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Legal Protection of Productive Credit Debtors Against the Execution of Fiduciary Collateral Objects Due to Breach of Performance

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Abstract. The purpose of this dissertation is to understand and find the reconstruction of the regulation of legal protection for productive credit debtors against the execution of fiduciary collateral objects; to understand and find the execution of fiduciary collateral directly in the provisions of Article 30 of Law No. 42 of 1999 concerning justice-based fiduciary collateral. The legal issue in this dissertation is the existence of a legal vacuum where the regulation on credit, especially regarding productive credit debtors who use collateral objects for productive interests or debtors with consumptive credit, receive the same treatment for execution due to default based on the provisions of Article 30 of Law No. 42 of 1999 concerning Fiduciary Collateral. The recommendations from the results of this study are (1) There is a reconstruction of legal protection for productive credit debtors in Law No. 42 of 1999 concerning Fiduciary Collateral, especially regarding productive credit issues so that the productive sector that uses fiduciary collateral objects for productive activities can be maximized to improve community welfare. (2) Although the creditor party in the distribution of credit with fiduciary guarantee objects is a weak party and needs to be protected, this is accommodated in Law No. 42 of 1999 concerning Fiduciary Guarantee Objects.

Keywords. Reconstruction, Fiduciary, Productive Credit, Execution

Introduction

The primary objective of this article are to analyze and find out how the reconstruction of the regulation on the execution of Fiduciary Guarantee is directly related to the provisions of Article 30 of Law No. 42 of 1999 concerning Fiduciary Guarantee based on justice, and to analyze and find out how the reconstruction of the Legal Protection of productive credit debtors against the execution of fiduciary guarantees is directly related to the provisions of Article 30 of Law No. 42 of 1999 concerning Fiduciary Guarantee based on Justice.

In Article 1 paragraph (11) of Law Number 10 of 1998 concerning banking, it is stated that: "Credit is the provision of money or money bills that can be equated with it, based on a loan agreement or agreement to pay off debts after a certain period of time with the provision of interest." In providing credit by banks, the basic principles are always taken into account,

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namely: Personality (Character), Ability (Capacity), Capital (Capital), Economic Condition (Condition of Economy), Collateral (Collateral) (Suyatno, 1990).

The provisions of Article 1 number 11 of Law Number 10 of 1998 concerning Banking state that the definition of credit is the provision of money or bills that can be equated with it, based on an agreement or loan agreement between the bank and another party that requires the borrower to repay the debt after a certain period of time with the provision of interest. Five basic principles in providing credit by the Bank, namely:

- Personality (Character)
- Ability (Capacity)
- Capital (Capital)
- Economic Condition (Condition of Economy)
- Collateral (Collateral)

According to Fuady (1992), there are three phases in the process of making an agreement between a debtor and a creditor, namely (1) Obligatory Agreement Phase, both parties have entered into an obligatory agreement with a money lending mechanism by submitting a fiduciary guarantee; (2) Object Agreement Phase (zakelijke overeenkomst), the transfer of rights from the debtor to the creditor is carried out by constitutum prosessium2; (3) Use of Borrowing Agreement Phase, objects that have become property are borrowed for use by the debtor, so that power over the object never occurs at all.

The Indonesian government on September 30, 1999, has enacted Law Number 42 of 1999 concerning Fiduciary Guarantee. This institution is known as Fiduciary Cum Creditore Contracia, meaning a guarantee in the form of trust made by a creditor, that the debtor will transfer ownership of an object to the creditor as collateral for his debt with the agreement that the creditor will transfer the ownership back to the debtor if the debt has been paid in full (Satrio, 2002:166).

The banking world is familiar with the existence of a Guarantee Institution based on trust, namely Fiduciare Eigendom Overdracht (FEO). This guarantee institution was previously regulated in the provisions of Article 1152 paragraph (2) of the Civil Code concerning pawns which stipulates that control of the pawned object is not with the pawnbroker. The pawnbroker cannot use the FEO institution which has been recognized by Dutch jurisprudence in the Arrest Hoge Raad dated January 25, 1929 and in Indonesia in the Arrest Hooggerechtshof jurisprudence dated August 18, 1932.9 This jurisprudence became the forerunner of modern fiduciary (Sofwan, 1997).

Law Number 42 of 1999 concerning Fiduciary Guarantee (Fiduciary Guarantee Law) has provided convenience for business actors in the financing sector, especially in consumer finance which in the past decade has become an important part of society. The community to meet their needs by using credit facilities provided by banking institutions and non-bank financial institutions such as consumer finance.

Financing institutions in carrying out their functions refer to Presidential Regulation Number 9 of 2009 concerning Financing Institutions. In this regulation, a financing institution is a business entity that carries out financing activities in the form of providing funds or capital goods. The financing can be given to a business or individual. In financing institutions there are several restrictions including (Nasihin, 2012:13):

- Financing institutions are prohibited from directly withdrawing funds from the public in the form of: (a) Giro; (b) Deposits; and (c) Savings.

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- Financing institutions may issue a Promissory Note by fulfilling the principle of prudence. A Promissory Note is a statement of the debtor's unconditional ability to pay a certain amount of money to the creditor or his/her successor.
- The issuance of the Promissory Note is further regulated by the Minister

Finance companies in the Regulation of the Minister of Finance of the Republic of Indonesia Number 84/PMK.012/2006 concerning Finance Companies, are business entities outside of Banks and Non-Bank Financial Institutions that are specifically established to carry out activities included in the business field of Finance Institutions. One type of finance company is consumer finance. Consumer finance is a financing activity for the procurement of goods based on consumer needs with installment payments.

Finance companies are established in the form of limited liability companies or cooperatives and the scope for procuring goods for consumer needs with installment payments includes: (a) financing of motor vehicles; (b) financing of household appliances; (c) financing of electronic goods; (d) housing financing (Nasihin, 2012).

Finance companies need to be responsible both morally and legally (criminal and civil) in running the economy of the Indonesian people, in order to create good harmony with the community. As a business entity, a finance company is led by a Director who is responsible for the Limited Liability Company both inside and outside the court. The Board of Directors is the only organ that has responsibility for the interests and objectives of the company (Sjawie, 2017:153).

Every business entity or individual in running their business and in order to obtain legal protection, needs to pay attention to several laws and regulations regarding consumer financing, such as Law No. 42 of 1999 concerning Fiduciary Guarantees, Regulation of the Chief of Police No. 8 of 2011 concerning Securing the Execution of Fiduciary Guarantees and Constitutional Court Decision No. 18/PUU-XVII/2019. In the Fiduciary Guarantee Law, it is stated that the definition of fiduciary is the transfer of ownership rights of an object based on trust with the provision that the object whose ownership rights are transferred is in the control of the owner of the object. Fiduciary guarantees are guarantee rights for movable objects, both tangible and intangible, and immovable objects, especially buildings that cannot be burdened with mortgage rights.

The case in this study is based on the Constitutional Court Decision No. 18/PUU-XVII/2019 concerning the Testing of Article 15 paragraph (2) and (3) of Law Number 42 of 1999 concerning Fiduciary Guarantees against the 1945 Constitution, which was submitted by two applicants, Aprilliani Dewi and Suri Agung Prabowo regarding the Decision of the South Jakarta District Court Number 345/Pdt.G/2018/PN.Jkt.Sel.

Based on the Decision of the South Jakarta District Court Number 345/Pdt.G/2018/PN.Jkt.Sel dated January 7, 2019, in its decision it is stated that:

- In the Exception: Rejecting the exceptions of T1 (PT. Astra Sedaya Finance), T2 (Idris Hutapea), T3 (M. Halomoan Tobing) and TT (OJK) in their entirety;
- In the Main Case

- Granting the plaintiff's lawsuit in part;
- Stating that T1 (PT. Astra Sedaya Finance), T2 (Idris Hutapea), T3 (M. Halomoan Tobing) have COMMITTED UNLAWFUL ACTIONS that are detrimental to the PLAINTIFF;

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- Sentencing T1 (PT. Astra Sedaya Finance), T2 (Idris Hutapea), T3 (M. Halomoan Tobing) to jointly and severally pay material losses to the Plaintiff in the amount of Rp. 100,000,-;
- To sentence T1 (PT. Astra Sedaya Finance), T2 (Idris Hutapea), T3 (M. Halomoan Tobing) to pay material losses to the Plaintiff in the amount of Rp. 200,000,000,-;
- To sentence TT (OJK) to comply with the contents of this decision

The Financing Company (PT. Astra Sedaya Finance) ignored the contents of the South Jakarta District Court Decision Number 345/Pdt.G/2018/PN.Jkt.Sel and continued to withdraw the Fiduciary Collateral Object on January 11, 2019 on the basis that the provisions of Article 15 paragraph (2) and paragraph (3) of the Fiduciary Collateral Law and the Fiduciary Agreement are deemed to have permanent legal force.

The Financing Company is too hasty in determining the debtor who is in default or has broken the promise. The institution that has the right to do so is the District Court (with the Financing Company filing a lawsuit and/or an execution request to the Head of the District Court).

Based on the problems in cases related to the execution of fiduciary collateral objects, it shows that there has been no justice for the injured parties. The focus of this research study is based on the case of unilateral execution carried out by the Creditor using the services of a third party (debt collector). In the Decision of the South Jakarta District Court No. 345 / Pdt.G / 2018 / PN.Jkt.Sel which later developed into a Decision of the Constitutional Court No. 18 / PUU-XVII / 2019. The incident began with AD suing Defendant 1 PT. Astra Sedaya Finance; Defendant 2 Idris Hutapea; Defendant 3 M.Halomoan Tobing and Co-Defendant OJK.

The lawsuit was filed because Defendant 1 hired the services of a debt collector to take over the fiduciary collateral object controlled by the Plaintiff without going through the correct legal procedures, such as by force, without showing evidence and official documents, without authority by attacking the personal, honor, dignity and threatening to kill the plaintiffs. In the Decision of the South Jakarta District Court Number 345 / Pdt.G / 2018 / PN.Jkt.Sel dated January 7, 2019, it has stated that the actions carried out by Defendant 1 PT. Astra Sedaya Finance; Defendant 2 Idris Hutapea; Defendant 3 M. Halomoan Tobing are Unlawful Acts.

Based on the Decision of the South Jakarta District Court 345/Pdt.G/2018/PN.Jkt.Sel, the Defendants were not required to implement the contents of the Decision, but to ignore it, because on January 11, 2019, based on the Fiduciary Agreement, it was deemed to have permanent legal force (Article 15 paragraph 2 of the UUJF). The Plaintiff filed an Application with the Constitutional Court with Registration Number 18/PUU-XVII/2019 in the case of Judicial Review of Law Number 42 of 1999 concerning Fiduciary Guarantees against the 1945 Constitution of the Republic of Indonesia.

In the decision of the Constitutional Court Number 18/PUU-XVII/2019, it was stated that Article 15 paragraph (2) and Article 15 paragraph (3) of the Fiduciary Guarantee Law were in conflict with the 1945 Constitution of the Republic of Indonesia. So that the two Articles can no longer be used as a basis for Financing Companies to withdraw fiduciary guarantee objects, except by filing a default lawsuit at a District Court.

Therefore, analyzing legal protection of productive credit debtors against execution of fiduciary collateral objects is crutial.

Research method

The research conducted in this dissertation uses normative legal research which is a study in the context of the field of legal science to be able to examine the substance of existing

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positive law textually which is not only about norms, but also the principles and even the values contained therein related to the reconstruction of the legal regulations for the execution of Fiduciary Guarantees based on the provisions of Article 30 of the Fiduciary Guarantee Law.(Marzuki, 2008:29).

Result and discussion

1. Execution of Fiduciary Collateral Objects From Debtors of Productive Credit In Default

Execution of fiduciary guarantees for consumer financing of motor vehicles in Indonesia, theoretically, before making a fiduciary guarantee agreement, the financing company must first make an appraisal of the value of the collateral and compare it with the amount of payments in the form of installments for each month. months that must be paid by the Debtor providing the fiduciary guarantee, in this case as a consumer. The provisions of Article 29 of the Fiduciary Guarantee Law do not provide any mention of the method of executing the object of the Fiduciary Guarantee through a regular lawsuit, however, this does not mean that this regular lawsuit cannot be carried out to execute the object of the Fiduciary Guarantee. This can be explained because the fiduciary guarantee law by means of special execution is not to eliminate general procedural law. There is no indication whatsoever in the Fiduciary Law, especially regarding the method of execution, which aims to eliminate the provisions of general procedural law through ordinary lawsuits to the competent district court.

Execution according to Article 29 of the Fiduciary Guarantee Law cannot be carried out, so in some cases as a forced effort, the Fiduciary Recipient confirms his contractual rights to the Fiduciary Grantor through: 1. Civil Lawsuit in the District Court; 2. Lawsuit at the Consumer Dispute Resolution Agency; 3. Criminal Legal Efforts; By making a complaint report against the Fiduciary Provider or the one who controls the Collateral Vehicle, for example by reporting fraud, false information, embezzlement, and double BPKB. These efforts certainly require a lot of money, a long time and even uncertain results. 4. Left by the Fiduciary Recipient.

If the debtor or fiduciary provider defaults on his/her promise, execution of the object which is the object of the fiduciary guarantee can be carried out in several ways, namely: 1. Executorial title by the fiduciary recipient, meaning directly carrying out the execution through the execution party institution. 2. Sale of the object of the fiduciary guarantee by his own power through a public auction and taking payment from the proceeds of the sale. 3. Underhand sales, meaning that the implementation of the sale of the object to be executed must be based on an agreement between the giver and recipient of the fiduciary. In its implementation, it is carried out after 1 (one) month has passed since the written notification by the giver and/or recipient of the fiduciary to the interested parties and announced in at least 2 (two) newspapers circulating in the relevant areas (Patrik & Kashadi, 2008:46).

Fiduciary guarantee through binding of fiduciary collateral objects that are not equipped with a fiduciary certificate gives rise to a risky and complex legal consequence. The creditor as the recipient of the fiduciary can take execution action so that the Debtor as the fiduciary giver can be considered unilateral and can cause arbitrariness for the actions of the Creditor. It can also be in this case on the basis that the financing of the fiduciary object is usually not in full accordance with the value of the goods or it can also be that the Debtor as the party providing the fiduciary has carried out his obligations even though only in part, so that it can be said that the object The fiduciary collateral consists of part of the Creditor's rights and also part of the Debtor's rights (Patrik & Kashadi, 2008:46).

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This weakness is exploited by business actors in the financial industry, "especially the financing institution and banking sector which carry out fiduciary guarantee practices with underhand deeds. The author is also concerned about the alleged embezzlement of non-tax state revenue in accordance with Law Number 20 of 1997 concerning Non-Tax State Revenue, because millions of financing (consumption, manufacturing and industry) with fiduciary guarantees are not registered and have great potential to harm state revenue finances (Patrik & Kashadi, 2008:46).

For the benefit of Creditors who hold debts, the Law provides guarantees that are directed at all Creditors and regarding all Debtor assets. The existence of guarantees for the Debtor is for the security of capital and legal certainty for capital providers, this is where the importance of guarantee institutions lies. The formation of a fiduciary institution that grows in practice because there is a need for a guarantee institution for movable objects in the form of business capital objects without the need to hand over the collateral objects and only need to hand over ownership rights through trust.

Default (negligence) has such important consequences, it must be determined first whether the debtor has committed default or negligence, and if this is denied by him, it must be proven before a judge. Sometimes it is not easy to say that someone is negligent or forgetful, because often it is not promised exactly when a party is required to carry out the promised performance. As a result of the occurrence of a breach of contract, the Debtor must: 1) Compensate for losses 2) The object that was made the object of the obligation since at that time the fulfillment of the obligation becomes the responsibility of the Debtor. 3) If the obligation arises from a reciprocal agreement, the Creditor may request cancellation (termination) of the agreement (Patrik & Kashadi, 2008).

If we pay attention to the definition of objects that can be the object of fiduciary guarantee, then what is meant by objects also includes receivables. Specifically regarding the results of objects that are the object of fiduciary guarantees, Article 10 of the Fiduciary Guarantee Law regulates that insurance claims are not subject to agreement otherwise (Pebrianti, 2021).

Registration of objects burdened with Fiduciary Guarantee is carried out at the domicile of the Fiduciary giver, and the registration includes objects, both those located within and outside the territory of the Republic of Indonesia to fulfill the principle of publicity, as well as being a guarantee of certainty for other Creditors regarding the objects that have been burdened. Fiduciary Guarantee. Fiduciary registration is carried out at the Fiduciary Registration Office. The Fiduciary Registration Office is part of the Ministry of Justice and is not an independent institution or technical implementing unit. The Fiduciary Registration Application is made by the Fiduciary Recipient, his/her attorney or representative by attaching the Fiduciary Guarantee Registration Statement. The Fiduciary Guarantee Registration Statement includes: a. Identity of the Fiduciary Giver and Recipient; b. Date, Fiduciary Guarantee deed number, name and domicile of the notary who made the Fiduciary Guarantee deed; c. Data on the principal agreement guaranteed by the Fiduciary; d. Description of the object that is the object of the Fiduciary Guarantee; e. Guarantee value; f. Value of the object that is the object of the Fiduciary Guarantee (Pebrianti, 2021).

Article 19 of the Fiduciary Guarantee Law states that the transfer of rights to receivables guaranteed by Fiduciary Guarantee results in the transfer by law of all rights and obligations of the Fiduciary Recipient to the new Creditor. The transfer is registered by the new Creditor with the Fiduciary Registration Office.

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Article 23 paragraph (2) of the Fiduciary Guarantee Law states that: "The Fiduciary Provider is prohibited from transferring, pawning, or renting to another party an object that is the object of the fiduciary guarantee which is not an inventory item, except with the prior written consent of the Fiduciary Recipient."

Thus, fiduciary cannot be given to more than one Creditor unless it is given together at the same time and all Creditors are aware of the existence of two or more Creditors.

In relation to execution, execution is the realization of the obligation of the defeated party in the judge's decision, to fulfill the achievements listed in the judge's decision. In other words, the execution of a judge's decision that has permanent legal force is the final process of the civil and criminal case process in court. A decision that has permanent legal force can be requested to be executed by the winning party, provided that the losing party is unwilling to carry out the relevant decision. Meanwhile, only decisions that have a condemnatory sentence (condemnatoir) can be requested for execution, while declaratory and constitutive decisions cannot be requested for execution.

The execution of fiduciary guarantees is regulated in Article 29 to Article 34 of the Fiduciary Guarantee Law. What is meant by the execution of fiduciary guarantees is the seizure and sale of objects that are the objects of fiduciary guarantees. Meanwhile, the cause of the emergence of this fiduciary guarantee execution is because the fiduciary giver breaches his promise or does not fulfill his performance on time to the fiduciary recipient, even though they have been given a warning. There are 3 ways to execute fiduciary collateral objects, namely: 1. implementation of the executorial title by the fiduciary recipient. What is meant by an executorial title is a writing that contains the implementation of a court decision, which provides the basis for seizure and auction of seizures (executory verkoop) without the intermediary of a judge. 2. sale of objects that are the object of fiduciary guarantees under the authority of the fiduciary recipient himself through a public auction and taking payment of his receivables from the proceeds of the sale. 3. underhand sales carried out based on an agreement between the giver and recipient of fiduciary if in this way the highest price can be obtained which is profitable for both parties (Salim, 2024: 89-91).

Fiduciary Guarantee execution can be carried out in several ways, including: 1. Direct execution with an executorial title which means the same power as a court decision that has permanent legal force. This execution is justified by Law Number 42 of 1999 concerning Fiduciary Guarantees, because according to Article 15 paragraph (2) of Law Number 42 of 1999 concerning Fiduciary Guarantees, the Fiduciary Guarantee Certificate uses the phrase "For the Sake of Justice Based on the Almighty God" which means its power is the same as the power of a court decision that is permanent. This irahirah provides an executorial title and means that the deed can be executed without having to go through a court decision. Therefore, what is meant by fiat execution is the execution of a deed such as executing a court decision that has been legally binding, namely by requesting fiat from the chief justice by requesting a determination from the chief justice to carry out the execution. The chief justice will lead the execution as referred to in the HIR. 2. Public Auction or Parate execution. Fiduciary execution can also be carried out by executing it, by the Fiduciary Recipient through a public auction institution (auction office), where the results of the auction are taken to pay off the Fiduciary Recipient's bills. The execution of the order through a public auction can be carried out without involving the court as regulated in Article 29 paragraph (1) letter b of Law Number 42 of 1999 concerning Fiduciary Guarantees. 3. Underhand sales. Fiduciary execution can also be carried out through underhand sales provided that the conditions for that are met (dspace.uii.ac.id).

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Regarding the implementation of the law on Fiduciary Guarantees, Article 30 states that the fiduciary giver (debtor) is obliged to hand over the object that is the object of the fiduciary guarantee in the context of implementing the execution". Furthermore, the explanation of Article 30 states that "in the event that the fiduciary giver does not hand over the object of the fiduciary guarantee at the time the execution is carried out, the fiduciary recipient has the right to take the object that is the object of the fiduciary guarantee, and if necessary can ask for assistance from the authorized party". In order to secure the implementation of the Fiduciary Guarantee, the Republic of Indonesia Police issued the Regulation of the Chief of Police No. 8 of 2011 which has been in effect since June 22, 2011 with the aim of ensuring that the implementation of the Fiduciary Guarantee is carried out safely, orderly, smoothly, and accountably. Meanwhile, the process of securing the execution of the Fiduciary Guarantee is stated in Article 7 of the Regulation of the Chief of Police No. 8 of 2011 which states that the application for securing the execution must be submitted in writing by the recipient of the Fiduciary Guarantee or his legal representative to the Regional Police Chief or Police Chief where the execution is carried out. This is contrary to the procedure for executing a gross deed where the sole authority to carry out the execution is the Head of the District Court.

Based on the theory of justice, the security of the execution of fiduciary guarantees is given based on an assessment of the situation and conditions faced. In addition, in securing the execution, it is also carried out proportionally, namely a security of the execution of the fiduciary guarantee which is carried out by taking into account the nature of the threats faced and the involvement of power, as well as fulfilling accountability, namely the implementation of the security of the execution of the fiduciary guarantee which can be accounted for. In the implementation of security execution by the Police must be in accordance with applicable provisions.

However, the facts of the incident as written in Law Number 42 of 1999 concerning Fiduciary Guarantees Article 30 and its explanation are not like that, but what happens is: the implementation of the execution/withdrawal of the object of the fiduciary guarantee (motorized vehicles) often encounters many obstacles, including the following:

- The fiduciary giver (debtor) has left and his whereabouts are unknown (tends to be covered up by the family)
- The collateral object is no longer in the hands of the fiduciary giver (debtor) with; a. Pawned b. The collateral object is outside the city / outside the province, far from the reach of the fiduciary giver (debtor) c. Sold (Usman, 2016:1).

The focus of attention in the matter of fiduciary guarantee is the default of the Debtor giving the fiduciary. The Fiduciary Guarantee Law does not use the word default but rather injury to promise. Executorial action or better known as execution is basically the act of carrying out or carrying out a court decision.

According to Article 195 HIR, the definition of execution is carrying out a judge's decision by the court. This shows that the Creditor's receivables are imposed on all of the Debtor's assets without exception (Poesoko, 2008:125). The implementation of the execution of fiduciary guarantees is regulated in the provisions of Articles 29 to 34 of the Fiduciary Guarantee Law.

The legal ratio of selling fiduciary collateral underhand is to obtain the highest cost and benefit both parties. Therefore, an agreement is needed between the Debtor and the Creditor on how to sell the fiduciary collateral. For example, whether the Debtor or the Creditor is looking for a buyer. The proceeds from the sale are handed over to the Creditor to be calculated against the Debtor's debt. If there is any remaining, the money is returned to the Debtor who

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gave the fiduciary, but if it is not enough to pay off the debt, the Debtor remains responsible for paying it off (Kamelo, 2014:54).

In the provisions of Article 30 of the Fiduciary Guarantee Law, it states: The Fiduciary Provider is obliged to hand over the Objects that are the object of the Fiduciary Guarantee in the context of implementing the execution of the Fiduciary Guarantee. In the event that the Fiduciary Provider does not hand over the Object that is the object of the Fiduciary Guarantee at the time the execution is carried out, the Fiduciary Recipient has the right to take the Object that is the object of the Fiduciary Guarantee and if necessary can ask for assistance from the authorized party.

Executorial action or better known as execution is basically the act of carrying out or carrying out a court decision. According to Article 195 HIR, the definition of execution is carrying out a judge's decision by the court. This shows that the creditor's receivables are imposed on all of the debtor's assets without exception.157 Many people say that execution is identical to the implementation of a judge's decision that has permanent legal force, but in practice this is not entirely the same (Poesoko, 2008:124).

According to Harahap (1989:90), there are several forms of exceptions that are permitted by law which allow execution to be carried out outside of a decision which has obtained permanent legal force, namely: Implementation of a decision which can be carried out in advance (uitvoerbaar bijvoorraad), in accordance with Article 180 paragraph (1) HIR or Article 191 paragraph (1) of the RBg, where the judge can issue a decision containing an order that the decision can be executed in advance, which is usually called a "decision" which can be executed immediately, even if an appeal or cassation is requested against the decision.

Fiduciary guarantees are based on trust, but in reality many Fiduciary Providers default; not paying installments properly, not handing over the Collateral Vehicle to the Fiduciary Recipient as mandated in Article 30 of the Fiduciary Guarantee Law, carrying out resistance or efforts so that the Fiduciary Recipient cannot or is constrained from making withdrawals, resulting in failure presenting Vehicle Guarantee causes vehicle sales to be unable to be carried out. The presence of the Chief of Police Regulation No. 8 of 2011 also turned out to not be very helpful and was very rarely used, especially in towing Bennotor vehicles, so that the presence of the Fiduciary Guarantee Law and the Chief of Police Regulation still leaves problems including due to legal awareness, legal culture, good faith of Fiduciary Providers and the general public. which does not support.

Based on the theory of legal discovery, the failure of the Fiduciary Guarantee Law and the Regulation of the Chief of Police No. 8 of 2011 concerning the Security of the Execution of Fiduciary Guarantees to provide maximum legal certainty and protection to Fiduciary Recipients, has resulted in Fiduciary Guarantees whose objects are Motor Vehicles needing to be revised and evaluated with a more ideal model from the perspective of ius constituendum. Ius constituendum is a law that is aspired to by social life and the State but is not yet a rule in the form of laws or various other provisions. Ius constituendum can also be interpreted as a law that is expected to apply in the future."

The implementation of the execution/withdrawal of the object of fiduciary guarantee falls within the scope of civil law, so it is not easy to implement it. If resistance occurs, assistance from the police is needed, which has a guideline in the Police Procedure Number 08 of 2011, because the form of coercive method when implementing the execution of the object of fiduciary guarantee is clearly outside the scope of the provisions of Article 30. Fiduciary Guarantee Law and its explanation.

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The legal consequences of implementing the execution of fiduciary collateral objects as stated in the provisions of Article 30 of the Law on Fiduciary Guarantees in the implementation of the execution of fiduciary guarantees that "The Fiduciary Provider is obliged to hand over the Object which is the object of the Fiduciary Guarantee in the context of implementing the execution of the Fiduciary Guarantee". The follow-up to the provisions of this article is that the Debtor can immediately take the collateral directly from the Creditor if there is a default in the agreement. However, if there are difficulties in implementing the execution of the fiduciary collateral, in accordance with the Regulation of the Chief of Police No. 8 of 2011 concerning the security of the execution of fiduciary collateral, the Police can assist in securing the execution, of course in accordance with the applicable terms and conditions.

To ensure certainty, "registration" is a very essential spirit in this Draft Law because with registration, certainty can be obtained regarding objects that are guaranteed by fiduciary, because for movable objects that are guaranteed by fiduciary, so far they are vulnerable to misused especially by the Debtor as the fiduciary giver because as the owner he feels that the ownership remains in his power without realizing that the goods are guaranteed through a fiduciary guarantee institution. However, the Draft Law is there to provide legal certainty and equal opportunity to all parties and all groups in society to guarantee their assets in a fiduciary manner, both movable assets that are registered and those that are not registered, including in this case, non-movable assets. as regulated in Law No. 4 of 1992 concerning Housing in order to obtain its share of funds.

The draft law on Fiduciary Guarantee provides Fiduciary Guarantee as collateral for a debt bond that has a special attraction, because the owner/object, which is guaranteed, does not need to hand over the object to the creditor (Creditor), so that the goods can still be used to support their business. This is a positive element in fiduciary guarantees. This draft law was born, in general, the objects of fiduciary guarantees are movable objects consisting of objects in inventory, merchandise, receivables, machine equipment and motor vehicles. Therefore, in order to meet the needs of society which continue to develop in terms of obtaining business capital, the object of fiduciary guarantee is given a broad definition, namely movable objects that are tangible or intangible, and immovable objects that cannot be burdened with collateral rights.

Prior to the issuance of the Fiduciary Law, there was no clarity regarding how to execute the object of fiduciary guarantee. Because there are no provisions governing it, many interpret the execution of the object of fiduciary guarantee by using the usual lawsuit procedure (through the court with the usual procedure) which is long, expensive and also tiring. Although since the enactment of Law No. 16 of 1985, there is an easier procedure with underhand execution. In addition to the heavy requirements, the execution of the object of the fiduciary guarantee under the hand of course only applies to the fiduciary that applies to flats. Therefore, in legal practice, the execution of fiduciary guarantees is rarely carried out (Fuady, 2000:57).

The existence of the parate execution institution is intended to make it easier for creditors to pay off their collection rights and better conditions for the special collateral they hold. This is a manifestation of the principle of legal protection, reflected in the implementation of parate execution (Panjaitan, 2018). Executorial action or better known as execution is basically the act of implementing or carrying out a court decision. According to Article 195 HIR, the definition of execution is carrying out a judge's decision by the court.

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Parate execution in fiduciary guarantee institutions is regulated in two articles, namely, Article 15 Paragraph (3) which states "If the debtor defaults, the fiduciary recipient has the right to sell the object that is the object of the fiduciary guarantee under his own authority";

Article 29 Paragraph (1) Letter (b) of the Fiduciary Law, which states: "If the debtor or fiduciary giver defaults, execution of the object that is the object of the fiduciary guarantee can be carried out by: ... b. selling the object that is the object of the fiduciary guarantee under the authority of the fiduciary recipient himself through a public auction and taking payment of his receivables from the proceeds of the sale."

If we look at the provisions of the articles above, the requirements for the "maturity" of the authority to carry out parate execution are almost the same as the discussion regarding the previous special guarantee institution. The only difference with a mortgage (and its similarity to a pawn) is that the right to parate execution in fiduciary is granted by law without the need for agreement by the parties.

2. Reconstruction of the Legal Protection Arrangements for Productive Credit Debtors Against the Execution of Fiduciary Collateral Objects Based on Justice

According to Article 1315 of the Civil Code, “in general no one can bind himself in his own name or ask for a promise to be made, except for himself.” This principle is called the principle of the personality of an agreement. Binding oneself is aimed at taking on obligations or agreeing to do something, while asking for a promise to be made is aimed at obtaining rights over something or being able to demand something. Therefore, it is only right that an obligation that is born from an agreement can only bind the parties who make the agreement and does not bind people who are outside the agreement, thus an agreement is only in a binding position regarding rights and obligations between the parties who made the agreement only. Other people are third parties who have no connection with the agreement (Subekti, 1989).

The agreement is made with the knowledge and mutual will of the parties, with the aim of creating or giving rise to obligations on one or both parties making the agreement. Thus, as has been mentioned, an agreement as a source of obligation is different from other sources of obligation, namely law, based on the voluntary nature of the party who is obliged to perform a performance towards the other party in the obligation. In an agreement, the party who is obliged to carry out an achievement, in this case the Debtor, can determine in advance by adjusting to his ability to fulfill the achievement and to align with the rights (and obligations) of the opposing party, what, when, where and how he will fulfill the achievement (Muljadi & Widjaja, 2004).

According to Setiawan (1999), an agreement can be revoked because: 1. It is determined in the agreement by the parties, for example the agreement will be valid for a certain period of time. 2. The law determines the validity period of an agreement. For example, according to Article 1066 paragraph (3) the heirs can make an agreement for a certain period of time not to divide the inheritance. However, the validity period of the agreement is limited by Article 1068 paragraph (4) to only five years. 3. The parties or the law can determine that if a certain event occurs, the agreement will be revoked. For example: if one of the parties dies, the agreement will be revoked. Company agreement Article 1646 paragraph (4). Agreement to grant power of attorney Article 1813. Work agreement Article 1803 j. 4. Statement to terminate the agreement (opzegging) Opzegging can be done by both parties or by one of the parties. Opzegging only exists in temporary agreements, for example: 1. Work agreements 2. Rental agreements (Setiawan, 1999).

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In relation to credit, when providing credit, banks always ensure what the credit will be used for, because if there is a deviation from the agreed credit purpose, it can be detrimental to the interests of the bank itself. Generally, banks will supervise the use of credit given to debtors, but in banking practice this is often ignored because banks prioritize credit growth to increase their portfolios (Ibrahim, 2004:13).

Credit given by banks as creditors has a risk, therefore in the implementation of the provision of bank credit in particular and other institutions in general always pay attention to the principles of healthy credit, namely among others banks are not permitted to provide credit without a written agreement, providing credit to debtors which from the start has been considered unhealthy and could result in losses, providing credit exceeding the BMPK or Maximum Credit Limit, and banks are not permitted to provide credit for purchasing shares and working capital in the context of buying and selling shares (Djumhana, 206:246).

Law Number 7 of 1992 concerning Banking, as amended by Law Number 10 of 1998 concerning Amendments to the Banking Law, does not recognize the term credit agreement. The term credit agreement is found in Cabinet Presidium Instruction Number 15/EK/10 dated October 3, 1966 Jo. Circular Letter of Bank Indonesia Unit I Number 2/539/UPK/Pemb dated 8 October 1966 which instructed the banking community that in providing credit in any form, banks are required to use a credit agreement (Sutarno, 2004:97).

The very clear and strong basis for a bank regarding the obligations of a credit agreement is what is in a regulation. in article 11 of Law No. 10 of 1998 concerning Amendments to Law no. 7 of 1992 concerning Banking states that “credit is granted based on an agreement or lending agreement between the bank and another party”.

The inclusion of the words agreement or borrowing agreement in the definition of credit as stated in Article 1 number 11 above, may have the following intentions (Syahdeini, 1999:180-181):

- The legislators intend to confirm that the bank credit relationship is a contractual relationship between the bank and the Debtor customers in the form of borrowing and lending. So thus the bank credit relationship applies to Book Three (concerning obligations) in general and Chapter Thirteen (concerning borrowing and lending) of the Civil Code in particular.
- The legislators intend to require that bank credit relationships be based on written agreements, with the aim that such agreements can be used as evidence.

According to Badrulzaman (2000:32), a credit agreement is an agreement made as a precursor to the transfer of a sum of money. The preliminary agreement referred to here is the result of an agreement between the guarantor or Creditor and the borrower or Debtor regarding the legal relationships between the two.

Based on the formulation of Article 2 of the Regulation of the Minister of Finance Number: 130/PMK.010/2012, concerning the registration of fiduciary guarantees for financing companies that carry out consumer financing for motor vehicles with a Fiduciary guarantee charge, it states that "Financing companies are required to register fiduciary guarantees at the Fiduciary Registration Office at the latest." 30 (thirty) calendar days from the date of the consumer financing agreement". However, in practice, many Debtors who receive motor vehicle ownership credit from financing companies never receive an accurate and detailed explanation from the marketing party at the financing company to the Debtor/Consumer.

Based on the Theory of Legal Discovery, financing companies often carry out legal smuggling, especially regarding fiduciary guarantee agreements, the consequences of which will arise, especially for the Debtor. Especially when the payment of the object of the fiduciary

guarantee in the form of a vehicle is stalled and not smooth. However, many financing companies only pursue targets on how the company can benefit without thinking about the causes of the Fiduciary Debtor experiencing bad credit. And it often happens in the field when the Debtor is said to have a bad credit, then when the fiduciary collateral object is about to be withdrawn, the collector brings the fiduciary collateral certificate and other supporting evidence. In this regard, in order to be able to carry out the fulfillment of his rights over certain objects from the Debtor through such an execution method, the Creditor must have a basis for the right to carry out the execution through an executory seizure (executory beslag).

Conclusion

One of the characteristics of the Fiduciary Guarantee contained in the Fiduciary Guarantee Law is that its execution is easy and certain, if the Debtor (fiduciary giver) breaches his promise, especially in the provisions of Article 30 of the Fiduciary Guarantee Law. The ease of carrying out execution is certainly a very good breakthrough in order to protect the fiduciary collateral object in the hands of productive credit debtors, this is also because the fiduciary collateral object is a movable object that is easily moved from one location to another and moved so that it is very vulnerable to being used in a way that violates the rules. This convenience, of course, must provide space for other parties, in this case productive credit debtors, to be given the opportunity to pay off their debts that are guaranteed by the fiduciary guarantee object. The existence of a reconstruction of the regulation for debtors in productive credit will provide justice to debtors with productive credit because the purpose of the credit provided by the Fiduciary Law is productive credit for capital and business, where the object of the fiduciary guarantee can be used for production activities or to produce something productively as explained by the government and the views of the factions in the DPR in the process of making the Fiduciary Guarantee Law. However, this law is too protective of the interests of Creditors, so that the absence of balance in the framework of Debtors' rights certainly cannot be ignored, especially Debtors with productive credit who use the collateral object for productive activities should be protected from unfair treatment by Creditors.

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