
LEGAL PROTECTION OF CREDITORS RELATED TO VIOLATION OF VEHICLE UNILATERAL FIDUCIARY COLLATERAL BASED ON THE PRINCIPLE OF JUSTICE

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ABSTRACT

Indonesian people generally buy private vehicles by using credit facilities or making monthly payments to finance companies to own their vehicles. Vehicles purchased on credit are bound by using fiduciary guarantees prone to being pawned, rented out and transferred by the debtor unilaterally. The reason was due to default so that the fiduciary guarantee vehicle was diverted so that it could be confiscated by POLRI investigators to be used as evidence. As a result of the unilateral transfer of the debtor, the creditor suffers a loss, so that the creditor must be legally protected. The purpose of this research is to find out and analyze the legal protection for credit related to violations and diversion of vehicles based on the principle of justice. The method in this research is qualitative research with empirical and normative juridical approaches. Empirical juridical research prioritizes secondary data, books, laws and regulations and examines positive legal principles from literary data and comparative law. The fiduciary giver must be responsible, carry out his obligations and keep the collateral object under his control. However, in reality it does not rule out the possibility of the Fiduciary Guarantee object changing hands or transferring control to a third party because it is transferred by the debtor, usually due to economic factors. The existence of Law no. 42 of 1999 concerning guarantees in Indonesia which are *lex specialis derogat legi general*, is one of the legal principles which implies that specific legal rules will override general legal rules.

Keywords: default, unilateral transfer, legal protection, compensation lawsuit.

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INTRODUCTION

Vehicles are a means of transportation commonly used by Indonesian people to support their activities. This is a natural thing for today's modern society. Middle and upper-class people tend to buy vehicles in cash, and middle and upper-class people usually use credit facilities or finance companies to own private vehicles. The high demand for transportation means that businesses in Indonesia see it as a very promising opportunity. The market competition is so wide, and the public's high interest in owning a vehicle encourages business actors in Indonesia, especially in financing institutions or finance companies, to fulfil the public's need for vehicles (Nasarudin, 2014).

Purchasing a vehicle on credit provides many benefits and advantages for the community and for finance companies. However, the price of one object will be higher. Even so, people in Indonesia still need the process of buying a vehicle on credit. A fiduciary is the transfer of ownership rights of an object based on trust, provided that the object whose ownership rights are transferred remains in the control of the object owner. Debtors are parties who have debts because of agreements or laws, and creditors are parties who have debts because of agreements or laws.

Financing companies as creditors are business entities outside banks and non-bank financial institutions specifically established to carry out activities that are included in the business sector of

financing institutions (Junaidi & MH, 2022), so it is certain that the Financing Company will bind fiduciary guarantees to the vehicle in question (Fahirattunisa et al., 2022). The fiduciary guarantee itself is a guarantee right over movable objects, both tangible and intangible and immovable objects whose control is with the debtor and will end when the debt has been paid off. However, quite a number of debtors do not know the concept of this guarantee, especially fiduciaries (Sanusi et al., 2017).

The existing fiduciary guarantee institutions in Indonesia currently make it possible for fiduciary givers to control the collateralized object in order to carry out or carry out business activities financed from loans using the fiduciary guarantee. In the beginning, the objects that became fiduciary objects were limited to tangible movable property in the form of equipment. However, in subsequent developments, objects that become fiduciary objects include a wealth of immovable, movable objects as well as immovable objects as stated in No. 42 of 1999 concerning Fiduciary Guarantees (Satrio, 2002).

Fiduciary collateral objects in the form of vehicles are generally prone to be transferred, mortgaged, or leased to other parties by unscrupulous debtors without the approval of the creditor so that the creditor is harmed and can potentially be criminalized. This can usually occur due to economic factors from the debtor so that he is no longer able to carry out his obligations to pay instalments to creditors so that the object of the fiduciary guarantee is transferred unilaterally. With this alleged crime, the creditor can report it to the police. With reports from the public, the vehicle that is the object of the fiduciary guarantee can be confiscated by POLRI investigators to be used as Evidence. The police, as investigators, have the authority to confiscate vehicles if they are caught in the act of committing a crime and complete the case file until it enters the court process. This is stated in Perkap No. 8 of 2014 and the Criminal Procedure Code. In Perkap No. 8 of 2014 concerning Amendments to Perkap No. 10 of 2010 concerning Procedures for Managing Evidence in the Environment of the Republic of Indonesia National Police Article 1 point 5 states (PRASETIONO, 2017): "Evidence is movable or immovable objects, tangible or intangible which have been confiscated by investigators for the purposes of examination in the level of investigation, prosecution and examination before the court. Based on the above background, the purpose of this study is to identify and analyze the legal protection of creditors regarding violations and unilateral transfer of vehicle fiduciary collateral based on the principle of justice.

METHODS

The method in this research is qualitative research with normative juridical and empirical juridical approaches. Normative juridical research is legal research that places law as a building system of norms. The norm system in question is regarding principles, norms, legal rules, agreements and doctrines (teachings) (Emma Aulia, 2019). Meanwhile, empirical juridical research is research whose object of study is community behavior. The behavior of the person under study is the behavior that arises as a result of interacting with the existing system of norms. This interaction appears as a form of community reaction to the implementation of a positive legal provision and can also be seen from the behavior of the community as a form of action in influencing the formation of a positive legal provision.

Empirical juridical research in this study was carried out by prioritizing secondary data, studying books and statutory regulations and examining the principles of positive law originating from literary data and comparative law, as well as factors related to the object of research as part of the research. Field. The emphasis of this research is on library research, which means that it studies and analyzes more secondary data as a normative juridical approach because the problems studied revolve around the relationship between one regulation and another and its application in society. However, it is also supported by field data which is used as a support/complementary to secondary data to find out concretely all problems, which is done by way of interviews.

RESULTS AND DISCUSSION

In a fiduciary agreement, the parties have the same legal protection even though the creditor has the potential to experience a higher risk of loss if the debtor does not have good faith or commits a crime. The author agrees and uses the theory of legal protection from Philipus M. Hadjon, the opinion of Phillipus M. Hadjon that legal protection for the people is a preventive and repressive government action (Sinaulan, 2018). Preventive legal protection aims to prevent disputes from occurring, which directs the government's actions to be careful in making decisions based on discretion and repressive protection aims to resolve disputes, including their handling in courts (Putra, 2018).

Creditor Legal Protection

Financing agreements are generally made in the form of standard agreements or also called standard agreements, namely: an agreement formulated by one party (financial institution) and another party (consumer) simply agrees to the terms contained in the agreement clause proffered to him by signing the deed of agreement or rejecting it (Siskaniati et al., 2022).

Financing agreements have certain characteristics because they actually contain several forms of agreements, including loan agreements, sale and purchase agreements, guarantee agreements and insurance agreements. Even though consumer financing agreements have never been recognized in the Civil Code, based on the principle of freedom of contract, the parties can make and determine the form and type of agreement themselves as long as they do not conflict with the legal terms of the agreement as stipulated in Article 1320 of the Civil Code, namely an agreement, capable, a certain matter, for lawful reasons, while an agreement legally made by law will bind the parties as stipulated by law.

The consumer financing for motorized vehicles discussed is facilitated by a consumer finance company. In making an agreement or contract, it is required that the terms of the agreement be valid as specified in Article 1320 of the Civil Code, namely the existence of an agreement, competence, a certain matter, or a lawful cause, while an agreement made legally by law will bind the parties as regulated in the law. In Indonesia.

Technical and terms of providing consumer financing facilities which contain matters required in the process of providing financing, including signing of agreements, submission of required documents, obligation to pay down payment determined by the financing provider, and delivery and receipt of goods required financed. The consumer financing agreement contains a debt agreement in it because the financing provided to the consumer as the debtor becomes a debt equal to the financing provided along with interest agreed upon by the parties.

Given the nature of the financing, the agreement contains a principal agreement in the form of debt and credit. In general, financing services also require adequate collateral (collateral) for the funds issued to finance the consumption needs of the consumer. In general, the guarantee is bound by a fiduciary guarantee agreement. In implementing the fiduciary agreement, there are several obstacles and obstacles that arise from the debtor, such as the occurrence of default in the fiduciary agreement.

Legal protection for creditors (fiduciary recipients) is provided by UUJF if the object of the fiduciary guarantee has been registered at the Fiduciary Registration Office. One way to protect the interests of creditors (as fiduciaries) is to provide definite terms for creditors. Among them are the complete data that must be contained in the Fiduciary guarantee (Article 6 UUJF), indirectly providing a strong handle for Creditors as Fiduciary Recipients, especially which bills are guaranteed and the amount of the collateral value, which determines how much the preferred creditor bills.

Legal protection and the interests of creditors in the UUJF can be seen in Article 20 UUJF: "Fiduciaries continue to follow objects that are objects of fiduciary guarantees in the hands of whomever the objects are, except for the transfer of these objects, except for the transfer of inventory objects which are objects of fiduciary guarantees".

Fiduciary givers are prohibited from transferring, pawning, or renting to other parties objects that are objects of Fiduciary guarantees that are not inventory objects, except with prior written approval from the Fiduciary Recipient. This is also legal protection for creditors. We can see this in Article 23, paragraph (1) 2) UUJF (Paparang, 2014).

Fiduciary Guarantees have the nature of *droit de suite*, meaning that Fiduciary Guarantees follow objects that are objects of Fiduciary Guarantees in the hands of whomever the object is (Winarno, 2013). The acknowledgment of the principle of *droit de suite* that the right to a fiduciary guarantee follows the object in the hands of whomever the object is in providing legal certainty for the creditor to obtain debt repayment from the proceeds from the sale of the Fiduciary Collateral object if the debtor defaults and transfers the Fiduciary Collateral object (Satriya, 2020). So, legal certainty over these rights is not only when the object of the Fiduciary Guarantee is still in the power of the debtor but also when the object of the Fiduciary Security has been transferred or is in the power of a third party.

There is a *Droit de suite* principle regarding the transfer of inventory items, and the Fiduciary Guarantee Law stipulates that inventory items which are objects of fiduciary guarantees that have been transferred must be replaced by the fiduciary giver with an equivalent object as stipulated in Article 21 paragraph (3) of the Guarantee Law Fiduciary (Yasir, 2016).

For objects of fiduciary guarantees that have been transferred to third parties by the debtor, they must first be replaced with an equivalent value by the debtor because the creditor does not bear any liability for the consequences of the actions or omissions of the debtor, whether arising in a contractual relationship or arising from unlawful acts in connection with the use and transfer of objects that are used as fiduciary guarantee objects as stipulated in Article 24 of the Fiduciary Guarantee Law. The forms of legal protection in Indonesia that can be given to creditors are based on, are:

a. Preventive Legal Protection With Fiduciary Guarantee Registration System

In providing legal certainty, especially for fiduciary givers (creditors) in Indonesia, based on Article 11, UUJF requires objects burdened with Fiduciary Guarantees to be registered at the Fiduciary Registration Office. Registration of fiduciary guarantees is an embodiment of the principles of publicity and legal certainty because registration of fiduciary guarantees is expected to provide legal certainty to fiduciary givers and recipients. Apart from being an embodiment of the principle of publicity and providing legal certainty, registration of fiduciary guarantees also gives preference rights to fiduciary recipients over other creditors. Application for registration is addressed to the Minister of Law and Human Rights of the Republic of Indonesia through the Fiduciary Registration Office at the place of domicile of the fiduciary giver in writing in Indonesian by the fiduciary recipient, proxy or representative by attaching a statement of Fiduciary Guarantee Registration and filling out a form whose form and content have been determined based on Attachment I to the Decree of the Minister of Law and Human Rights of the Republic of Indonesia No. M-01.UM.01.06 of 2000. The procedures for registration of Fiduciary Guarantees are (Kausar, 2017):

- 1) Make fiduciary requests made by fiduciary recipients, proxies or representatives at the Fiduciary Registration office. The application is submitted in writing in the Indonesian language and attaches a Fiduciary Registration statement. The statement contains the following:
 - a) Identity of the fiduciary giver and fiduciary recipient
 - b) Place, No. fiduciary guarantee deed, name and place
 - c) Notary position to make a fiduciary guarantee deed
 - d) Main agreement data guaranteed by fiduciary
 - e) Description of the objects of fiduciary guarantees which are objects of fiduciary guarantees
 - f) The value of the agreement and the value of objects that are the object of fiduciary guarantees.

The application is accompanied by the following:

- a) Copy of notarial deed regarding the imposition of fiduciary guarantees
 - b) Power of attorney or letter of delegation of authority to register fiduciary guarantees
 - c) Proof of payment of the fiduciary guarantee registration fee
- 2) The registration office records the Fiduciary Guarantee in the Fiduciary Register Book on the same date as the date of receipt of the application for registration.
- 3) Pay the fiduciary registration fee.
- 4) The Fiduciary Registration Office issues and delivers to the fiduciary recipient the Fiduciary Guarantee Certificate on the same date as the receipt of the application for registration. The Fiduciary Guarantee Certificate is a copy of the Fiduciary Register Book.
- 5) The Fiduciary Guarantee was born on the same date as the date the Fiduciary Guarantee was recorded in the Fiduciary Register Book.

UUJF requires that the fiduciary agreement must be made in an authentic form that has perfect proof of what is contained therein. Article 1868 of the Civil Code: "An authentic deed is a deed made in a form determined by law by or before a public official who is authorized to do so at the place where the deed was done" (Nurwulan, 2018).

Especially when it is seen that the objects of Fiduciary Guarantees are generally unregistered movable property, then the form of an authentic deed is considered to be able to guarantee legal certainty regarding the object of Fiduciary Guarantees. A fiduciary guarantee must be registered. This statement is contained in the provisions of Article 11 UUJF. In Article 11, paragraph (1), it is emphasized that objects burdened with Fiduciary Guarantees must be registered. Registration of Fiduciary Guarantees, apart from being regulated in the UUJF, is also to fulfil the principle of publicity which is one of the principles adhered to in the UUJF and is the main principle in the law of material guarantees. Based on the principle of publicity, all rights, both mortgage rights and fiduciary rights, must be registered. This is intended so that third parties can find out that the object being pledged is being carried out as collateral.

A principle is something that must exist. However, if the principle does not exist, it does not cause the agreement to be void. The nature of the principle of publicity is in the form of registration of a Fiduciary Guarantee Deed which is a deed of fiduciary encumbrance that is being burdened with a Fiduciary Guarantee. Fiduciary Guarantee registration is carried out at the fiduciary registration office where the fiduciary giver is domiciled. For objects encumbered with a fiduciary guarantee but the goods are outside the territory of Indonesia, the registration is still carried out at the fiduciary registration office in Indonesia, where the fiduciary giver is domiciled.

The Fiduciary Guarantee based on the UUJF was born on the date when the Fiduciary Guarantee was recorded in the Fiduciary Register Book. The proof that the creditor is the holder of the Fiduciary Guarantee is the Fiduciary Guarantee Certificate. The Fiduciary Guarantee Certificate is issued on the same date as the date of receipt of the Fiduciary Guarantee application. Based on Article 15 (1): "In the Fiduciary Guarantee Certificate as referred to in Article 14 paragraph (1), the words "For Justice Based On The One Almighty God" are stated.

With the existence of this fiduciary certificate, if the debtor in Indonesia defaults and diverts the fiduciary guarantee object vehicle unilaterally, the creditor can execute or take the fiduciary guarantee vehicle, whether it is still in the hands of the debtor or in the hands of a third party, and the creditor cannot be punished due to this incident, this is in accordance with Article 15 (2) which provides legal protection to creditors in Indonesia: "The Fiduciary Guarantee Certificate as referred to in paragraph (1) has the same executive power as a court decision that has obtained permanent legal force" (Rufaida, 2019).

Creditors as fiduciary recipients also have the right to carry out executorial titles on Fiduciary collateral objects using a Fiduciary Collateral Certificate if the debtor defaults or defaults, and the creditor also has the right to sell objects that are Fiduciary collateral objects with the approval of the fiduciary provider or with the assistance of a district court.

b. Protection is Repressive by Setting Criminal Threats against Debtors

In the Fiduciary Guarantee Law, which has been discussed above, it is stated that every fiduciary guarantee must be registered, and the law also regulates the procedures for registering fiduciary guarantees. Prior to the existence of this law, the existing legislation did not regulate procedural and registration processes, so there was no such registration for fiduciary guarantees. The absence of the obligation to register fiduciary guarantees can cause problems for debtor financing companies to execute fiduciary guarantees that are transferred by the debtor. It can be

proven that registration of fiduciary guarantees can guarantee legal certainty to interested parties, namely creditors. Registration is expected to protect creditors from debtors who transfer Fiduciary collateral objects to third parties without the creditor's knowledge, such as when the collateral object is confiscated by the police as Evidence.

Evidence of ownership of the collateral object in the form of a BPKB, which is in the control of the creditor, provides legal protection to take back the collateral object, which is in possession of the police if the collateral object becomes Evidence. A power of attorney from the debtor stating that he is unable to make payments and submits all settlements to the creditor so that the creditor can regain control of the collateral object after the investigation process is complete. If the creditor does not obtain power of attorney from the debtor because the debtor has committed a crime or defaulted in the fiduciary agreement, the creditor may apply for a court order regarding the object of fiduciary security according to the domicile of the creditor or debtor.

Creditors who have a fiduciary certificate, as we know, if the debtor defaults and transfers the fiduciary vehicle, the creditor is authorized to execute the fiduciary guarantee vehicle by first giving a written warning to the debtor at least twice to carry out his obligations. The fact is still found when creditors execute fiduciary vehicles due to defaults and unilateral transfers, where collection officers from the creditor generally still get resistance from the debtor. Creditors are often reported as a result of their execution by making police reports, and investigators process complaints from debtors with alleged Criminal Code articles. The article used by debtors to report creditors is 362 of the Criminal Code: "Anyone who takes something, which is wholly or partly owned by another person, with the intention of unlawfully possessing it, is threatened with theft, with a maximum imprisonment of five years or a maximum fine of a lot of nine hundred rupiahs."

In addition to the article above, the article that is often used in providing legal protection to creditors is the use of Article 365 Paragraph (1) of the Criminal Code, namely: "Threatened by a maximum imprisonment of nine years theft which is preceded, accompanied or followed by violence or threats of violence, against a person with the intent to prepare the *atsu* to facilitate theft, or in the event of being caught red-handed, to allow the escape of oneself or another participant, or to retain possession of stolen items."

The police report made by the debtor should not be valid in Indonesia if the creditor has a fiduciary guarantee certificate and can be categorized as legally disabled. The encumbrance of objects or vehicles with a Fiduciary Guarantee is made with a notarial deed in Indonesian and is Fiduciary Guarantee deed. Registration of fiduciary guarantees in Indonesia is carried out at the Ministry of Law and Human Rights (Kemenkumham). With the registration of a fiduciary guarantee object in the form of a vehicle, it is hoped that it can protect creditors. In Article 36 UUJF, if the debtor transfers the vehicle as a fiduciary guarantee object, it can be subject to criminal sanctions in prison for a maximum of 2 (two) years and a maximum fine of Rp. 50,000,000. - (fifty million rupiahs).

The creditor can report the debtor to the police, and with the police report, the object of the fiduciary vehicle will be confiscated by Polri investigators to be used as Evidence. The confiscated fiduciary vehicle can be loaned to the authorized party to reduce damage or loss from the creditor, with certain conditions according to existing legal regulations, and if investigators need the confiscated Evidence, the party applying for the loan must present it at trial. The results

of an interview conducted with the Head of the North Jakarta Police, represented by Mr Dwi Prasetyo Wibowo as Head of the Criminal Investigation Unit of the North Jakarta Metropolitan Resort, explained: "For vehicles that are confiscated, the status is still in the process of credit, it can be borrowed or used by the debtor or the debtor as long as they are still paying the credit instalments."

The same opinion was obtained from the results of an interview with the East Jakarta Police Chief, represented by Mr Ashanuil Muqaffi as Head of the Criminal Investigation Unit for the East Jakarta Police, explaining: "Regarding the vehicle that was confiscated, the status is still in the credit process, it can be borrowed or used by the debtor or the debtor as long as he is still paying the credit instalments."

This is in accordance with the explanation of the Leasing party represented by Mr Chandra D. Silitonga as the Director of PT Artha Asia Finance, who explained: "Fiduciary recipients as holders of ownership rights to fiduciary collateral objects can submit applications for borrowing".

This is reinforced by the results of an interview with Mr Eko Budiswanto as Head of the Legal and Business Counsel Dept. of PT. Federal International Finance, which explains that:

"Creditors as fiduciary recipients are the holders of vehicle ownership rights, which are the object of the fiduciary guarantee. Therefore, they can apply for a loan to the Investigator."

From the results of these interviews, it can be concluded to fulfil a sense of justice in Indonesia, especially creditors, the police who are responsible for handling cases invite the parties who are entitled to apply for a loan to use a fiduciary vehicle, the aim is to reduce the risk of damage due to the confiscation of the fiduciary vehicle. This, of course, can be done by fulfilling all the procedures set out. This is in accordance with Perkap No. 8 of 2014 concerning Amendments to Perkap No. 10 of 2010 concerning Procedures for Managing Evidence in the Environment of the Indonesian National Police Article 23, namely: "(1) Evidence confiscated and stored in a special place can only be loaned to the owner or party entitled to it".

The process that must be carried out when the loan-to-use process is carried out, according to an interview with the Head of the North Jakarta Police, represented by Mr Dwi Prasetyo Wibowo as Head of the North Jakarta Metropolitan Resort Criminal Investigation Unit, explained:

"For confiscated vehicles, it can be borrowed. The process is by submitting a loan application by attaching a photocopy of the identity document of the vehicle being borrowed, and against this submission, the POLRI leadership has the right to refuse the application submitted for certain reasons."

The same opinion was obtained from the results of an interview with the East Jakarta Police Chief, represented by Mr Joko Dwi Harsono as Head of the Criminal Investigation Unit of the West Jakarta Police, who explained: "For confiscated vehicles, you can borrow them. The process is by submitting a loan application by attaching a photocopy of the identity document of the vehicle being borrowed, and against this submission, the POLRI leadership has the right to refuse the application submitted for certain reasons."

Confiscation of fiduciary vehicles also does not eliminate fiduciary guarantees; based on Article 25 UUJF, the elimination of fiduciary guarantees is due to the following:

- 1) Elimination of debt guaranteed by fiduciary;
- 2) Relinquishment of rights to fiduciary guarantees by fiduciary recipients; or

3) The destruction of objects that are the object of fiduciary guarantees.

Based on this article, confiscation will not cancel the agreement burdened by a fiduciary guarantee, so the debtor is still obliged to pay off his debts. In Article 1131 of the Civil Code (hereinafter referred to as the Civil Code), where the article reflects a general guarantee that obliges the debtor to provide a replacement guarantee which reads, "All movable and immovable objects belonging to the debtor, both existing and future, becomes collateral for the debtor's individual agreements. Obligations must be carried out by the debtor if the fiduciary collateral object is confiscated by the Investigator. Namely, the debtor must pay his debts. If the debtor experiences congestion in paying off his credit, the debtor must provide a replacement guarantee that has a higher value or is equivalent to the fiduciary collateral object that has been confiscated.

The fiduciary giver (the debtor) should be responsible, carry out his obligations and keep the collateral object under his control. However, it is possible that the object of the Fiduciary Guarantee changes hands or transfers its control to a third party because it is transferred by the debtor, usually due to economic factors. The existence of Law No. 42 of 1999 concerning guarantees in Indonesia which is *lex specialis derogat legi general*, is one of the legal principles which implies that specific legal rules will override general legal rules. It will provide legal protection to the parties, especially creditors.

Compensation Civil Lawsuit

The confiscation of fiduciary vehicles in Indonesia by POLRI investigators because of a unilateral transfer from the debtor caused the creditor to suffer losses, and the vehicle became unmaintained and damaged. The legal relationship that occurs between the two parties occurs because of an agreement; because there is a legal relationship between the two, the creditor's rights are guaranteed by the law, which is emphasized by Article 1338 paragraph (1) of the Civil Code (hereinafter referred to as the Civil Code) which states that all agreements made legally apply as laws to those who make them. Based on that, if one of the parties does not comply with the demands of the other party voluntarily, the creditor can sue them in court.

Creditors who feel aggrieved can file a lawsuit for default. Compensation that can be claimed in default in a fiduciary agreement, Article 1243 of the Civil Code has provided its provisions which are the principal regulations regarding compensation if an agreement is not fulfilled. The compensation is in the form of costs, losses, and interest (*Kosten, Schaden et interested*). In the event that the debtor breaks his promise, the demands that can be submitted by the creditor are (Slamet, 2013):

- a. engagement fulfilment;
- b. fulfilment of the agreement with compensation;
- c. compensation;
- d. reciprocal agreement cancellation;
- e. cancellation with compensation.

The default can be interpreted as the implementation of obligations that are not right at the specified time or in carrying out the achievement of the agreement has been negligent so that it is late from the specified time schedule or in carrying out achievements that are not appropriate/proper, where the negligence can be of four types:

- a. does not do what he is willing to do;

- b. carry out what was agreed, but not as agreed;
- c. carry out what he promised but too late; or
- d. Do something that, according to the agreement, is not allowed to do. If the default in the fiduciary agreement creates an obligation for compensation and the creditor can sue for the above matters, then making demands, the creditor must understand when the debtor can be said to have broken a promise, whether the broken promise happened by itself.

The debtor is said to have defaulted on the fiduciary agreement if it fulfils:

- a. Material requirements, namely the intentional existence of which the debtor wants and knows and is aware of causing losses to creditors and the existence of negligence that is obligatory to perform, should reasonably suspect that the actions or attitudes taken by him will cause losses. There is a default in a fiduciary agreement made by the debtor, which means that the debtor is aware and knows it has not been implemented for various reasons, for example, the economy is down, late paying, and the instalment should be given to the creditor but given to another party who is not responsible, causing the debtor to lose due to non-fulfilment of the agreement.
- b. Formal requirements, namely the existence of a warning given by the creditor if the material conditions carried out by the debtor are met. This means that if it is not fulfilled, the creditor gives a subpoena or gives a legal warning 2 (two) times. If the debtor still does not carry out his achievements, then an action is taken to execute the withdrawal of the fiduciary guarantee, which becomes the object whenever and wherever because the power of withdrawing the fiduciary execution guarantee is equivalent to a decision court that has permanent legal force.

Creditors in Indonesia who feel disadvantaged can take legal remedies granted by law to a person or legal entity for certain matters to fight against the judge's decision as a place for parties who are dissatisfied with the judge's decision which is deemed not in accordance with what is desired, not fulfilling a sense of justice, because a judge is also a human being who can make mistakes/oversights so that he decides wrongly or takes the side of one of the parties, in legal remedies for the aggrieved parties can be divided into ordinary legal remedies and extraordinary legal remedies:

a. Ordinary legal remedies

It is a legal remedy that is used for decisions that do not have permanent legal force. Basically, suspend execution. With the exception, namely, if the decision has been handed down with the provision that it can be implemented first or *uitvoerbaar Bij voorraad* in Article 180 paragraph (1) HIR so, even though legal efforts are made, the execution will continue. These ordinary remedies include:

1) Resistance/*verzet*

Legal action against a decision outside the presence of the defendant (*verstek* decision). The legal basis for *verzet* can be seen in Article 129 HIR. *Verzet* can be carried out within a period of 14 days (including holidays) after the *Verstek* decision has been notified or submitted to the defendant because the defendant was not present. *Verzet* requirements, as stated in (Article 129 paragraph (1) HIR), are:

- a) issuance of the *verse* decision
- b) the period for filing resistance shall not exceed 14 days, and if there is an execution, it shall not exceed eight days; and

- c) Verzet is entered and submitted to the Chairperson of the District Court in the jurisdiction where the plaintiff filed his lawsuit.

2) Appeal

It is a legal remedy that is taken if one party is dissatisfied with the decision of the District Court (Sitorus, 2018). The legal basis is Law no. 4 of 2004 concerning Amendments to the Basic Power Law and Law no. 20 of 1947 concerning Repeat Trials. An appeal must be submitted to the clerk of the District Court who made the decision (Article 7 Law No. 20 of 1947). The order of appeal according to Article 21 of Law no. 4 of 2004 jo. Article 9 UU No. 20 of 1947 revoked the provisions of Article 188-194 HIR, namely:

- a) there is a statement of wanting to appeal
- b) the clerk makes a deed of appeal
- c) recorded in the master register of cases
- d) The statement of appeal must have been received by the appellant no later than 14 days after the statement of appeal was made.
- e) The comparator can make a memorandum of appeal, and the appellant can submit a counter memorandum of appeal.

3) Cassation

According to Articles 29 and 30 of Law no. 14 of 1985, jo. Law No. 5 of 2004 cassation is the annulment of decisions on court decisions from all judicial environments at the final court level (Tamusala, 2018). The decision submitted in the cassation decision is an appeal decision. The reasons used in the request for cassation are specified in Article 30 of Law No. 14 of 1985 jo. Law No. 5 of 2004 are:

- a) not authorized (both absolute and relative authority) to exceed the limits of authority;
- b) misapplying/violating applicable law;
- c) failure to comply with the requirements required by laws and regulations that threaten negligence with the cancellation of the decision in question.

4) Extraordinary legal action

Made against decisions that have permanent legal force, and in principle, this legal remedy does not suspend execution. Includes:

1. Judicial review

If there are matters or circumstances determined by law, a court decision that has legal force can still be requested for review from the Supreme Court in civil and criminal cases by interested parties. The reasons for the review according to Article 67 of the Law, namely:

- a) There is a novum or new Evidence which is known after the case has been decided, which is based on Evidence later declared false by the criminal judge;
- b) if, after the case has been decided, decisive Evidence is found which could not be found at the time the case was examined;
- c) if a thing has been granted, that is not demanded/more than what is required;
- d) if a part of the claim has not been decided without considering the reasons;
- e) if, in one decision, there is a judge's oversight/a real mistake.

The deadline for filing is 180 days after the decision has permanent legal force. (Article 69), the Supreme Court decides on a request for review at the first and final levels (Article 70 Law No. 14 of 1985 concerning the Supreme Court).

2. Extraordinary Remedies: Denderverzet

Occurs if a court decision harms the interests of a third party, then the third party can file a challenge against the decision. The legal basis is 378-384 Rv and Article 195(6) HIR. It is said to be an extraordinary legal remedy because, basically, a decision only binds the litigants (the plaintiff and the defendant) and does not bind a third party (but in this case, the result of the decision will bind another person/third party. Therefore, it is said to be extraordinary). Denderverzet was submitted to the District Court, which decided the case at the first level.

The existence of other legal remedies in Indonesia in the form of a lawsuit for compensation provides justice for the aggrieved party, especially the creditor. According to John Rawls in creating justice, the main principles used are (Safa'at, 2011):

- 1) The same freedom as much as possible, if it continues to benefit all parties;
- 2) The principle of inequality is used to the advantage of the weakest.

John Rawls argues that what causes injustice is the social situation, so it needs to be re-examined to determine which principles of justice can be used to form a good social situation (Purba et al., 2021). In Indonesia, justice is described in Pancasila as the basis of the state, namely social justice for all Indonesian people. The five precepts contain values that are the goal of living together. This justice is based on and imbued with the essence of human justice, namely justice in the relationship between humans and themselves, humans and other humans, humans and society, nation, and state, as well as the relationship between humans and God.

These values of justice must be a basis that must be realized in living together with the state to realize the goals of the state, namely realizing the welfare of all its citizens and all its territory, educating all its citizens.

Likewise, the values of justice serve as the basis for the association between countries among nations in the world and the principles of wanting to create order in living together an association between nations in the world based on a principle of independence for every nation, eternal peace, and justice in living together (justice social).

CONCLUSION

The form of legal protection in Indonesia is specifically given to creditors because the debtor defaults and diverts the fiduciary guarantee vehicle unilaterally to provide legal certainty and obtain justice. The protection is in the form of preventive legal protection with the Fiduciary Guarantee Registration System and repressive protection by setting criminal threats against debtors. The encumbrance of objects or vehicles with a Fiduciary Guarantee is made with a notarial deed in Indonesian and is Fiduciary Guarantee deed. Registration of fiduciary guarantees in Indonesia is carried out at the Ministry of Law and Human Rights.

Registration of fiduciary guarantees that have been carried out by the creditor will provide legal protection with the existence of the fiduciary certificate if the debtor in Indonesia defaults and

diverts the fiduciary guarantee object vehicle unilaterally, the creditor can execute or take the fiduciary guarantee vehicle whether it is still in the hands of the debtor or in the hands of third parties and creditors cannot be criminalized as a result of this incident. Debtors who unilaterally transfer fiduciary vehicles can be punished for this, as stated in article 36 UUJF. The fiduciary vehicle can be confiscated by POLRI investigators to be used as Evidence. Creditors who feel aggrieved as a result of the actions of unscrupulous debtors can also take other legal remedies by filing a lawsuit for compensation.

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