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Legal Protection of Creditors' Preferences Rights Regarding Fiduciary Security Receivables

Muhammad Awal Alishakur¹, Ariawan Gunadi².

¹Tarumanagara University, Jakarta, Indonesia, muhhammad.217231007@stu.untar.ac.id.

²Tarumanagara University, Jakarta, Indonesia, ariawang@fh.untar.ac.id.

Corresponding Author: muhhammad.217231007@stu.untar.ac.id¹

Abstract: This article is entitled legal protection of creditors' preference rights for fiduciary guarantee receivables. This article uses a normative legal research type with a research approach . statute approach , namely a legislative approach carried out by identifying legal issues and discuss applicable laws and regulations, in relation to the material discussed . The state through laws and regulations provides legal protection for recipients of guarantees for goods legally in the transfer of rights to goods, one of which is fiduciary guarantees. This guarantee positions the recipient of the guarantee as having special rights, namely being given the first opportunity in terms of making payments if the borrower experiences default or bankruptcy . The recipient of fiduciary guarantees legally according to the Fiduciary Law can sell goods that have been placed as fiduciary guarantees, if the creditor or borrower cannot fulfill their obligations in the loan agreement. This execution is guaranteed in Article 15 paragraph (2) of the Fiduciary Law, through an execution mechanism with a court ruling.

Keyword: Legal Protection, Preference Rights, Fiduciary.

INTRODUCTION

Agreements regarding loans provided by people or financial institutions that have funds are stipulated in Article 1754 of the Civil Code, in which one party gives to another party with a predetermined amount of consumable goods , through the requirements of the second party to make a return in the same form and condition (Juwitasari et al., 2021) . A credit agreement is a basic agreement that must be present in making an agreement to submit collateral . Agreement submitting collateral is an agreement that accompanies or is added (*accessoir*) to the main agreement , namely the credit agreement . The approval of the loan agreement causes the emergence of rights and obligations between the two parties involved . The lender's right is to receive back the principal and interest if it has been agreed upon (Hedistira & Pujiyono, 2020) While the loan recipient is required to submit funds according to what has been previously agreed . While the borrower has the right to receive funds as agreed . The obligation of the loan recipient to pay the principal and interest according to what has been agreed . In the conditions of the loan agreement , if the loan recipient does not fulfill refund according to the agreement

then the loan recipient is said to have broken his promise . There are two factors that cause a break in promise , namely external and internal causes . External cause is a condition that is not expected to occur and can not be expected to occur when making an agreement . This cause is said to be a compelling condition , which becomes an obstacle for one party to fulfill its rights to the other party . In this condition, the party who cannot fulfill its obligations cannot be subject to punishment or blame . In which case there is no party who can be held responsible. In article 1133 of the Civil Code, the lender who holds the collateral has a priority position in the loan agreement . The preferred lender must be prioritized over other lenders , for any proceeds from the sale of the object used as collateral . In the provisions, the first to be given are the creditors of privilege, pledge, mortgage, land security and fiduciary rights . When carrying out debt expansion , execution and bankruptcy, the positions of the lenders are different from each other . Concurrent lenders have a low level below preferred lender (Winarno, 2013) . Concurrent lenders only have personal rights (*persoonlijk*) which have the same level among the others . Then the preferred lender is the lender who has the highest position , and is the most important to get payment . So that the position of the lenders tiered from preferred creditors, privileged creditors, and concurrent creditors.

Law No. 42 of 1999 regulates Fiduciary . The definition of Fiduciary is stated in Article 1 number 1 of the Fiduciary Law. related to Fiduciary is the transfer of ownership rights to goods based on belief if the goods whose ownership rights can be transferred are still determined to be controlled by the owner of the goods . the reason that gives rise to fiduciary is because there is a situation where the lender does not have the goods that are used as collateral by the borrower (Kurnia Sakti & Silviana, 2024) . In an agreement regarding fiduciary, both parties, both creditors and debtors, all receive legal protection for example , obtaining the right to use collateral is a form of protection for the guarantor and a breach of promise that provides a guarantee cannot be a factor in the goods being used as collateral change his ownership rights . Because of the UUJF causing the existence of preferential rights because of the debt and the application of the principle of *droit de suite* to the collateralized goods , then on the 3rd side of the principle of publicity in the agreement Fiduciary guarantees contain data related to goods that will later be used as fiduciary . Data regarding goods that will later be used as fiduciary, based on the provisions of Article 11 of the JF Law, namely (1) fiduciary goods must be registered , (2) fiduciary goods must be domiciled in foreign countries, the obligations in paragraph 1 remain valid .

In order to have an item, it is mandatory to follow the procedure in front of a notary and the office where the fiduciary is registered . There are so many unregistered fiduciary objects that cause a huge loss of value , because if the fiduciary guarantee is not registered, it is underhand and does not comply with the provisions of the regulations. making the related fiduciary object have no executory ability (without the need for a trial , final and binding) parties involved in making decisions) and preferential rights and also null and void (*Vernitngbarheid*). The next issue is what kind of legal protection is there for the lender's preferential rights over fiduciary collateral debt.

METHOD

This scientific article writing uses deductive analysis, as well as normative research type. The research approach used is the statute approach by inventorying related regulations to be used in solving legal issues in this article writing. (Hendrik Mezak, 2006) . The collection of legal materials carried out is by using primary, secondary and tertiary legal materials by documenting legal materials and then classifying and compiling them systematically to be used in solving a legal problem.

RESULTS AND DISCUSSION

An obligation is a legal relationship between parties that arises either from an agreement or because of the law. An obligation that arises because of an agreement, must perform the performance stated in the agreement, if there is a party that violates the performance in the agreement, then the party is said to have committed a breach of promise or default. What is meant by having committed a breach of promise in an agreement, especially a credit agreement, is if (a) the debtor breaks the promise of the nominal value of the payment that is his obligation and stated in the agreement . (b) the debtor carries out his payment obligations, which are not in accordance with or less than what has been stated in the agreement. Loan agreements that have been made by various financing institutions and banks usually require collateral. For financing institutions, loan agreements use fiduciary deeds as a layer of rights for credit agreements. So if in the loan agreement that has been placed on the basis of fiduciary deed rights, and there is a breach of promise made by the borrower, then the borrower must bear the risk of the goods that have been placed on fiduciary rights, as regulated in articles 15 and 30 of the Law on Fiduciary. (Meyda et al., 2023) . A credit agreement that has been placed on fiduciary deed rights has implications for the transfer of rights from the giver to the recipient of the fiduciary, if there is a default on the achievements stated in a credit agreement that has been agreed upon and signed jointly between the creditor and the debtor.

The loan agreement contained in the financing institution between the creditor and the debtor, usually always places a fiduciary deed on it as a form of guarantee and legal protection for the creditor, if the debtor defaults. The placement of the fiduciary deed on it is a form of obligation with an additional agreement. So that the main agreement is the loan agreement and the additional agreement is the agreement by issuing a fiduciary deed. The Fiduciary Law emphasizes in Article 4 which states (a) "Fiduciary Guarantee is a follow-on agreement to a main agreement that creates an obligation for the parties to fulfill the performance". (b) The creditor's rights follow the object (principle of *droit de suite*). According to Article 20 of the Fiduciary Law, the right to the guarantee owned by the Fiduciary Recipient continues to follow the object (principle of *droit de suite*). This means that the right to the fiduciary collateral object follows the object, wherever the collateral object is located. The principle of *droit de suite*, which means that the rights of the Fiduciary Recipient arising from the Fiduciary Encumbrance Agreement can be maintained against anyone . (c) Obligation of the Fiduciary Recipient to register the object of the fiduciary guarantee (Article 11 Paragraph 1 of the Fiduciary Law) . (d) Principle of Publicity Article 18 of the Fiduciary Law. (e) Fiduciary recipients have priority rights (Maharani et al., 2024) . Article 27 Paragraphs 1 and 2 of the Fiduciary Law are stated as follows: Paragraph (1) "The fiduciary recipient has priority rights over other creditors". Paragraph (2) "Preferential rights are the rights of the fiduciary recipient to take payment of his debts from the results of the execution of the object that is the object of the fiduciary guarantee". Explanation of Article 27 Paragraph (1) states: "The priority rights are calculated from the date of registration of the object that is the Fiduciary Guarantee at the Fiduciary Registration Office". Paragraph (3) "The priority rights of the fiduciary recipient are not removed due to the capitulation and/or liquidation of the Fiduciary Provider". This Preferential Right is one of the characteristics of property rights, such as the opinion of Djuhaendah Hasan as follows: "Fiduciary rights also contain property rights because there are certain objects that are bound and registered, and provide a preferential position to the creditor who holds them." (Adolph, 2016)

If the authentic fiduciary letter has been signed by the creditor and debtor parties, the Notary is required to register the fiduciary deed with the Ministry of Law and Human Rights as a legalization of the fiduciary deed, also stated in Article 11 paragraph (1) of the Fiduciary Law . The fiduciary deed registered by the notary and the debtor and creditor parties to the Ministry of Law and Human Rights must also include attachments that have been determined in the

Fiduciary Law as a form of formal requirements for a fiduciary deed to be made as stated in Article 13 paragraph (2) and can have executorial power. (ABADIE et al., 1999) . If all the formal requirements in making a fiduciary deed and the formal requirements to be able to register a fiduciary with the Ministry of Law and Human Rights, then the Ministry of Law and Human Rights is required to record the fiduciary deed as a guarantee from the parties receiving the fiduciary guarantee, to be recorded and listed in the fiduciary guarantee book. (Lila Kurniawati Khisni, 2014) . The creditor's right to receive all rights to the fiduciary deed, if the fiduciary deed has been recorded in the fiduciary guarantee book of the Ministry of Law and Human Rights, by recording the fiduciary deed in the fiduciary record book or registered, the Ministry of Law and Human Rights will issue a Fiduciary Guarantee Certificate, the fiduciary guarantee certificate is then given to the recipient of the fiduciary guarantee. A fiduciary certificate is a form of guarantee that is legally received by the fiduciary recipient and has legal force and can be used to protect the recipient's rights to goods that have been pledged with a fiduciary guarantee. The certificate has the right to carry out direct execution of the fiduciary guarantee, the power of the certificate is the same as the power of a court decision that is *inkracht*. However, in carrying out the execution of the fiduciary guarantee, the fiduciary recipient must still carry out the execution procedure through the court, to issue a determination of execution of the fiduciary guarantee. Fiduciary guarantees place the fiduciary recipient in the position of being able to transfer the rights to the object directly to the fiduciary recipient, if the fiduciary guarantee provider has broken the promise regarding the principal loan agreement. This is also relevant to what is contained in Article 15 paragraph (2) of the Fiduciary Law which states that: "The sale of objects that are the object of fiduciary guarantees is at the discretion of the fiduciary recipient himself through a public auction and taking payment of his receivables from the proceeds of the sale. The explanation of Article 27 of the Fiduciary Law states: "The priority rights are calculated from the date of registration of the object that is the fiduciary guarantee at the Fiduciary Registration Office . "

The *droit de suite* principle is a general principle in collateral law that protects the lender when the loan recipient commits an act of breaking a promise . On UU no. 42 of 1999 article 20 definition of the *Droit de suite* principle is the right of the lender who receives the fiduciary , which arises from the agreement to impose fiduciary duties can be maintained by everyone , as well as the ownership rights to land or buildings which serve as collateral. temporarily rented the recipient of the loan to another party , who is not bound by the building encumbrance agreement on his land (Lolong et al., 2023) . This principle is very important when The lender will then carry out the execution against collateral that has a form . .

So even though it is based on Article 15 of the Fiduciary Law , the party receiving the fiduciary has the right to carry out execution on the goods used as objects fiduciary guarantee, however , if the burden for fiduciary is not carried out in the form of a notarial deed and registered , this means that the party receiving the fiduciary will not be able to sell the goods. be used as an object of fiduciary guarantee against the authority of the party receiving the fiduciary , through a public auction and carrying out the taking to make the payment of his debt . because the burden in the form of a notarial deed, is evidence that shows the existence of the right to provide fiduciary and the party receiving the fiduciary . If the provisions regarding the type of agreement to charge fiduciary have been fulfilled and registered , the lender has the right to carry out the execution. If the recipient of the loan or the party providing the fiduciary carries out a breach of promise . If the type of agreement to charge fiduciary is not fulfilled and registered , the lender does not have the right to carry out the execution when the loan recipient or the party providing the fiduciary carry out a broken promise .

Apart from the right to carry out execution on objects that guaranteed by fiduciary, in line with the provisions of Article 1239 of the Civil Code, the lender can also receive compensation as stipulated in Article 1243 of the Civil Code, which states : " compensation for costs, losses and

interest due to failure to fulfill an agreement" only have obligations if the party who has the debt has it is determined that he has broken his promise in carrying out his agreement, is still negligent or if there is something that must be submitted or something carried out during the period of time that has passed". In Article 1240 of the Civil Code "In the condition of the lender claim rights against anything that is contrary to the agreement and obtain the right to be given power by a judge in carrying out the execution, while still receiving compensation for costs, losses and interest". The loan agreement with a building guarantee above the right of use does not provide benefits in the future, because the right of use can be removed. and if the loan recipient breaks his promise, the execution against buildings located on land with right-to-use land is not the case it's as easy as executing it buildings located on freehold land. Due to land sales also of course selling the building that stands on it.

CONCLUSION

Law No. 42 of 1999 concerning Fiduciary has given a very strong position to the party receiving the Fiduciary, because they have preferential rights, namely the right to pay off the debt of the party providing the Fiduciary which is used as collateral through Fiduciary Guarantee which prioritizes its fulfillment before other lenders, the important thing is that the agreement to impose fiduciary obligations must be registered. The lender does not get his rights if the fiduciary guarantee is not registered. If the lender does not carry out the obligation in paying off the debt as promised or if the borrower fulfills the obligation but not as agreed, then based on Article 15 Paragraph 2 of the Fiduciary Law: the lender who receives the fiduciary has the right to sell the goods that are used as the object of the fiduciary guarantee through parate execution, namely making a sale without a court order. In addition, the party receiving the fiduciary has the right to obtain the collateral object in the form of a building on land with right-of-use rights, if the lender breach of promise on the guarantee held by a third party. The party receiving the fiduciary is not permitted to claim the goods that are used as the object of fiduciary collateral if the recipient of the loan does not fulfill his obligations. If the party receiving the fiduciary Fiduciary claims the goods that are used as the object of fiduciary collateral, then based on Article 32 of the Fiduciary Law, the related agreement is null and void. In the sense that the agreement was never carried out.

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