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Legal Implications of Not Performing Roya Fiduciary Guarantee by the Creditor

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Abstract: The purpose of this research is to find out and analyze the obstacles of the creditor not doing roya fiduciary when the debtor's debt is paid off, legal protection to the debtor if the creditor does not do roya fiduciary guarantee and the legal implications of not doing roya fiduciary at PT Verena Multi Finance Medan City. This type of research is normative juridical legal research, the nature of the research is descriptive analysis, the techniques used are library research and field research. The results of the study state that the obstacles of creditors in carrying out fiduciary security roya are constraints on the removal system and constraints on legal arrangements. Legal protection to the debtor if the creditor does not make a fiduciary guarantee roya is stated in Article 25 paragraph (3) of the Fiduciary Guarantee Law that upon the abolition of the fiduciary guarantee the fiduciary recipient notifies the Fiduciary Registration Office of the abolition of the fiduciary guarantee by attaching a statement regarding the abolition of debt. The legal implication of not doing fiduciary roya at PT Verena Multi Finance Medan City is that the object of fiduciary guarantee that has not been royaed cannot be used as collateral if the object of the guarantee is to be re-guaranteed as an object of fiduciary guarantee, then the object must be royaed first.

Keyword: Fiduciary Guarantee, Leasing, Roya.

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1. Introduction

There are times when the implementation of a fiduciary roya does not go as expected. Often in carrying out the fiduciary roya, creditors experience obstacles. The same is the case with the implementation of fiduciary roya at PT Verena Multi Finance Medan City. Even though it has been done online, it turns out that the implementation of the fiduciary roya has not run optimally. As is known, since 2015, registration and elimination of fiduciary guarantees can be done online. This is as stated in Government Regulation Number 21 of 2015 concerning Procedures for Registration of Fiduciary Guarantees and Fees for Making Fiduciary Guarantee Deeds. However, this also still faces obstacles. A common obstacle is the difficulty in accessing the website for fiduciary certificate deletion. Another obstacle is the large number of administrative

requirements needed, which causes the roya fiduciary process to be hampered (Ghoni, 2018).

Departing from the provisions of Article 17 of Law No. 42/1999 on Fiduciary Guarantee, namely the provision prohibiting the re-registration of fiduciary by the fiduciary beneficiary, can be used as a reference regarding the legal basis for conducting a fiduciary roya before the re-registration of fiduciary. These obstacles are divided into internal and external factors. Internal factors include the absence of awareness and concern on the part of creditors and debtors to repossess their collateral, discrepancies between regulations and implementation in the field, the charging of abolition fees by notaries, the lack of supervision by the Ministry of Law and Human Rights, the absence of binding sanctions in the abolition of fiduciary guarantees and the ignorance of debtors regarding the abolition of fiduciary guarantees. Meanwhile, external factors include frequent server interruptions, the absence of a fiduciary certificate repair menu on web.ahu.go.id and the legal consequences if fiduciary deletion is not carried out, namely the debtor cannot re-guarantee the goods or objects of guarantee as fiduciary collateral and if there is an intentional re-fiduciary by the debtor before credit repayment, the debtor may be subject to a criminal threat of 1 year imprisonment and a maximum of 5 (five) years imprisonment, a fine of Rp.10,000,000 (ten million rupiah) and a maximum of 100,000,000, - (one hundred million rupiah). For this reason, it is necessary to find out about the implementation and obstacles in carrying out fiduciary roya (Manurung, 2015).

Failure to remove some fiduciary guarantees at the time of payment of the bill will of course have legal consequences. This legal consequence is of course that the debtor cannot register the fiduciary guarantee again because the roya has not been carried out. In addition, of course, other legal consequences will arise related to this matter so that it will be able to develop as a turmoil in society.

2. Research Method

The research type is normative juridical research. The nature of the research is descriptive, the things described and analyzed in this thesis research are about the implementation of fiduciary roya and legal consequences if the creditor is negligent in carrying out fiduciary roya. This research uses statutory approach and conceptual approach. Data collection tools are used with document studies and interview guidelines, by examining documents related to the research at the office of PT Verena Multi Finance Medan City, while the interview guidelines are a list of questions that have been prepared. Interviews were conducted with informants, namely the Head of PT Verena Multi Finance Medan City and the Legal staff of PT Verena Multi Finance Medan City. After the data is obtained, qualitative data analysis is carried out and using deductive inference, namely a way of thinking where from a general statement a specific conclusion is drawn.

3. Result and Discussion

3.1 Constraints on Creditors Not Performing Fiduciary Roya at the Time of Debtor's Debt Settlement

After the end of the installment payment between the debtor and the creditor, the creditor and the debtor or their representative must notify the Ministry of Law and Human Rights of the abolition of the fiduciary guarantee by attaching a statement regarding the abolition of the debt, relinquishment of rights, or destruction of the object of the guarantee. With the abolishment of the fiduciary guarantee, the office of the Ministry of Law and Human Rights issues a certificate stating that the relevant fiduciary guarantee certificate is no longer valid.

In accordance with the subsidiary nature of the fiduciary guarantee, the existence of the fiduciary guarantee depends on the existence of the receivables whose repayment is guaranteed. If the receivables are extinguished due to the extinguishment of the debt or due to discharge, the relevant fiduciary guarantee is automatically extinguished. The extinguishment of the debt is evidenced, among other things, by proof of repayment or proof of extinguishment of debt in the form of a statement made by the creditor (Yasir, 2016).

Factually, there are still many debtors who do not abolish their fiduciary guarantee, this is due to the very low awareness of the debtor or even the debtor's ignorance of the importance of abolishing the fiduciary guarantee. This will certainly have an impact on the debtor because if the debtor will guarantee an object or item that has not been previously abolished, it will be rejected by the server because in the UUJF re-fiduciary is not allowed, of course this will be a problem for the debtor himself.

Based on an interview with Julius as the Insurance Operational Staff at PT Verena Multi Finance Medan Branch on September 5, 2022, the obstacles in the implementation of the elimination of fiduciary guarantees are always not implemented by creditors and debtors, namely: First, there is no concern from the creditor or debtor about the elimination of fiduciary guarantees. In principle, the fiduciary grantor feels that with the repayment of the principal debt that has been agreed upon, the fiduciary guarantee will automatically be abolished. Similarly, if there is a relinquishment of rights or the destruction of a fiduciary security object that has been registered, the fiduciary receiver feels that if his rights have been released from the fiduciary guarantee, the fiduciary guarantee will automatically be abolished, especially if the fiduciary security object has been destroyed, then the fiduciary receiver feels that there is no longer any obligation to the object.

Secondly, fiduciary guarantees are movable objects so that at the time of transfer of rights to movable objects, checks are rarely carried out by Ministry of Law and Human Rights. Third, there are no strict sanctions stipulated in Government Regulation 21/2015 against creditors and debtors who do not remove their fiduciary guarantees, which causes the ineffective implementation of the elimination of fiduciary guarantees. Fourth, the incompatibility of laws and regulations with their implementation. The regulatory factor plays an important role in the implementation of a policy, in this case

regarding the implementation of the abolition of fiduciary guarantees where Article 16 paragraph (2) of Government Regulation 21 of 2015 states that the abolition of fiduciary guarantees is carried out directly to the Ministry of Law and Human Rights but in practice the abolition is carried out through a notary, this results in a mismatch between regulations and implementation, this will have an impact on the implementation of fiduciary guarantees where if the abolition is carried out through the Ministry of Law and Human Rights. Fifth, there is a charge for the elimination of fiduciary guarantees by a notary for the elimination of fiduciary guarantees.

Based on the description above, it can be concluded that the creditor's obstacles in carrying out roya fiduciary guarantees are the abolition system constraints and legal regulatory constraints. The regulatory factor plays an important role in the implementation of a policy in this case regarding the implementation of the abolition of fiduciary guarantees where Article 16 paragraph (2) of Government Regulation 21 of 2015 states that the abolition of fiduciary guarantees is carried out directly to the Ministry of Law and Human Rights but in practice the abolition is carried out through a notary, this results in a mismatch between the regulation and the implementation of this will have an impact on the implementation of fiduciary guarantees where if the abolition is carried out through the Ministry of Law and Human Rights. In addition, the absence of clear sanctions for creditors to carry out fiduciary royalties can also be said to be an obstacle to the implementation of fiduciary royalties.

3.2 Perlindungan Hukum Debitur Apabila Kreditur Tidak Melakukan Roya Jaminan Fidusia

In essence, everyone is entitled to protection from the law. Almost all legal relationships must receive protection from the law. Legal protection must see the stages, namely legal protection born from a legal provision and all legal regulations provided by the community which is basically an agreement of the community to regulate behavioral relationships between members of the community and between individuals and the government which is considered to represent the interests of the community (Kristiyanti, 2022).

Legal protection can mean protection provided by the law against something. The law should be able to provide protection to all parties in accordance with their legal status because everyone has the same position before the law. Every law enforcement officer is obliged to enforce the law and with the functioning of the rule of law, the law will indirectly provide protection for every legal relationship or all aspects of community life regulated by the law itself (Mawanda & Muhshi, 2019).

The abolition of the fiduciary guarantee due to the repayment of the debt secured by the fiduciary guarantee is a logical consequence of the character of the assessoir agreement. So, if the debt and credit agreement is abolished for any reason, the fiduciary guarantee is also abolished. Meanwhile, the abolition of the fiduciary guarantee due to the relinquishment of the right to the Fiduciary guarantee by the beneficiary of the fiduciary guarantee is reasonable because as a party with a right he is free to maintain or relinquish his right (Meiyudianti, 2018).

The procedure that must be followed if the fiduciary guarantee is erased, namely by making a deletion (Roya) of the fiduciary guarantee record at the fiduciary registration office. Furthermore, the fiduciary registration office issues a certificate stating that the fiduciary guarantee certificate is no longer valid and in this case, the fiduciary guarantee is removed from the fiduciary register book at the fiduciary registration office. In accordance with the accesoir nature of the fiduciary guarantee, the end of which follows the main agreement, then with the repayment of the debtor, which makes all obligations of the debtor fulfilled, the main agreement between the debtor and the creditor ends, so that the additional agreement, namely the fiduciary guarantee, also ends (Meiyudianti, 2018).

However, with the administrative obligation to remove the fiduciary guarantee, the debtor's repayment has not completely ended the fiduciary guarantee. The deletion of the fiduciary guarantee record becomes the right of the debtor after fulfilling the obligation to pay his debt to the creditor. Article 25 paragraph (3) of the Fiduciary Guarantee Law states that upon the extinguishment of fiduciary guarantee, the fiduciary beneficiary shall notify the Fiduciary Registration Office of the extinguishment of fiduciary guarantee by attaching a statement regarding the extinguishment of debt. Referring to Article 1 point 6 of the Fiduciary Guarantee Law, which states that a fiduciary beneficiary is an individual or corporation that has receivables whose payment is secured by a fiduciary guarantee. Therefore, the obligation to strike off the fiduciary guarantee record is the obligation of the Creditor (Subagiyo, 2019).

Based on the description above, it can be concluded that the protection of the debtor if the fiduciary roya is not carried out due to the repayment of debt by the debtor, which is the obligation of the creditor, is that the creditor can be considered negligent and can be qualified as committing an illegal act and is responsible for compensating the losses suffered by the debtor if the debtor cannot re-register the fiduciary guarantee.

The form of legal protection for debtors whose fiduciary guarantees are not crossed out by creditors, even though they have been paid off, can be seen in the case of Simalungun District Court Decision Number 67/Pdt.G/2016/PN Sim. In this case, the Plaintiff filed a lawsuit against a finance company that neglected its obligation to reclaim the fiduciary on behalf of the Plaintiff. Where in 2013 the Plaintiff had purchased goods in the form of a motor vehicle as much as 1 (1) unit with a financing facility from the Defendant (PT. CENTRAL SANTOSA FINANCE), namely a Mitsubishi Brand Truck, Type FM 517 HS (4x2) BOX Th 2010, Year of Manufacture 2010, orange color, Frame Number MHMFM517AAK003089, Engine Number 6D16F49852, Police Number BK 8118 II, at a price of Rp. 499,000,000,-, down payment of Rp. 124,900,000,-, principal amount of financing of Rp. 374,100,000,-, total installments of Rp. 13,510,000,- per month, installment period of 36 months as stated in the consumer financing agreement Number: 80300631311 signed on April 11, 2013.

In 2016, the Plaintiff made the final payment and therefore the Plaintiff had repaid the debt to the creditor, which meant that the Plaintiff was entitled to obtain documents relating to the ownership of the vehicle (BPKB) and other supporting documents. In July

2016, the Plaintiff needed a large amount of funds for business development, so the Plaintiff intended to carry out financing with the collateral object of the vehicle that had been previously repaid. When he wanted to conduct financing with the object of collateral for the repaid vehicle, the Plaintiff was surprised to receive information from a prospective creditor that the vehicle was still registered as a fiduciary guarantee and had not been crossed out. From this, the Plaintiff then filed a lawsuit which in essence had been harmed by the Plaintiff's negligence, so the panel granted the Plaintiff's claim and imposed compensation for the creditor's negligence. This shows that the panel considered that the debtor needs to protect his rights considering that the debtor is the party harmed by the creditor's actions.

3.3 Implikasi Hukum Tidak Dilakukannya Roya Fidusia di PT Verena Multi Finance Kota Medan

Legislation must have legal certainty in its implementation, for this reason it is necessary to study the certainty in the implementation of regulations regarding the elimination or roya fiduciary. The following is a discussion of regulations related to fiduciary guarantees from the perspective of legal certainty.

Law No. 42/1999 on Fiduciary Guarantee, in view of the provisions of Article 25 paragraph 3, has not yet provided firmness in its implementation. This article is only a suggestion and not an obligation for fiduciaries or creditors to carry out fiduciary abolition. The fiduciary is only encouraged to notify the Fiduciary Registration Office of the abolition of the fiduciary guarantee. In addition, the Fiduciary Guarantee Law also does not include rules regarding strict sanctions for fiduciaries who do not perform fiduciary roya. Of course, this article is far from being firm and will ultimately be doubtful in its certainty of implementation.

Minister of Finance Regulation No. 130/PMK.010/2012 on Fiduciary Guarantee Registration for Financing Companies that conduct consumer financing for motor vehicles with fiduciary guarantee encumbrance. This finance ministerial regulation is only limited to regulating the strictness of registration obligations accompanied by sanctions for violators. However, there is no single regulation that mentions the abolition of fiduciary guarantees.

Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 10 of 2013 on the Procedure for Electronic Registration of Fiduciary Guarantees. The Regulation of the Minister of Law and Human Rights of the Republic of Indonesia is more or less the same as the regulation in the Fiduciary Guarantee Law related to fiduciary abolition, which both do not provide firmness in its implementation. This is because this regulation is still a suggestion rather than an obligation to carry out fiduciary deletion and there are no sanctions imposed on fiduciaries who do not want to carry out fiduciary deletion. Of course, this regulation is still far from being firm to create legal certainty.

Government Regulation No. 21/2015 on the Procedure for Registration of Fiduciary Guarantees and the Cost of Making a Fiduciary Guarantee Deed This government regulation is actually quite strict in regulating fiduciary abolition. It can be seen from

the obligation for the fiduciary recipient, its attorney, or representative to notify in writing about the abolition of fiduciary guarantee. Coupled with the existence of a predetermined grace period, which is no later than 14 days after the abolition of the fiduciary guarantee concerned, this is not enough to ensure legal certainty in the implementation of fiduciary abolition. If the fiduciary beneficiary does not want to carry out fiduciary deletion, of course this rule is only a regulation that cannot be followed up on violations because this rule does not provide for strict sanctions against violations in order to create legal certainty.

All of the above rules do not strictly regulate the abolition of fiduciary guarantees and have the potential to cause legal uncertainty regarding the abolition of fiduciary guarantees themselves. One of the objectives of law is legal certainty in order to create legal certainty in the actions of society. Strict sanctions in a legal product are very important to realize legal certainty.

Based on research at PT Verena Multi Finance, which throughout 2021 there were only 269 roya implementations carried out by PT Verena Multi Finance Medan. Meanwhile, in the same year, 528 fiduciary registrations were made. This number is of course concerning considering that only about 50% of the number of fiduciary applications occurred. The reason for this lack of roya is because there is no request from the debtor. In fact, it is clear that the abolition of fiduciary guarantees is an absolute obligation of the creditor.

Based on an interview with Julianta Perangin-Angin as a Notary working in Medan City, it was explained that "in Online Fiduciary there are two causes of roya (abolition): first, abolition due to repayment, second, abolition due to relinquishment of rights". Furthermore, she explained that "there are quite a lot of finance companies that usually register fiduciaries with her". However, "for roya, it is rare for finance companies that have a cooperative relationship with him to register roya". "Notary cannot take the initiative to perform roya because the request for abolition must come from the creditor as the fiduciary recipient". To confirm this, an interview was conducted with the Branch Manager of PT Verena Multi Finance Medan Branch where it was said that in practice roya is generally carried out when there is a release of rights only. Meanwhile, if it is due to repayment, this is rarely done because it will increase the cost of write-off. This statement is actually contrary to Article 25 Paragraph (3), which states that "the fiduciary shall notify the fiduciary registration office of the extinguishment of the fiduciary guarantee as referred to in Paragraph (1) by attaching a statement regarding the extinguishment of debt, relinquishment of rights, or destruction of the object of the fiduciary guarantee"..

The registration of collateral foreclosures has not been widely complied with by creditors. Furthermore, that "the request for roya should come from the creditor and usually he does roya when there is a release of rights". The ineffectiveness of roya concerns the agency that issues proof of vehicle ownership with the agency that issues the fiduciary certificate so that there is no harmonization regarding registration and removal or roya. The elucidation of Article 25 also states, "in accordance with the subsidiary nature of fiduciary guarantees, the existence of a fiduciary guarantee

depends on the existence of receivables whose repayment is guaranteed". If the receivables are extinguished due to the extinguishment of debt or due to discharge, the relevant fiduciary guarantee is automatically extinguished." However, the obligation to execute the roya is further regulated in Article 25 Paragraph (3) which is emphasized by Article 16 of Government Regulation No. 21/2015 on Procedures for Registration of Fiduciary Guarantees and Fees for Making Fiduciary Guarantee Deeds as its implementing regulation. If the roya is not implemented by the creditor, it will certainly cause legal problems in the future.

The first legal problem, as explained by Bahsan, is that "a fiduciary security object that has not been scrutinized cannot be used as collateral". If the object of collateral is to be re-guaranteed as a fiduciary security object, then the object must be royaltized first. In relation to a fiduciary security object that is re-fiduciated, even though the fiduciary roya has not been carried out, it is included in the re-fiduciary and it is prohibited by the fiduciary guarantee law (Rendra et al., n.d.).

Regarding Articles 35, 36 and 28 of the UUJF, the fiduciary grantor will be severely disadvantaged if the roya is not carried out by the fiduciary recipient who wishes to re-collateralize his movable property. Article 36 of the UUJF prohibits re-fiduciation and even provides criminal penalties if re-fiduciation is carried out by the fiduciary. However, in the event that the fiduciary grantor does not know that the movable object has not been released or royally removed from the collateral status by the fiduciary beneficiary, the collateral owner will still be punishable for re-fiduciation.

Another disadvantage that will be experienced by the fiduciary grantor when seen in the provisions of Article 28 of the UUJF which states that if the same object becomes the object of more than 1 (one) fiduciary guarantee agreement, the creditor who first registers it is the fiduciary recipient. This will harm the new creditor who does not know that the object of collateral has not been made roya. Although the principle of publicity is upheld, that is, the public can check the status of an object being pledged or not. However, obstacles in the field show that it is likely that creditors do not only have one collateral object that must be checked, so the PNBP payment for checking requires creditors to prepare extra expenses. This is a factor that causes creditors to be reluctant to conduct checks (Winstar & Harahap, 2017).

The legal consequences if the registration of fiduciary abolition is not carried out by the Notary of the power of attorney, among others, against the fiduciary grantor is that the abolition of the fiduciary guarantee does not result in the fiduciary recipient being unable to carry out fiduciary guarantees on the same object even though the guaranteed loan has been paid off, so that the fiduciary grantor cannot get his rights back, Meanwhile, for the fiduciary recipient, the fiduciary recipient cannot fulfill his rights if the Notary within a period of more than 30 (thirty) days does not register the fiduciary guarantee, which includes the right to sell the collateral, while the legal consequences for the Notary receiving the power of attorney for fiduciary registration and abolition are that he can be sued civilly for losses suffered by the grantor and recipient.

The legal consequences that arise if the fiduciary grantor or fiduciary recipient does not abolish the fiduciary guarantee, namely the fiduciary grantor cannot pledge the goods or object of fiduciary guarantee to be re-registered. Article 17 of Government Regulation No. 21/2015 explains that if the fiduciary does not notify the abolition of the fiduciary guarantee, the relevant fiduciary guarantee cannot be re-registered. And in Article 17 of the fiduciary guarantee law, the fiduciary grantor is prohibited from conducting a re-fiduciary. This is because the collateral object is still the object of collateral in the previous collateral agreement. This makes the fiduciary grantor and the new fiduciary recipient or new creditor suffer losses and cannot register the fiduciary and cannot execute the collateral object (Alfitra, 2021).

The indecisiveness of the Fiduciary Guarantee Law has left a loophole for the Fiduciary Grantor, Fiduciary Recipient or Notary to not encumber the object of fiduciary guarantee and not register it with the authorized agency. These matters clearly violate the provisions of Law No. 42/1999 on Fiduciary Guarantee, which requires that the object of fiduciary guarantee must be encumbered and must be registered with the Fiduciary Registration Office in accordance with the place and position of the Fiduciary Grantor.

In the absence of protection in the Fiduciary Guarantee Law for creditors who receive a transfer or re-encumbering of fiduciary rights, a new legal instrument is needed that can expressly regulate the legal protection of creditors. So, not only the creditor who first registers the object of fiduciary guarantee gets legal protection, but all creditors can get protection. If this is not possible, then Article 28, which relates to the position of creditors who take precedence, should be deleted. Thus, it is clear that the fiduciary law prohibits the existence of re-fiduciary guarantees.

4. Conclusion

Based on the discussion above, it is concluded that the legal implication of not doing roya fiduciary at PT Verena Multi Finance Medan City is that the object of fiduciary guarantee that has not been roya, cannot be used as collateral". If the object of collateral is to be re-guaranteed as a fiduciary security object, the object must be roya first. In relation to a fiduciary security object that is re-fiduciated, even though the fiduciary roya has not been carried out, it is included in the re-fiduciary and it is prohibited by the fiduciary guarantee law. Regarding Articles 35, 36 and 28 of the UUJF, the fiduciary grantor will be severely disadvantaged if the roya is not carried out by the fiduciary recipient who wishes to re-collateralize his movable object. Article 36 of the UUJF prohibits re-fiduciation and even provides criminal penalties if re-fiduciation is carried out by the fiduciary. However, in the event that the fiduciary grantor does not know that the movable object has not been released or divested from its collateral status by the fiduciary beneficiary, the collateral owner will still be punishable for re-fiduciation. Another disadvantage that will be experienced by the fiduciary grantor when seen in the provisions of Article 28 of the UUJF which states that if the same object becomes the object of more than 1 (one) fiduciary guarantee agreement, the creditor who first registers it is the fiduciary recipient. This will be detrimental to new creditors who do not know that the object of collateral has not been royaed.

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