

## The Legal Protection of Fiduciary Guarantee Recipients & Resolution of Tort Disputes in the Fiduciary Guarantee Agreement at PT Astrido Pacific Finance

Indah Pratiwi Widyaningrum

Masters Notary Program, University of Indonesia, E-mail: [indah.wydia@gmail.com](mailto:indah.wydia@gmail.com)

**Abstract.** *This research aims to examine the legal protection mechanism for recipients of fiduciary guarantees, such as PT Astrido Pacific Finance, in their business practices and to analyze the mechanism for resolving default disputes that can arise in fiduciary guarantee agreements. This research uses normative juridical research methods with a descriptive approach. The data used is secondary data consisting of primary and secondary legal materials. The results of this research show the importance of clarity in laws and regulations related to fiduciary guarantees to provide strong legal protection for recipients of fiduciary guarantees. In addition, a good understanding of the mechanism for resolving default disputes is needed to maintain stability and fairness in fiduciary transactions. It is hoped that the results of this research will provide guidance for PT Astrido Pacific Finance and contribute to the development of legal science in Indonesia.*

**Keywords:** *Dispute; Fiduciary; Guarantee; Protection; Resolution.*

### 1. INTRODUCTION

Fiduciary involves strong trust between the fiduciary giver (debtor) and the fiduciary recipient (creditor), where the fiduciary is sure that the creditor will respect the ownership rights of the transferred object, while the creditor is sure that the fiduciary will take good care of the object that is the object of the fiduciary guarantee. In an effort to provide legal protection for fiduciary recipients, the law places the principle of *droit de suite* on the object that is used as collateral so that the fiduciary's security rights follow the object no matter where it is controlled.<sup>1</sup> The principle of *droit de suite* gives the recipient of a fiduciary guarantee the right to defend his/her objects from interference by any party, so that they can file a claim against any form of interference with their ownership of the object.

In practice, a fiduciary agreement usually starts from a debt-receivable agreement between the creditor and debtor, where the fiduciary agreement aims to act as an anticipatory step for the creditor if the debtor cannot fulfill its obligations to pay off debts in accordance with the debt-receivable agreement. The obligation to hand over ownership rights to movable property to another party confirms that the fiduciary agreement is material in nature (*zakelijk*).

Guarantee in fiduciary is expressed with the concept of "transfer of property rights in trust" or better known as *Fiduciare Eigendom Overdracht*.<sup>2</sup> This concept relies on the trust factor in the transfer of property rights, where one party gives confidence to another party that what appears to be a transfer of property is actually only collateral

---

<sup>1</sup>Law concerning Fiduciary Guarantees, Law Number 42 of 1999, LN of 1999 No. 168, TLN No. 3889, hereinafter referred to as UUJF, Article 20.

<sup>2</sup>Efendi, Jonaedi, et. Al., (2018). *Kamus Istilah Hukum Populer*. Jakarta: Kencana.p.148.

for a debt. In this case, the debtor gives confidence to the creditor that his property rights will be returned after the debt is paid off. In other words, fiduciary guarantees are carried out by means of *constitutum possessorium*, namely objects whose ownership rights are handed over to the creditor but which are still physically controlled by the fiduciary giver for the benefit of the fiduciary recipient.<sup>3</sup>

According to Hartono Hadisoeparto, what is meant by guarantee is: "Something given to a creditor to create confidence that the debtor will fulfill obligations that can be valued in money arising from an obligation."<sup>4</sup> According to their nature, there are general guarantees and specific guarantees.<sup>5</sup> A general guarantee is a guarantee given to all creditors and concerns all of the debtor's assets as regulated in the provisions of Article 1131 of the Civil Code. Meanwhile, special guarantees are guarantees in the form of specifically appointing or handing over certain goods as collateral for the repayment of the debtor's debt to the creditor.

More specifically, fiduciary guarantees cover movable objects, including tangible and intangible ones, as well as immovable objects, such as buildings which cannot be subject to mortgage rights. The fiduciary recipient (creditor) obtains security rights over objects used as collateral or guarantee for the repayment of a particular debt, but control over the objects used as the object of fiduciary collateral remains in the control of the fiduciary giver.

Regarding the form of a fiduciary agreement, Article 5 paragraph (1) UUJF requires this agreement to be made in writing and with a notarial deed in Indonesian. This is done to provide legal certainty considering that the object of fiduciary collateral is often unregistered movable property, so a notarial deed is the means that can best provide legal certainty.

Fiduciary guarantees are formed when fiduciary guarantees are recorded by the fiduciary guarantee holder. Fiduciary guarantee certificate issued on the same date as the application for registration of fiduciary guarantee is received, as regulated in Article 14 UUJF. The process of forming fiduciary guarantees involves constitutive actions, in accordance with Article 13 UUJF.

Registration of fiduciary guarantees has an important objective in providing legal certainty and effectiveness of fiduciary guarantees. This binds third parties and supports the principle of "first registered, first secured," which means that the fiduciary recipient has priority in taking payment for the proceeds of the execution of the object that is the object of the fiduciary guarantee.

While the fiduciary remains in control of the object that is the object of the fiduciary guarantee and obtains economic benefits from the object, Article 24 UUJF mandates that the fiduciary is responsible for the risks and consequences associated with the object. Article 20 UUJF regulates the principle of "droit de preference," which applies from registration at the Fiduciary Registration Office. What is meant by pre-emptive right (which takes precedence) is the right of the fiduciary recipient to receive the fiduciary to collect repayment of his receivables for the proceeds of the execution of the object that is the object of the fiduciary guarantee.<sup>6</sup> So according to this article, recipients of fiduciary guarantees as holders of material rights have the same rights in implementing this

---

<sup>3</sup>Prajitno, Andi. (2011). *Hukum Fidusia : Problematika Yuridis Pemberlakuan UU No.42 Tahun 1999*. Malang: Bayumedia. p.30.

<sup>4</sup>Hadisoeparto, Hartono. (2004). *Pokok-Pokok Hukum Perikatan dan Hukum Jaminan*. Yogyakarta: Liberty. p. 50.

<sup>5</sup>Widjaja, Gunawan, dan Yani, Ahmad. (2000). *Jaminan Fidusia*, Jakarta: Rajagrafindo Persada. p. 79.

<sup>6</sup>Satrio, J. (2007). *Hukum Jaminan Hak Jaminan Kebendaan*. Bandung: Citra Aditya Bakti. p. 168.

principle, namely defending their material rights from any interference and are entitled to legal protection for this. The equal position of the owner of the object and the recipient of the fiduciary guarantee makes a logical reason to give the object to the right party and not neglect his obligations, so that it is appropriate for the fiduciary recipient to get what is his right.<sup>7</sup>

Having a fiduciary as a form of collateral can provide benefits for creditors, because the fiduciary gives the creditor or fiduciary recipient a priority position over other creditors in terms of debt repayment by the debtor. So, if there is a dispute or default on the part of the debtor regarding the agreement that has been agreed upon, then the creditor or fiduciary recipient with their own authority can sell and/or auction the object of the fiduciary guarantee.

Thus, fiduciaries not only provide legal certainty and legal protection in every credit transaction, but are also an effective means of resolving disputes fairly, clearly and transparently. The practice of using Fiduciary Guarantees is often used by banks and motor vehicle financing companies in credit agreements. The purpose of using Fiduciary Guarantee in the credit agreement is to secure the assets of the Bank or finance company given to the debtor. Banks or finance companies often require guarantees or collateral for prospective debtors who apply for credit facilities, because the Bank or Financial Institution requires certainty for the return of credit loans provided by creditors to debtors.

Fiduciaries have a preventive role in protecting the interests of creditors. By having a fiduciary guarantee, the creditor can minimize the risk of the debtor failing to return his debts to the bank or finance company, because the Debtor is aware that the object used as the object of the fiduciary guarantee can be executed and taken over by the Creditor if a default occurs. This often also encourages debtors to fulfill their debt payment obligations to creditors on time.

The basic concept of fiduciary includes a guarantee mechanism that allows creditors to protect their rights to movable and immovable assets guaranteed by debtors as collateral for payment of certain debts. Fiduciary is the act of transferring ownership rights to an object based on trust, where the fiduciary (debtor) continues to hold the collateral and control it while providing a guarantee of trust to the fiduciary recipient (creditor) that the object will be used as collateral for debt payment.

In fiduciary, there are two main parties, namely the fiduciary giver (debtor) and the fiduciary recipient (creditor). Based on Article 1 Paragraph (5) UUJF, a Fiduciary Giver is an individual or corporation who owns objects that are the object of Fiduciary Guarantee.<sup>8</sup> It can be concluded that there are two types of fiduciary providers, namely:<sup>9</sup>

1. The fiduciary debtor, the guarantor is the debtor himself; or
2. Third party fiduciary, guarantor is a third party.

Meanwhile, based on Article 1 Paragraph (6) UUJF, a Fiduciary Recipient is an individual or corporation that has receivables whose payment is guaranteed by a Fiduciary Guarantee.<sup>10</sup>

Fiduciary allows creditors to secure their rights to collateral objects, both movable and immovable, by registering fiduciary at the authorized fiduciary registration office. After

---

<sup>7</sup>Lubis, Aditya Nabilah., *Perlawanan Pihak Ketiga Sebagai Pemilik Benda Terhadap Benda Yang Dijadikan Jaminan Fidusia Tanpa Persetujuan Pemilik Benda (Studi Kasus: Putusan Mahkamah Agung 1012 K/PDT/2021)*. Lex Patrimonium, Vol. 1, No. 1 (2022). p. 12.

<sup>8</sup>UUJF, Article 1 Paragraph (5)

<sup>9</sup>J. Satrio, Op.cit, p. 180.

<sup>10</sup>UUJF, Article 1 Paragraph (6)

registration is complete, the fiduciary guarantee will have a priority position for the fiduciary recipient over other creditors, providing stronger legal protection in demanding debt repayment. It also regulates the provision that fiduciary guarantees can be valid as long as the guaranteed debt has not been repaid. However, the fiduciary recipient will not bear liability for the fiduciary's actions or omissions that violate the law, emphasizing the importance of carrying out fiduciaries legally in accordance with applicable regulations.

The explanation given in the statement explains that a fiduciary agreement has the main objective of making it easier for creditors holding fiduciaries to prove that collateral for an object has been handed over by the fiduciary or debtor. The provision of fiduciary guarantees is a subsidiary agreement to a main agreement as stated in the explanation of Article 5 UUJF that the encumbrance of objects with Fiduciary Guarantees is made by notarial deed in Indonesian and is a Fiduciary Guarantee deed.

Furthermore, according to Article 11 in conjunction with Article 13 in conjunction with Article 15 of the UUJF, it is determined that objects encumbered with fiduciary guarantees whether within the territory of the Republic of Indonesia or outside the territory of the Republic of Indonesia must be registered at the Fiduciary Registration Office which is within the scope of duties of the Department of Justice, whose application for registration is made by the Fiduciary Guarantee Recipient by attaching a Fiduciary Guarantee registration statement as stated in Article 13 Paragraph (2) UUJF. If the application for Fiduciary Guarantee registration is granted, the Fiduciary Registration Office will hand over to the fiduciary recipient a Fiduciary Guarantee Certificate whose date of birth of the Fiduciary Guarantee is the same as the date the Fiduciary Guarantee was recorded. The Fiduciary Certificate includes the words "FOR JUSTICE BASED ON THE ALMIGHTY GOD," which means the Certificate has the same executorial power as a court decision that has obtained permanent legal force.<sup>11</sup>

Overall, fiduciaries have a strategic role in supporting a just legal system and maintaining economic stability. By providing strong legal protection for creditors and debtors, fiduciaries encourage healthy and sustainable economic growth. Therefore, a deep understanding of the fiduciary concept and its implementation in business and banking practices is very important in creating a fair and conducive business environment.

The binding of collateral objects using a fiduciary institution is an *accessoir* agreement, which is always an agreement that is linked to the main agreement, serving the main agreement.<sup>12</sup>As an accessory agreement, a fiduciary guarantee agreement gives a privileged or priority position to creditors who receive fiduciaries compared to other creditors, in accordance with Article 27 paragraph (1) UUJF which states that "Fiduciary recipients have priority rights over other creditors." Furthermore, Article 27 paragraph (2) UUJF states that the priority right is the right of the fiduciary recipient to obtain repayment of his receivables through the execution of the object that is the object of the fiduciary guarantee.

The priority rights of the fiduciary recipient will also not be lost in a situation of bankruptcy or liquidation of the fiduciary giver, in accordance with Article 27 paragraph (3) UUJF. From this provision, it can be concluded that creditors who receive fiduciary collateral are given preferential rights over other creditors to obtain repayment of their debts by taking the proceeds from the execution of the collateral.

---

<sup>11</sup>UUJF, Explanation of Article 15 Paragraph (2).

<sup>12</sup>Sri Soedewi Masjchoen Sofwan, *Guarantee Law in Indonesia Principles of Guarantee Law and Personal Guarantees*, (Yogyakarta: Liberty Offset, 1980), p. 37.

In addition, Article 24 UUJF stipulates that "The fiduciary recipient is not responsible for the consequences of the fiduciary's actions or negligence, whether arising from contractual relationships or arising from unlawful acts related to the use and transfer of objects that are the object of fiduciary collateral." Thus, the fiduciary recipient will not bear the consequences of unlawful acts committed by the fiduciary provider against the object of the fiduciary guarantee. If it turns out that the object of the fiduciary guarantee was obtained through unlawful actions, the fiduciary recipient will not be involved in the consequences if the object is confiscated by the state at a later date.

In the context of civil law, fiduciary is an important instrument in maintaining balance and fairness between interested parties in every business and banking transaction. With the existence of a Fiduciary Guarantee, the rights and obligations between the fiduciary giver and the fiduciary recipient are regulated clearly and transparently, thereby preventing abuse or injustice in the implementation of transactions.

It is important to know that the implementation of fiduciary execution, in the event of a dispute between debtors and creditors, the dispute resolution process must be carried out in accordance with the provisions of the applicable laws and legal regulations.

Specifically in Article 29 UUJF, which contains provisions:<sup>13</sup>

1. If the debtor or Fiduciary Giver breaks their promise, execution of the Goods which are the object of the Fiduciary Guarantee can be carried out by:
  - a. implementation of the executorial title as intended in Article 15 paragraph (2) by the Fiduciary Recipient.
  - b. sale of objects which are the object of Fiduciary Guarantee under the authority of the Fiduciary Recipient himself through a public auction and taking repayment of the receivables from the sale proceeds;
  - c. private sales carried out based on an agreement between the Giver and the Fiduciary Recipient if in this way the highest price that is profitable for the parties can be obtained.
2. The sale as intended in paragraph (1) letter c is carried out after 1 (one) month has passed since being notified in writing by the Giver and/or Fiduciary Recipient to interested parties and announced in at least 2 (two) newspapers spread throughout the region.

However, with the Constitutional Court (MK) Decision Number 18/PUU-XVII/2019 dated 6 January 2020 which interprets Article 15 paragraphs 2 and 3 of Law 42 of 1999 concerning Fiduciary Guarantees, fiduciary guarantee certificates automatically no longer have executorial power. If the creditor wants to execute the object of the fiduciary guarantee, the creditor must first submit an application to the District Court to carry out the execution. With the Constitutional Court's decision, of course it raises concerns for creditors in providing financing to debtors with fiduciary guarantees, especially when carrying out execution of fiduciary collateral objects if the debtor breaches their contract, because the object is in the debtor's control.

In this context, PT Astrido Pacific Finance, as a leading financing company in Indonesia, has implemented fiduciary guarantees as one of the instruments to ensure the return of credit given to debtors. However, challenges in understanding and following the procedures for registering fiduciary guarantees can be an obstacle in implementing the agreement.

The research focus includes legal protection efforts provided to recipients of fiduciary guarantees in the registration process as well as exploring the mechanism for resolving default disputes that may arise in fiduciary guarantee agreements at PT Astrido Pacific

---

<sup>13</sup>UUJF, Article 29.

Finance (PT APF). With an in-depth understanding of the procedures for registering fiduciary guarantees, it is hoped that the results of this research can make an important contribution to PT APF in increasing effectiveness, efficiency and compliance in implementing fiduciary guarantees.

Based on the background of the problem described above, the problem formulation for writing this article is as follows:

1. How is the legal protection given to recipients of fiduciary guarantees who have good intentions, especially at PT Astrido Pacific Finance?
2. What is the process for executing the fiduciary guarantee object due to default in the fiduciary guarantee agreement between PT Astrido Pacific Finance and the debtor if referring to the Fiduciary Guarantee Law?

## **2. RESEARCH METHODS**

This research uses normative juridical research methods, which specifically examine law and systematize written legal materials. The type of data used in this research is Secondary Data, which includes primary legal materials, secondary legal materials and tertiary legal materials. The data in this research was collected through literature study, namely by examining documents, books, papers, articles and statutory regulations related to the research problem. The analytical method used is qualitative analysis.

## **3. RESULTS AND DISCUSSION**

### **3.1. Analysis of the legal protection provided to recipients of fiduciary guarantees who have good intentions, especially at PT Astrido Pacific Finance?**

Fiduciary is a form of guarantee that gives creditors confidence to protect their rights to movable and immovable assets that are used as collateral for certain debt payments. In a fiduciary agreement, the fiduciary recipient is given a priority position over other creditors. This results in the fiduciary recipient having priority rights in taking repayment of his receivables through the execution of the assets that are the object of the fiduciary guarantee. This special position provides legal certainty for all parties involved in a fiduciary agreement.

Legal protection for recipients of fiduciary guarantees is very important, especially in the context of financial transactions and financing in Indonesia. Creditors who use fiduciary guarantees feel safer because their rights have priority in the guarantee execution process, reducing the risks that may occur compared to other creditors.

Apart from providing confidence to the parties, legal protection for recipients of fiduciary guarantees also plays a role in encouraging greater financing and increasing financial access for parties who need it. This legal protection becomes more important in an increasingly complex and diverse business environment.

If we refer to Article 4 UUJF, Fiduciary Guarantee is a follow-up agreement to a main agreement which creates an obligation for the parties to fulfill an achievement. At PT APF, every consumer financing must go through a consumer financing agreement first before the financing application is processed further.<sup>14</sup>

Before providing financing facilities to prospective debtors, PT APF first conducts an in-depth analysis regarding the debtor's ability and capability to repay or pay off the loan and interest as agreed. The application of the prudential principle in providing credit is

---

<sup>14</sup>UUJF, Article 4.

mandatory for finance companies as an embodiment of the implementation of the prudential principle in providing credit which is reflected in the criteria called The Five C's Principle of Credit Analysis (5C's).<sup>15</sup>The brief explanation is as follows:

- a. *Characters*, which means the character, character and habits of the debtor to be analyzed before granting credit;
- b. *Capacity*, debtor capacity which is closely related to a debtor's ability to repay the loan;
- c. *Capital*, see how much capital the debtor has in his business;
- d. *Collateral*, collateral submitted by the debtor, if the debtor experiences problems and is even unable to repay the loan; And
- e. *Condition of Economy*, You also have to pay attention to the economic conditions around where the prospective debtor lives.

Analysis of the provision of financing facilities must be carried out appropriately and correctly as a risk mitigation effort to prevent the provision of credit facilities to debtors who turn out to be unfit and do not meet the criteria that should be met. This aims to provide a financing facility by minimizing the number of bad loans in financing companies.

PT APF also carries out consumer due diligence such as: conducting surveys, carrying out verification and checking the validity of data provided by prospective debtors, as well as requesting other necessary supporting documents.

The activity of providing financing facilities is of course closely related to the existence of guarantees. Guarantees or collateral in financing facilities must be fulfilled by imposing fiduciary guarantees on guarantees or collateral from financing activities. Furthermore, if you refer to Article 5 UUJF, the encumbrance of objects with Fiduciary Guarantee is made by notarial deed in Indonesian and is a Fiduciary Guarantee deed. Where the Fiduciary Guarantee Deed must at least contain:

- a. identity of the Fiduciary Giver and Recipient;<sup>16</sup>
- b. data on the principal agreement guaranteed by fiduciary;
- c. description of the objects that are the object of Fiduciary Guarantee;
- d. guarantee value; And
- e. value of the object that is the object of the Fiduciary Guarantee.

In accordance with the provisions of Article 11 of the UUJF, objects which are encumbered with Fiduciary Guarantees must be registered, whether within the territory of the Republic of Indonesia or outside the territory of the Republic of Indonesia.<sup>17</sup>The implementation of fiduciary guarantee registration procedures is carried out at the Fiduciary Registration Office by the fiduciary recipient, their proxy or representative in writing by attaching a fiduciary guarantee registration statement, which contains:<sup>18</sup>

- a. identity of the Fiduciary Giver and Recipient;
- b. date, Fiduciary Guarantee deed number, name and location of the notary who made the Fiduciary Guarantee deed;
- c. data on the principal agreement guaranteed by Fiduciary;
- d. description of the objects that are the object of Fiduciary Guarantee;
- e. guarantee value; And
- f. value of the object that is the object of the Fiduciary Guarantee.

---

<sup>15</sup>Sentosa Sembiring, "The Importance of Collateral in Providing Credit in Banking Business Transactions", Gloria Juris, Vol. 7, no. 1 (2007), p. 25-26.

<sup>16</sup>UUJF, Article 6

<sup>17</sup>UUJF, Article 11

<sup>18</sup>UUJF, Article 13 Paragraph (2)

As proof that the fiduciary recipient has registered the fiduciary guarantee, the Fiduciary Registration Office will issue and hand over to the fiduciary recipient a fiduciary guarantee certificate, on the same day as the day the registration was carried out.<sup>19</sup>The fiduciary guarantee certificate contains the words "FOR JUSTICE BASED ON THE ALMIGHTY GOD", which has the same executorial power as a court decision that has obtained permanent legal force. In this provision, what is meant by "executorial power" is that it can be exercised directly without going to court and is final and binding on the parties to implement the decision.<sup>20</sup>

As it turns out in the provisions of Article 14 paragraph (3) UUJF, that Fiduciary Guarantee is born on the same date as the date the Fiduciary Guarantee is recorded in the Fiduciary Register Book. So it can be concluded that registration of fiduciary guarantees is an absolute requirement for the birth of fiduciary guarantees and to fulfill the principle of publicity. The principle of collateral publicity requires holders of all material collateral to register the objects pledged as collateral in a debt assignment, with the aim of ensuring that third parties know the status of an object in terms of collateral.<sup>21</sup> One form of providing legal certainty for the rights of creditors receiving fiduciaries as regulated in the UUJF is by establishing a fiduciary registration institution and the purpose of the registration is none other than to guarantee the interests of the party receiving the fiduciary.<sup>22</sup>Furthermore, the same protection can also be seen in the provisions of Article 17 UUJF, that Fiduciary Givers are prohibited from re-fiduciating objects that are objects of Fiduciary Guarantee that have already been registered.<sup>23</sup>Where it is also regulated in Article 23 paragraph (2): Fiduciary givers are prohibited from transferring, pawning or renting to other parties objects that are the object of fiduciary collateral which are not inventory items, except with the prior written approval of the Fiduciary Recipient."

Sanctions for the above provisions are criminal as intended in Article 36 UUJF.<sup>24</sup>The provisions mentioned above which are regulated in the UUJF are of course very beneficial for creditors and protect the interests of creditors which are also regulated regarding criminal provisions in the UUJF. And if you refer to Articles 29 and 30 UUJF, in the event that the fiduciary breaks his promise, the fiduciary is obliged to hand over the collateral object, if the creditor wants to carry out execution on the fiduciary collateral object.

In accordance with Article 27 paragraph (1) UUJF No. 42 of 1999 which states that "Fiduciary recipients have priority rights over other creditors." Furthermore, Article 27 paragraph (2) UUJF no. 42 of 1999 states that the priority right is the right of the fiduciary recipient to obtain repayment of his receivables through the execution of the object that is the object of the fiduciary guarantee.

The priority rights of the fiduciary recipient will also not be lost in a situation of bankruptcy or liquidation of the fiduciary giver, in accordance with Article 27 paragraph (3) UUJF No. 42 of 1999. From this provision, it can be concluded that creditors who receive fiduciary guarantees are given preferential rights over other creditors to obtain repayment of their debts by taking the proceeds from the execution of the collateral.

---

<sup>19</sup>Supianto, *Fiduciary Guarantee Law*, (Yogyakarta: Garudhawaca, 2015), p. 47

<sup>20</sup>UUJF, Explanation of Article 15 Paragraph (2).

<sup>21</sup>Zaeni Ashhadie and Rahma Kusumawati, *Guarantee Law in Indonesia*, (Depok: Rajawali Press, 2018), p. 24.

<sup>22</sup>J. Satrio, *Law on Security of Property Guarantee Rights...*, page 143.

<sup>23</sup>UUJF, Article 17.

<sup>24</sup>Yogi Sidabariba, Et al., "Delivery of Ownership Rights to Fiduciary Objects Based on Constitium Possessorium", *Lex Privatum*, Vol. IX, No. 8, (2021), p. 21.



The legal protection and interests of creditors in the UUJF can be seen in Article 20 of the UUJF, the provisions confirm that fiduciary guarantees have a material nature and the principle of *droit de suite* applies to them, according to Prof. Dr. Soedewi Masjchoen Sofwan, SH, stated the principle of *droit de suite* as one of the characteristics of property rights where the rights will always follow the owner of the object wherever the object is located, except for the transfer of inventory items which are the object of fiduciary collateral.

PT APF, as a consumer financing institution, in practice always refers to the laws and regulations in force in Indonesia, especially the UUJF and other laws and regulations relating to fiduciary guarantees. This is done to provide legal protection to PT APF as a fiduciary creditor by registering the fiduciary collateral object as fiduciary collateral, which will provide legal certainty to PT APF to obtain repayment of its receivables from debtors and can also carry out the execution process for objects that are collateral objects. However, challenges in understanding and following applicable laws and regulations regarding fiduciary guarantees can be an obstacle in implementing the agreement.

UUJF has an important role in providing a strong legal basis for regulating fiduciary guarantees. Fiduciary guarantees that have been legally bound provide legal protection for fiduciary recipients so they can secure their assets as collateral for debt payments. By following the statutory regulations related to fiduciary guarantees, of course you can provide legal certainty and provide legal protection, as well as safeguard the rights and obligations of the parties involved in the fiduciary guarantee agreement.

### **3.2. Analysis of the execution of fiduciary guarantee objects due to default in the fiduciary guarantee agreement between PT Astrido Pacific Finance and the debtor when referring to the Fiduciary Guarantee Law?**

The process of executing the fiduciary guarantee object due to default is an important stage in the fiduciary guarantee agreement. This stage usually occurs after the debtor fails to fulfill his debt obligations which are guaranteed by a fiduciary guarantee, then the fiduciary recipient has the right to take execution steps in order to obtain repayment of his receivables for the collateral. Execution can be carried out by selling or taking over collateral to pay off outstanding debts. This execution mechanism provides legal power for fiduciary recipients to ensure debt repayment.

One of the key points is that recipients of fiduciary guarantees have priority rights in collecting repayment of their receivables from the proceeds of the execution of objects that are the object of fiduciary guarantees, in accordance with article 27 UUJF. This provides strong legal protection for recipients of fiduciary guarantees, especially PT APF, because priority rights provide earlier access to the assets pledged as collateral in the execution process.

It is important to know that the implementation of fiduciary execution, in the event of a dispute between debtors and creditors, the dispute resolution process must be carried out in accordance with the provisions of the applicable laws and legal regulations.

Specifically in Law Number 42 of 1999 Article 29 which contains provisions:

1. If the debtor or fiduciary breaches his contract, execution of the object that is the object of the fiduciary guarantee can be carried out by:
  - a. implementation of the executorial title as intended in Article 15 paragraph (2) by the Fiduciary Recipient.

b. sale of objects which are the object of Fiduciary Guarantee under the authority of the Fiduciary Recipient himself through a public auction and repayment of receivables from the sale proceeds;

c. private sales carried out based on an agreement between the Giver and the Fiduciary Recipient if in this way the highest price that is profitable for the parties can be obtained.

2. Implementation sale as referred to in paragraph (1) letter c is carried out after 1 (one) month has passed since being notified in writing by the Giver and/or Recipient of the Fiduciary to interested parties and announced in at least 2 (two) newspapers distributed in the area concerned. <sup>25</sup>

It is further regulated in Article 30 UUF that if the debtor breaks his promise, the Fiduciary Giver is obliged to hand over the objects that are the object of the Fiduciary Guarantee in order to carry out the execution of the Fiduciary Guarantee.<sup>26</sup>In the event that the Fiduciary Giver does not hand over the objects that are the object of the Fiduciary Guarantee at the time the execution is carried out, the Fiduciary Recipient has the right to take the objects that are the object of the Fiduciary Guarantee and, if necessary, can request assistance from the authorities.<sup>27</sup>

As regulated in Article 15 paragraphs (2) and (3) of the Fiduciary Guarantee Law in conjunction with Constitutional Court Decision MK Number 18 of 2019, granting executorial rights equivalent to a judge's decision which has legal force remains a violation of the 1945 Constitution as long as the debtor does not voluntarily hand over the object of guarantee and no provisions regarding breach of contract have been agreed in the previous agreement.<sup>28</sup> With the existence of the Constitutional Court (MK) decision will of course have a number of impacts on banks or financial institutions, which at this time will no longer be able to execute collateral for movable objects based on fiduciary deeds or fiduciary certificates if one day it turns out that the debtor has committed an act of default and violated the agreement, because it no longer automatically has executive power. Creditors must first submit a request for execution of the fiduciary guarantee object to the district court and must be based on a court decision that has permanent legal force to be able to carry out the execution of the fiduciary guarantee object.

Based on the decision of the Constitutional Court, it can be concluded that with an agreement between the parties, execution based on a fiduciary guarantee certificate which has executorial power equivalent to a court decision that has obtained legal force can still be carried out against debtors who are in breach of contract. However, if there is no agreement regarding breach of contract and the debtor objects to voluntarily handing over the object that is the fiduciary guarantee, then the execution must go through a court process.

This has the potential to cause concerns for Creditors in carrying out execution of fiduciary collateral objects for defaults committed by the Debtor because these objects are under the control of the debtor, so that the owner of the rights to the collateral object, namely the creditor, is not protected as it should be. Control of collateral given to Debtors can also be a weak point in Legal Protection for Creditors, which if referring to Article 1977 Paragraph 1 of the Civil Code, "Regarding movable objects that do not consist of interest, or receivables that do not have to be paid to the debtor. Whoever

---

<sup>25</sup>UUF, Article 29.

<sup>26</sup>UUF, Article 30.

<sup>27</sup>UUF, Explanation of Article 30.

<sup>28</sup>Constitutional Court of the Republic of Indonesia, Decision no. 18/PUU-XVII/2019. p. 125.

controls it is considered the owner."<sup>29</sup>And people in Indonesia generally think that if they still control collateral, the object belongs to the person who controls the object. In fact, by registering the object as fiduciary collateral, the ownership rights have also been transferred to the creditor.

In order to avoid disputes with the debtor during the fiduciary guarantee execution process, before ratifying the consumer financing agreement and also the fiduciary guarantee deed, PT APF makes an additional agreement in the form of a clearer agreement regarding what is meant by a breach of contract, as well as the consequences of a breach of promise that might occur in the future, namely that the debtor must voluntarily hand over the object that is the fiduciary guarantee without having to go through court proceedings.

Of course, when carrying out the execution of objects that are the object of Fiduciary Guarantee, PT APF ensures that the execution is carried out in a manner that does not conflict with the provisions as intended in Article 29 and Article 31 and Article 31 of the UUJF.

#### **4. CONCLUSION**

Analysis of the legal protection provided to recipients of fiduciary guarantees who have good intentions, especially at PT Astrido Pacific Finance which PT APF as one of the consumer financing institutions in implementing the fiduciary guarantee concept has followed the applicable laws and regulations in Indonesia regarding fiduciary guarantees. In order to provide legal protection to PT APF as a fiduciary creditor to obtain repayment of its receivables from debtors and can also carry out the execution process for objects that are the object of fiduciary collateral. Analysis of the execution of fiduciary guarantee objects due to default in the fiduciary guarantee agreement between PT Astrido Pacific Finance and the debtor if referring to the Fiduciary Guarantee Law which in the event of default, in accordance with Article 29 UUJF, PT APF has the right to carry out execution by carrying out executorial title, selling objects that are the object of fiduciary collateral through public auctions and private sales based on an agreement with the fiduciary giver and collecting repayment of its receivables from the sale proceeds without going through court process. This is based on an additional agreement regarding defaults well as the consequences of default in which there are articles agreed upon by both parties at the beginning of the agreement. So, if the execution of the fiduciary guarantee will be carried out by PT APF, the debtor will not have a strong reason to sue PT APF as a creditor.

#### **5. REFERENCES**

##### **Journals:**

Lubis, Aditya Nabilah., *Perlawanan Pihak Ketiga Sebagai Pemilik Benda Terhadap Benda Yang Dijadikan Jaminan Fidusia Tanpa Persetujuan Pemilik Benda (Studi Kasus: Putusan Mahkamah Agung 1012 K/PDT/2021)*. Lex Patrimonium, Vol. 1, No. 1 (2022).

Sembiring, Sentosa. (2007). *Arti Penting Jaminan dalam Pemberian Kredit dalam Transaksi Bisnis Perbankan*. Gloria Juris, Vol. 7, No. 1 (2007).

Sidabariba, Yogi, Et al., *Penyerahan Hak Milik Atas Objek Fidusia Berdasarkan Constitium Possessorium*". Lex Privatum, Vol. IX, No. 8, (2021)

##### **Books:**

---

<sup>29</sup>*Code of Civil law* [Burgerlijke Wetboek], translated by R. Soebekti and R. Tjitrosudibio, Article 1977 Paragraph 1.

- Asyhadie, Zaeni, dan Kusumawati, Rahma. (2018). *Hukum Jaminan di Indonesia*. Depok: Rajawali Press.
- Efendi, Jonaedi, et. Al., (2018). *Kamus Istilah Hukum Populer*. Jakarta: Kencana.
- Hadisoeparto, Hartono. (2004). *Pokok-Pokok Hukum Perikatan dan Hukum Jaminan*. Yogyakarta: Liberty.
- Prajitno, Andi. (2011). *Hukum Fidusia : Problematika Yuridis Pemberlakuan UU No.42 Tahun 1999*. Malang: Bayumedia.
- Satrio, J. (2007). *Hukum Jaminan Hak Jaminan Kebendaan*. Bandung: Citra Aditya Bakti.
- \_\_\_\_\_. (2021). *Hukum Jaminan Hak Jaminan Kebendaan Fidusia*, (Bandung: Citra Aditya Bakti.
- Sofyan, S. S. Masjchoen. (1980). *Hukum Jaminan di Indonesia, Pokok-Pokok Hukum Jaminan dan Jaminan Perorangan*, Cet. 1. Yogyakarta: Liberty.
- \_\_\_\_\_. (2000). *Hukum Perdata: Hukum Benda*, Yogyakarta: Liberty.
- Supianto, *Hukum Jaminan Fidusia*, (Yogyakarta: Garudhawaca, 2015), hlm. 47
- Widjaja, Gunawan, dan Yani, Ahmad. (2000). *Jaminan Fidusia*, Jakarta: Rajagrafindo Persada.

**Regulations:**

*Law on Fiduciary Guarantees*, Law Number 42 of 1999, LN of 1999 No. 168, TLN No. 3889.

*Civil Code [Burgerlijke Wetboek]*, translated by R. Soebekti and R. Tjitrosidibio.

**Court Decision:**

Constitutional Court, Decision no. 18/PUU.XVII/2019, Aprilliani Dewi and Suri Agung Prabowo (Petitioners) (2019).