

The Need for Online Fiduciary that can Strengthen Law and Justice

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Abstract- The recent online system plays a role in all aspects of world life. Globalization signals all humanity to carry out reforms, including in the financial sector. Fiduciary who later became a supporter of the credit agreement is now also shifting dimensions to an online system with a degree of efficiency and effectiveness. This analysis will explore further the extent to which the Indonesian government's policies are able to be interpreted well or actually cause public problems, more precisely to find answers to why online fiduciaries that are legal and just are needed. It is said that because remembering technology itself is indeed designed for accuracy, but also on the contrary the legal and real principles have not been able to guarantee reality. This type of normative legal research will use secondary data with mixed methods (mixed methods) with multistage evaluation designs. Thus the descriptive translation of this study is expected to be able to describe online fiduciary imagery that is legal and fair.

Keywords-Online Fiduciary, Legal Power, Justice.

I. INTRODUCTION

National development efforts require continuity from all aspects. The availability of money and capital is an important foundation in the procurement of businesses, both small and medium and above. As we all know, fiduciary is present as a transfer of ownership rights to an object on certain grounds. Based on Government Regulation Number 86 of 2000 concerning the procedures for fiduciary registration, those intended to be registered, then if we examine Article 5 paragraph (1) of Law Number 42 of 1999 it is explained that the imposition of fiduciary guarantees is made in a Notary Deed in Indonesian and is a Deed Fiduciary guarantee.

This means that if there is no such treatment, it can be said that there is also no legal certainty over the rights and parties involved.[1] Unfortunately, regarding whether or not online fiduciary registration is required, there is still a lot of confusion, because there is no clear deadline, object and format in the application that cannot cover all types of collateral, so the case of the notary must be accepted regarding accountability.[2]

A problem that is quite a prop is checking that it is only done by entering a fiduciary certificate number, so that this cannot accommodate the needs of all parties. Next there has been no anticipation from the application to check whether the guarantee has been registered before manually, which is likely to result in multiple fiduciary

registrations. Including repayment of obligations to creditors can not be detected if no fiduciary loading of old charges has been carried out so that fiduciary repairs can occur.[3] Of course these things are very detrimental to both one or both parties. For this reason, there is a need to review why fiduciary legal and just power is needed.

II. RESEARCH METHOD

This research was conducted with a normative juridical legal approach using secondary data. The method used is mixed methods with a multistage evaluation design. In line with the purpose of this research which emphasizes the objective aspect to explore the importance of online fiduciary that has the power of law and justice.

III. FINDINGS AND DISCUSSION

In order to equalize rights and conditions in use, the Indonesian government regulates fiduciary guarantees in Law No. 42 of 1999. According to the Law, Fiduciary is the transfer of ownership rights of an object on the basis of the belief that the object whose ownership rights are transferred remains in control owner of objects Article 1 paragraph (1). With the existence of these regulations explain the definition, definition, nature, nature, object of fiduciary guarantee, the scope of the Fiduciary Guarantee Act, the subject, the form of deed, the contents of the deed and matters that need to be confirmed in the fiduciary guarantee deed, and all things about collateral fiduciary.

Before the existence of the Fiduciary Guarantee Law which regulated fiduciary guarantees, Munir Fuadi stated that "there is no regulation regarding the obligation to register as one of the links of the procedure for the birth of a fiduciary, so there is no obligation for registration for fiduciary guarantees." absence of obligation to register fiduciary which creates legal uncertainty. Fiduciary registration does not result in a fiduciary guarantee that does not fulfill the publicity element, making it difficult to control. It is clear that what will happen next is injustice for one of the parties involved, for that the renewal of the online fiduciary registration model is needed to ensure legal certainty for parties involved in fiduciary guarantees. Besides that, online fiduciary applications must be understandable and easy to use and can guarantee justice for all levels of society.

Over time, in 2015 the government renewed the regulation by issuing Republic of Indonesia Government Regulation Number 21 of 2015 concerning Procedures for Registration of Fiduciary Guarantees and Fees for Fiduciary Guarantee Deeds. Although its application has been regulated, in fact the standard standards regarding all its relationships often strip away the element of objectivity. Based on the notion of fiduciary guarantees regulated in article 1 point 2, the Fiduciary Guarantee Law is a guarantee right for movable objects, both tangible and intangible and immovable objects, as referred to in the Law of the Republic of Indonesia Number 4 of 1996 concerning Mortgage Rights. remain in the possession of the fiduciary giver, as collateral for certain debt repayments that give a priority to the fiduciary recipient of other creditors. So that the partnership that was born because of the binding agreement will give rise to obligations and rights from the existence of the agreement can be enforced legally.[4]

An effective movable object guarantee system will be increasingly important in Indonesia's growth in the industrial era 4.0. As a consequence, the entire reporting system must be integrated and supervised by the state. Fiduciary accommodation accommodates the country's needs in terms of MSME financing (Micro Small and Medium Enterprises), therefore its development must be led to fulfill the economic responsibilities and rights of all interested parties. The potential of MSMEs that have a significant impact on the Indonesian economy is expected to continue to grow in the future. As evidence, the Ministry of Cooperatives and SME data states that MSME output contributes to 57.12% of Indonesia's Gross Domestic Product, with a stable amount since 2006 (around 58%).[5]

The Market Study on Movable Asset-Based Financing to Small and Medium Enterprises in Indonesia conducted by the World Bank-IFC Group in early 2014, the Indonesian MSME sector still needed at least 3,826.5 trillion of capital from their total working capital needs. In the same survey, it was found that 83.7% of creditors chose motorized vehicles as collateral with a Loan To Value Ratio of 50-80%, relatively equivalent to the preference for immovable property guarantees which was also recorded at 83.7% with a Loan To Value Ratio of 75% - 80%. Later in this development, World Bank emphasized based on the study they conducted that one of the parameters of the 10 points of easy access to loans was the strength of legal rights index, so in addition to balancing the country's financial needs globally, fiducia also must prioritize aspects of legal rights.

According to Sudikno Martokusumo, an agreement is a legal relationship between two parties or more based on an agreement to cause legal consequences.[6] While fiduciary itself is a relationship of legal or ethical trust with one or more other parties (people or groups of people).[7] Related to the stipulation based on legal and legal elements, there needs to be a matter that is accepted

by the creditor and given by the debtor to guarantee the public debt or the accounts receivable of the creditor, because the guarantee is in principle an accessoir.[8]

Going deeper, some of the problems that might arise with the new system of fiduciary guarantee are: first, a system that has not been able to cover all possible bad fiduciaries. This happens because checking is done only by inputting the certificate number, there is no individual anticipation if the certificate has been manually registered which is likely to result in multiple fiduciaries. The same is true for the system of abolishing obligations or repayments. That repayment of obligations to creditors cannot be detected if the old fiduciary loading has not been carried out so that fiduciary re-occurrence can occur.

The two rules listed in the Fiduciary Law are conceptually different if we do not want to mention that this is contrary to the legal concept. Broadly speaking, the Fiduciary Guarantee Act tries to protect creditors and debtors, but in reality this is not the case. Regardless of who is the absolute owner of the collateral, the debtor who has the absolute form of the guaranteed property has the full right to sell or transfer ownership without the knowledge of the creditor. This is because the creditor does not have the absolute form of the collateral item. It is clear that this makes the creditor's position a level weaker than the debtor even though he has secured legal rights. [9] [10]

Detailed by Gunawan in his analysis that fiduciary guarantees are made based on additional agreements and signed after the approval of the main agreement. Whereas if it is returned to its main agreement, the agreed obligation is in any form whether in the form of "giving up something", "doing something" or "giving and not doing something" that is reasonable in a standard clause as long as the agreement has monetary value. Regarding the guarantee of movable objects, ownership can be transferred commercially and it is legally permissible based on article 21 paragraph (1) juncto (3) Fiduciary Guarantee Law but must be accompanied by an obligation to replace the property that is worth its value. The problem is that most of the goods guaranteed by the debtor are movable objects such as motorized vehicles, when a default occurs and the debtor no longer has goods that are physically guaranteed, this is where the injustice points to the creditor.

IV. CONCLUSION

World development in the industrial era 4.0 requires all aspects of life to balance it. Fiduciary as a supporting aspect must prioritize the power of law and justice. This is not only to support the online fiduciary world that emphasizes time efficiency and convenience, but must cover everything related to rights and obligations so that it cannot annul all elements of the game of an individual.

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