

Forced Execution of the Object of Fiduciary Guarantees Through the Debt Collector

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ABSTRACT

To achieve national goals, economic sector activities have the main aim of improving the standard of living and welfare of the community, and various policies are implemented to reactivate economic activities and give business entities more freedom to develop their businesses. One of the government policies to encourage development and economic growth is credit. To guarantee loan repayment from the borrower, the lender must have collateral, and one of the collaterals used is a fiduciary guarantee.

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INTRODUCTION

Lending loans to entrepreneurs can be risky. Like lenders, banks provide loans based on the principle of confidence in the borrower's ability to fulfill their obligations and based on the principle of prudence, which can be seen in the rating system implemented by the bank. In this case the creditor wants to protect the law. In the case of a loan, if the bond is registered with a guarantor, there may be problems because the lender cannot enforce the bond.

Sustainable law in the field of economic law functions to support economic activities and global development. The basis for the existence of an agreement as a source of inclusion can be found in the provisions of article 1233 of the Civil Code which states that "every agreement arises because of an agreement or law". Many major orders are recognized by law. The first is a type of mortgage, the second is a type of mortgage that is converted into a mortgage, the third is a mortgage regulated in Law Number 4 of 1996, and the last is a fiduciary guarantee. This is regulated in the Fiduciary Guarantee Law Number 42 of 1999 (hereinafter referred to as the Fiduciary Guarantee Law).

Fiduciary is a term that has long been known in Indonesian. The laws that specifically regulate this, especially Law Number 42 of 1999, use the word "custody". Therefore, the term "fiduciary" has become a buzzword in legal circles. However, fiduciary guarantees are sometimes referred to in Indonesian as "transfer of property under fiduciary guarantees". The creation of fiduciaries grew out of necessity. Asset guarantee companies for dynamic companies in the form of venture capital companies to transfer ownership through

fiduciaries without need to transfer collateral. One way to guarantee the legality of creditors' rights is by creating a list of fiduciary guarantees whose aim is to guarantee interests.

Employer beneficiaries. This is an extension of the many weaknesses of pawnshops that prevent them from meeting the needs of society and keeping up with social developments. A fiduciary agreement, under current law, transfers ownership of the property and personal property (owned by the debtor) in the fiduciary to the creditor, with physical control of the remaining assets.

The intention of the parties is to try to produce legal consequences. Many agreements create social and moral obligations but have no legal consequences. For example, promising to go to the movies has no legal consequences, but in some cases it does. In this case the willingness of the parties to enter into legal relations is important.

RESEARCH METHODS

The approach method used in this research is a normative juridical approach. The aim of this research is to understand the process by which the forced execution of a fiduciary guarantee object is a legal action if the correct procedures have been fulfilled in executing the fiduciary guarantee object. However, it is important to remember that enforcing financial obligations through violence, threats and even confiscation on the street is a special punishment even though it is not free from binding conditions.

RESULTS AND DISCUSSION

Execution of Fiduciary Guarantee Objects According to Law no. 42 of 1999

The basis for implementing fiduciary guarantees is stated in Law Number 42 of 1999 concerning Fiduciary Guarantees. The enforcement of fiduciary collateral objects can be carried out if the debtor feels there is a breach of contract regarding the contractual promises made and agreed with the creditor so that the creditor obtains enforcement rights or rights that can be used in the contract. concluded and agreed with the creditor. goods or securities without a court order. This causes the debtor's obligation to transfer collateral, namely to give control and ownership rights to the creditor, which is then processed in various ways to be sold according to this provision. regulated in Law no. 42 of 1999 concerning Fiduciary Guarantees.

A. Giving a Warning Letter

In dealing with problem loans before they are implemented, the priority is of course out-of-court settlement, i.e. If the debtor experiences a delay in the first payment of capital and interest, the creditor's action is to carry out verbal negotiations. a way that is free from disputes, for example family, reminding debtors of their obligations to pay. Late credit payments are reported one day after the credit page due date. Only then will the bank send a warning letter if the debtor does not show good faith after the first month's deadline. A warning letter containing an invoice for the amount to be paid and notification of cancellation/confiscation of the collateral is issued 3 (three) times in the following order:

- a. Warning letter I: issued 1 (one) day after the lot expiry date;
- b. Warning letter II: issued 7 (seven) days after the issuance of warning letter I
- c. Warning letter III: issued 7 (seven) days after the date of issuance of warning letter II.

B. Confiscation or Withdrawal of Collateral Objects

If after the issuance of the third warning letter (SP 3) there is no initiative between the creditor and debtor to achieve achievement, namely achieving the payment owed, then the creditor will meet directly with the debtor to carry out final negotiations with the debtor. before dragging the object out. If the debtor is still unable to fulfill its achievements in the form of repayment in the final agreement, then the object of the fiduciary guarantee is void. In this process, the creditor must include or be able to show an official deed of fiduciary guarantee made by a notary at the beginning of the fiduciary guarantee agreement, so that the creditor has executive rights in implementing the fiduciary guarantee object.

This official fiduciary guarantee deed is a very important legal basis for its implementation, so that if the creditor cannot show the original of the official fiduciary guarantee, then the debtor can refuse to take the object, the debtor must obtain a transfer note. The vehicle (BASTK) is signed by the giver of the unit (side goods), ie. the debtor and recipient of the unit are signed by the donor of the unit (side item), i.e. debtors and unit recipients.

C. Barriers to Producer Execution of Fiduciary Guarantees

In implementing a policy, there will certainly be problems or inconsistencies with the regulations provided. This usually occurs in the form of obstacles that arise outside the influence of the parties, in which case there will certainly be obstacles to the implementation of reliable guarantees. Below we describe the obstacles in implementing fiduciary guarantee objects in society which are divided into two categories, namely internal obstacles from creditors and also external obstacles originating from external parties.

Negligence in credit contracts is due to the creditor's limited human resources at the investigation stage, whose job is to assess the debtor's suitability for providing credit. This is important because it is the basis for selecting a reliable potential guarantor, because creditors cannot rely solely on the fact that they have confidence in a potential guarantor, i.e. Creditors must be more critical and careful in choosing debt.

After the credit agreement, there is no ongoing monitoring of the debtor. Even though it seems rarely done, this is very useful to do to prevent debtors from experiencing credit problems in the future. In other words, the creditor can still control the collateral object.

Apart from the lack of public information regarding the implementation of credit guarantees, there is also a gap in communication of information regarding trusted guarantees applied by creditors to debtors. Borrowers who are considered unfamiliar with fiduciary guarantees generally do not understand the fiduciary guarantees contained in credit agreements. So it is feared that new problems will arise in the future.

The most common external obstacles are fiduciary guarantees over an object and the debtor over the object. In this case, cooperation with the police is needed so that creditors can trace the objects and bad debtors who deliberately did this, and for the police this falls into the category of embezzlement cases.

The next obstacle is the transfer of collateral by the debtor to another person without the creditor's knowledge and permission, and in this case it is also reported to the police on the basis of embezzlement or without permission. transfer which is contrary to the provisions of article 23 (2) of Law no. 42 of 1999 concerning Fiduciary Guarantees.

CONCLUSION

Based on the discussion and analysis made by the author in the previous chapters, the author hereby draws conclusions regarding the problems raised by the author as follows:

The procedure for enforcing fiduciary security objects according to Law Number 42 of 1999 is carried out with warning letters one (SP I) to three (SP III) to debtors who experience delays in payment and if the debtor does not do so. to answer the debtor, the debtor is considered bankrupt so that the creditor has the right to enforce the guarantee, namely to take over the guarantee by showing a trust guarantee certificate that can be enforced. In this case, the collateral held by the creditor is sold at the auction stage, and if the value of the sale proceeds exceeds the value that the debtor must pay to the debtor, then that value must be returned.

Debtor, and if there is a shortfall, the debtor is obliged to pay the shortfall. Obstacles to the implementation of additional objects according to Law Number 42 of 1999 are divided into 2 (two) types. First, various internal obstacles, starting from limited creditor human resources in selecting debtors at the investigation stage, lack of examination of debtors after granting credit, and not providing information on creditors' trustworthiness, especially to debtors. and to society in general. Apart from that, there are also external obstacles, namely the transfer of trust guarantee letters to other parties without the creditor's permission or informally, and the loss of debtors and/or collateral.

Suggestion

To avoid this problem occurring in the future, it is recommended that creditors/finance companies in the future be more careful and confident when conducting data surveys on consumers/debtors so that they can properly see whether these consumers are able to carry out their obligations in an agreement with the finance company. And debtors/consumers should be able to prepare themselves well. If you are bound by an agreement, you can try to fulfill your obligations. If you find that the debtor is in default, you can communicate well with the creditor and carry out your achievements voluntarily.

REFERENCES

- [1] Hapsari Indri Kusumastuti, "Kajian Yuridis Eksekusi Obyek Jaminan Fidusia Yang di Alihkan Kepada Pihak Ketiga", e Jurnal.
- [2] Lolong Rivo Noviandi Chrismania, "Persoalan Eksekusi Objek Jaminan Fidusia Terhadap Pihak Ketiga", Jurnal FAKultas Hukum Universitas Sam Ratulangi Lx Privatum Vol.XII/No.2/Jul/23
- [3] Nofianti Nabila Ila dan Apriani Rani,"Pelaksanaan Eksekusi Jaminan Fidusia Apabila Kreditur Cedera Janji", Supermasi Jurnal Hukum Vol. 3 no. 2.
- [4] Purwadi Ari, Hukum Jaminan Dalam Perspektif Undang-undang Jaminan Fidusia, Jl. Dukuh Kupang, Surabaya.
- [5] Rivansyah Muhammad Dan Badriyah Malikhatun Siti, "Prosedur Eksekusi Objek Jaminan Dalam Perjanjian Kreditur Kendaraan Bermotor".
- [6] Undang-Undang Jaminan Fidusia Nomor 42 Tahun 1999 Pasal 6 Perkap Nomor 8 Tahun 2011.