

# Legal Consequences Due to the Execution of the Pandemic On Default Debtors by Financing Institutions on Motor Vehicle Loan Fiduciary Objects at Pegadaian Semarang

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**ABSTRACT:** Credit at the Pegadaian financing institution as one of the fiduciary guarantee institutions is formed on the basis of the community's need for debts (credit) with collateral without releasing the goods that are used as collateral, because the goods/objects are still used for business. Credit agreements with fiduciary guarantees sometimes arise, one of which is what if the debtor defaults. The formulation of the problem in this research is how is the fiduciary guarantee of motorized vehicle loans at the Semarang pawnshop, and what are the legal consequences of default debtors on motorized vehicle loan fiduciary guarantees and how to execute during the Pandemic period on Default Debtors by the Semarang Pegadaian Institute on the object of fiduciary guarantees for motor vehicle loans? This study uses an empirical juridical approach with research specifications that are descriptive-analytical, sampling is done by purposive sampling, the data used includes primary data consisting of field studies, and secondary data includes literature studies including the internet, which are then analyzed qualitatively. The results showed the legal consequences of the execution of the pandemic period on Debtors of Achievement by a Financing Institution on the Object of the Fiduciary Guarantee for Motorized Vehicle Loans at PT. Pegadaian Pedurungan Branch of Semarang City, as a result of the law, the financing institution/Pawnshop or leasing has the right to execute the object of a fiduciary guarantee, which is made notarial. Meanwhile, the execution method of the Semarang Pawnshops on the object of fiduciary guarantees for motor vehicle loans, there are several obstacles faced by PT. Pegadaian Persero Pedurungan Branch Semarang City, namely obstacles at the time of execution, among others, collateral goods were lent or had been transferred to someone else and were out of town, collateral was damaged, and sales through execution could not cover the debt. Execution of Fiduciary Guarantees according to Law no. 42 of 1999 at PT. Pegadaian Persero Pedurungan Branch, Semarang City, if customers are injured in their promises and achievements, a lot of things happen because during the pandemic, PT. Pegadaian as a creditor has the right to make withdrawals with the withdrawal procedures that have been determined, namely: 1) persuasive efforts, 2) subpoenas and 3) execution of fiduciary guarantees. As a recommendation from the results of this study, the government needs to seek to improve supervision of the implementation of fiduciary guarantees at financing or leasing institutions in accordance with applicable laws and regulations.

**Keywords:** Legal consequences of Default Debtor, Fiduciary, Pawnshop Financing Credit.

## I. INTRODUCTION

Pegadaian credit is an alternative for solving credit problems that are safe, fast, easy, simple, and in accordance with the level of public knowledge during an economic crisis. This is important in relation to small entrepreneurs considering that credit at the Pegadaian institution is one of the creditors that can be reached by the economically weak.

There are two things that make Pegadaian Credit a financial institution. First, the financing transactions provided by Non-Bank Credit are similar to loans through bank credit, but are regulated separately on the basis of the pawn law and not with regulations regarding ordinary borrowing and borrowing. Second, Non-Bank Credit in Indonesia is legally monopolized by only one business entity, namely Non-Bank Credit Lending. (Susilo 2000)

To support the smooth running of the business in disbursing and withdrawing the credit, here credit at Pegadaian requires a guarantee from the debtor in the event of default so that the credit given can be returned properly. Guarantees in civil law are known as material guarantees and individual guarantees. An individual guarantee is a guarantee in the form of a statement of ability given by a third party, in order to guarantee the fulfillment of the debtor's obligations to the creditor, if the debtor in question is in default, which has the following characteristics: can cause a direct relationship to certain individuals, only can be maintained on certain debtors, for the debtor's assets in general (eg guarantees), and material guarantees are guarantees in the form of assets, both property rights, which are given by separating part of the assets from the debtor or from a third party, in order to guarantee the fulfillment of the debtor's obligations to the creditor; if the debtor concerned is in breach of contract, which has the following characteristics: has a direct relationship to certain objects from the debtor, can be defended against anyone, always follows the object, can be transferred (eg mortgages, pledges and fiduciaries).

If taken by using a pawn guarantee institution in obtaining credit, it will collide with the inbezitstelling condition. Inbezitstelling is an absolute condition that must be met in pawning, which requires that the pledged goods must be taken out of the power of the pawnbroker. This is in accordance with Article 1152 paragraph 2 of the Civil Code which states that "Invalid is a lien on all objects that are still left in the control of the debtor or the pawnbroker, or which are returned to the debtor's power at the will of the creditor. (Dharmwan Tri Budi Utomo, 2006)

In accordance with the development of community needs that require a form of guarantee in which people can get credit with movable property as collateral but can still use it for daily needs and for business purposes, namely with fiduciary guarantees, so that they are considered more capable and more appropriate to keep up with the times and community needs. The construction of a fiduciary guarantee is the transfer of ownership rights to movable goods belonging to the debtor to the creditor, while the physical control remains with the debtor. Furthermore, in a fiduciary guarantee, it is indicated that when the debtor pays off his debt, the ownership rights to the collateral will return to the debtor.

"In Indonesia, the regulation regarding Fiduciary Guarantee is regulated by Law no. 42 of 1999 concerning the Fiduciary Guarantee Law, before the Fiduciary Guarantee Law was formed, in general objects that became the object of fiduciary security were movable objects consisting of objects in inventory, merchandise, receivables, machine tools and fiduciary registered. Therefore, in order to meet the growing needs of the community, according to this law, objects of fiduciary security are given a broad definition, namely tangible and intangible movable objects and movable objects that are not burdened with mortgages and mortgages as stipulated in the Act. No. 4 of 1996 concerning Mortgage Rights". (Gunawan Widjaja , 2000)

To provide a fiduciary guarantee, the delivery is carried out on a *constitutum possessorium*, which is a form of delivery in which the goods delivered are left in the control of the party who submits them, so that only their property is handed over. Such submission is not recognized in the Civil Code, however, the submission by *constitutum possessorium* can still be carried out legally because basically the Parties are free to agree on what they want. (J. Sabio, 1991)

With the enactment of Law no. 42 of 1999 concerning Fiduciary Guarantees, people can obtain credit with movable property as collateral but can still use it for daily needs as a means to assist business activities and

to provide legal certainty to interested parties, but in practice many people do not know the extent of the process of implementing fiduciary guarantees.

Meanwhile, the problem formulation of this research is how is the fiduciary guarantee for motor vehicle loans at the Semarang pawnshop? and what are the legal consequences of defaulting debtors on motor vehicle loan fiduciary guarantees? and how to carry out the execution during the Pandemic on Default Debtors by the Semarang Pawnshops on the object of fiduciary guarantees for motorized vehicle loans? The purpose of this research is to find out. fiduciary guarantee for motor vehicle loans at the Semarang pawnshop, the legal consequences of default debtors on motor vehicle loan fiduciary guarantees and the execution method of Semarang Pawnshops on the object of fiduciary guarantees for motor vehicle loans This research method uses descriptive type. with a descriptive qualitative approach. While the sample in this study is the loan borrower of the Pawnshop, Notary and KPF (Fiducia Registration Office).

Sources of data used are primary data sources and secondary data sources, this study uses qualitative data analysis methods.

## **Fiduciary Guarantee Legal Overview**

### **Definition of Fiduciary Guarantee**

A guarantee can create a sense of security for creditors that their receivables will be repaid. There are several meanings of guarantee, namely according to:

- a. Kartono, the term guarantee is aimed at guaranteeing that the debtor's debt (the person who guarantees the money or who gets the credit) will be paid in full. (Kartono, 1997a)
- b. R A Van der Pol, the term guarantee is something that is used to guarantee the repayment of debts. (R A Van da Pol, 1978)

Fiduciary comes from the word fides which means trust. In full terminology, it is called Fiduciaire Eigendomsoverdracht or in English, it is called Fiduciary Transfer of Ownership which is then interpreted in Indonesian as the transfer of property rights in trust. Article 1 point 1 of Law Number 42 of 1999 concerning Fiduciary Guarantees contains the following definitions and limitations: "Fiducia 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". Meanwhile, Article 1 point 2 of Law Number 42 of 1999 concerning Fiduciary Security contains the following meanings:

"A fiduciary Guarantee is a security right on movable objects that are tangible or intangible and immovable objects, especially buildings that cannot be encumbered with mortgage rights as referred to in Law Number 4 of 1996 concerning Mortgage which remains in the control of the fiduciary giver, as collateral for the settlement of certain debts, which gives a position that Priority is given to fiduciary recipients over other creditors". (Kartono, 1997)

Hamzah and Senjun Manulang define fiduciary as follows: "A method of transferring property rights from the owner (debtor), based on the main agreement (debt agreement) to the creditor, but only the rights are handed over by juridical levering and are only owned by the creditor legally. trust only (as collateral for the debtor's debt), while the goods are still controlled by the debtor, but no longer as eigenaar or bezitter, but only as detentor or houder and on behalf of the creditor  $\rightarrow$  eigenaar". (Salim, 2004)

The transfer of ownership rights is carried out by way of *Constitutum Possessorium*. This means the transfer of an object by continuing to control the object which is intended for the benefit of the fiduciary recipient. "The transfer of ownership rights is intended solely as a guarantee for the repayment of debts, not to be permanently owned by the fiduciary recipient. This is the essence of the meaning of Fiduciary Guarantee as referred to in Article 33 of the Fiduciary Guarantee Law, every promise that gives authority to the fiduciary recipient to own objects that are the object of fiduciary security if the debtor breaks the promise, it will be null and void by law".

Fiduciary guarantees have several characteristics, including the following:

### **a. Accessoir**

Fiduciary guarantee as one of the accessor agreements has the following characteristics:

- 1) The nature of dependence on the main agreement.
- 2) Its validity is solely determined by the validity of the main agreement, and
- 3) As a conditional agreement, it can only be implemented if the conditions required in the main agreement have or are not fulfilled.

Article 4 of the Fiduciary Guarantee Law also explicitly states that a fiduciary guarantee is an accessor agreement from a main agreement that creates an obligation for the parties to fulfill an achievement in the form of giving something, doing something, or not doing something that can be valued in money.

#### **b. Droit de Preference**

Droit de Preference is often also called a precedence right. This Droit de Preference is effective from the date of its registration with the Fiduciary registration office, this is in accordance with the provisions of Article 28 of the Fiduciary Law.

The right that takes precedence above is the right of the fiduciary recipient to take repayment of his receivables on the results of the execution of objects that are objects of fiduciary guarantees. The right to take this repayment precedes other creditors. Even if the fiduciary giver is declared bankrupt or liquidated, the priority rights of the fiduciary recipient are not removed because the objects that are the object of the fiduciary guarantee are not included in the assets of the fiduciary bankrupt giver. Thus, the fiduciary recipient is classified as a separatist creditor group.

#### **c. Droite de Suite**

“A provision which is an acknowledgment of the droit de suite principle which has become part of the Indonesian statutory regulations in relation to absolute rights to objects is that fiduciary guarantees continue to follow objects that are objects of fiduciary security in the hands of whoever the object is, except for the transfer of inventory items. which is the object of a fiduciary guarantee. This is in accordance with article 21 of the Fiduciary Guarantee Law with the methods and procedures commonly carried out in the trading business”.(Munir, 2000)

“However, the law does not rule out exceptions. The fiduciary giver can transfer the inventory object that is the object of the fiduciary guarantee by means and procedures commonly carried out in a trading business, this is in accordance with Article 21 paragraph (1) of the Fiduciary Guarantee Law. What is meant by "transfer" here is, among others, including selling or leasing in the context of its business activities”. (Gunawan & Ahmad, 2000)

Based on Article 21 paragraph (3) of the Fiduciary Guarantee Law, the object that is the object of the fiduciary guarantee that has been transferred is in the form of inventory but must be replaced by the fiduciary giver with an object of equal value and type to protect the interests of the fiduciary recipient.

### **Subject and Object of Fiduciary Guarantee**

#### **a. Fiduciary Guarantee Subject**

What is meant by the subject in the Fiduciary Guarantee Act is the fiduciary giver and the fiduciary recipient. “In article 1 number 5 of the Fiduciary Guarantee Law it is stated that the Fiduciary Giver is an individual or corporation that owns the object that is the object of the fiduciary guarantee. The fiduciary giver can be the debtor himself or another party (3rd party) who is not a debtor, while what is meant by a corporation is a business entity that is a legal entity or a business entity that is not a legal entity. To prove that the object that is the object of the fiduciary guarantee belongs to the fiduciary giver, the evidence of ownership of the collateral object must be seen”. (Soetarno, 2003)

The fiduciary can be done by the debtor himself and it can be done by a third party. Provisions relating to the possibility of third parties to act as fiduciary givers are contained in the explanation of Article 17 of the Fiduciary Guarantee Act.<sup>13</sup> But in practice it is rarely carried out by third parties as fiduciary givers, in fact, most of the fiduciary givers are debtors themselves.

Registration of fiduciary guarantees is carried out at the domicile of the fiduciary giver and the Notary who makes the fiduciary guarantee deed must be an Indonesian Notary, therefore the fiduciary grantor cannot be carried out by foreign citizens except for the fiduciary recipient because it is only domiciled as a creditor of the fiduciary recipient.

#### **b. Object of Fiduciary Guarantee**

With the birth of the Fiduciary Guarantee Law, namely by referring to Article 1 points 2 and 4, as well as Article 3 of the Fiduciary Law, it can be said that the object of a fiduciary guarantee is any object that can be owned and transferred to ownership, both tangible and intangible, registered or unregistered, movable or immovable that cannot be encumbered with mortgages or mortgages.

Thus, a fiduciary that is not registered is also an object of a fiduciary guarantee, because an unregistered fiduciary includes movable objects, but movable objects that are in the name. Because a fiduciary that is not registered is accompanied by a letter, so it is a registered object. Specifically regarding the results of objects that are the object of fiduciary guarantees, the law stipulates that fiduciary guarantees include these results as well as insurance claims unless agreed otherwise, as stated in Article 10 of the Fiduciary Guarantee Law.

The description of the object that is the object of the fiduciary guarantee must be clearly stated in the fiduciary guarantee deed, both the identification of the object, as well as an explanation of the proof of ownership and inventory objects that are always changing and or must explain the type of object and its quality.

#### **The Process of the Occurrence of Fiduciary Guarantees**

The process of the occurrence of fiduciary guarantees is carried out in two stages, namely the stage of imposition of fiduciary guarantees and the stage of registration of fiduciary guarantees.

#### **c. Fiduciary Guarantee Loading Stage**

“According to Article 5 paragraph 1 of the Fiduciary Law, the imposition of objects with fiduciary guarantees is made with a notarial deed in Indonesian which is a Fiduciary Guarantee deed. In the fiduciary guarantee deed, after stating the time (hours), the day and date of the making of the deed are stated”.

“Article 1870 of the Civil Code states that a notarial deed is an authentic deed that has perfect proof of what is contained in it between the parties and their heirs or successors. Therefore, the Fiduciary Guarantee Law applies a fiduciary agreement that must be made with a notary deed. Moreover, considering that the object of fiduciary security is generally movable goods that are not registered, it is only natural that the form of an authentic deed is considered to be the most able to guarantee legal certainty regarding the object of fiduciary guarantee”.

The Fiduciary Guarantee Deed shall at least contain:

- 1) “The identity of the fiduciary giver and recipient  
The identity includes full name, religion, place of residence, or place of domicile and date of birth, gender, marital status, and occupation.
- 2) Fiduciary-guaranteed principal agreement data, namely regarding the types of agreements and debts guaranteed by fiduciary.
- 3) A description of the object that marks the object of a fiduciary guarantee Includes: Identification of the object and an explanation of the proof of ownership. objects in inventory that are always changing and or not fixed, such as stocks of raw materials, finished goods or a portfolio of securities companies, then the fiduciary guarantee deed shall include a description of the type, brand, quality of the object.
- 4) The value of the guarantee means the determination of the amount of debt that is guaranteed by a fiduciary guarantee determined by the creditor by taking into account the amount of principal debt, interest, fines and other costs.
- 5) The value of the object that is the object of the fiduciary guarantee.

Valuation of objects that are objects of fiduciary guarantees can be assessed by creditors themselves if they have the ability to make an assessment, but they can also use an independent appraiser consultant”.

#### **d. Fiduciary Guarantee Registration Stage**

In accordance with Article 11 of Law No. 42 of 1999 concerning Fiduciary, it is obligatory for objects that are burdened with fiduciary guarantees to be registered at the Fiduciary Registration Office located in Indonesia at the place where the fiduciary guarantee is located. This obligation remains in effect even though the objects that are burdened with fiduciary guarantees are outside the territory of the Republic of Indonesia to fulfill the principle of publicity, as well as the purpose of providing legal certainty guarantees to interested parties, giving rights that take precedence over other creditors.

The registration of this fiduciary guarantee is carried out at the Fiduciary Registration Office which was established for the first time in Jakarta with a working area covering the entire territory of the Republic of Indonesia. Applications for registration of fiduciary guarantees are made by the fiduciary recipient, his proxy or his representative by attaching a fiduciary guarantee registration statement, which contains;

- 1) “The identity of the fiduciary giver and fiduciary recipient.
- 2) The date, number of the fiduciary guarantee deed, name, and domicile of the Notary who made the fiduciary guarantee deed.
- 3) Fundamental agreement data guaranteed by fiduciary.
- 4) A description of the object that is the object of a fiduciary guarantee.
- 5) Guarantee value
- 6) The value of the object that is the object of the fiduciary guarantee”.

“Further confirmation can be seen in the provisions of Article 28 of the Fiduciary Law which states that if the same object becomes the object of more fiduciary guarantees and one fiduciary guarantee agreement, then the creditor who first registers it is the fiduciary recipient. This matter is important to be considered by creditors who are parties to the fiduciary guarantee agreement, because only the fiduciary recipient, his proxy or his representative may register for the fiduciary guarantee”.

After the fiduciary registration is carried out, the Fiduciary Guarantee Registration Office issues a Fiduciary Guarantee Certificate and is handed over to the fiduciary recipient. This Fiduciary Guarantee Certificate is a copy of the Fiduciary List Book. In the Fiduciary Guarantee Certificate as referred to in Article 14 paragraph I the words "For the sake of Justice Based on the One Godhead", so that this certificate has an executive power that is equivalent to a court decision that has obtained permanent legal force. This means that this fiduciary guarantee certificate can be directly executed or implemented without going through a trial process and examination through a court, and is final and binding on the parties to implement the decision.

“If the debtor is in default, the fiduciary recipient has the right to sell the object that is the object of the fiduciary guarantee on his own power. This is one of the characteristics of material guarantees, namely the ease in carrying out its execution, namely if the fiduciary giver breaks his promise”.

With the Fiduciary Guarantee Certificate issued by the Fiduciary Registration Office, the certificate has strong evidentiary power as an authentic deed. If there is a change regarding the matters listed in the fiduciary guarantee certificate, the fiduciary recipient must submit an application for registration of the change to the Fiduciary Registration Office and it must be notified to the parties.

If there is a change, it does not need to be done with a notarial deed in the context of efficiency to meet the needs of the business world. The Fiduciary Registration Office shall record these changes in the Fiduciary Register Book and issue a statement of changes which are an integral part of the Fiduciary Guarantee Certificate.

In terms of the transfer of fiduciary guarantees, it is regulated in Article 19 to Article 24 of the Fiduciary Law no. 42 of 1999 concerning Fiduciary Guarantees. Article 19 of the Fiduciary Law stipulates that: “the transfer of rights to receivables guaranteed by Fiduciary Guarantees results in the transfer by law

of all rights and obligations of the fiduciary recipient to new creditors. The transfer of the fiduciary guarantee must be registered by the new creditor with the Fiduciary Registration Office”.

The transfer of receivables transferred in Article 19 of the Fiduciary Law is referred to as "cessie". Cessie is a legal act that transfers the delegation of rights to a debt of a debtor (the fiduciary recipient creditor) delegates the receivables to another creditor, and must be notified to the fiduciary giver. In Article 21 of the Fiduciary Law, it is stated that the fiduciary giver can also transfer inventory objects that are the object of the Fiduciary Guarantee but this does not apply if there has been a breach of contract by the debtor and or 3rd party fiduciary giver. The object that is the object of the fiduciary guarantee that has been transferred must be replaced by the fiduciary giver with an equivalent object. “In the provisions of Article 22 of the Fiduciary Guarantee Law, the buyer of the object that is the object of the fiduciary guarantee which is the object of inventory, is free from demands even though the buyer is aware of the existence of the fiduciary guarantee, provided that the buyer has paid in full the sale price of the object in accordance with the market price. . The fiduciary giver is prohibited from transferring, mortgaging or leasing to other parties objects that are objects of fiduciary guarantees that are not inventory items, except with prior written approval from the fiduciary recipient. What is meant by objects that are not inventory items, such as production machines, private cars, or private houses that are objects of fiduciary guarantees. (Article 123 paragraph 2 of the Fiduciary Law)”.

#### **e. Fiduciary Guarantee Execution**

The occurrence of execution for the fiduciary guarantee is carried out if the debtor or fiduciary giver breaks the promise. Therefore, execution is a collection opportunity to fulfill the obligations carried out by the recipient of the guarantee due to the debtor's default. (Widyadarma & Ridwan, 1997) Regarding the execution of fiduciary guarantees, it is regulated in Articles 29 to 34 of Law Number 42 of 1999 concerning Fiduciary Guarantees.

According to Article 29 of the Fiduciary Law, the execution of fiduciary collateral objects can be carried out by:

- a) Execution of the executorial title (the basis for the right of execution), namely: writing containing the implementation of court decisions, which provide the basis for confiscation and auction of confiscations without the mediation of a judge.
- b) The sale of objects that are the object of a fiduciary guarantee.  
“The execution of the fiduciary guarantee can be carried out by executing the object of the fiduciary guarantee by the fiduciary recipient through a public auction institution (Auction Office) without involving the court at all and the results of the auction are taken to pay off the payment of the receivables. This provision clears the previous doubt that every execution through the Public Auction Office must be by a court decision, even though this assumption is not true at all”.
- c) “Underhand sales/execution, meaning that sales are made on terms based on the agreement of the fiduciary giver and recipient if in this way the highest price that benefits the parties can be obtained, and the fiduciary giver and recipient are notified in writing to interested parties and the sale made after one month has elapsed from the notification”.

In the execution of the fiduciary guarantee, the fiduciary recipient has the right to take the object that is the object of the fiduciary guarantee and if necessary can request assistance from the competent authority, this is regulated in Article 30 of the Fiduciary Guarantee Law.

Article 31 of the Fiduciary Guarantee Law also explains that if the object that is the object of the fiduciary security consists of trading objects or securities that can be sold on the market or stock exchange, the sale can be made at those places in accordance with the prevailing laws and regulations.

The possibility of the results of the auction or sale of fiduciary collateral is that if the result of the execution exceeds the value of the guarantee, the fiduciary recipient must be obliged to return the excess to the fiduciary giver, and if the proceeds from the execution are insufficient to pay off the debt, the debtor or fiduciary giver remains responsible for the debt owed. not yet paid.

#### **g. Delete it and Roya Fiduciary Guarantee**

In accordance with Article 4 of the Fiduciary Law, this fiduciary guarantee is an accesoir agreement from the basic agreement, namely a credit agreement that issues obligations for the parties to fulfill an achievement. As an accesoir agreement, this fiduciary guarantee is, by law, nullified if the debt in the principal agreement that is the source of the birth of the fiduciary guarantee agreement or the debt guaranteed by the fiduciary guarantee is erased. In addition, Article 25 of the Fiduciary Law expressly states that the Fiduciary Guarantee is nullified because:

- a. "Elimination of debt guaranteed by fiduciary.
- b. Release of rights to fiduciary guarantees by fiduciary recipients.
- c. The destruction of objects that are the object of fiduciary guarantees".

If the object that is the object of the fiduciary guarantee is destroyed, for example due to fire, loss and other causes, the object of the fiduciary guarantee will be deleted. If the insured does not write off the insurance claim in the sense that the insurance claim will be a substitute for the object of fiduciary guarantee as a source of debt repayment of the debtor.

"When a fiduciary guarantee is deleted, the fiduciary recipient must notify the Fiduciary Registration Office, the news is made no later than 7 (seven) days after the fiduciary guarantee is deleted, accompanied by supporting documents, the Fiduciary Registration Office will at the same time delete the registration of the guarantee. fiduciary from the Fiduciary Guarantee Register Book, and issue a certificate stating that the relevant fiduciary guarantee certificate is declared no longer valid"

#### **Criminal provisions**

The UUJF contains criminal provisions for violators of the Fiduciary Guarantee Law in Articles 35 and 36, these provisions are intended to strengthen institutional norms, individual and social morality as well as the aim of protecting parties with good intentions, both individuals and corporations.

"Article 35 states that, any person who intentionally falsifies, changes, eliminates or in any way provides misleading information, which if it is known by one of the parties does not result in a Fiduciary Guarantee agreement, shall be punished with imprisonment for a minimum of 1 (one) year. and a maximum of 5 (five) years and a fine of at least Rp. 10,000,000., - (ten million rupiah) and a maximum of Rp. 100,000,000.- (one hundred million rupiah)".

Meanwhile, the fiduciary giver who transfers, mortgages or rents out objects that are the object of the fiduciary guarantee without prior written approval from the fiduciary recipient, shall be sentenced to a maximum imprisonment of 2 (two) years and a maximum fine of Rp. 50,000,000; (fifty million rupiah), this provision is regulated in article 36.

## **II. DISCUSSION AND ANAYSIS**

### **A. Fiduciary Guarantee for Motor Vehicle Loans at the Semarang Pawnshop**

Helping to develop Micro, Small and Medium Enterprises (MSMEs) as well as the welfare of the community is a mission carried out by the Pegadaian Credit Financing Agency as a BUMN. Pegadaian Loans always try to help the development of productive businesses, especially for Micro, Small and Medium Enterprises MSMEs through the provision of various credit facilities that are fast, easy and cheap. One form of loan facility that can be obtained by MSME entrepreneurs is the Fiduciary System Installment Credit (KREASI). This creation is a credit to individuals or legal entities of micro and small businesses individually, entrepreneurs or individual business entities that are group members who meet the requirements and pass the business feasibility test.

So far, what can be used as objects of temporary credit guarantees are limited to registered fiduciary guarantees and those that are not registered with two wheels and four wheels or more, both black and yellow plates, for fiduciaries who are not registered with two wheels, which have requirements that have been determined by the loan. Creditors or Creditors, which are as follows:(*Tribunnews.Com*)

- a. The fiduciary who is not registered is his own property as evidenced by the name listed on the BPKB and the STNK is his own property, the same as the name of the ID card.



- b. If the unregistered fiduciary belongs to the wife/husband/business manager, it must include an approval letter to guarantee the vehicle from the owner.
- c. If the unregistered fiduciary has not been renamed, there must be a statement from the old owner that the vehicle really belongs to the credit applicant who has not been renamed.
- d. Types and brands of vehicles are types and brands that are well known and commonly used by the public and their marketing is not difficult.
- e. The age and physical condition of the vehicle still meets the requirements as stipulated in the applicable regulations.
- f. The system and procedure for assessing a fiduciary that is not registered, please follow the company's provisions regarding the procedure for accepting an unregistered fiduciary which is regulated in the provisions that are still valid in Credit Lending
- g. Local Police/Polda number plate.
- h after the accounts payable process is agreed upon, the Credit Lending/Creditor makes a notification letter to the Police Chief (registrant unit) that the BPKB on behalf of the customer is being pledged as credit collateral (during the credit period), as well as when the credit is repaid, it must notify the Ditserse and Ditlantas local police.
- i. Credit agreements are allowed to be supported by up to 3 types of collateral, as long as they meet the specified conditions and have been renamed on behalf of the prospective customer/wife/husband who has signed an approval letter to pledge the vehicle from the owner.
- j. Especially for fiduciaries who are not registered with four or more wheels with yellow plates, they must be accompanied by a route permit and a left book from the local Highway Traffic and Transportation Service.

In KREASI credit, the credit period is set for a minimum of 12 months to a maximum of 36 months, if the installments run smoothly, the customer concerned can apply for the next credit extension, with the loan repayment being made in monthly installments. Capital lease (interest) is paid in each installment. The capital rental rate is 1% of the total credit received. If the customer intends to repay before the credit period ends, the customer must pay the capital lease from the remaining outstanding loan at an effective interest rate calculation.

The stipulation of a credit term of more than 12 months is only done for investment credit. To make it easier to calculate the customer's obligations if you want to pay off the credit before the period ends, the KREASI credit term units for this investment are made in units of 18, 24, 30, and 36 months. In providing this investment credit, the Credit Lending/creditor takes into account the economic value or the selling value of the collateral up to the "end of the term".

There is a possibility that the object that is the object of the fiduciary guarantee is lost or damaged, so the debtor is responsible for replacing the new collateral and is reminded to complete the credit until it is paid off. However, if the debtor is unable to replace the damaged or lost item, the creditor can file an insurance claim. Based on Article 10 of the Fiduciary Guarantee Act

Article 25 paragraph (2) of the Fiduciary Guarantee Law stipulates that the destruction of objects that are the object of fiduciary security does not eliminate the insurance claim.

## **B. Legal Consequences of Default Debtors on Fiduciary Guarantees for Motor Vehicle Loans**

If the debtor's customer is in breach of contract, then the Credit Lending by the Pawnshop has the right to withdraw and execute the collateral as an effort to pay off all of the customer's obligations. The execution by this Pawnshop in Mortgage is based on Articles 6, 14, and 20 of the UUHT and the fiduciary execution is stated in Articles 15 and 29 of UUJF N0. 42/1999. Therefore, executions on mortgages, mortgages and fiduciaries must be registered in order to obtain an executorial title to carry out the execution of the object of collateral when the debtor defaults. According to the Deputy Director for Supervision of Financial Institutions I *OJK*, the Financial Services Authority (*OJK*) stated that: financing or leasing companies are declared to be allowed to execute fiduciary guarantee objects against debtors who are deemed to be in

default. Deputy Director for Supervision of Financing Institutions I Financial Services Authority (*OJK*) Indra said that: fiduciary guarantees are part of risk mitigation carried out by financing companies, so that in practice, finance companies have the authority to execute fiduciary guarantee objects without going through court, but this is a last option.

This is also reinforced by the decision of the Constitutional Court Number 2/PUU-XIX/2021 which states that, in the execution of a fiduciary guarantee certificate through a district court, it is actually only an alternative that can be done in the event that there is no agreement between the creditor and the debtor either relating to wan achievement and voluntary submission.

### **C. How to Execute in a Pandemic Period on Defaulting Debtors by Semarang Pawnshops on the Object of the Fiduciary Guarantee for Motor Vehicle Loans**

In the pawnshop system, if the customer breaks his promise, PT. Pegadaian has the right to withdraw and execute collateral goods in an effort to pay off all customer obligations. PT. Pegadaian has its own efforts in resolving non-performing loans, namely:

#### 1. Persuasive Efforts

In dealing with non-performing loans with the reasons for the problem, for example: Because the business is sluggish or, intentionally not willing to pay, really can't pay, even the collateral is damaged or lost, then for customers who don't want to pay in installments or don't want to pay in installments, then processed settlement of credit through the mechanism of selling collateral or execution of collateral.

#### 2. Summons

Prior to the confiscation of customers who have been in arrears in installments for three consecutive months or are in arrears to maturity, the branch manager will issue a summons in the form of a warning letter to the customer three times.

#### 3. Process of Withdrawal/Confiscation of Goods/Execution

After sending the Warning Letter III and fulfilling the requirements for submitting an insurance claim, at the same time as submitting an insurance claim, the process of confiscation/confiscation/execution of collateral and sales is carried out in accordance with Article 29 of Law no.42 of 1999 concerning fiduciary guarantees, for those registered with the Fiduciary Registration Office. However, "For example, if a finance company uses the services of a third party, to carry out the execution, the collector must be provided with certification and complete fiduciary guarantee documents. Based on the provisions of Article 49 of the Financial Services Authority Regulation Number 30/POJK.05/2014 concerning Good Corporate Governance for Financing Company, has regulated the mechanism of cooperation between the Financing Company and other parties to perform the function of billing to debtors, namely:

1. The Financing Company may cooperate with other parties to perform the billing function to the Debtor.

2. The Financing Company must establish cooperation with other parties as referred to in paragraph (1) in the form of a stamped written agreement.

3. Cooperation with other parties as referred to in paragraph (1) must meet the following provisions:

- a. the other party is in the form of a legal entity;
- b. the other party has permission from the competent authority and
- c. the other party has human resources who have obtained certification,

Therefore, understanding the contents of this contract is important so that debtors get clear information regarding the agreement clauses in the financing agreement, so that there are no conflicts or misunderstandings that can harm the community in the future," said Deputy Commissioner for Strategic Management and Logistics at *OJK*. If Debtor Wan Prestasi then Fiduciary Guarantee, can he be executed without trial?" (webinar rabu(6/10/2021)) According to the Chairperson of the Indonesian Association of Financing Companies, Suwandi Wiratno, stated that: finance companies actually do not want to execute fiduciary guarantees. According to him, there are many ways that can be done to avoid execution if the debtor shows good faith to discuss. If there are debtors and their units, it's more about how we do

restructuring and discussions. The point is that the finance company does not want the vehicle to be executed. We give money, we want the money back, we want an agreement, he said. So that everything that happens in the future, there is a gradual process and does not immediately carry out the execution. If after the first to third warning is still negligent. We will ask in writing to hand over the unit, so we can help sell it, we will return some of the money to the consumer and make it clear. However, said Suwandi, in reality there are not a few naughty debtors who make the unit change hands and try to disappear with the unit. "There are those whose units can reach the other party, up to the fourth person," he explained. On the same occasion, Finance Director and Corporate Secretary of BFI Finance Sudjono added, his party always carried out literacy activities to the public, including to consumers.

#### 4. Guaranteed Goods Auction Procedure

Goods that have been successfully withdrawn from the customer must be auctioned or sold no later than seven days after the withdrawal date. Sales can be made by:

- a) Through the auction procedure applicable in the company together with other collateral goods.
- b) Underhand sales, based on an agreement, if this is more profitable for both parties. This way of selling can be done at any time without having to wait for auction time.
- c) If the object being auctioned is a fiduciary guarantee object that is insured by the debtor, the borrowing credit/creditor only performs a general auction procedure, all consequences arising from the insurance are borne by the debtor.

If a persuasive settlement is not reached, then the fiduciary guarantee will be executed based on the Financial Services Authority Regulation Number 29/POJK.05/2014 concerning the Business Operation of a Financing Company. Provisions have been made regarding the imposition of a fiduciary guarantee by a Financing Company, in Article 24: Execution of a fiduciary guarantee object by a company Financing must comply with the terms and conditions as stipulated in the law regarding fiduciary guarantees and have been agreed upon by the parties in the financing agreement by Article 29 of the Law. No. 42 of 1999 concerning Fiduciary Guarantee which states that:

- 1) "If the Debtor or Fiduciary Giver is in breach of contract, the execution of the object that is the object of the Fiduciary Guarantee can be carried out by:
  - a. Execution of the executorial title as referred to in Article 15 paragraph (2) by the Fiduciary Recipient;
  - b. The sale of objects that are the object of the Fiduciary Guarantee on the authority of the Fiduciary Recipient himself through a public auction and take the settlement of his receivables from the proceeds of the sale;
  - c. Underhand sales are made based on an agreement between the Giver and the Fiduciary Recipient if in this way the highest price can be obtained that benefits the parties
- 2) The implementation of the sale as referred to in paragraph (1) letter c is carried out after 1 (one) month has elapsed since being notified in writing by the Giver and/or Fiduciary Recipient to interested parties and announced in at least 2 (two) newspapers in circulation. in the area concerned".

### III. CONCLUSION

Fiduciary guarantee for motor vehicle loans at the Semarang pawnshop has provided loan facilities that can be obtained by MSME entrepreneurs, namely Fiduciary System Installment Loans (*KREASI*). This creation is a credit to individuals or legal entities of micro and small businesses individually, entrepreneurs, or individual business entities that are group members who meet the requirements and pass the business feasibility test.

The legal consequences of the debtor default on the fiduciary guarantee of motor vehicle loans, if the debtor customer is in default or default, then the Credit Lending by the Pegadaian institution has the right to withdraw and execute the collateral as an effort to pay off all customer obligations. The execution by this Pawnshop in Mortgage is based on Articles 6, 14, and 20 of the UUHT, and the fiduciary execution is stated in

Articles 15 and 29 of UUJF N0. 42/1999. And based on the decision of the Constitutional Court Number 2/PUU-XIX/2021 which states, that the execution of a fiduciary guarantee certificate by applying to a district court, is only an alternative.

How to execute during the Pandemic in Default Debtors by the Semarang Pegadaian Institution on the object of the motor vehicle loan fiduciary guarantee, if the debtor is negligent (default) in paying the installments, the Credit Lending/financing institution or leasing party, in this case, has the right to withdraw and execute the collateral as an effort to cover all debtor obligations. Efforts made by Credit Lending at pawnshop financing institutions or leasing parties first use persuasive efforts, if the customer still does not want to resolve to have bad ethics with persuasive efforts, then the financing or leasing institution provides a subpoena which is then carried out in the process of confiscation of goods. The confiscated goods are then auctioned off to cover all debtors' obligations. This is a legal reason for creditors to carry out direct executions with their power without a court decision as has been done by the Pegadaian Financing Institution or the leasing party against debtors who are in breach of contract.

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