Legal Problems The Implementation Of Credit Agreements With Fiduciary Guarantees

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Abstract.
This look at targets to analyze the legal problems with the implementation of Credit Agreements, especially in relation to the credit using fiduciary guarantees as collateral. Financing institutions use Credit Agreements that are included in the Standard Agreement. Because credit is a business activity of financial institutions, in this case it is a bank, in order to achieve a national balance in distributing funds to the public. In carrying out its function, banks as financial institutions provide credit, therefore the provisions of the Guarantee Law are intended to help business activities both macro and micro, as well as create legal certainty for stakeholders. To achieve the goal of obtaining legal certainty regarding Credit Agreements with Fiduciary Guarantees, This study uses an empirical legal approach method, and the research specifications are descriptive analytical.This study produced a data, namely it was concluded that Fiduciary Guarantee is a form of guarantor by the debtor at his request, in order to guarantee the repayment of credit debts, movable objects become the object of guarantee in this study. The Supplementary Agreement or what is often referred to as the Accesoir of the Principal Credit Agreement can be guaranteed by the Fiduciary Guarantee, while the charge is made in the form of a notarized, by guaranteeing legal certainty so that it needs to be Register with the Trustee Registration Authority and apply for issuance of a Trustee Certificate to gain enforcement powers. The obstacle arises when defaulting by the debtor, with various causes and factors. Sometimes execution efforts are made to save credit that has been channeled by financing institutions, especially banks, but in practice there are many obstacles, including in executing the object of the guarantee that is not found, has changed hands or is controlled by others, so that execution in the form of auctioning fiduciary objects is difficult to do.

Keywords: *Legal Problems, Credit Agreement and Fiduciary Guarantee.*

I. INTRODUCTION

Non-banking and banking financial institutions are very important as business liaisons for business actors of business economic activities. Based on the principle of trust, the agreement between the debtor and the creditor forms the basis of the agreement. A loan contract is a type of contract between a creditor and a debtor in a financial institution, and a contract with a trustee's guarantee is an ancillary contract or an additional contract. [7] Banks as financial institutions in general in the process of implementing agreements are almost the same, taking into account and applying the principle of prudence. It is an important point to be applied by both customers and banks, so that the parties benefit from each other later. [8] The government's financial improvement directive for the sake of creating a balance in the country's economy, has an effect on increasing financing. Data from Bank Indonesia on new borrowers increased in the second quarter of 2021 (SBT 1) by 93.3% from 30.4%, driven by utilization loans, working capital advances and investment loans. [9] A form of guarantee that does not paralyze economic activity, is recommended both for debtors. Meanwhile, both the collateral creditors must provide a sense of security, especially they must provide legal certainty, related to obtaining returns on time. The guarantee institution in Indonesia was born from the classical history of the Roman *Fiduciary Law Crediture*, where the location of the delivery of debtor goods was handed over to creditors and the objects could be both movable and immovable objects. The position of the debtor can still be used to control the collateral, even if it is only a loan, not as an owner A physical security must be given to the obligee in relation to the provisions of Article 1152 of the Civil Code. [10] Law No. 42 of 1999 regarding Trust warranties have been recognized for their existence, that the trust guarantee

cannot be impeded with dependent rights under the UUHT if the trust beneficiaries have been registered in the trust registry as a return guarantee has the power to prevail over others.

[11] This obligation was a subject of the Trust Guarantee prior to the main Credit Contract. Receivables activities are not uncommon for default events so that there is an execution of the fiduciary collateral. [12] Banking credit procedures always include collateral or collateral, underlying Article 504 of the Civil Code (movable and non-movable objects), the classification is based on the nature, purpose of use and is thus determined by law. [13] The Credit Agreement regulates the clause of default or default, this happens because of the clauses about the number of installments per month, maturity, installment terms, and much more. Default is due to the debtor being late in installments or defaulting (bad debts) the parameters occur when. By looking at the payment time data, if it is due, it has not been paid, it is said to have defaulted. In practice, the customer or debtor is subject to a fine even if it exceeds its capacity, the fiduciary object can be withdrawn for sale by the creditor. It is not uncommon for many disputes to arise over foreclosures, as the purpose of the trust receivables is still the debtor's right of disposition. [14] In the early development of trust law in Indonesia did not escape its history, namely after the Bierbrouwerij Arrest in the Netherlands, then in 1932 Indonesia received instructions also following the practice in the Netherlands regarding fiduciary with marked HGH decision (Hoogerechtshof). The Indonesian Fiduciary Guarantee event was first decided by the Supreme Court in the case of BPM v. Pedro Clignett, with a fiduciary object of a moving object (car). The next Supreme Court decision in the BNI 1946 case v. Fa Megaria Number 1500K / SIP / 1978, which became the object of the fiduciary was concrete iron and cement, besides PT Sriwidjaya Raya Lines, Koromath, and JTN Sipahutar Number 3216/K/Perd/1984 stipulates the following lands that exist thereon which are not yet clear the status of rights can be granted.It can be concluded that the objects of the Fiduciary Guarantee include movable objects and immovable objects (grant rights and land that have not been certified).

In making legal findings, the Supreme Court plays a role for the birth of fiduciaries in Indonesia, the development of the guarantee law does not demand the possibility of still causing problems in the community or legal experts, it appears that the judiciary has a different concept in the validity of the Fiduciary Agreement. A legal system of guarantees is said to be good if legal principles and legal regulations that do not overlap (overlapping) with each other.Indonesia has regulated fiduciary guarantees under law number 42 of 1999. Trust guarantee in legislation from a legal point of view is expected to meet the legal needs in society in order to ensure certainty and protection of law. Fiduciary Guarantees are a much-needed collateral institution in the world of financing institutions, especially banks, considering that banks are financial institutions that can collect and channel, support economic growth. Since banks are the lifeblood of a country's economy, the development of the banking industry can be an indicator of the economic development of each country. This means that the existence of the banking world is increasingly needed by the state and society. [15] Lending to the public is the most important business of the A bank that functions as a financial institution. Credit based on Article 1 number 11 of Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking is an effort to provide money or bills that can be equated with it, based on a loan agreement or agreement between the bank and other parties that requires the borrower to pay off his debt after a certain period of time with the provision of interest. The credit provision is carried out both with funds entrusted by the 3rd party (third) and by circulating new means of payment in the form of giral money. [16] In addition to conventional banks, there are People's Credit Banks (BPR).

The position of the People's Credit Bank here is not as a preferred creditor who takes precedence due to special guarantees but as a concurrent creditor whose position is the same as other creditors with general guarantees According to Article 1131 of the Civil Code. [17]Banks as financing institutions are obliged to pay attention to prospective debtors by assessing their disposition, ability, capital, guarantees and circumstances. One form of credit security with a guarantee agreement. Banks that perform their functions as financial institutions Guarantees as statutory institutions create a legal basis in civil law and play an important role in the world of business. The principle on fiduciary guarantees is the constitutum possessorium, where the fiduciary object remains in the possession of the fiduciary grantor. This means that

the fiduciary giver can still enjoy the fiduciary object even though his status is no longer as an eigenaar but rather as a detentor (houder). Article 11 of the Guarantee Act stipulates that a property with a trustee guarantee must be registered with the trustee registry office. The purpose of fiduciary registration is to ensure legal certainty, including guarantees of execution of fiduciary assets in the event of default by the obligor. The title of the enforcement is "For Justice Under Almighty Reign" at the head of the Trustee Guarantee Certificate, allowing the creditor to perform the enforcement directly without court proceedings. [18]

II. METHODS

Research methods in a writing or article as a means of containing how the problem approach is used, sources of legal materials, methods of data collection. Bambang Sunggono, he argues that the basic research is a search, not just observing certain objects.Taken from the formulation of the problem and the purpose of the research, this type of research is an Empirical Juridical Law research, which is carried out by examining secondary data to provide an overview qualitative implementation of Loan agreement with fiduciary guarantee. In addition, analyzing data by referring to applicable legal norms can also help in finding problems. This method uses 2 considerations: first, adjustment is easier to deal with double reality; second, it presents directly the nature of the relationship between the researcher and the respondent. [19]

III. RESULTS AND DISCUSSION

The characteristics of the agreement on the basis of the oath and the Law of The Covenant are built for the sake of the enforcement of the law recognized by the public. Agreements are agreements and are recognized by law and become the subject matter in the business world, for trade transactions such as buying and selling, credit assistance, insurance, and so on concerning labor.Conventional Bank activities are collected for the distribution of funds and give or charge in the form of interest with a certain percentage within a predetermined period, usually applied annually. The Civil Code regulates the Special Agreement but there is no mention of the Credit Agreement, therefore the determination of the relationship between the Bank and the Customer must also be studied or explored through other sources outside the Civil Code.The process of beginning the promise towards agreeing ends with the goal of being the meaning of the covenant. Indonesian law has a goal against contracts, namely the achievement of sociale gezindheid social propriety, and balance in material existence. From the substance of the agreement if it is anything contrary to public order and morals can be null and void, the same applies if it is contrary to the laws and regulations.There are two types of Credit Agreements, which can be made in the form of agreements under the hand or with authentic deeds. Made under the hand means that an agreement is made between them the parties without any interference from a Notary. Generally, the signing of the deed, there are also witnesses who sign, because the witness plays an important role in proving a civil case. Second, a Notarial Credit Agreement means that it is made before a Notary in the form of an Authentic Deed, usually for credit in a large long-term tenor.The literature reveals the nature of credit agreements classified into 3 groups, namely they are real, consensual, and real consensual.

Meanwhile, those who live in Indonesia, which are real agreements, only exist after the loan is handed over to the debtor. One party submits to the other party the money or goods can be replaced promises then returned with the same amount or similar and worth.The law of guarantee is conceptually a translation of the security of law zekerheidstellling or zekerheidsrechten. It is divided into 2 groups, the first is material and individual. [20] treasury guarantee of absolute rights of an object is retained by anyone, following its object (droit de suite) can be transferred. The Individual Guarantee is a third party form of insurer (borgtoch) book III Chapter XVII Article 1820 to Article 1850.The Anglo Saxon Common Law state championed intellectual property rights, emphasizing the provision of legal protection to anyone in a work of economic value.The debtor believes that the title to the guarantee is returned if the debt on the Fiduciary Guarantee has been paid off. The collateral goods will be treated by the Fiduciary giver, in the possession of the owner of the thing, the right of preference, the nature of which is Accesoir. The main principle is that in real terms the holder has the function of a guarantee holder not the owner, the holder executes if there is a default, the debt has been paid off the object must return, if execution exceeds the amount of debt then the remainder

must be returned.Generally, the object of the Fiduciary Guarantee of movable objects consists of objects of inventory, merchandise, receivables, machinery and motors. So in essence the object of the guarantee is a moving object. Meeting the evolving needs of the community Fiduciary Guarantees have a broad sense: 1. Tangible, 2. Intangible, 3. Immobile is not burdened with Dependent Rights. [21] Based on the principle of the formation of statutory regulations there is principle of formation, the principle of content matter, other principles concerned.

[22] Credit mechanisms are focused on charging and registration mechanisms. The principle is based on trust so that prospective debtors are not too burdened with technical aspects. The stage emphasizes the mechanism of the parties agreeing to the Notary to make an agreement, then bind each other, then continue with registration by the Office of the Ministry of Law and Human Rights related to guarantees. The burden is regulated in Articles 4, 5, and 6 of the UUJF, arising from the follow-up agreement.Determination of guaranteed debts, the Notary determines debts through the system and the criteria that can be guaranteed are regulated in accordance with the Fiduciary Law (42/1999), since not all objects are mainly immovable may be pledged. The granting of a Fiduciary Guarantee Certificate. the Deed is binding on the parties. Article 6 contains aspects: identification of parties, data on the main agreement, description of the object, the value of the guarantor, the value of the object. The last stage of registration, confirming that this fiduciary registration is valid, Article 2 of PP No. 86/2000 contains registration submitted to the Minister, submitted in writing in Indonesian with an attachment to the statement registration, imposition of registration fee is determined pp own non-tax revenue, with a copy of the Notarial Deed on The Imposition of Guarantee, the power to register, proof of payment.The validity of the Fiduciary Credit Agreement is with proof of ownership of the goods, handed over and controlled by the bank avoiding the goods being pledged to other parties. generally the deed pours: credit facility, purpose, term, interest, other fees, payment and termination of the agreement. [23]One of the concerns may be problems with the object of ownership of land or buildings at auction, for example the debtor's lawsuit objecting to the execution of the land, and also the physical concern of the land is still on the the power of the debtor so that during the process there is a problem.

[24] The Executory Power of a fiduciary certificate shall not be exercised alone but must apply for execution to the District Court essentially to provide a balance of the position of the debtor and creditor so as not to arbitrary. The process is only an alternative if there is no agreement regarding default or voluntary surrender of the object of the guarantee. Being a normative problem is the equally strong position between certificates and court decisions that are inkracth with the principle of constitutionality and consistency of the concept of the state of law reducing the power of the judiciary gives rise to uncertainty. Normatively, legal certainty through regulations made is clearly and logically regulated, not multi-interpretive. The enforcement of clear laws remains consistently not influenced by subjective circumstances. [25]The default factor can be caused by the debtor for several reasons, namely the business fails, the credit is not distributed accordingly, the debtor does not have good faith, the national economy has an effect to the debtor's economy, and anything else beyond prediction.For banks to execute efforts made not to become Non-Performance Loans, execution is the last resort taken after restructuring and a deliberative approach of consensus. In practice some obstacles often occur for example, the confiscation of execution cannot be placed on the object of bail even though Article 23 (2) of the UUJF granting fiduciaries is prohibited from transferring, leasing the object of the guarantee except by prior consent, the holder of the guarantee requests the execution of the object turns out to have been purchased by a third party, article 1977 of the Civil Code believes the movable goods are controlled owner (bezit geldt als volkomen title). The obstacle for banks if they sell objects through the mechanism of selling on their own power to apply for auction houses, but the goods are not found or controlled by third parties, so they cannot conduct the auction process.

Another obstacle is that the object of the guarantee is lost, so that the process of executing a permanent legal force decision that is immediately included in the process of executing the flduciary guarantee certificate / dependent rights entitled "For the Sake of Justice Based on the One True God" has 3 (three) stages, namely: reprimand, if in 8 days given a reprimand, confiscated execution if 8 days do not also fulfill the obligations, the application is made to the Chief Justice who arbitrarily confiscates the execution

so that the execution is issued execution and bailiffs carry out foreclosures, the auction stage of the debtor's dependent rights if they still do not pay, the court arbitrarily issues a determination later to the Auction office.[11] After all the conditions are met, the proceeds of the auction sale minus the auction fee and other costs are handed over to the creditor, the remaining proceeds of the sale are handed over to the debtor. In practice, it has not been used as an efficient legal remedy considering that it requires a long time and large costs.

IV. CONCLUSION

Some of the obstacles in practice include that the Execution Confiscation cannot be placed on the Object of the fiduciary guarantee, the bank as the creditor of the fiduciary holder in the event that it will sell the object of the fiduciary guarantee through the mechanism of selling on its own power, please help the Auction Office according to Article 15 paragraph (3) of the UUJF, but the goods that are the object of the fiduciary guarantee are not found or controlled by others, so as not to be able to make an auction sale of the fiduciary object, the object of the Lost Fiduciary Guarantee.Special attention to the Credit Agreement regarding the complete rules, on execution so that the process will be simpler, faster, cheaper.

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