

Binding of Fiduciary at Product Named Pegadaian Kredit Angsuran Fidusia at PT Pegadaian (Persero) Post-Applicability of Finance Minister Regulation Number 130/PMK.010/2012

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ABSTRACT--PT PEGADAIAN (Persero) is running its operations from one based lending fiduciary, has issued a product named Pegadaian Kredit Angsuran Fidusia (KREASI) with the mechanism set out in the Standard Operating Procedure (SOP) established by the Board of Directors. In preparing the SOP products with based on act Number 42 Year of 1999 (UUJF) and other legislation. That there is a conflict in the implementation of the product with the UUJF and Finance Minister Regulation No. 130/PMK.0010/2012. In this connection, need to know how the implementation of UUJF and the post-enactment binding fiduciary Finance Minister Regulation No. 130/PMK.0010/2012 on product named Pegadaian Kredit Angsuran Fidusia (KREASI) at PT PEGADAIAN (Persero). The method used in this study is a normative research methods undertaken in an effort to obtain the necessary data with respect to the problem. The data used are secondary data consisting of primary legal materials and secondary legal materials. Besides, it is also used as the primary data secondary data supporting legal materials. For the data analysis was conducted using qualitative juridical analysis. From the research results can be obtained that the application of the fiduciary provisions on product named Pegadaian Kredit Angsuran Fidusia (KREASI) at PT PEGADAIAN (Persero) in accordance with UUJF and the binding fiduciary on product named Pegadaian Kredit Angsuran Fidusia (KREASI) at PT PEGADAIAN (Persero) does not conflict with Finance Minister Regulation No. 130/PMK.0010/2012 because it does not apply to PT PEGADAIAN (Persero), which excludes the category Financial Institutions.

Keywords: binding of fiduciary, product Pegadaian (Kreasi)

I. INTRODUCTION

Pawnshop services in Indonesia show a graph that is increasing over time [1]. This is indicated by the amount of funds disbursed by PT PEGADAIAN (Persero) as the only state-owned pawnshop to its customers. Carrying the motto "Mengatasi Masalah Tanpa Masalah", PEGADAIAN is at the forefront of short-term financing for the community and micro-small businesses to meet funding needs quickly and easily. However, it must still be recognized that currently the pawn is still used for consumer financing [2]. The development of the business world in the current era is increasing along with the changing times. Seeing the

development of the business world that is popping up and growing more rapidly, this is an impact that is marked by the increasing competitive business competition, especially in this era of globalization.

Economic development as part of national development is an effort to achieve a just and prosperous society. In order to maintain and continue sustainable development, it certainly requires a large amount of funds. The need for these funds is obtained through lending and borrowing activities. The form of public credit distribution is through banking institutions, both government and private, and also through other financial service institutions. One of them is PEGADAIAN [3] through micro and small business credit funding products.

Since being appointed as an Implementing Financial Institution (LKP) by the Minister of Finance of the Republic of Indonesia through Letter Number: S-121 / MK.06 / 2004 April 21, 2004 by obtaining micro and small business credit funding loans sourced from Government Debt (SUP) with ceiling of Rp. 200,000,000.00 (two hundred million rupiah). As a realization, a Loan Agreement between the Government of the Republic of Indonesia and PEGADAIAN Number KP-019 / DP3 / 2004 was signed on May 14, 2004 and in its development has increased by Rp. 410,000,000.00 (four hundred and ten million rupiah).

In the context of implementing credit distribution to micro and small businesses, PEGADAIAN applies one of them to the Fiduciary System Installment credit scheme which is named "PEGADAIAN Kreasi". The operational guidelines regulate the requirements and procedures for providing loans with light requirements. Then it is affordable to finance investment and working capital for micro and small businesses on a fiduciary basis.

PEGADAIAN KreasiCredit is a credit to individuals / Legal Entities individually small micro businesses. Loan Amounts ranging from Rp. 1,000,000.00 (one million rupiah) to Rp. 100,000,000.00 (one hundred million rupiah) with terms ranging from 1 (one) year to 3 (three) years [4]. PT PEGADAIAN (Persero) is one of the Pawn Companies that is included in the category of Other Financial Services Institutions, not including Financial Institutions. However, the scope of regulation and supervision of other Financial

Institutions, which is under a Chief Executive Supervisory of Insurance, Pension Funds, Financing Institutions, and Other Financial Services Institutions [5].

Since 2012, the Government through the Minister of Finance has enacted PMK No.130 / PMK.010 / 2012. A finance company that carries out consumer financing for motorized vehicles with the imposition of fiduciary guarantees must register the fiduciary guarantee referred to the Fiduciary Registration Office, this is in accordance with Article 1 paragraph (1) of PMK No. 130 / PMK.010 / 2012 which states that the obligation to register also applies to finance companies that conduct consumer financing for motor vehicles based on sharia principles and / or whose financing comes from forwarding and joint financing. All Fiduciary activities must be registered no later than 30 (thirty) calendar days from the date of the consumer financing agreement and the finance company is prohibited from withdrawing fiduciary collateral items in the form of motorized vehicles if a fiduciary guarantee certificate has not been issued.

Referring to the Minister of Finance Regulation Number 130 / PMK.010 / 2012 and the provisions in Law Number 42 Year 1999 concerning Fiduciary Guarantees which require finance companies to register fiduciary guarantees at the Fiduciary Registration Office, it can be seen that in the regulation there is a conflict of norms or the difference with the facts that have happened so far. Whereas in fact the registration was not carried out because it resulted in high costs that must be borne by the debtor, of course this was not in accordance with the objectives of the country that wanted to drive the microeconomic sector.

II. RESEARCH METHODS

The method of approach used by researchers in this study is a juridical-normative approach, which is a study that relies on legislation supported by literature studies that are relevant to the issues discussed and then analyzed and concluded in writing [6].

The juridical approach is used to analyze various laws and regulations related to the implementation of binding fiduciary guarantees which is the correlation of problems between creditors and debtors when debtors commit defaults. While the Normative approach is used to analyze the law, which is seen as a behavior of people who are patterned in the lives of people who are always interacting [7].

The results of this research are descriptive analysis, which is the procedure or problem solving of the research by explaining, describing, or revealing the implementation of the Fiduciary Guarantee Law on the PEGADAIAN Kreasi Products at PT PEGADAIAN (Persero).

III. FINDINGS AND DISCUSSION

A. *Application of Law Number 42 Year 1999 on PEGADAIAN Kreasi Products Performed by PT PEGADAIAN (Persero)*

In its Operational Guidelines, PEGADAIAN KreasiCredit is a loan (credit) within a certain period of time using the construction of a Fiduciary Guarantee loan guarantee, provided by PEGADAIAN to micro entrepreneurs and small entrepreneurs who need funds for their business development needs. This credit scheme is a credit to individual small micro entrepreneurs. Credit applications for business groups are still being processed on behalf of each individual group member who meets the requirements and passes the business feasibility test. Submission of credit on behalf of business groups is not justified.

This credit guarantee is a material and immaterial guarantee to support the creditor's confidence in the ability and capability of the debtor to repay his debt in accordance with what was promised in the credit agreement. Credit agreement is an approval or agreement made between a creditor and a debtor for a number of loans with the agreed conditions. The case where the Debtor is obliged to return credit that has been received from the Creditor within a certain period of time accompanied by a capital lease and agreed fees [8].

The Operational Guidelines is explained that the definition of fiduciary is the transfer of ownership rights of an object on the basis of a trust, provided that the object whose ownership rights are transferred remain in the possession of the object owner (Law Number 42 of 1999 concerning Fiduciary Guarantee Article 1 number 1).

Micro Business which is the target as referred to in the Decree of the Minister of Finance of the Republic of Indonesia No. 40 / KMK.06 / 2003 dated January 29, 2003 is a productive business owned by a family or individual Indonesian citizen; has a maximum of Rp100,000,000 (one hundred million rupiah) in sales per year [9]. Whereas the target for Small Business, as referred to in Act Number 9 of 1995 concerning Small Business, is a small-scale productive enterprise.

Before the lending process is carried out, a business feasibility assessment is first carried out intended to see how far the prospective debtor has the conviction (desire). The intention to pay and how much the ability of the prospective debtor to pay up to the repayment of the credit following the capital lease. This business feasibility assessment is carried out from an analysis of credit applications. It must also be carried out by conducting a survey to the business location to explore further information about the character of the prospective customer, customer financial data (Balance Sheet, Profit and Loss, and working capital / investment needs). From the results of this survey, in addition to the customer's character, it can also be calculated that Repayment Capacity (RPC) from the customer can also be calculated. If after cross checking, the prospective customer deserves credit, then carry out the credit granting process.

In the distribution of loans or credits there is a risk that is the existence of problem loans. As for the handling of problem loans there are several stages of the procedure

performed on insurance claims. PEGADAIAN cooperates with the insurer who bears the loss of the credit made by the debtor, so that there is a default done by the debtor. Then PEGADAIAN can submit claims to PT. ASKRINDO is for compensation incurred during the period of cover for non-performing loans. The process of withdrawal and Execution of Collateral Goods that will be carried out if the customer does not make installment payments for 3 (three) times in a row or does not repay the debt after the due date, then the collateral can be confiscated and sold in accordance with Article 29 of Law Number 42 of 1999 [10].

B. Application of Fiduciary Binding Collateral in PEGADAIAN Kreasi Products in PT PEGADAIAN (Persero) After the enactment of the Minister of Finance Regulation Number 130 / PMK.010 / 2012.

On August 7, 2012, the Government through the Ministry of Finance issued a regulation requiring finance companies to register fiduciary guarantees at the Fiduciary Registration Office, in accordance with Law Number 42 of 1999 concerning Fiduciary Guarantees ("Fiduciary Guarantee Act"). The regulation in question is Regulation of the Minister of Finance Number 130 / PMK.010 / 2012 concerning Registration of Fiduciary Guarantees for Financing Companies Conducting Consumer Financing for Motorized Vehicles With Fiduciary Collateral Imposing ("PMK"). The regulation is aimed at Financing Institutions, particularly Financing Companies as stipulated in Presidential Regulation Number 9 Year 2009 concerning Financing Institutions in conjunction with Minister of Finance Regulation Number 84 / PMK.012 / 2016 concerning Financing Companies.

If the finance company does not follow the provisions in the PMK, the finance company may be subject to sanctions in the form of (i) warnings, (ii) freezing of business activities, and (iii) revocation of business licenses. The sanction provisions show that the PMK strictly requires finance companies to register fiduciary guarantees and obtain fiduciary guarantee certificates. This is in accordance with the Fiduciary Guarantee Law and indirectly provides justice and legal protection for consumers.

PEGADAIAN is one of the pawn companies (Pawnshop) in the category of Other Financial Services Institutions in accordance with Article 1 Number 10 of the Financial Services Authority Law [11]. As of December 31, 2012, the regulation and supervision of Other Financial Services Institutions and Financing Institutions are under a Chief Executive Supervisory of Insurance, Pension Funds, Financing Institutions, and Other Financial Services Institutions in accordance with Article 55 jo Article 10 Paragraph (4) letter (e) of the Financial Services Authority Law.

The binding or imposition of collateral objects which constitutes an additional agreement or a part of the fiduciary installment credit agreement. The binding or imposition of

the fiduciary security object is made in the fiduciary security deed [12]. Although the binding of the fiduciary security object is an additional agreement or a follow-up of the fiduciary system installment credit agreement, it must still follow the provisions of the agreement in general, including but not limited to the terms of the legal terms of the agreement.

Flexible and elastic characteristic are basic Fiduciary properties. Fiduciary is a Guarantee Law that adheres to the open principle. Very flexible in determining the value of objects to be designated as collateral objects. The fiduciary guarantee deed must contain the parties, the basis for making a fiduciary guarantee deed, credit value, fiduciary guarantee object, guarantee period, rights and obligations of the fiduciary recipient (PEGADAIAN) and the fiduciary giver (debtor), and contain provisions regarding the fiduciary grantor for grants power to the fiduciary recipient.

Distribution of KREASI credit schemes using PHPDKM, or Notarial Fiduciary Guarantee Agreement Deed, but registration is only done if the debtor defaults. This is a Fiduciary-based innovation made by PEGADAIAN in order to prevent micro and small entrepreneurs from cost-fees that will burden them. If the Deed of Fiduciary Guarantee Agreement as an Additional Agreement (Accessoir Agreement) is drawn up by Notary and registered with the KPF, then all of this requires costs to be borne by the debtor. While the debtor has been in an orderly manner to carry out his obligations, then the Additional Agreement which has spent the cost is not used.

In carrying out Fiduciary-based charging with several innovations that are adjusted to the amount of loan funds, then this is one form of business judgment rules that are commonly done in the business world. This is also in line with Article 6 Paragraph (3) of the Loan Agreement between the Government of the Republic of Indonesia and PEGADAIAN Number: KP-019 / DP3.2004 which requires the preparation of a special procedure for channeling Micro and Small Business Loans (KUMK). This also does not constitute a violation, if the Fiduciary Guarantee Agreement Deed that has been stated in the Notarial Deed has not been registered for a while. That was because the registration was only a request to the KPF.

PEGADAIAN in distributing average loans distributed to customers is under Rp. 10,000,000.00 (ten million rupiah). If a Fiduciary Guarantee Deed is charged and registration fees are charged to obtain a Fiduciary guarantee certificate, it will result in high costs and not in accordance with the objectives of the country wishing to move the microeconomic sector.

In the distribution of these loans, Power of Attorney to Install Fiduciary was made. If in the future the debtor defaults, the PEGADAIAN can face the Notary to make an authentic Fiduciary Guarantee Agreement without the need for the presence of the debtor. After registering the Deed of Fiduciary Guarantee Agreement to the KPF and subsequently receiving a Fiduciary Guarantee Certificate which has an

executorial power as regulated in Article 15 of the Fiduciary Guarantee Law.

The Fiduciary Guarantee Law has actually been very good at providing legal guarantees to fiduciary recipients, even though there are also the controversy, such as the fiduciary deed even though it was made by a notary public official as the task given by the law. However, this is not useful for fiduciary deed guarantees that are not registered, so that the actual position of the notary is ineffective, and even tends to provide additional costs to the fiduciary deed. Because in addition to having to pay the notary fees, which in practice sometimes does not match the existing price benchmarks, it also has to pay a registration fee that costs in each region is different. Even though we know that fiduciary registration is very important, with this fact it is not surprising that in the implementation of providing fiduciary guarantees there is a high cost economy imposed on debtors.

IV. CONCLUSION

The application of Law Number 42 Year 1999 on the PEGADAIAN KreasiProducts conducted by PT PEGADAIAN (Persero) is that fiduciary guarantees as stipulated in the Fiduciary Guarantee Law (Law Number 42 Year 1999) cannot be carried out properly in practice. In granting credit by Banks, Financing Institutions or Other Financial Services Institutions with binding fiduciary collateral, which should be required by Notary Deed, and registered at the Fiduciary Registration Office (KPF) by issuing a Fiduciary Guarantee Certificate which has an executorial power. In practice most of the fiduciary guarantees are still made underhanded and not registered with the KPF. The cause of the discrepancy between the implementation of fiduciary guarantees with the rules of fiduciary guarantees is caused by several factors, including the large cost of making and registering fiduciary guarantees, where the Fiduciary Registration Office has so far only been available in the Provincial Capital, so to register the fiduciary deed in addition to being imposed the cost of the deed, of course also the cost of getting it to the KPF. And no less important is the lack of strict rules in UUJF, in the form of the time limit required to register and sanctions if the fiduciary guarantee is not registered, not regulated in UUJF, so PT PEGADAIAN (Persero) in running the Fiduciary Installment Credit Pawnshop product can be it is justified to carry out a policy of not immediately registering fiduciary guarantees to the KPF (Business Judgment Rules).

Implementation of the binding of fiduciary guarantees on PEGADAIAN Kreasi products in PT PEGADAIAN (Persero) after the enactment of Permenkeu Number 130 / PMK.010 / 2012, one of which is the amount of loans extended up to Rp. 10,000,000 (ten million) completed with a Power of Attorney Imposing Fiduciary status and at any time being upgraded to status as a Deed and Fiduciary Certificate can be justified given PT. PEGADAIAN (Persero) is not a Financial Institution that is required to

register a fiduciary agreement no later than 30 (thirty) days as Finance Minister Regulation Number 130 / PMK.010 / 2012.

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