

Legal Implication Analysis of Decision Number 14/Pdt.G.S/2022/PN.Gto On The Legal Protection of Creditors Against Bad Debts Burdened By Fiduciary Guarantees

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Abstract.

This study aims to examine how legal protection for creditors is applied in judicial practice by analyzing the case in Decision Number 14/Pdt.G.S/2022/PN.Gto. It focuses on the legal protection available to creditors when a debtor defaults (bad debt) on a financing agreement secured by a fiduciary guarantee. This research is crucial as it highlights how the law provides a foundation for protection by recognizing agreements, establishing breach of contract (default), and granting rights over the collateral object. On the other hand, the evidentiary process in court and disputes surrounding the formal aspects of the guarantee show that such legal protection does not always run smoothly and can be influenced by various factors. Consequently, there is an urgent need to analyze the considerations weighed by the panel of judges in bad debt cases secured by fiduciary guarantees. This study utilizes a normative legal research method (doctrinal) by analyzing applicable legal regulations supported by other legal materials, including primary and secondary sources. The findings demonstrate that fiduciary guarantees are fundamentally recognized and enforced by courts through civil dispute resolution mechanisms. However, the implementation of this legal protection varies depending on the concrete circumstances of the case, particularly when disputes arise regarding the formal validity of the fiduciary guarantee that serves as the basis for protecting the creditor's rights.

Keywords: *Legal protection; bad debt and fiduciary and guarantee.*

I. INTRODUCTION

Regarding agreements, Article 1313 of the Indonesian Civil Code (KUHPerdata) states, "An agreement is an act by which one or more persons bind themselves to one or more other persons." Based on this definition, it can be concluded that an agreement consists of parties, mutual consent, performance to be executed (consideration), a lawful cause, a specific form (oral or written), certain terms defining the content of the contract, and an objective to be achieved. In social life, the legal step most frequently taken by individuals and legal entities as legal subjects to meet their daily needs or generate profit is entering into agreements. Furthermore, Book III of the Indonesian Civil Code adopts an "open system," meaning parties are free to enter into contracts with anyone, determine their terms, execution, and form—whether oral or written. Additionally, parties are permitted to draft contracts that are already recognized within the Indonesian Civil Code or those outside of it. Agreements regulated within the Civil Code include sale-purchase, leasing, civil partnerships, grants, safekeeping, loans for use, loans for consumption, powers of attorney, debt guarantees, aleatory contracts (contracts of chance), and settlements. Outside the Civil Code, various new types of contracts have emerged, such as leasing, hire-purchase, franchising, joint ventures, and others.¹

Among these various agreements, credit agreements are one type that almost everyone encounters. They are utilized by individuals or business actors who are launching a new venture or expanding an existing one but need financial assistance from an outside party. This capital injection usually comes from banks or financial institutions through a loan. Providing a loan, or what is commonly referred to as credit, is typically executed through an agreement. This framework consists of a principal agreement (the loan or debt agreement) followed by an accessory contract (the provision of collateral by the debtor). Every credit

approved and mutually agreed upon between the lender and the borrower must be formalized in a written credit agreement².

Within property law specifically regarding security interests over movable property positive Indonesian law recognizes the term "fiduciary." Fiduciary guarantees are regulated under the Fiduciary Guarantee Law and are also known as the "transfer of ownership rights based on trust." The enactment of Law Number 42 of 1999 concerning Fiduciary Guarantees covers both tangible and intangible movable objects, as well as immovable objects (specifically buildings) that cannot be burdened with a mortgage (*Hak Tanggungan*). The emergence of fiduciary guarantees was largely driven by the fact that certain land rights or specific goods could not be pledged via traditional mortgages. As a form of collateral, a fiduciary guarantee acts as a security measure for bank credit, which originates from the bank credit agreement itself. This is because a fiduciary contract is inherently an accessory agreement (*accessoir*)³.

Fundamentally, the principle of prudence (prudential banking) serves as the implementation of prevailing laws, acting as a preventive tool against risks that banks and financing institutions might experience. The legal basis mandating the application of this principle is Article 8 paragraph (1) of the Banking Law and its official elucidation. This article also forms the bedrock of the "5C Principles" used when assessing prospective debtors: *Character, Capacity, Capital, Collateral, and Condition of Economy*.⁴

Breach of contract, or default (*wanprestasi*), can be defined as a failure to fulfill an obligation due to the debtor's fault, whether through intent or negligence. Meanwhile, in the financial world, default is also understood as a "non-payment" event, which describes a situation where a debtor cannot fulfill their obligations in accordance with the credit agreement they signed⁵. Losses resulting from this can be divided into two forms: material losses and immaterial losses.⁶ The case in Decision Number 14/Pdt.G.S/2022/PN.Gto outlines a scenario where a financing institution (the creditor) entered into a multipurpose financing agreement with a debtor. Initially, the debtor paid the installments consistently. However, payments later became frequently delayed, and the debtor ultimately stopped paying the installments as agreed. The creditor attempted to offer relief by restructuring the contract and issuing warning letters to the debtor.

This decision is highly intriguing to analyze because it illustrates how legal protection for creditors plays out in actual judicial practice. On one hand, the law provides a baseline of protection by recognizing the contract, confirming the default, and granting rights over the collateral. On the other hand, the evidentiary process in court and ongoing disputes over the formal aspects of the guarantee demonstrate that enforcing these rights is rarely straightforward and is heavily influenced by a variety of external factors.

II. METHOD

This study implements a normative (doctrinal) legal research method, which analyzes prevailing laws and regulations in Indonesia through a systematic and structured approach. Normative legal research examines legal norms or rules as an interconnected systemic framework tied to a specific legal event⁷. A case study analysis was conducted on Decision Number 14/Pdt.G.S/2022/PN.Gto based on valid Indonesian regulations. Furthermore, the problem-solving approach utilizes a statutory approach (*statute approach*) by reviewing all laws and regulations relevant to the legal issues raised⁸. The statutory approach in this study is used to analyze legal provisions governing fiduciary guarantees and defaults, such as the Indonesian Civil Code (KUHPer) and Law Number 42 of 1999 concerning Fiduciary Guarantees. Additionally, a case approach (*case approach*) is applied to study how legal norms or rules are implemented in practice. This focus centers on cases that have already been adjudicated, as seen in jurisprudence relevant to the study's

core focus. The case approach is widely used by practitioners in research to identify court decisions that qualify as jurisprudence to be applied to concrete cases. In this study, the case approach is utilized to dissect and analyze Decision Number 14/Pdt.G.S/2022/PN.Gto as the object of research, mapping out how creditor legal protection is carried out in judicial practice.

III. RESULT AND DISCUSSION

Legal protection for creditors is incredibly vital considering that the object of a fiduciary guarantee remains under the physical possession of the debtor. If the debtor defaults or commits an act that violates the agreement, the fiduciary guarantee serves as the legal mechanism to secure the repayment of the creditor's receivables. This protection is normatively regulated under Articles 1131 and 1132 of the Indonesian Civil Code (KUHPerdata), and specifically within Law Number 42 of 1999 concerning Fiduciary Guarantees.⁹ Nevertheless, legal protection for creditors does not rest solely on the existence of the collateral itself, but also on how the legal system provides mechanisms to enforce those rights when a default occurs. Therefore, legal protection for creditors in fiduciary guarantees must be analyzed not just from a normative angle, but also through its practical execution in court. This is crucial to evaluate the extent to which the law can successfully guarantee protection for creditors facing bad debts, particularly through court decisions as a means of dispute resolution

The legal protection of creditors in financing relationships backed by fiduciary guarantees essentially has a robust normative foundation in Indonesian civil law. In the context of contracts, the provisions of the Indonesian Civil Code yield a foundational rule that any legally made agreement operates as law for the parties involved, as reflected in Article 1338 of the Civil Code. This provision confirms that the creditor has the right to demand the fulfillment of the debtor's obligations if a default occurs. Furthermore, the Civil Code regulates default as a form of non-fulfillment of obligations by the debtor, which triggers legal consequences such as the obligation to pay damages. Thus, from a normative standpoint, the law protects the creditor through contractual mechanisms and claims for losses arising from defaults.

This legal protection is further reinforced by Law Number 42 of 1999 concerning Fiduciary Guarantees, which stipulates that a fiduciary guarantee grants the creditor, as the fiduciary recipient, the right to priority satisfaction of their receivables from the proceeds of the collateral object. This setup shows that fiduciary guarantees are a legal instrument specifically tailored to protect creditor interests in financing arrangements. Therefore, the existence of the agreement as the basis of the legal relationship, combined with the fiduciary guarantee as a tool for debt settlement, proves that the law provides a solid normative framework. However, the effectiveness of this protection must still be examined in practice, particularly through court judgments resolving default disputes. This normative baseline serves as the foundation for assessing how creditor legal protection is applied in reality, specifically in Decision Number 14/Pdt.G.S/2022/PN.Gto.

The dispute in Decision Number 14/Pdt.G.S/2022/PN.Gto arose between a creditor and a debtor stemming from a multipurpose financing agreement secured by a fiduciary guarantee over a motor vehicle. Under this agreement, the debtor was required to pay installments according to an agreed schedule as their form of performance. In practice, the debtor failed to meet their obligation to pay the installments despite being given opportunities through restructuring and warning letters, thereby resulting in a default. Consequently, the creditor suffered losses and was unable to recover their receivables as contracted.

This situation prompted the creditor to file a lawsuit, demanding that the debtor fulfill their obligations and surrender the object of the fiduciary guarantee to settle the debt. In the ruling, the judge declared that the financing agreement was valid and binding, ruled that the debtor had committed a breach of contract (default), and ordered the debtor to pay for damages and surrender the collateral to the creditor. However, during the proceedings, the debtor raised a defense/objection regarding the validity of the fiduciary guarantee, specifically targeting the formal aspects of its creation and registration. This demonstrates that the

dispute did not just involve a simple default, but also touched upon the technical legality of the fiduciary guarantee that serves as the bedrock of the creditor's legal protection.

The legal protection afforded to the creditor through the court mechanism in this case also aligns with the principles affirmed in the Constitutional Court Decision Number 18/PUU-XVII/2019. The Court, through this landmark decision, stated that the executory power (*kekuatan eksekutorial*) embedded in a fiduciary guarantee certificate remains intact as long as there is a mutual agreement regarding the breach of contract (default) and the debtor voluntarily surrenders the collateral object. However, if these conditions are not met, repossession and execution must be carried out through judicial mechanisms. This issue initially stemmed from a judicial review of Article 15 of Law No. 42 of 1999, which historically granted immediate executory power (*parate eksekusi*) to creditors if a debtor defaulted. In practice, however, this often led to arbitrary actions and coercion by debt collectors, which violated the constitutional rights of debtors. The judicial review of Article 15 of the Fiduciary Guarantee Law via Constitutional Court Decision No. 18/PUU-XVII/2019 firmly established that the execution of a fiduciary guarantee cannot be done unilaterally¹⁰.

Based on the facts described above, we must analyze the specific form of legal protection granted to the creditor in Decision Number 14/Pdt.G.S/2022/PN.Gto. In this case, protection for the creditor was evident from the moment the judge recognized the valid legal relationship between the creditor and debtor via the mutually agreed financing contract. Recognition of the contract's validity is a critical milestone because it provides the legal legitimacy required for the creditor to demand compliance. Thus, the contract acts not only as the source of the legal relationship but as the initial shield guarding the creditor's rights.

Next, legal protection manifested clearly when the judge officially declared the debtor to be in default. The facts showed that the debtor failed to pay their installments even after being given grace periods through contract restructuring and warnings. This timeline proves that the creditor acted in good faith by offering alternative solutions before taking legal action. Therefore, the judge's declaration of default provided legal certainty for the creditor to seek recourse through the court.

This declaration of default directly paved the way for legal protection in the form of rights restoration. In the judgment order (*amar putusan*), the judge ordered the debtor to fulfill their outstanding obligations to the creditor as a form of accountability for the losses incurred. This shows that the law protects the creditor's economic interests by supplying a remedy for the losses triggered by the debtor's default. In summary, legal protection for creditors holding fiduciary guarantees is firmly recognized and enforced by courts through civil litigation channels. However, the actual application of this protection can vary based on the specific facts of a case particularly if there is a challenge against the formal, technical validity of the fiduciary guarantee itself.

IV. CONCLUSION

Legal protection for creditors in financing agreements secured by fiduciary guarantees fundamentally possesses a strong normative foundation in Indonesian civil law, anchored by both the Indonesian Civil Code and Law Number 42 of 1999 concerning Fiduciary Guarantees. This protection is realized through the formal recognition of the contract's validity, the legal determination of the debtor's default, and the granting of rights to the creditor to obtain debt satisfaction from the fiduciary collateral. In Decision Number 14/Pdt.G.S/2022/PN.Gto, the judge successfully provided legal protection to the creditor by declaring the debtor in default, ordering them to satisfy their outstanding obligations, and mandating the surrender of the fiduciary collateral to the creditor. However, this study also highlights that implementing legal protection for creditors in judicial practice is not always a simple affair. This protection can be swayed by numerous variables, particularly when a dispute arises over the formal aspects of the creation and registration of the fiduciary guarantee. The debtor's objection to the legality of the fiduciary guarantee proves that the effectiveness of a creditor's legal shield depends heavily on their ability to prove the flawless formal validity of the guarantee in court. Ultimately, this decision demonstrates that legal protection for creditors

facing bad debts with fiduciary guarantees remains highly dependent on the concrete details of the case and the judge's assessment of the facts and legal elements presented by the parties.

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