Principal Guarantee

The principal collateral for consumer financing transactions is the item purchased with the funds. If the funds are provided, for example, to purchase a car, the car becomes the principal collateral. This collateral is typically established in the form of a Fiduciary Transfer of Ownership (Fiducia). Because of this Fiducia, all documents relating to ownership of the item are typically held by the creditor (the lender) until the loan is fully repaid.

3. Additional Guarantee

Additional collateral is often required for consumer financing transactions, although not as stringent as collateral for bank loans. Typically, additional collateral for such transactions takes the form of promissory notes, an acknowledgment of indebtedness, a power of attorney to sell the goods, and an assignment of proceeds (cession) from the insurance company. In addition, spouse approval is often required for personal customers and the approval of the board of commissioners/GMS for corporate customers, in accordance with the provisions of the company's articles of association.[15]

---

[14]Munir Fuady, Dynamics of Legal Theory, Ghalia Indonesia, Jakarta, p. 168
[15]Munir Fuady, Ibid, p. 224.

With a fiduciary transfer of ownership agreement, the facility recipient/debtor is deemed to have transferred ownership of the collateral to the facility provider/creditor. Therefore, upon signing the fiduciary transfer of ownership agreement, ownership is deemed to have occurred.

*Fiduciary Eigendom Over Dracht*or the transfer of ownership rights based on trust arises from the needs of the community. The community requires loans or credit with movable property as collateral, but the movable property being pledged is still controlled by the recipient of the facility because it is needed daily to continue the business or for daily work purposes. Considering the large and ever-increasing need for funds for the business world to meet the legal requirements for this guarantee, Law Number 42 of 1999 concerning Fiduciary Guarantees was issued. Article 1 of the Fiduciary Law states that: "Fiduciary Guarantees aresecurity rights over movable objects, both tangible and immovable, especially buildings that cannot be burdened with Mortgage Rights as referred to in Law Number 4 of 1996 concerning Mortgage Rights that remain under control. The fiduciary grantor, as collateral for the repayment of certain debts, which gives the fiduciary recipient a priority position over other creditors.

D. Conclusion

The unilateral withdrawal of a fiduciary security object by a creditor without following proper procedures constitutes a violation that can result in various legal consequences. Based on the research findings, the procedure for withdrawing a fiduciary security must be carried out in accordance with the provisions stipulated in Law Number 42 of 1999, including registration at the Fiduciary Registration Office and issuance of a fiduciary security certificate. If creditors violate these provisions, they may be subject to criminal and civil sanctions, including demands for compensation from the debtor. The legal consequence for a creditor who unilaterally withdraws collateral is the loss of preferential rights over the fiduciary guarantee. In this case, the creditor cannot execute the collateral without due legal process. Furthermore, unlawful withdrawal can potentially give rise to a civil lawsuit by the debtor, who is entitled to compensation for the losses suffered as a result of the unauthorized withdrawal. Debtors have several legal remedies available if they experience unauthorized withdrawal of their fiduciary collateral. They can request that the financing company produce a valid fiduciary collateral certificate. If they cannot produce one, the debtor is not required to hand over the collateral.

Debtors can also report unlawful actions to authorities, such as the Financial Services Authority or the Ministry of Finance, for enhanced legal protection.

Bibliography

Bernad Adjie Sudarmono, 2020. Limits in Determining the Amount of Immaterial Losses in Unlawful Acts (Case Study of Bandung District Court Decision Number: 121/Pdt.G/2017/PN.BDG), Undergraduate Program in Law, Faculty of Law, Islamic University of Indonesia, Yogyakarta 2020

Brigita Tesalonika Timbuleng, 2018. Legal Remedies of Debtors Against Withdrawal of Collateral by Creditors in Consumer Motor Vehicle Financing Agreements. Lex Et Societatis Vol. VI/No. 10/Dec/2018.

Civil Code (KUHPerdata).

Constitutional Court Decision Number 18/PUU-XVII/2019.

Diah Sulistyani RS, Muhammad Junaidi, (2019) Execution of Fiduciary Guarantees in the Study of Law Number 42 of 1999 Concerning Fiduciary Guarantees Soegianto, IUS Constituendum Journal, Volume 4 Number 2 October 2019.

EY Kanter and SR Sianturi, 2018. Principles of Criminal Law in Indonesia and Their Implementation. Jakarta: Storia Grafika.

Faisal Rusyuandi, 2024. Legal Review of the Legal Power of Forced Withdrawal of Fiduciary Guarantee by Leasing Through Debt Collectors Reviewed from Law Number 42 of 1999 Concerning Fiduciary Guarantee (Study of Constitutional Court Decision No. 18/PUU-XVII/2019, Concerning Procedures for Withdrawal of Fiduciary Guarantee Objects). Journal of Legal Science (JIH), Volume 3 Number 1 June 2024, pages 21-30.

Farid Hardianysah, "Implementation of Parate Execution in Fiduciary Guarantees in Indonesia," Journal of Law, Politics and Social Sciences Vol. 1, No. 1 (June 2, 2023).

Fedhli Faisal. 2024. Execution of Fiduciary Guarantee Objects by Separatist Creditors in Bankruptcy Cases, Collegium Studiosum Journal, Vol. 7 NO. 2, December 2024.

Gunawan Widjaya, 2020. Fiduciary Guarantee, Jakarta: PT Raja Grafindo Persada.

Hanifah, I., Hariyanto, H., Ginting, L., Koto, I., & Syafriana, R. (2026). Legal Protection of Indonesia's Fisheries from Foreign Investment: A Social-State Approach. Jurnal IUS Kajian Hukum dan Keadilan, 14(1).

Herman, "Legal Protection of Citizens Against Government Actions in Making State Administrative Decisions," Journal of Legal Communication (JKH) Vol. 1, No. 1 (February 6, 2015): 46

Ida Hanifah, et al. 2018. Guidelines for Writing Student Final Assignments. Medan: Faculty of Law, Muhammadiyah University of North Sumatra.

Indah Sari, 2020. Unlawful Acts (Pmh) in Criminal Law and Civil Law, Scientific Journal of Aerospace Law–Faculty of Law, Marshal Suryadarma Aerospace University | Volume 11 No. 1, September.

Karnelo, Tan. 2024. Fiduciary Guarantee Law, Bandung: PT Alumni.

Law Number 42 of 1999 concerning Fiduciary Guarantees.

Law Number 8 of 1999 concerning Consumer Protection.

Muhammad Djumhana. 2018. Banking Law in Indonesia. Bandung: Citra Aditya Bakti.

Munir Fuady, 2023. Unlawful Acts: A Contemporary Approach, PT. Citra Aditya Bakti, Bandung

Ojak Nainggolan. 2016. Introduction to Legal Science. Medan: Indonesia Media.

Rachmadi Usman, 2019. Property Law. Jakarta: Raja Grafindo Persada,

Regulation of the Minister of Finance Number 130/PMK.010/2012 concerning Registration of Fiduciary Guarantees.

Ricardo Simanjuntak. 2018. Contract Law: Business Contract Design Techniques, Jakarta: Gramedia.

Riduan Syahrani. 2016. The Ins and Outs and Principles of Civil Law. Bandung: Alumni.

Rudyanti Dorotea Tobing, 2017. Financing Institution Law, Principles of Justice in Financing Agreements, Lakbang Pressindo.

Salim HS. 2018. Development of Innominaat Contract Law in Indonesia. Jakarta: Sinar Grafika.

Simatupang, R. S. A., Hanifah, I., & Mansar, A. (2025). The Concept of Restitution as Legal Accountability in the Crime of Human Trafficking. Pena Justisia: Media Komunikasi dan Kajian Hukum, 24(1), 3554-3462.

Soerjono Soekanto, 2020, Introduction to Legal Research, Jakarta: University of Indonesia Publisher.

Sri Soedewi Mascjhoen Sofwan. 2016. Guarantee Law in Indonesia: Principles of Guarantee Law and Individual Guarantee. Jakarta: National Legal Development Agency.

Sutarno, 2019. Legal Aspects of Credit in Banks, Bandung: Alpabeta.

Tan Kamello. 2019. Fiduciary Guarantee Law: A Desired Necessity, Bandung: Alumni.

Tri Widiyono, 2016. Legal Aspects of Operational Transactions of Banking Products in Indonesia, Bogor: Ghalia Indonesia.