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Legal Certainty For An Object That Is A Fiduciary Guarantee Which Has Not Been Removed After The Debt Is Removed

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Abstract. *The relationship between creditors and debtors in the business world requires legal certainty, which is realized through collateral instruments, one of which is fiduciary collateral. Although Law No. 42 of 1999 concerning Fiduciary Collateral and Government Regulation No. 21 of 2015 stipulate the obligation to write off debts after debt repayment, practice shows that many collateral items are not written off, so the object remains listed as collateral. TypeThis research is normative juridical, using a conceptual juridical approach. The data used include primary, secondary, and non-legal data by collecting data through literature and analyzing it using prescriptive analysis to describe and evaluate the implementation of fiduciary roya. The procedure for the removal (roya) of fiduciary collateral is carried out by the creditor after the debtor has fully paid their obligations by submitting an application to the Fiduciary Registration Office, which then issues a Roya Certificate. However, because the removal is not automatic, differences often arise between the material and administrative removal of fiduciary collateral. This situation creates legal uncertainty, where the debtor cannot reuse the collateral, new creditors lose certainty, and potentially give rise to disputes. The roya mechanism in the Fiduciary Collateral Law needs to be strengthened with clear derivative regulations regarding time limits and sanctions for creditors who fail to comply, to prevent re-fiduciary collateral and provide legal certainty. System improvements can also be achieved through digitization and data integration between institutions, mandatory verification by notaries, and strengthening fiduciary certificates as executorial titles to more effectively protect creditors and debtors.*

Keywords: *Legal Certainty; Fiduciary Guarantee; Roya.*

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1. Introduction

In today's global economy, businesses are inextricably linked to banking and financial institutions, which can be partners in the development and advancement of their businesses. Partnerships between businesses and financial service providers and banks must be harmonious, based on a strong foundation of trust. Building mutual trust between financial institutions and banks requires clear and definitive legal regulations. One form of realizing mutual trust between financial institutions or banks that we call creditors with their customers or what we call debtors is a thought that creditors will provide loans to debtors if there is a guarantee that the loan will be repaid according to the loan agreement between the creditor and the debtor. The problem that occurs then is that creditors will feel hesitant to provide loans to debtors if in the future it turns out that the loan cannot be repaid or the customer becomes difficult to ask for repayment when the loan is due, this is when it feels important to think about collateral, not only that, the type and position of collateral will affect how likely the creditor can withdraw the funds that have been given to the debtor.

The purpose of providing collateral is to provide certainty to the creditor that the debtor will be able to fulfill his performance obligations in the form of payment of a sum of money from the credit agreement made and if the debtor does not fulfill that obligation, then the collateral object will become a means of repayment of the debtor's debt. Therefore, collateral is a means of substitution payment, so the collateral provided must have a value commensurate with the amount of debt and interest agreed. The assessment of the collateral object is aimed at the economic value of the item, the ease of sale is also a very important factor because the execution of the collateral object is carried out through public sales.[1] One type of collateral that can be used to secure a debt is a fiduciary bond. In this case, the creditor acts as the fiduciary recipient, while the fiduciary grantor is the debtor, the individual or corporation that owns the object of the fiduciary bond. The fiduciary recipient (creditor) is then required to enshrine the movable object as a fiduciary bond through a fiduciary bond deed drawn up by a notary.

Fiduciary is the transfer of ownership rights to an object based on trust with the provision that the object whose ownership rights are transferred remains in the possession of the owner of the object.[2] Fiduciary guarantees are a special form of collateral that emerged after the enactment of Law Number 42 of 1999 concerning Fiduciary Guarantees (UUJF). The UUJF was born out of the conditions following the 1998 economic crisis, when the business world needed a guarantee institution that was flexible for debtors while still providing legal certainty for creditors.[3]

[1]DY Witanto, 2015, Fiduciary Guarantee Law in Consumer Agreements, CV. Mandar Maji, Bandung, p. 45.

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[2]J. Satrio, 2005, Guarantee Law: Fiduciary Property Guarantee Rights, Citra Aditya Bakti, Bandung, p. 157.

[3] https://www.hukumonline.com/berita/a/fiduciary-guarantee--developments-and-its-problems-lt615279db01e93/, accessed on October 2, 2024, at 13.00 WIB.

The consequence of not removing the fiduciary guarantee is that administratively the fiduciary guarantee certificate will still be registered as collateral that is being pledged. It will not become collateral until an application for the deletion of the fiduciary guarantee is submitted to the fiduciary registration office. With the Fiduciary Guarantee certificate still being registered, legally the collateral that is being pledged remains recorded in the Fiduciary Register Book, so it cannot be pledged again before being deleted from the Fiduciary Register Book. The fiduciary guarantee certificate remains valid as proof of fiduciary guarantee on the registered object as long as there is no report from the fiduciary recipient, their attorney or representative regarding the termination of the fiduciary guarantee as stipulated in Article 25 of the UUJF.

Deletion is one of the important instruments in the fiduciary guarantee system besides the imposition and registration of fiduciary guarantees, but this instrument is largely ignored by fiduciary recipients or interested parties. The lack of public awareness, especially fiduciary recipients, their attorneys or representatives as mandated by Article 16 of Government Regulation (PP) Number 21 of 2015 to submit a request for deletion of fiduciary guarantee objects that have expired at the Fiduciary Office, to be subsequently deleted from the Fiduciary Register Book can have an impact on the administration of the registration of the guarantee object, if in the future the guarantee object will be guaranteed fiduciary again. To avoid the existence of duplicate certificates for the guarantee object and also to protect the interests of the new creditor.

According to Sutarno, "re-fiduciary cannot be carried out because the object that has been burdened with fiduciary is not the debtor's property but the ownership rights have been transferred to the fiduciary recipient. The importance of removing fiduciary is to provide legal certainty regarding the collateral object or the object has been freed from fiduciary security and can be re-pledged as new fiduciary security."[4] The provisions governing fiduciary obligations are Law Number 42 of 1999 concerning Fiduciary Guarantees. In addition, there are also government regulations governing fiduciary obligations, namely:

1. Government Regulation of the Republic of Indonesia Number 21 of 2015 concerning Procedures for Registering Fiduciary Guarantees and Costs for Making Fiduciary Guarantee Deeds;

2. Government Regulation of the Republic of Indonesia Number 28 of 2019 concerning Types and Tariffs of Non-Tax State Revenue Applicable to the Ministry of Law and Human Rights.

[4] Sutarno, 2005, Legal Aspects of Credit in Banks, Alfabeta, Bandung, p. 218.

The elimination of fiduciary guarantees based on the Fiduciary Guarantee Law and Government Regulation Number 21 of 2015 concerning Procedures for Registering Fiduciary Guarantees and Costs for Making Fiduciary Guarantee Deeds, has several differences, one of which is the legal subject, the subject in the Fiduciary Guarantee Law is the fiduciary recipient, there is no other party according to Article 25 paragraph (3). Meanwhile, in Government Regulation Number 21 of 2015, Article 16 paragraph (2) states that the subject of the elimination is not only the fiduciary recipient but can also be their attorney or representative. The fiduciary recipient, attorney or representative is required to notify the elimination within a period of 14 (fourteen) days from the date of the elimination of the fiduciary guarantee, by attaching a statement regarding the elimination of debt, release of rights or destruction of objects that are the object of the fiduciary guarantee.[5]

2. Research Methods

This study uses normative legal research, which views law as a system of norms encompassing principles, rules, statutory regulations, court decisions, and legal doctrine. The study was conducted to determine the legal certainty of an object that becomes the object of fiduciary collateral after the debt is forgiven.[6]The approaches used are the legislative approach and the conceptual approach. The data used is secondary data consisting of primary, secondary, and tertiary legal materials, collected through literature review. Data analysis is conducted prescriptively to provide legal arguments and normative recommendations based on applicable legal provisions.

3. Results and Discussion

3.1. Legal Certainty for an Object that is a Fiduciary Guarantee that has not been Written Off After the Debt is Written Off

Fiduciary guarantee is a guarantee right for movable objects, both tangible and intangible, as well as certain buildings that cannot be burdened with mortgage rights, which remain in the control of the fiduciary giver and provide preferential rights to the fiduciary recipient. Legally, land cannot be a fiduciary object because it can only be guaranteed through Mortgage Rights according to Law Number 4 of 1996 concerning Mortgage Rights which remain in the control of the Fiduciary Giver, as collateral for the repayment of certain debts which provide a preferred position to the Fiduciary Recipient over other creditors.[7]However, in practice,

[5] Laksana Arum Nugraheni, 2017, Legal Responsibilities of Notaries in Electronic Registration of Fiduciary Guarantees, Journal of Law, Atma Jaya University Yogyakarta, Vol. 3 No. 1, p. 5.

[6]Mukti Fajar and Yulianto Achmad, 2010, Dualism of Normative and Empirical Legal Research, Pustaka Pelajar, Yogyakarta, p. 34.

[7]M. Khoidin, 2017, Guarantee Law (Guarantee Rights, Mortgage Rights, and Execution of Mortgage Rights), Laksbang Yustitia, Surabaya, p. 65.

there are still errors in the use of fiduciary rights over land that do not have legal force.

In financing practices, particularly in areas with high MSME activity, such as Kuningan, fiduciary guarantees are widely used by financial institutions such as Perumda BPR Kuningan, particularly for motor vehicle loans and working capital. Frequent problems include delays in fiduciary registration and the failure to promptly write off (roya) after debts are paid off. BPR Kuningan is working to improve its internal administrative mechanisms so that roya can be processed promptly after debts are paid off. Furthermore, the BPR is providing counseling to debtors on the procedures and importance of roya, enabling them to more actively pursue their rights.[8]

The implementation of fiduciary guarantees is carried out through the creation of notarial deeds, electronic registration through the AHU system(https://ahu.go.id.)[9], issuance of a fiduciary certificate, and recording in the Fiduciary Register Book, which marks the birth of fiduciary rights. The rights and obligations of the parties are regulated in the Civil Code and the Fiduciary Law, where creditors have the right to collateral and are required to register fiduciaries, while debtors have the right to legal certainty and are required to safeguard the collateral and repay the debt according to the agreement.

According to the theory of legal certainty, debt cancellation should be followed by the cancellation of fiduciary collateral. However, administratively, until a roya (payment of debt) is carried out at the Fiduciary Registration Office, the collateral remains registered as bound, potentially giving rise to disputes and harming the debtor. Regulations such as PMK Number 130/PMK.010/2012 strengthen the obligation to register fiduciaries to ensure legal certainty and prevent multiple disputes over collateral. In judicial practice, there are criminal cases related to the transfer of fiduciary assets without creditor consent. Furthermore, weaknesses remain in the Fiduciary Law, particularly regarding the roya mechanism and sanctions for late registration or removal of fiduciaries. Therefore, optimized supervision, administrative improvements, and regulatory updates are needed to increase legal certainty. Weaknesses of the Fiduciary Law on Legal Certainty of Collateral Objects:

a. Although Law Number 42 of 1999 concerning Fiduciary Guarantees has provided a fairly clear legal basis, this law has not yet explicitly regulated the mechanism for the removal (roya) of fiduciary guarantees if the creditor fails to carry out the removal, even though the debt has been paid off.

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[8]Interview with Mr. Dodo Warda, President Director of Perumda BPR Kuningan, August 15, 2025.
[9] *https://panduan.ahu.go.id/doku.php?id=penghapusan* accessed on September 18, 2025, at 20.10 WIB.

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b. In practice, the fiduciary registration procedure is still often delayed, while the law does not provide strict sanctions for creditors who delay registration or deletion.

c. Although fiduciary certificates have enforceable powers (Article 15 paragraph 2), their implementation often faces obstacles in practice due to differing interpretations among creditors, debtors, and law enforcement officials. This situation indicates that the expected legal protection is not fully effective.

Fiduciary collateral is removed after the debt is fully paid through a request for relinquishment by the creditor to the Fiduciary Registration Office, attaching proof of repayment, a fiduciary certificate, and other supporting documents. Following the removal, a fiduciary certificate is issued as proof that the collateral is free from the fiduciary bond.Fiduciary Guarantee Removal (Roya) Procedure:[10]

a. Debt Settlement: The debtor pays off his debt obligations to the creditor.

b. Roya Application: The creditor (fiduciary holder) submits a deletion application (roya) to the Fiduciary Registration Office.

c. Required Documents:

1) Letter of application for removal of fiduciary.

2) Proof of debt repayment (receipt, statement of full payment).

3) Original Fiduciary Guarantee Certificate.

d. Recording by the Fiduciary Registration Office: The officer crosses out the fiduciary registration in the Fiduciary Registration Book.

e. Issuance of a Roya Certificate: Issued as proof that the collateral object is free from fiduciary ties.

3.2. Legal Consequences for Fiduciary Providers Who Repeat Fiduciary for Objects for Which Fiduciary Guarantee Has Not Been Removed

Fiduciary security is a collateral right of an accessory nature, so its existence depends on the principal agreement in the form of a debt agreement. Based on the provisions of Law Number 42 of 1999 concerning Fiduciary Security, the cancellation of the principal debt results in the cancellation of the fiduciary security, which must be followed by the cancellation of the fiduciary security

[10]Sang Ayu Made Ary Kusuma Wardhani, 2025, Implementation of Fiduciary Guarantee Removal (Roya) After Credit Settlement, Kerta Dyatmika Journal, Denpasar, Vol. 22 No. 1, p. 3.

registration (roya) at the Fiduciary Registration Office. This provision is a manifestation of the principles of legal certainty, publicity, and legal protection for parties interested in the collateral object.

Re-encumbrance of the same collateral object before the previous fiduciary is removed is still common. This condition creates overlapping collateral rights and has the potential to create a conflict of interest between creditors. Legally, re-fiduciary without prior roya is contrary to the principle of preferential rights in material collateral, because the first collateral right is still attached to the collateral object. As a result, the creditor's position subsequently becomes uncertain in the exercise of executorial rights if the debtor defaults. If the debtor defaults, while the fiduciary collateral object is not registered with the fiduciary registration office, then no fiduciary guarantee is created, and if no fiduciary guarantee is created, then the agreement is only an ordinary debt agreement, so that the creditor's position is only as a concurrent creditor. Legal protection for creditors, if the creditor feels aggrieved and wants to demand the return of his receivables, then the creditor can sue under Article 1131 of the Civil Code.[11]

The role of a notary is crucial. As a profession authorized to create authentic deeds, notaries play a crucial role in maintaining legal certainty and protecting parties in fiduciary transactions.[12] The notary's responsibility in verifying the status of fiduciary objects is an important aspect in preventing re-fiduciary. As a public official who makes deeds, a notary is obliged to ensure that the collateral object submitted by the debtor is not currently bound by another fiduciary agreement. This is in line with the notary's obligation to act carefully (prudentia) in carrying out their duties as stipulated in the Notary Law (UUJN). Because not all fiduciary objects are registered online, only fiduciary objects registered through the Ministry of Law and Human Rights' online fiduciary application whose data can be accessed online, and this only applies to registrations made after March 5, 2013. The Fiduciary Guarantee registration process is carried out online, but fiduciary objects created before that date are not automatically recorded online.[13]

Fiduciary guarantee registration is carried out at the Fiduciary Registration Office in accordance with Articles 11 to 18 of the Fiduciary Guarantee Law. This office plays a passive role as an administrative agency accepting registrations and an active role in verifying the completeness of application data. However, the fiduciary registration system still has weaknesses because it lacks an automatic mechanism for rejecting re-applications, so the registration office functions more

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[11]Eva Rita Hutagaol, 2013, Legal Consequences If the Fiduciary Guarantee Certificate is Not Validated (Study at the Ministry of Law and Human Rights in Pontianak, West Kalimantan), Jurnal Notarius, Diponegoro University, Semarang, Vol. 4 No. 1, p. 4.

[12]Maria Ulfa and Fifiana Wisnaeni, 2025, The Role of Notaries in Fiduciary Transactions to Ensure Legal Certainty and Protection, Jurnal Notarius, Diponegoro University, Vol. 18 No. 2, p. 2.

[13]https://ahu.go.id/pencarian/fidusia#:~:text=Data%20Fidusia%20yang%20dapat%20diakses,sejadi%20tahun%205%20maret%202013, accessed on September 2, 2025, at 21.00 WIB.

as an administrative recorder without thoroughly examining the status of the collateral.

4. Conclusion

The procedure for deleting (roya) a fiduciary guarantee is carried out after the debtor's debt is fully paid, with the creditor submitting a request for deletion to the Fiduciary Registration Office until a Roya Certificate is issued as proof of the object's release from the fiduciary bond. However, this deletion does not occur automatically, resulting in differences between the deletion of fiduciary obligations under material and administrative law, which has the potential to create legal uncertainty for debtors, new creditors, and existing creditors. To address this, strengthening regulations related to the roya mechanism is needed, including setting time limits and sanctions for negligent creditors, as well as reaffirming fiduciary regulations. In addition, optimization of digitalization and data integration of the fiduciary registration system needs to be improved, accompanied by mandatory verification by notaries and strengthened coordination between law enforcement agencies so that legal protection for the parties can be effective.

5. References

Journals:

Hutagaol, Eva Rita, (2013), Akibat Hukum Bila Sertifikat Jaminan Fidusia Tidak di Roya (Studi Pada Kementrian Hukum dan Hak Asasi Manusia di Pontianak Kalimantan Barat), *Jurnal Notarius*, Universitas Diponegoro, Semarang, Vol. 4 No 1.

Ulfa, Maria dan Wisnaeni, Fifiana, (2025), Peran Notaris dalam Transaksi Fidusia untuk Menjamin Kepastian dan Perlindungan Hukum, *Jurnal Notarius*, Universitas Diponegoro, Vol. 18 No. 2.

Wardhani, Sang Ayu Made Ary Kusuma, (2025), Pelaksannaan Penghapusan (Roya) Jaminan Fidusia Setelah Kredit Lunas, *Jurnal Kerta Dyatmika*, Denpasar, Vol. 22 No. 1.

Nugraheni, Laksana Arum, (2017), Tanggung Jawab Hukum Notaris dalam Pendaftaran Jaminan Fidusia Secara Elektronik, *Jurnal Hukum,* Universitas Atma Jaya Yogyakarta, Vol. 3 No. 1.

Books:

Fajar, Mukti dan Achmad, Yulianto, (2010), *Dualisme Penelitian Hukum Normatif dan Empiris,* Yogyakarta: Pustaka Pelajar.

Khoidin, M., (2017), *Hukum Jaminan (Hak-hal Jaminan, Hak Tanggungan, dan Eksekusi Hak Tnggungan)*, Surabaya: Laksbang Yustitia.

Satrio, J., 2005, *Hukum Jaminan: Hak Jaminan Kebendaan Fidusia,* Bandung: Citra Aditya Bakti.

Sutarno, (2005), *Aspek-Aspek Hukum Perkreditan Pada Bank,* Bandung: Alfabeta.

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Witanto, D. Y., (2015), *Hukum Jaminan Fidusia Dalam Perjanjian Konsumen*, Bandung: CV. Mandar Maji.

Internet:

https://ahu.go.id/pencarian/fidusia#:~:text=Data-Fidusia-yang-dapat-diakses,sejak-tanggal-5-maret-2013

https://panduan.ahu.go.id/doku.php?id=penghapusan

https://www.hukumonline.com/berita/a/jaminan-fidusia--perkembangan-dan-masalahnya-lt615279db01e93/

Interview:

Interview with Bapak Dodo Warda, Direktur Utama Perumda BPR Kuningan, accessed on 15 August 2025.