

The Legal Impact of Delaying Fiduciary Security Registration in Terms of Law Number 42 of 1999 Concerning Fiduciary Security and Regulation of the Minister of Finance Number 130/PMK.010/2012

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Abstract: Article 11 the Fiduciary Security Law stipulates that the object of Fiduciary Security must be registered at the Fiduciary Registration Office before a Fiduciary Security certificate, which shall have an executorial power, be issued. In its implementation, there are some financing companies who would like to delay the registration. Therefore, question arises as to what kind of the legal consequences of delaying Fiduciary Security registration in terms of Law Number 42 of 1999 concerning Fiduciary Security and Regulation of the Minister of Finance Number 130 / PMK.010 / 2012. This was an analytical descriptive research with a normative juridical approach. The data collection of this study was performed by using literature study technique, while the data were obtained are analyzed in a qualitative juridical manner. The legal consequence of delaying the Fiduciary Security registration is that, if the debtor performs defaults, the financial institution would be incapable to execute Fiduciary Security for there is no Fiduciary Security certificate available, so that it can only be done by filing a civil suit to the District Court, and that the position of the financial institution would merely be as the concurrent creditor.

1 INTRODUCTION

Fiduciary law is currently regulated by Law No. 42/1999 on Fiduciary Security. Article 11 of the Fiduciary Security Law requires that the object of Fiduciary Security should be registered at the Fiduciary Registration Office located in Indonesia. The Fiduciary Registration Office issues a Fiduciary Security Certificate on the same date as of the receipt of the application for registration. The Fiduciary Security Certificate, as referred to in Article 14 paragraph (1), shall include the words "For the sake of Justice of the Divine God" and possess an executorial power equal to a court decision which has obtained permanent legal force, meaning that this Fiduciary Security Certificate may be immediately executed/carried out without undergoing a trial process and examination through the court, and it is final as well as binding to the parties. If the debtor makes default, the fiduciary receiver will be eligible to sell the object of Fiduciary Security at his authority. The purpose of the registration of this Fiduciary

Security is to provide the right for a creditor to be the preference above the other creditors in taking the payment of receivables which come from the results of the execution of Fiduciary Security objects due to the debtor defaults. The implementation is regulated by Regulation of the Minister of Finance of the Republic of Indonesia Number 130 / PMK.010 / 2012 concerning Registration of Fiduciary Security for Financing Companies Conducting Consumer Financing for Motorized Vehicles under Fiduciary Security Imposition. In this regulation, it is determined that all financing companies shall be required to register Fiduciary Security for each financing transaction within 30 calendar days from the date of consumer financing (Ibnu Artadi, Sudarminto dan Wulansari Partinah, 2018). However, in the implementation, there are some financing companies who keep delaying Fiduciary Security registration.

2 LITERATURE REVIEW

There are two types of Fiduciary Security, *Fiducia cum creditore* and *fiducia cum amico*. Both of which arise from the agreement called the *pactum fiduciae* and are further followed by the transfer of rights or *in iure cession*. *Fiducia cum creditore contracta* means the promise of trust made together with the creditor, that the debtor will transfer the ownership of an object to the creditor, as collateral for the debt, under the consent that the creditor will transfer the ownership back to the debtor if the debt has been settled. (Gunawan Widjaja & Ahmad Yani, Jaminan Fidusia, 2007). In *fiducia cum creditore*, there are several important things which constitute elements in the legal relationship between the debtor and the creditor, such as: (Tan Kamelo, 2006)

- a. The debtor transfers ownership of the object to the creditor.
- b. The object submitted is recognized as the collateral of the debt.
- c. Physically, objects which are used as collateral for debt shall be controlled by the debtor.
- d. The creditor shall be obliged to return the property rights to the debtor after carrying out his obligations. In Indonesia, the existence of fiduciary was recognized by jurisprudence based on the decision of HGH on 18 August 1932.

The issuance of the Fiduciary Act is a kind of official acknowledgment from the legislators of a Fiduciary Security institution, which, to these days, only gained recognition through jurisprudence. According to Article 1 sub 1 of the Fiduciary Act: A fiduciary is the transfer of ownership of an object on the basis of trust, provided that the object whose ownership rights is transferred remain in the possession of the owner of the object. Some characteristics appearing in the formulation include (Satrio, 2007). The ownership rights of an object can be transferred, performed on the basis of trust the object remains in the possession of the object owner.

3 RESEARCH METHODS

This research was normative juridical research, which means that this research used secondary data or literature data (Ronny Hanitijo Soemitro, 1990) and it had the characteristic of analytical descriptive. (Soerjono Soekanto, 1986). The data collection technique was conducted by performing library. As supporting data, interviews were

conducted together with related parties. Then the data obtained were analyzed using qualitative descriptive methods. (Maria S.W. Sumardjono, 1989).

4 DISCUSSION

In the practice, while entering the financing agreements, financing companies include words that are guaranteed on a fiduciary basis, yet not be made with a notarial deed and not registered at the Fiduciary Registration Office in order to get a certificate or registration delay. This, as the matter of fact, generates complex and risky legal consequences. Creditors can be considered one-sided when exercising their rights of execution and they can be quite arbitrary. Currently, there are finance companies who execute unregistered Fiduciary Security objects, yet they find that their actions are safe and smooth because customer's bargaining power of is still considered weak in the eyes of the creditors (as owners of funds), and because people's knowledge is still low. This weakness is usually exploited by business doers, particularly the business person in financial institutions' sector (Grace P. Nugroho). Following Article 11 of the Fiduciary Security Law, registration of Fiduciary Securities must be carried out by business doers. Besides, there are many credit transactions, especially motorcycle loans, whose executions simply ignore the obligation to pawn goods that are traded by debtors and creditors, causing legal uncertainty to the debtors and creditors, while the registration of Fiduciary Security actually gives priority rights (*droit de preference*) to the fiduciary receiver among the others creditors. (Eva Andari Ramadhina, 2017).

The main substances regulated in the Minister of Finance Regulation Number 130 / PMK.010 / 2012 shall include: (Ibnu Artadi, Sudarminto dan Wulansari Partinah, 2018).

1. The Financing Company that carries out financing for consumer upon motorized vehicles, with the imposition that the concerned Fiduciary Security must be registered to the fiduciary registration office. The Fiduciary Security registration requirement is also applicable to the financing companies who conduct sharia-based financing for the motor vehicle consumers and/or the financing for motorized vehicle consumer whose execution is performed through channeling or joint financing.

2. Financing companies must register the Fiduciary Security at the fiduciary registration office no later than 30 (thirty) calendar days from the date of the consumer financing agreement.
3. Financing companies are prohibited to withdraw fiduciary collateral in the form of motorized vehicles if the fiduciary registration office has not issued a Fiduciary Security certificate, and they should hand it over to the financing company.
4. Withdrawal of fiduciary collateral objects in the form of motorized vehicles, which will be performed by financing companies, must fulfill the terms and conditions as regulated in the Fiduciary Security Act and have been agreed by the parties involved in the motorized vehicle consumer financing agreement. Article 5 of the Minister of Finance Regulation Number 130 / PMK.010 / 2012 stipulates that if a financing company violates this obligation, then administrative sanctions shall be imposed in the form of: (Ibnu Artadi, Sudarminto and Wulansari Partinah, 2018)
 - a. Warning;
 - b. freezing of business activities, or
 - c. revocation of business license

Fiduciary Security Certificates which is issued after the period of 30 days from the date of the Consumer Financing Agreement shall have no legal force, for they have passed the time specified in the Regulation of the Minister of Finance Number 130 / PMK.010 / 2012. Although the Fiduciary Security Certificate is no longer possessing legal force, it does not mean that the Consumer Financing Agreement will also be considered as null and void. Therefore, if a breach of contract occurs, the execution of fiduciary security can be carried out by:

- a. Submitting a civil suit to the District Court until the verdict with permanent legal force is granted.
- b. Conducting private sales based on the consent of the Fiduciary provider and Receiver 1 (one) month after they notified the concerned parties and announced it in 2 (two) newspapers published in the concerned area.
- c. asking the help of Alternative Dispute Resolution agencies.

The purpose of fiduciary security registration is to provide legal certainty to fiduciary the receiver and provider, and the interested third parties, because, with this registration, a Fiduciary Guarantee certificate will have the right to possess executorial

power which is likened to a court ruling with permanent legal force, meaning that, with a Certificate of Guarantee, this fiduciary can be directly executed or carried out without going through a trial and examination process in a court, and this fiduciary is deemed final and binding to the parties, requiring them to carry out the decision. (Yurizal, 2015).

5 CONCLUSIONS

Based on the above description, it can be concluded that legal impact of delaying fiduciary Securities registration, in terms of Law Number 42 of 1999 Concerning Fiduciary Securities and Regulation of the Minister of Finance No. 130 / PMK.010 / 2012, will be the incapability, suffered by business doers, in executing fiduciary security whenever the debtor performs defaults, since there is no fiduciary security certificate that possesses executorial power just like a court decision with its permanent legal force, so the business actor can only file a civil law to the District Court and the position of the financial institution only as the concurrent creditor.

6 SUGGESTIONS

Supervision from the Financial Services Authority is required so that financing companies will be willing to carry out the obligations of registering fiduciary security. In addition, Fiduciary Security Law Socialization still needs to be socialized.

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