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The Results of Fiduciary Law Warranties which the Objects are Transferred to Third Parties

Nabila Ananda Putri[*)] & Siti Malikhatun Badriyah[**)]

[*)] Diponegoro University, Indonesia, E-mail: nabilaputri1897@gmail.com

[**)] Diponegoro University, Indonesia, E-mail: sitimalikhatun@live.undip.ac.id

Abstract.
This study aims to find out and analyze legal protection for fiduciary guarantee holders whose objects are transferred to third parties and legal protection for fiduciary guarantee holders transferred to third parties in decisions Number: 45 / Pdt.Eks / 2015 / PN.Smg. the results of this study, it is known that Legal protection for Fiduciary Guarantees Transferred to Third Parties, if the object of fiduciary collateral turns out to be transferred to a third party or transferred without the creditor's knowledge, while the debtor and third parties acknowledge it, then the creditor can give summons which subsequently have the force to withdraw objects guaranteed can In Decision Number 45 / Pdt.Eks / 2015 / PN.SMG, against debtors whose objects of fiduciary collateral are not registered forcibly executed by creditors, the debtor can file a lawsuit made by creditors to the court based on the provisions of the Civil Code for violating the provisions of UUJF.
Keywords: Consequences; Land; Register.

1. Introduction

Economic development, as part of national development is one of the efforts to achieve a just and prosperous society based on Pancasila and the 1945 Constitution of the Republic of Indonesia. In order to maintain and continue sustainable development, development actors, both government and society, both individuals and legal entities require large funds. As development increases, so does the need for funding, most of the funds needed to meet these needs are obtained through borrowing and borrowing.[1]

[1]Purwahid Patrik and Kashadi, (2009), *Hukum Jaminan,* Semarang: Fakultas Hukum Universitas Diponegoro Edisi Revisi Dengan UUHT, p. 171.

Society's need for consumption of goods and services is increasing. However, this is not offset by the purchasing power of the people towards secondary and tertiary goods which is still quite low. To realize this need, people generally choose to use credit facilities through the services of financial institutions. This condition certainly triggered the emergence of non-bank financial institutions that provide financing facilities for the public through a credit payment system. Several types of financing that show rapid development are financing for the procurement of motorized vehicles and financing in the provision of business capital. These financial institutions offer many conveniences to the public to meet their needs.

In banking practice, material guarantees that are more widely used by banks are fiduciary guarantees, as guarantee institutions for movable objects.[2] Now fiduciary guarantees have been regulated in a separate legal umbrella, namely Act No. 42 of 1999 concerning Fiduciary Guarantees, as an institution that is expected to be able to provide legal protection to parties related to bank lending.

Based on the provisions of Article 5 paragraph (1) of Act No. 42 of 1999 concerning Fiduciary Guarantees, the encumbrance of objects with fiduciary guarantees is made with a notarial deed. Furthermore, based on the provisions of Article 11 paragraph (1), it is determined that objects burdened with fiduciary guarantees must be registered. Of the two provisions of the article, indicates that the imposition of fiduciary guarantees is carried out with an authentic deed, namely a notarial deed[3], and then the fiduciary guarantee object is registered at the Fiduciary Registration Office. However, if the fiduciary guarantee deed is not registered, there are no strict sanctions stipulated in the Fiduciary Guarantee Act which causes many banks or finance companies to only process the fiduciary guarantee until the fiduciary guarantee deed is drawn up at a notary. So that it raises a polemic whether the registration of the fiduciary deed must be carried out or not[4].

For the debtor, a good form of guarantee is a form of guarantee that will not paralyze his daily business activities, while for creditors, a good guarantee is a

[2]Badruluzaman, Mariam Daruz, (2001), Kompilasi Hukum Perikatan, Bandung, Citra Aditya Bakti, p.78

[3] Deen, Thaufiq., Ong Argo Victoria & Sumain. (2018). *Public Notary Services In Malaysia. JURNAL AKTA*: Vol. 5, No. 4, 1017-1026. Retrieved from http://jurnal.unissula.ac.id/index.php/akta/article/view/4135

[4] Ong Argo Victoria, Ade Riusma Ariyana, Devina Arifani. (2020). *Code of Ethics and Position of Notary in Indonesia. Sultan Agung Notary Law Review* 2 (4), 397-407, http://lppm-unissula.com/jurnal.unissula.ac.id/index.php/SANLaR/article/view/13536

guarantee that can provide a sense of security and legal certainty that the credit given can be recovered on time.[5]

Another use is to give the creditor the rights and powers to obtain a return from the guarantee if the debtor fails to fulfill his obligations, that is, does not pay off his debt at the time specified according to the agreement, and ensures that the debtor participates in transactions to finance his business, so as to prevent the possibility of leaving his business or project at the expense of himself or the company's profits, or at least minimizing the possibility of doing so.

The material guarantee essentially functions to guarantee certainty that the debtor's debt will be repaid if the debtor fails to fulfill his obligations. With the guarantee in the financing, it can be a protection for creditors that credit loans made by debtors will return.[6]

Fiduciary guarantees as one of the guarantees of material rights have characteristics including: giving priority to fiduciary recipients over other creditors, fiduciary guarantees continue to follow objects that are objects of fiduciary guarantees in the hands of whoever the object is, is a follow-up agreement of an agreement principal, fulfilling the principle of specialization, fulfilling the principle of publicity, easy and certain execution.[7]Act No. 42 of 1999 concerning Fiduciary Guarantees provides convenience in carrying out executions through the *Parate execution* institution.

Parate execution according to Subekti, it is self-executing or self-taking what is rightfully theirs, in the sense that without intermediary judges, which are shown for a collateral item to then sell the item themselves.

Parate execution arrangements existed at the time the mortgage institution took effect, as stipulated in Article 1178 paragraph (2) BW, which reads: "However, it is permissible for the creditor of the first mortgage to, at the time the mortgage is given, expressly ask for an agreement that, if the principal money is not properly repaid, or if the interest payable is not paid, he will absolutely be empowered to sell the parcels bonded in public, to take repayment of principal, as well as interest and fees, from the sales revenue. The promise must be made according to the method stipulated in Article 1211 BW.

[5]Gunawan Widjaja & Ahmad Yani, (2000), *Seri Hukum Bisnis: Jaminan Fidusia,* Jakarta: PT. Raja Grafindo Persada, p. 120.
[6]Satrio, J. (1993). *Hukum Jaminan Hak-Hak Jaminan Kebendaan*. Penerbit PT Citra Aditya Bakti, Bandung.
[7]Siti Malikhatun Badriyah, (2005), *Jaminan Fidusia di Indonesia (setelah berlakunya UU No 42 Tahun 1999*), Semarang: BP UNDIP, p. 55

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The material guarantee essentially functions to guarantee certainty that the debtor's debt will be repaid if the debtor fails to fulfill his obligations. With the guarantee in the financing, it can be a protection for creditors that credit loans made by debtors will return.[8]

This is done by the debtor in order to obtain loans from other creditors so that their needs can be met. What is meant by re-fiduciary is for the same object that has been charged by fiduciary, fiduciary is charged again. Actually it is not a problem if in the fiduciary agreement there is more than one creditor, as long as the financing that will be given to the debtor is a consortium credit financing.

The fiduciary guarantee law regulated in Act No. 42 of 1999 was created and enforced one of the ways to provide more certainty and legal protection for creditors. However, it is often found that objects burdened with fiduciary guarantees are fiduciary more than once (re-fiduciary) for the same object which is the object of fiduciary guarantees.

The fiduciary guarantee institution is actually not a new guarantee institution for people in Indonesia. Fiduciary guarantee institutions have been known since the Dutch colonial era[9]. It's just that, previously the provisions regarding fiduciary guarantee institutions were based on jurisprudence and were not regulated in statutory regulations. Since 30 September 1999, Law No. 42 of 1999 concerning Fiduciary Guarantees (hereinafter referred to as UUF). In the provisions of Article 41 of the UUF it is stated that the law is effective from the date of promulgation however in Article 39 it is stated that the Fiduciary Registration Office as referred to in Article 12 paragraph (2) of the UUF is established within a period of no later than 1 year after the UUF is promulgated. Practically, with that, at least since September 30 2000, fiduciary guarantee institutions in Indonesia have now been regulated effectively in a law.

2. Research Methods

The method is a process, principles and procedures for solving a problem, while research is a careful, diligent and thorough examination of a symptom to increase human knowledge, the research method can be interpreted as a process of principles and procedures for solving problems encountered in conducting research.[10] This study uses a normative juridical approach or normative law. This research method is a library law research method where the method or method used in legal research is carried out by examining existing

[8]J. Satrio, Loc.cit
[9]J. Satrio, Ibid
[10]Soerjono Soekanto, (1984), *Pengantar Penelitian Hukum*, Jakarta: Ui Press, p.6

library materials.[11]The first stage of normative legal research is research aimed at obtaining objective law (legal norms), namely by conducting research on legal issues. The second stage of normative legal research is research aimed at obtaining subjective law (rights and obligations).[12]

3. Results and Discussion

3.1. Legal Consequences for Holders of Fiduciary Guarantees Transferred to Third Parties

1. Definition of Fiduciary

According to the origin of the word, fiduciary comes from the word "fides" which means trust, in accordance with the meaning of this word, the legal relationship between the debtor (authority) and creditor (recipient of power), is a legal relationship based on trust.[13]The institution of fiduciary guarantees is well known and enforced in Roman legal society. There are 2 forms of fiduciary guarantees, namely fiduciary cum creditore and *fiduciary cum amico*. Both arise from an agreement called pactum fiduciae which is then followed by the transfer of rights or *in iure cessio.*

In the first form or in its full form *fiducia cum creditare contracta* which means a promise of trust made with creditors, it is said 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.[14]

Article 1 point 1 UUF states the definition of fiduciary by legislators, which illustrates that fiduciary is a "transfer" in trust of ownership of an object, in which the object whose ownership is transferred remains in the power of the person transferring it. From this stipulation, an image may emerge in our minds, if so, UUF wants to create a new "delivery" institution?

In order to clarify this issue, it is helpful to review the issue of levering a bit. In Article 584 of the Civil Code it is stated: "Property rights to an object cannot be obtained in any other way, but by ownership, due to attachment, due to expiration, due to inheritance, either according to law or according to a will, and due to appointment or surrender based on a civil event to transfer property

[11]Soerjono Soekanto, Ibid, p. 13–14
[12]Hardijan Rusli, (2006), *Metode Penelitian Hukum Normatif, Bagaimana, (*Law Review Fakultas Hukum Universitas Pelita Harapan, Volume V No. 3 Tahun, p. 50.
[13]Gunawan Widjaja, Loc.cit, p.113
[14]Gunawan Widjaja, Ibid, p.114

rights, carried out by a person who has the right to act freely (with authority) over said object." The provisions of Article 584 of the Civil Code mentioned above are general provisions on how to obtain property rights.[15]

2. Fiduciary Guarantee Imposition Procedure

Article 4 of the UUJF states that fiduciary guarantees are a follow-up agreement to a principal agreement which creates an obligation for the parties to fulfill an achievement. What is meant by achievement here is giving something, doing something or not doing something that can be valued in money.

The imposition of fiduciary collateral objects is made with a notarial deed in Indonesian and is a fiduciary guarantee deed[16]. Thus, the notarial deed here is a material requirement for the enactment of UUJF provisions on fiduciary guarantee agreements.

Fiduciary guarantee registration, based on Articles 12 and 13 UUJF is to the Fiduciary Registration Office. If the fiduciary office at level II (regency/city) does not yet exist, then the Fiduciary Registration Office is registered at the Regional Office of the Ministry of Law and Human Rights of the Republic of Indonesia at the Provincial level.

The purpose of fiduciary registration is to give birth to fiduciary guarantees for fiduciary recipients, provide certainty to other creditors regarding objects that have been burdened with fiduciary guarantees and provide priority rights to creditors and to fulfill the principle of publicity because the registration office is open to the public.[17].

As evidence for the creditor that he is a recipient of a fiduciary guarantee is a fiduciary guarantee certificate issued by the fiduciary guarantee registration office on the same date as the date of receipt of the application for registration. This certificate is actually a copy of the fiduciary register book which contains notes on the same things as the data and information that existed at the time of the registration statement.[18]

3. Reimbursement of Fiduciary Guarantee Procedure

Re-fiduciary actually cannot be carried out because objects that have been burdened with fiduciary do not belong to the fiduciary giver but are rights. the

[15]J. Satrio, Op.cit
[16] Ibid.
[17]Purwahid Patrik & Kashadi, Op.cit, p. 188.
[18]Ibid., p. 14

ownership has been transferred to the fiduciary recipient.[19]The fiduciary giver can only re-fiduciary the object after the object has been fiduciary. The implementation of fiduciary roya indicates that the object is free from fiduciary guarantees and can be re-guaranteed as a fiduciary guarantee object.

Objects whose fiduciary guarantees have been officially registered have their ownership rights transferred to the fiduciary recipient (creditor). This is as stated in the elucidation of Article 17 of the Fiduciary Guarantee Law which states that it is not possible to re-fiduciary by a Fiduciary Giver, both a debtor and a third party guarantor, is not possible for objects that are objects of Fiduciary Guarantees because the ownership rights to these objects have been transferred to the Fiduciary Recipient. Regarding Article 28 of the Fiduciary Guarantee Law, in practice it is possible for one object to be imposed by more than one fiduciary agreement.

Submission of a *constitutum pessessorium* by a fiduciary giver with malicious intent can be misused by repeating fiduciary. The intention is to hand over the property rights again in a fiduciary manner as collateral to a third party, which in this case will be the second fiduciary holder. The issue is whether the second sicreditor can obtain ownership of the object or whether the first creditor in this way loses his property. This is the second transfer of property rights as collateral to the second creditor, does not eliminate the property rights of the first creditor.

4. Fiduciary Guarantee Object

According to R. Soepomo, the Law of Execution is a law that regulates the methods and conditions used by state instruments to help interested parties carry out a judge's decision if the losing party is not willing to fulfill the verdict within the allotted time.

The existence of an obligation to register a fiduciary guarantee at the Ministry of Law and Human Rights, shows the existence of a publicity principle. The registration contains complete data that is included in the fiduciary guarantee deed. This certainly does not cause problems if there is only one creditor who has receivables from the creditor himself, where the debtor will obtain repayment of all assets. However, based on Article 1 paragraph (1) which reads as follows: "Fiduciary is the transfer of ownership rights to an object on the basis of trust provided that the object whose ownership rights are transferred remains in the control of the owner of the object."

[19]Sutarno, (2005), *Aspek*-Aspek *Hukum Perkreditan* Pada Bank, Bandung: Alfabeta, p. 218

If the debtor still controls the fiduciary collateral object, then the general public assumes that the collateral object belongs to the debtor in accordance with Article 1977 of the Civil Code, which states that possession (bezit) is the basis for perfect rights.

5. Fiduciary Guarantee Principles

Basic principles in Fiduciary guarantees[20]:

a. Principle of Speciality for Fixed Loans

The object of a fiduciary guarantee is a collateral or guarantee for repayment of certain debts which gives the fiduciary recipient a priority position over other creditors. Therefore, the object of the fiduciary guarantee must be clear and certain, and the amount of the debtor's debt must be certain or at least the amount can be ascertained or calculated.

b. Assessor principle

A fiduciary guarantee is a follow-up agreement to a principal agreement where the principal agreement is a debt agreement. Thus the validity of the fiduciary guarantee agreement depends on the validity of the main agreement and the elimination of fiduciary guarantee objects depends on the elimination of the main agreement

c. The principle of droit de suite

The fiduciary guarantee still follows the object that is the object of the fiduciary guarantee, in the hands of whoever the object is, except for its existence in the hands of a third party based on the transfer of rights to receivables or cessie based on Article 613 of the Civil Code

d. Preference Principle

Article 27 paragraph (1) confirms giving priority rights to fiduciary recipients over other creditors to take fulfillment of debt repayment for the sale of fiduciary collateral objects. The quality of this priority right is not erased even if the debtor goes bankrupt or liquidates.

6. Fiduciary Guarantee Execution

[20]M.Yahya Harahap, (2005), *Ruang Lingkup Permasalahan Eksekusi Bidang Perdata Edisi Kedua, Ctk.Pertama,* Sinar Grafika, Jakarta, p.209

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As also in the case of Mortgage as regulated in Law No. 4 of 1996 concerning Mortgage[21], Fiduciary Guarantee Certificates have the same executorial power as court decisions that have obtained permanent legal force[22]Based on the executorial title, the Fiduciary Recipient can directly carry out the execution through a public auction of fiduciary guarantee objects without going through a court.

In addition to the execution of objects that are objects of fiduciary guarantees based on executorial titles, the Fiduciary Law provides convenience in carrying out executions through the *Parate execution* institution.[23]. Then in the execution of the fiduciary guarantee it is also known in terms of pawning as regulated in article 1155 of the Civil Code, mortgage rights as contained in article 6 in conjunction with Article 20 paragraph (1) a Law on Mortgage and Mortgages as referred to in article 1178 paragraph (2) of the Civil Code , what needs to be considered in terms of *Parate execution* is that the sale of objects which are objects of fiduciary guarantees must go through a public auction, because in this way it is expected to obtain the highest price for the object of fiduciary guarantees, however in the case of sales through public auctions it is estimated that it will not produce the highest price that benefits both the Fiduciary Giver and Recipient,[24]The opening of the possibility of private sales methods is intended to make it easier to sell fiduciary collateral objects at the highest selling price.

Specifically in the case of objects that are objects of fiduciary guarantees for trading objects or securities that can be traded on the market or on the stock exchange, the Fiduciary Law stipulates that sales can be carried out in these places in accordance with applicable laws and regulations[25] for securities listed on stock exchanges in Indonesia, laws and regulations in the Capital Market sector apply, similar arrangements are also found in the case of pawning institutions as it is regulated in Article 1155 of the Civil Code.

The provisions regarding the method of executing fiduciary guarantees as stipulated in articles 29 and 31 of the Fiduciary Law are binding (*dwingen recht*) which cannot be waived at the will of the parties. Deviations from these provisions result in the said deviation being null and void by law.[26] Furthermore, bearing in mind that a fiduciary guarantee is a guarantee institution and that the transfer of ownership rights by means of a *constitutum possessorium* is intended solely to provide collateral with priority rights to the Fiduciary Recipient, then

[21]See Article 23 paragraph (3) of the Mortgage Law
[22]See Article 15 paragraph (2) of the Fiduciary Law
[23]See Article 15 paragraph (3) in conjunction with Article 29 paragraph (1) b of the Fiduciary Law
[24]See Article 29 paragraph (1) c and paragraph (2) of the Fiduciary Law
[25]See Article 31 of the Fiduciary Law.
[26]See Article 32 of the Fiduciary Law

any promise that authorizes the Fiduciary Recipient to own a fiduciary guarantee object is null and void by law.[27]This provision is made to protect the Fiduciary Giver especially if the value of the object of the fiduciary guarantee exceeds the amount of the guaranteed debt[28]Similar provisions are also found in the Mortgage Law and Article 1178 paragraph (1) of the Civil Code in relation to mortgages.

As is the case with collateral rights over other objects such as Pledge, Mortgage and Mortgage[29], fiduciary guarantees adhere to the principle of "*droit de preference*" which applies from the date of registration at the Fiduciary Registration office[30], based on the provisions in Article 28 of the Fiduciary Law, the adage "first registered, first secured" applies to fiduciary guarantees, which means that the priority right is that the Fiduciary Recipient has the right to collect the settlement of his receivables for the execution of objects that are the object of fiduciary guarantees before creditors. -other creditors. Even if the Fiduciary Giver is declared Bankrupt, the priority rights of the Fiduciary Recipient are not deleted because objects that are objects of fiduciary guarantees are not included in the bankruptcy assets of the Fiduciary Giver[31], thus the Fiduciary Recipient belongs to the separatist creditor group.

What if the Fiduciary Recipient is declared bankrupt whether the object which is the object of the fiduciary guarantee and whose ownership rights are fiduciary with the Fiduciary Recipient are included in his bankruptcy assets, obtained solely as collateral, this is clearly emphasized in the provisions referred to in Article 33 of the Fiduciary Law which stipulates that any promise that authorizes a Fiduciary Recipient to own a fiduciary guarantee object is null and void.

Because the fiduciary guarantee is a follow-up agreement or accessory to the main agreement[32]then for the sake of law the fiduciary guarantee is deleted if the debt originating from the principal agreement and which is guaranteed by fiduciary is deleted, in addition to that article 25 of the Fiduciary Law stipulates that fiduciary guarantees are also deleted due to the relinquishment of rights to fiduciary guarantees by Fiduciary Recipients or the destruction of objects that are objects of fiduciary guarantees .

Is it necessary to abolish the fiduciary guarantee in the event that the guaranteed debt is written off, it is necessary to *retro-overdracht* ownership

[27]See Article 33 of the Fiduciary Law
[28]See Article 32 of the Fiduciary Law
[29]See Article 1150 of the Civil Code concerning Pledge and article 1 point 1 of the Liability Law
[30]See Article 28 of the Fiduciary Law
[31]See Article 27 paragraph (3) of the Fiduciary Law in conjunction with Article 56 of the Bankruptcy Tenure Law
[32]See Article 4 of the Fiduciary Law

rights by the Fiduciary Recipient to the Fiduciary Giver, noting that the transfer of ownership rights to the fiduciary collateral object is carried out by the Fiduciary Giver to the Fiduciary Recipient as a guarantee for the belief that these ownership rights will automatically return when the debt is paid off, so the authors are of the opinion that there is no need to transfer it back separately, this is presumably in accordance with the nature of the fiduciary security accessor as stated in Article 4 of the Fiduciary Law, as for the provision referred to in Article 25 paragraph (3) is to provide certainty to the Fiduciary Registration Office to cross out the registration of fiduciary guarantees from the Fiduciary Register Book and issue a statement stating that the Fiduciary Guarantee Certificate in question is no longer valid.[33]

7. Obligation to Register Objects Encumbered by Fiduciary Guarantees in Act No. 42 of 1999 concerning Fiduciary Guarantees

Registration of objects burdened with fiduciary guarantees is carried out at the place of domicile of the fiduciary giver, and this registration is carried out to fulfill the principle of publicity, as well as being a guarantee of certainty to other creditors regarding objects that have been burdened with fiduciary guarantees.[34]In the absence of rules containing strict sanctions if this fiduciary charge is not registered and the consequences for people who do not know the legal consequences, consider registration as an obligation that is not absolute. J. Satrio against this assumption gave the following statement:

The Fiduciary Guarantee Law adheres to the principle of registration of fiduciary guarantees. Even though Article 11 of the Fiduciary Guarantee Law states "objects burdened with a fiduciary guarantee must be registered", instead it reads "fiduciary guarantee" must be registered, because from further provisions it can be seen that this is what the legislator meant.[35]

J. Satrio's statement can be justified because the registration of fiduciary guarantees has a juridical meaning as a series that is inseparable from the process of making a fiduciary guarantee agreement. In addition, registration of fiduciary guarantees is a requirement to fulfill the principle of publicity in obtaining legal certainty.

8. Legal Consequences of Transfer of Fiduciary Guarantee Objects

Regarding the transfer of fiduciary guarantee objects carried out by debtors whose fiduciary guarantees have not been registered, it will result in legal

[33]See Article 26 of the Fiduciary Law
[34]J. Satrio, Loc.cit
[35]J. Satrio, Loc.cit

consequences that do not apply to the provisions contained in the Fiduciary Guarantee Law, because according to Article 14 paragraph (3) it states that "fiduciary guarantees are born on the same date with the date the fiduciary guarantee is recorded in the Fiduciary Register Book". Consequently, the legal events that occurred before the fiduciary guarantee was registered did not apply the provisions of the Fiduciary Guarantee Law.

Thus the agreement on the imposition of a fiduciary guarantee using a fiduciary guarantee deed that has not been registered, but has been transferred to a third party, means that the fiduciary guarantee is not attached to material rights. Because the fiduciary guarantee agreement that has not been registered is only an "obligatoir" agreement, which means an agreement that only creates obligations for the parties who make the agreement. Fiduciary guarantees that are not registered also do not contain the principle of publicity which will later bind third parties to find out about objects that have been burdened with fiduciary guarantees.

Legal consequences for the debtor who rents out fiduciary collateral objects without the creditor's written approval, i.e. in civil terms the debtor is categorized as having defaulted based on the Murabahah Agreement and Power of Attorney for Imposing Fiduciary Guarantees, and can also be prosecuted under Article 1365 of the Civil Code for having committed an unlawful act which caused harm to the creditor, and may be criminally[36] prosecuted for committing the crime of embezzlement and/or the crime of renting out fiduciary collateral objects without prior written approval from the fiduciary recipient. This is regulated in Article 36 UUJF that the fiduciary giver who transfers, pawns.

3.2. Legal Protection for Holders of Fiduciary Guarantees Transferred to Third Parties in Decision Number 45/Pdt.Eks/2015/PN.SMG

1. Decision Number 45/Pdt.Ex/2015/PN.SMG

In this case, Ahmad Rifki as the debtor bought a Bus vehicle from PT. Adedanmas (Mercedes-Benz dealer), after that he received an invoice, for the car, BPKB and STNK in the name of Ahmad Rifki, then pledged it at Bank Victoria Syariah Tegal Branch (Bank), but then transferred it to Bank Mandiri, and guaranteed it with a fiduciary guarantee. Unknowingly, it turns out that the 4 bus vehicles have been guaranteed by CV. Zentrum DSB to PT. Citra Mandiri Multi Finance was created by a fiduciary, so there was a case between PT. Citra Mandiri Multi Finance and CV. Zentrum DSB and its decision stated that the four guaranteed bus vehicles at

[36] Chuasanga A., Ong Argo Victoria. (2019). *Legal Principles Under Criminal Law in Indonesia and Thailand,* Jurnal Daulat Hukum, Vol 2, No 1 (2019) http://jurnal.unissula.ac.id/index.php/RH/article/view/4218

PT. Citra Mandiri Multi Finance declared valid. However, Ahmad Rifki objected to his losing decision and made a verzet attempt. He considers the need for protection of rights, for him (buyer) who has good intentions who also has proof of invoice, in the form of four buses, the BPKB, the STNK. Where the four bus vehicles include movable goods and are on behalf of, and moving goods there must be the term bezitter, namely those who control goods that take precedence. And he should have won over the dispute but lost.

2. Legal Protection for Holders of Fiduciary Guarantees Transferred to Third Parties in Decision Number 45/Pdt.Eks/2015/PN.SMG

The fiduciary agreement is made in writing with the aim that the creditor holding the fiduciary in his interests will demand the easiest way to prove the delivery of the guarantee to the debtor. The other most important thing in making a fiduciary agreement in writing is to anticipate things that are unexpected and beyond human control, such as the debtor's death, before the creditor gets his rights. Without a valid fiduciary deed it will be difficult for creditors to prove their rights to the debtor's heirs.

In practice, in practice, the binding of collateral objects using a fiduciary guarantee institution is often used by banks and motor vehicle (car) financing companies in a credit agreement. In principle, in a credit agreement either by a bank or by a finance company, binding collateral objects using a fiduciary guarantee institution is with the aim of securing bank/company assets provided to the debtor through a credit agreement from the risk that the debtor is unable to repay his debts to the bank or the financing company. Thus it can be said that the binding of the collateral object using a fiduciary guarantee institution is an accessoir agreement, in which the credit agreement that was previously implemented as the principal agreement.

4. Conclusion

Fiduciary collateral object that has been transferred to a third party or transferred without the creditor's knowledge, while the debtor or third party acknowledges it, the creditor based on the fiduciary guarantee deed can provide a subpoena which then has coercive power to withdraw the collateral object, if the debtor does not recognize and does not shows the collateral object that has been sold or transferred to another party, in this case the creditor takes field verification and collateral checks.

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