



## **RESPONSIBILITY FOR EXECUTION LAW OF MOTOR VEHICLES BASED ON ACT NO.42 OF 1999 CONCERNING FIDUSIAN GUARANTEE**

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### **Abstract**

A fiduciary guarantee is a non-possession guarantee, where the collateral is still in the debtor's hands. At present fiduciary guarantees are not only used in banks, but many financial institutions also use fiduciary guarantees. Fiduciary collateral is not only used as collateral in debts, but is also used in buying and selling. As for buying and selling that is not done in cash where the remaining unpaid purchase price is agreed as debt payable, it is possible to guarantee the repayment of the debt with fiduciary collateral for the goods being traded. In buying and selling using fiduciary collateral, it is considered to have been completed even though the payment has not been made as a whole. So, in this case it can be seen that fiduciary collateral is used as a debt of trade receivables or buying and selling. Thus, the use of fiduciary guarantees in financial institutions moves writers to conduct research on law responsibilities for the execution of motor vehicles based on Act No.42 of 1999 concerning fiduciary guarantees. The problem to be discussed is about how the execution of motor vehicles based on Act No. 42 of 1999 and also how the law responsibility for the execution of motor vehicles based on Act No. 42 of 1999. In this paper, the author uses normative research methods, where this research method uses data from the library and also from the law as reference material in analyzing problems in aspects of the issue being studied. Based on the results of the discussion, it can be concluded that the execution process was carried out due to default of the debtor to the creditor in the fiduciary guarantee agreement. In the execution of fiduciary security objects, it can be done by waiting for a decision from the court, but creditors can also carry out the execution, if the fiduciary agreement has been made an agreement between the two parties agreeing with each other.

**Keywords:** Responsibility, Motor Vehicles, and Fiduciary Guarantees



## **A. Introduction**

In general, credit / debt is given by anyone who has the ability to repay the debt. Therefore an agreement is needed to prove the occurrence of debt / credit. After the agreement is agreed upon by the parties, then the creditor is born<sup>1</sup>, namely to hand over the money promised to the debtor<sup>2</sup>, with the right to receive money back on time accompanied by interest agreed by the parties, while the rights and obligations of the debtor are reciprocated with the rights and obligations of the creditor.

"Furthermore, in borrowing and borrowing money that occurs in the community it can be noted that in general it is often required to submit a loan guarantee by the borrower to the lender. Debt collateral can be in the form of goods (objects) so that it is a material guarantee and / or in the form of a debt insurance pledge so that it is an individual guarantee. Material guarantees provide material rights to the guarantee holders ".<sup>3</sup>

Fiduciary guarantee is one of the material guarantees as regulated in Act No. 42 of 1992 concerning Fiduciary Guarantees (hereinafter referred to as UUJF). This form of fiduciary guarantee has begun to be widely used in lending and borrowing transactions because the loading process is considered simple, easy, and fast. Existing fiduciary collateral institutions indeed make it possible for fiduciary providers to control objects that are pledged, in order to carry out or conduct business activities financed from loans using the fiduciary collateral.

According to J. Satrio, based on article 1 sub 2 UUJF, namely:  
"Collateral rights to movable objects, both tangible and intangible and immovable objects, especially buildings which cannot be encumbered by the mortgage rights as referred to in Act Number 4 of 1996 concerning Mortgage Rights which remain under the control of the Fiduciary giver, as

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<sup>1</sup>According to the Big Indonesian Dictionary, creditors are the ones who owe; which gives credit; collector, Ministry of National Education, Big Indonesian Dictionary, Jakarta: Balai Pustaka, 2008, p. 57

<sup>2</sup>According to the Big Indonesian Dictionary, the Debtor is a person or institution that is indebted to another person or institution, Ministry of National Education, Big Indonesian Dictionary, Jakarta: Balai Pustaka, 2008, p. 24

<sup>3</sup>M. Bahah Legal Guarantee and Credit Guarantee of Indonesian Banking, Jakarta: Rajawali Press, 2012.p 2



collateral for repayment of certain debts, which give priority to Fiduciary recipients over other creditors ".<sup>4</sup>

Related to movable objects, at this time the growing need for motor vehicles which in the process can not be separated from various problems that arise as a result of the process and also due to the procurement of motor vehicles. The rise of motor vehicle purchases is also caused by the spread of financing companies (leasing). To answer all legal consequences arising from the process that occurs in the community and to provide justice for debtors and creditors, then it is regulated in laws, government regulations, ministerial regulations, police chief regulations and other regulations below. Fiduciary becomes the subject of debate when differences occur between the two parties. Fiduciary has become a national issue, where the actions taken by the executor of the lease are deemed to have committed a criminal act and are detrimental to the debtor. In Act No.42 of 1999 it is explained that the debtor is referred to as the fiduciary giver and the creditor (leasing) as the fiduciary recipient, therefore the point of concern so far is who has the right to execute in case of breach of contract committed by the debtor. So far, most leasing companies have registered fiduciary according to the stipulated provisions, but problems arise when there is execution in the field. Therefore, the point of concern so far is who has the right to execute in the event of breach of contract committed by the debtor. So far, most leasing companies have registered fiduciary according to the stipulated provisions, but problems arise when there is execution in the field. Therefore, the point of concern so far is who has the right to execute in the event of breach of contract committed by the debtor. So far, most leasing companies have registered fiduciary according to the stipulated provisions, but problems arise when there is execution in the field.

Based on the background above, the authors are interested in conducting a study entitled "RESPONSIBILITY FOR EXECUTION LAW OF MOTOR VEHICLES BASED ON ACT NO.42 OF 1999 CONCERNING FIDUSIAN GUARANTEE".

#### **A. Research methods**

The methodology explains and illustrates how the research is carried out which is listed systematically, how the foundation of the research design and the model that is preceded by the design of the experiment or

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<sup>4</sup>J. Satrio, SH, Law on the Guaranteed Material Rights Guarantee, Cet. V, Bandung: PT.Citra Aditya Bakti, 2007, p. 186



technique in accordance with the formulation of the problem studied by the author and to answer the research objectives then in this research method the steps used are as follows :

#### 1. Research type

In carrying out writing legal research on two types of research, namely normative research and empirical research. According to Peter Mahmud Marzuki, legal research is a process to find the rule of law, legal principles, and legal doctrines in order to answer the legal issues at hand. The word research is actually a translation of the term "research" which means to do a search again. The conclusion that can be drawn is that the research method is a method or a way or a process of examination or investigation that uses a method that must be taken to achieve a goal.<sup>5</sup>

### D. Discussion

Fiduciary as is the case with other material guarantees, is generally an accessory agreement of a principal agreement in the form of debts, but fiduciary although it has to do with debts, is also used in buying and selling.

In the practice of financial institutions, fiduciary collateral plays an important role, apart from being a special guarantee for a loan, it is also widely used as an additional collateral for mortgages, that is if collateral items for mortgages are considered to be inadequate, or it is unclear whether the objects can be classified as movable or immovable objects, they are guaranteed by fiduciary. For example machines in a factory, sometimes classified as fixed objects because of the determination, sometimes they are movable objects so they cannot be hypothesized. If the mortgages are intended to be charged to the factory with all its machinery, in order to obtain a high guarantee value, then the machines which are not fixed objects, are guaranteed through fiduciary to the mortgage holder. Also in agriculture,<sup>6</sup>

Besides that, fiduciary also plays an important role in providing credit by banks in the form of a running account, "credit verlening in lopende account". The form of fiduciary agreements in this way is widely used in banks to serve these companies for their business lives much in need of

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<sup>5</sup>Peter Mahmud Marzuki, *Legal Research*, Jakarta: Kencana, 2017, p. 133

<sup>6</sup>Mrs. Sri Soedewi Mascjhun, *Some Problems in Implementing Collateral Institutions, Especially Fiduciary in Practice and Their Implementation in Indonesia*, UGM Faculty of Law, Yogyakarta, 1977, p. 43



credit from banks, by providing their inventory and receivables both existing and will still exist as collateral, with still controls the inventory.

Such a company at one time needed credit from a bank for the purposes of supplying its supplies, paying its employees. But at other times many will receive payments and repayments of bills, as well as delivery of merchandise to the buyer. At one time there may be a lot of credit, but at another time there is a lot of debit in a bank account, which can be used to pay off debts to the bank.

In banking practice, many fiduciary agreements are contained in the deed drawn up by the bank. This is adjusted in view of the shape of the object that is the object of fiduciary collateral. In the event of a cessi on the accounts receivable being a fiduciary object where it has been agreed that the goods must be insured, then there must be notification of the existence of the cessi to the insurance company concerned. In the fiduciary deed it was agreed that the parties (the bank and the borrower) mutually agreed that as collateral for debt repayment, the debtor would transfer the right to collateral based on trust in the bank. Then after the surrender of the collateral object, the debtor retains control of the collateral object and has the authority to use it on the basis of the loan agreement. In the promise about insurance, the authorized bank is a power that cannot be revoked on behalf of the debtor to himself, all rights and receivables born because of insurance. Furthermore, it was also agreed that with credit repayment, the ownership of the object would return to the debtor.<sup>7</sup>

#### **A. Motor Vehicle Execution Based on Act No. 42/1999 UUJF**

Execution of objects as fiduciary collateral objects is carried out if the debtor defaults. Execution of objects as objects of fiduciary security according to Act No.42 of 1999 can be carried out in a tuga (3) method, namely with an executorial title, with a public auction, and with sales under the hand. Although it is not regulated in Act No. 42 of 1999, the execution of objects as objects of fiduciary security can also be carried out through ordinary lawsuits or litigation.

In financial institutions, fiduciary agreements occur after the sale and purchase process, where the buyer is unable to buy in cash so the buyer requests installments to buy the goods. Then with the seller's agreement, the price of the goods can be paid in part or in whole by loaning credit from a third party, with fiduciary guarantees for the goods.

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<sup>7</sup>Oey Hoey Tiong, *Fiduciary as a Guarantee of Engagement Elements*, Ghalia Indonesia, Jakarta, 1983, p. 61



At consumer financing institutions, agreements between sellers and buyers are carried out according to standard clauses. Where the buyer accepts all agreements that have been made by the seller. Where the buyer must accept the consequences of what has been agreed in the consumer financing agreement with the transfer of property rights in a fiduciary manner.

If the Second Party does not repay its debts or does not fulfill its obligations to or against the Seller, then without prior trial the Seller has the right and is hereby authorized with a substitution right by the Purchaser Party to take wherever and where anyone said the goods are with or without the assistance of the Party. the authorities or the police force and sell in public or under the hand or with the intermediaries of other parties, thus at a fair market price and with terms and conditions deemed good by the Seller.

The money from the sale of these items is used first for payment of fees and taxes incurred, the rest is to pay off all debts and fines, and if there is any leftover, the Seller must submit the remainder to the Purchaser, otherwise if the money from this sale is not sufficient to pay off debt and fines and all obligations of the buyer to the seller, the buyer is still obliged to pay the remaining debt to the seller immediately and at the same time when the seller asks / collects it.

By not reducing the buyer's obligation to pay the fines, in the case of late delivery of the goods mentioned above, the seller has the right directly to take the goods and or is entitled to the help of state equipment that are authorized to take or confiscate the goods for execution / selling entirely at cost and risk to the buyer.

In the consumer financing agreement as mentioned above, it is clearly stated that the execution of an object as an object of fiduciary security is carried out in the event of default or negligence by directly withdrawing the item as an object of fiduciary security. Then sold to third parties so that the results can cover credit from the buyer.

In comparison to the Bank, after the goods are taken to repay debtors' debts, the goods are more often auctioned through PUPN / BUPLN institutions. And in accordance with the Banking Act Article 6 Letter K, Banks are required to purchase part or all of the collateral, either in part or in full, provided that the collateral purchased must be disbursed as soon as possible.



## **B. Law Responsibility for Execution of Motor Vehicles Based on Act No. 42 of 1999**

Execution is the realization of the obligations of the party defeated 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 legal force remains the final process of civil and criminal proceedings in court.

Decisions that have permanent legal force, can be requested for execution by the winning party, with a note that if the losing party does not voluntarily want to implement the relevant decision, the only thing that can be requested for execution is only the decision which condemns (condematoir), while the ruling declaratoir and the constitutive cannot be requested for execution.

In non-performing loans (default), according to National Police Regulation No. 8 of 2011 concerning Safeguarding the Execution of Fiduciary Guarantees, the only party entitled to withdraw a problem credit vehicle is the police. If the debt collectors try to seize the debtor's installment goods, the debtor has the right to refuse and maintain the object of fiduciary collateral. So if the creditor wants to take the object of collateral, then it must bring a letter determining the execution of the District Court. Minister of Finance Regulation (PMK) No. 130 / PMK / 010/2012 concerning Fiduciary Registration requires leasing to register a fiduciary guarantee no later than 30 days after the credit agreement is signed.

According to Act Number 42 of 1999, Fiduciary is a process of transferring ownership of an object on the basis of trust, but the object is still in the control of the party who transferred it. Fiduciary was generally included in motor vehicle credit agreements. The debtor as the indebted party is obliged to pay the fiduciary guarantee fee, so the leasing party is actually required to register every credit transaction in front of the notary for this fiduciary agreement.

So the real flow is the customer / creditor to the leasing party and then to the notary who makes a fiduciary agreement as defined above before the vehicle is in the hands of the consumer, meaning that this fiduciary agreement protects the consumer's assets, the lease cannot necessarily attract vehicles that fail to pay or are in arrears due to the fiduciary agreement this, the flow that should occur is that the leasing party reports it to the Court. Thus, the creditor's vehicle will be auctioned or executed by the court and the money from the sale is used to pay credit debt to the leasing company, then the rest will be given to consumers.



At the time of the execution, usually the court appoints the authority to carry out the execution, and is accompanied by the authorities to oversee the execution of the execution.

If it is examined according to the principle of the *possessorium*, which is the surrender of a right of ownership without physically surrendering the object concerned, if the debtor defaults or experiences things that disturb the debtor in fulfilling his obligations, and also makes the creditor not accept his rights, in accordance with the contents of the agreement made, then the creditor has the right to immediately and at the same time collect all financing debts accrued by the debtor, along with all the penalties and other costs that arise later, even though the debt has not matured if the seller does not meet / default (default).

If the second party does not pay off the debt or does not fulfill its obligations to or against the seller, then without going through a court of law in advance, the seller has the right and is hereby authorized with a "substitution" right by the buyer to take wherever and where anyone said the item is with or without the help of the authorities or the police and to sell in public or under the hand or with intermediaries of other parties, thus at a fair market price and with terms and conditions deemed good by the seller.

## **E. Conclusion**

Based on the description of the previous chapters in this thesis, the author can conclude as follows:

1. In the consumer financing agreement, the execution of objects as objects of fiduciary security is carried out in the event of default or negligence by directly withdrawing goods as objects of fiduciary security. Then sold to third parties so that the results can cover credit from the buyer. Whereas at the bank, after the goods are taken to pay off debtors' debts, the goods are more often auctioned through the State Receivables Committee / State Receivables Agency (PUPN / BUPN).

Fiduciary collateral is *constitutum possessorium* where the collateral is still in the hands of the debtor. In the practice of execution, a court decision that is of a permanent legal nature is needed, and in its execution it can be assisted with security from the authorities, but the leasing / financial institution can withdraw the collateral without the court's ruling, because basically there are already terms and conditions already in place. approved by the seller and buyer. Whereas in terms of law responsibilities for the execution of motor vehicles based on Act no. 42 of 1997, it can be concluded that the ones responsible for the execution are the leasing parties / financial





institutions, because they are the ones who carry out the execution of the debtor's motorized vehicles, through a court decision and accompanied by the authorities.

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