

# Legal Protection for Creditors Against the Destruction of Fiduciary Guarantee (Case Study: Decision Number 26/PDT.GS/2020/PN.RAP)

Mario Josua Runtulalo <sup>1</sup>, Hanafi Tanawijaya <sup>2\*</sup>

<sup>1</sup> Students of the Undergraduate Program at the Faculty of Law, Universitas Tarumanagara.

<sup>2</sup> Lecturer at the Faculty of Law, Universitas Tarumanagara. Obtained a Bachelor of Law at the Faculty of Law Universitas Tarumanagara, Master of Law at the Faculty of Law, Universitas Tarumanagara.

\*Corresponding author. E-mail: hanafitanawijaya@gmail.com

## ABSTRACT

This study aims to determine how the legal protection for creditors or banks with the destruction of the object of fiduciary security that occurs through the decision of the District Court Number: 26/Pdt.GS/2020/PN Rap. This research is a descriptive research, with the aim of providing as complete data as possible regarding the process of resolving cases through the district court and also what the judges consider in making decisions through the decision of the District Court Number: 26/Pdt.GS/2020/PN Rap between the plaintiff and the defendant. The types of data used are primary data and secondary data. Sources of data used include primary and secondary data. Primary data were obtained from the Civil Code Law Number 42 of 1999 concerning Fiduciary Guarantees and several laws and regulations that apply in Indonesia and are connected with the research to be studied. while secondary data is obtained from documents, literature, and interviews which aim to support primary data. The data collection technique used is literature study. Interview with PT Dipo Star Finance Bekasi Branch. The approach used in this research is the statute approach, the case approach and the conceptual approach. The data analysis technique uses qualitative descriptive techniques. in a theoretical basis then presented in detail and structured to complete this paper. Based on the results of research and discussion, conclusions are generated. The first is regarding the legal protection of bank creditors related to the destruction of the object of fiduciary guarantees is the existence of preventive legal protection, repressive legal protection and the basic principles of law that apply to fiduciary guarantees. The second is regarding the judge's consideration in the District Court Decision Number: 26/Pdt.GS/2020/PN Rap where several things that are considered by the judge in the trial are taken juridically which contain the plaintiff's lawsuit, the defendant's statement, evidence and articles that support the act of default, then there are non-judicial factors that take the background of the defendant, as a result of the defendant's actions. and the defendant's condition.

**Keywords:** Creditors, Legal Protection, The Destruction of Fiduciary Guarantees.

## 1. INTRODUCTION

### 1.1 Background

Indonesia is a developing country that strives to create a better Indonesia. Therefore, the Government is trying to make developments in various sectors and from that, the rapid development of society today has resulted in the need for transportation facilities is also growing rapidly. People tend to use private vehicles rather than using public transportation services. Many peoples doesn't have enough funds to buy motor vehicles in cash, but the problem of funds is no longer a barrier. Broadly speaking, financial forums can be classified as 3 (three) major groups, that is Bank Financial Institutions, Non-Bank Financial Institutions (LKBB) and Financing Institutions. The various financial forums, especially conventional banks, have

helped fulfill the need for funds for economic activities by placing money loans, including in the form of bank credit. [1] The bank's credit is given to anyone who has the ability to repay using conditions through a receivables agreement between creditor and debtor. The credit agreement formed by the bank on the debtor is a very crucial aspect of the credit gift. [2] A credit agreement is a bond between a creditor and a debtor whose contents select and regulate the rights and obligations of both parties in relation to using credit.

Collateral is a means of protection for the security of creditors, which is the certainty of the debtor's debt repayment or the implementation of an achievement by the debtor or by the debtor's guarantor. [3] The existence of a guarantee is a requirement to minimize the risk of banks in lending. For goods or objects belonging to the debtor that are used as collateral, a loading agreement will be made

which is called a guarantee agreement. This guarantee agreement arises because of the main agreement, in the form of a loan agreement or credit agreement.

The destruction of the fiduciary guarantee object is divided into 2 (two): First, it is caused by the debtor's fault, meaning that the fiduciary guarantee object is lost from its control due to fraud or bad faith from the debtor, secondly, it is not caused by the debtor's fault, which means that the debtor has kept the fiduciary guarantee object with good, but for some reason the object of the guarantee is destroyed.

One example of the case is based on decision Number: 26/Pdt.GS/2020/PN Rap that the plaintiff of this decision is Ade Kemri Ardiyansyah Putra Sipahutar and the defendant of this decision is Nilawati Tambunan. The problem in this case is that the defendant Nilawati Tambunan is breaking promises and acts against the law where the broken promises made are multipurpose financing agreements with fiduciary guarantees and which are fiduciary guarantees for motor vehicle financing in the form of 1 Xenia car.

The contents of the agreement are that the Plaintiff provides financing for 1 (one) vehicle object with a fiduciary charge guarantee to the defendant with a principal amount of Rp. monthly installments of Rp.3,039.000,- (three million thirty-nine thousand rupiah) per month, each month will be paid according to the due date on the 12th which has been determined for 36 months from 12/09/2017 to 12/08 /2020 with a fine in case of late payment of 0.5% (zero point five percent) per day multiplied by the number of delayed days.[4]

However, since September 12, 2018, it turns out that the defendant has not fulfilled his obligations as he should which the amount is Rp. 3,039.000,- (three million thirty-nine thousand rupiah) every 12th of each year until now, which in the end the Plaintiff issued a letter of credit maturity failure but also not fulfilled by the Defendant, on the other hand the Defendant denies having defaulted on the reason for the car.

Whereas for the reasons for the Defendant's rebuttal as mentioned above, the Judge was opinion that the loss of the object of financing, which in this case is the car, does not make the Defendant no longer in default of the Plaintiff, the issue of the loss of the car and the refusal of the Defendant's insurance claim by the insurance company are other legal matters; that based on the considerations above, the Judge was opinion that the Defendant's actions did not fulfill his obligations.

Based on the things described above to write a thesis with the title "Legal Protection for Creditors Against the Destruction of Fiduciary Collateral Objects (Case Study: Decision Number: 26/PDT.GS/2020/PN.RAP).

## **1.2 Problems**

The issues discussed are:

- a. What is the legal protection for bank creditors for the destruction of fiduciary collateral?
- b. What is the judge's consideration in Decision Number: 26/Pdt.GS/2020/PN.RAP regarding the fiduciary guarantee case?

## **1.3 Research methods**

### *1.3.1 Types of research*

The type of research used is normative juridical research. This concept views law as identical with written norms made and promulgated by authorized institutions or officials. This conception views law as a normative system that is independent, closed and detached from the real life of society[5]

### *1.3.2 Research Specifications*

The research specification used is descriptive analytical research. Descriptive is research that aims to describe a problem in a certain area, while grammatically analysis is an investigation of an event (writing, deed, etc.) to find out the actual situation.[6]

### *1.3.3 Types and Techniques of Data Collection*

This research uses library data collection method and is carried out to obtain primary data by collecting data from the library. Legal materials to be used is:

#### **1.3.3.1 Primary Legal Materials.**

The legal materials that use:

1. 1945 Constitution of the Republic of Indonesia.
2. Code of Civil law.
3. Law Number 42 of 1999 concerning Fiduciary Guarantees.

#### **1.3.3.2 Secondary Legal Materials.**

Materials that are closely related to primary legal materials and can help analyze and understand primary legal materials, which consist of :

1. Papers and articles relating to the Debtor's Liability for Legal Protection against Individual Creditors for the Destruction of Fiduciary Collateral Objects.
2. Books on Debtors' Responsibilities for Legal Protection Against Individual Creditors for the Destruction of Fiduciary Collateral Items.
3. Legal Journals concerning the Liability of Bank Debtors for Legal Protection of Individual Creditors for the Destruction of Fiduciary Collateral Objects.

4. Interview.
5. Other reference materials.

### 1.3.3.3 Tertiary Law Material.

namely materials that provide instructions and explanations of primary legal materials and secondary legal materials, consisting of: newspapers, legal dictionaries such as Law Dictionary, Black Law Dictionary, Big Indonesian Dictionary, and the internet. [7]

### 1.3.4 Research Approach.

The approaches used include the statute approach, the case approach and the conceptual approach. Legal approach (statute approach) and Conceptual approach (conceptual approach), namely approaches that move from the views and doctrines that develop in the science of law.[8] The statutory approach is an approach based on legislation, legal norms/rules in positive law in Indonesia relating to the Debtor's Liability for Legal Protection against Individual Creditors for the Destruction of Fiduciary Collateral Objects. The Facts Approach is an approach based on facts obtained from data in the field, especially with regard to the legal consequences of issuing certificates with material defects. Then the legal concept analysis approach is intended to understand the concepts that can be used as references to answer the problem formulation.

### 1.3.5 Data analysis technique.

Analysis of the data used is done qualitatively. Qualitative data analysis is by connecting the data obtained in the field with related problems.[9] After doing a qualitative analysis, the data obtained will be presented in a qualitative and systematic descriptive manner. This is intended by analyzing the data obtained associated with theories on a theoretical basis and then presented in detail and arranged.

## 2. DISCUSSION

### 2.1 Legal Protection of Bank Creditors for the Destruction of Fiduciary Guarantee Objects.

Generally, each agreement will contain rights and obligations that bind both parties related to the agreement made and agreed upon. Over time, there must be things that are not expected by one of the parties, for example, the event that the debtor does not perform its obligations as stipulated in the agreement, so that the debtor will be declared to have defaulted or breach of contract.

Legal protection for creditors is based on Law Number 42 of 1999 concerning Fiduciary Guarantees, the protection will be given to creditors if the deed of fiduciary guarantee has been signed by the bank or the debtor, where this has been previously registered. The legal force of Law Number 42 of 1999 concerning Fiduciary Guarantee aims to guarantee and protect the rights of the bank as the holder of the fiduciary guarantee certificate, this is legally protected after the registration is carried out by the bank as the creditor. Legal protection is divided into 2 (two) syllables, namely protection and law. Protection is a thing or action to protect. Meanwhile, according to Wirjono Prodjodikoro law is a rule to protect the interests of all parties.[10] There is a prohibition for customers who re-facilitate the object of a fiduciary guarantee which is regulated in Article 17 of Law Number 42 of 1999 concerning Fiduciary Guarantees. Human interests are something that must be protected by law, because the law is made by and for humans or society.[11] Law No. 42 of 1999 in this case describes legal protection for parties interested in agreements with fiduciary guarantees, in other words the laws that specifically regulate fiduciary guarantees, Articles 11, 14, and 15 of Law Number 42 of 1999 which in basically it states that objects that are burdened with fiduciary guarantees must be registered and then a fiduciary guarantee certificate is made which states " FOR JUSTICE AND ALMIGHTY GOD " the fiduciary guarantee certificate has the same executive power as court decisions that have permanent legal force.[12]

Based on the level of repayment of the debtor, creditors are divided into 3 (three) categories:[13]

#### 1. Concurrent Creditor.

Creditors whose receivables are not guaranteed with security rights (security rights in rem) and the nature of the receivables is not guaranteed as receivables that are privileged by law.

#### 2. Preference Creditor.

Creditors who by law, solely because of the nature of their receivables, get paid off first.

#### 3. Separatist Creditor.

Creditors can sell themselves and take their own from the proceeds of the sale, which is separate from the general bankruptcy estate.

Laws are made to protect interested parties, including the Fiduciary Guarantee Act. Legal protection according to Satjipto Raharja is to provide protection to human rights parties who are harmed by others and this protection is given to the community so that they can enjoy all the rights granted by law.[14] According to CST Kansil, the notion of legal protection is a narrowing of the meaning of protection, in this case only protection by law. The protection provided by law is also related to the existence of rights and

obligations, in this case what is owned by humans as legal subjects is in their interactions with fellow humans and their environment. As legal subjects, humans have rights and obligations to take legal action. The definition of legal protection is a protection given to legal subjects in the form of legal instruments both preventive and repressive, both written and unwritten. The legal protections are divided into 2 (two):

1. Preventive Legal Protection.

Protection provided by the government with the aim of preventing violations before they occur. This is contained in laws and regulations with the aim of preventing a violation and providing signs or limitations in carrying out an obligation. The protection provided by the government to protect creditors is preventive in nature using two systems, that is: the registration system for fiduciary guarantees and insuring the object of the guarantee. With these two systems, it is hoped that they can provide guarantees of protection to creditors against the destruction or transfer of objects of fiduciary security.

2. Repressive Legal Protection.

Repressive legal protection is the final protection in the form of sanctions such as fines, imprisonment, and additional penalties given if a dispute has occurred or a violation has been committed. In a credit agreement, the object of the agreement is the most effective guarantee of the debt, so that if the debtor defaults, the object of the guarantee can be sold immediately, but in reality the position of the creditor is not as secure as expected. For example, there is a transfer of the object of collateral to a third party without the knowledge of the creditor.

In addition to the above legal protection, the basic principle of fiduciary guarantee is also a form of legal protection given to creditors. According to the Fiduciary Guarantee Law, according to Yahya Harahap:[15] the principles of fiduciary guarantees,:

1. The Principle of Speciality and the Principle of Publicity.

The principle of speciality is a clear and detailed description of the object of a fiduciary guarantee. The object that is the object of the fiduciary guarantee must be described clearly and in detail by identifying the object of the guarantee, explained about the proof of ownership in the Fiduciary Guarantee Deed. While the principle of publicity is in the form of registration of a Fiduciary Guarantee Deed which produces a deed of encumbrance of objects that are burdened with fiduciary guarantees.

2. *Asas droit de suite*.

Fiduciary guarantee which has the principle of *droit de suite* means that the recipient of the fiduciary guarantee or creditor has the right to follow the object that is the

object of the fiduciary guarantee in the hands of whoever the object is.

3. Prevent Principle.

Creditors who become fiduciary recipients have preferential rights over other creditors, namely if the debtor defaults or fails to pay his debts, then the fiduciary recipient creditor has the right to sell or execute fiduciary collateral objects and creditors receive priority rights to receive debt repayment based on the output of the object's penalty. the fiduciary collateral.

4. Executive power.

This executorial nature can be used by creditors if the debtor defaults, so that the creditor as a fiduciary recipient can sell collateral objects directly with the help of the Auction Office..

The object of the fiduciary guarantee is destroyed due to the debtor's fault and the destruction is not the debtor's fault. The destruction of the object of collateral due to the debtor's error can be exemplified by embezzlement by the debtor, for that incident the insurance company will not disburse funds for losses suffered as a result of the debtor's own actions.

Based on the results of interviews with one of the companies providing financing agreements to debtors, PT Dipo Star Finance Bekasi branch, the researchers gave the results of interviews, namely: in consumer financing agreements, non-fulfillment of defaults can come from both parties, both creditors and debtors. This may result in the termination of the consumer financing agreement. Negligence in fulfilling achievements in practice more often comes from the debtor.

The general form of general achievement of default that occurs at PT Dipo Star Finance Bekasi Branch is where the debtor does not or neglects to pay installments on the financing debt on the due date of the installment, has failed to meet the requirements or does not meet other terms or conditions in the consumer financing agreement, agreement guarantee or any other agreement related to the Consumer Financing Agreement, in a statement a statement or document provided by the debtor in connection with the consumer financing agreement turns out to be false, untrue or not in accordance with the actual reality in matters or regarding matters that the creditor deemed important, and finally the debtor transfers in any way, pledges or leases collateral to other parties except with the written approval of the facility provider.

Default by the debtor who owes it must be formally declared to have been negligent in advance, namely by warning the debtor that the creditor wants immediate payment. In short that the debt must be collected and the negligent must be

reprimanded with a warning or *somatie*. Sometimes the process of withdrawing a motor vehicle is hampered because the debtor intentionally hinders the creditor's efforts to withdraw the motor vehicle as a result of not fulfilling the debtor's obligations. If the execution cannot be carried out as well, the creditor will carry out the execution through an ordinary lawsuit to the Court.

In a financing agreement with Fiduciary Guarantees, in general, in the credit agreement clauses that have been agreed upon by the Financing Institution as the creditor and the debtor providing the Fiduciary Guarantee, the financial institution requires the debtor of the Fiduciary Guarantee to insure the Fiduciary Guarantee object against a third party, namely the insurance party. The obligation to insure objects that have been burdened with Fiduciary Guarantee is aimed at securing the object of the Fiduciary Guarantee from the risk of destruction of the Fiduciary Guarantee object due to something beyond human control (*force majeure*). The requirement for insuring objects that have been tied to the Fiduciary Guarantee is already an additional requirement that must be met by business actors so that their credit can be approved by the financing institution that provides the loan/credit. The purpose of being insured for the object that is the object of the Fiduciary Guarantee is to transfer the risk to a third party, namely the insurance party for the destruction of the object of the Fiduciary Guarantee. With the signing of the insurance policy by the debtor and the insurance company in the insurance agreement, the debtor is bound to pay a premium, while the insurance company is bound to be responsible for making compensation for movable goods that are the object of the Fiduciary Guarantee if it is damaged or destroyed due to a natural disaster or disaster. things beyond human control.

The legal consequences for the creditor for the destruction of the object of the fiduciary guarantee are the destruction of the fiduciary guarantee held by the creditor and the end of the financing agreement between the creditor and the debtor. While the legal consequences for the debtor for the destruction of the object of fiduciary security is the end of the financing agreement with the creditor and the debtor is entitled to an insurance claim to receive compensation for the object but must wait for confirmation from the insurance that the object is destroyed not because of the negligence of the debtor if due to the negligence of the debtor then the insurance company will not provide compensation.[16]

## **2.2 Judges Considerations in Decision Number: 26/Pdt.GS/2020/PN.RAP regarding Fiduciary Guarantee Cases.**

The judge's consideration in the decision Number 26/Pdt.GS/2020/PN Rap is based on several legal considerations that apply juridically. the decision to try and

give a verdict against the defendant which is described as follows:

### 1. Plaintiff's Claim.

The judge considered that the matter regarding the agreement between the creditor and the debtor is a law for both parties, each of which gives obligations and receives rights, because as a law for both parties, it is the same as in Article 1320 of the Civil Code concerning the validity of an agreement.

### 2. Defendant's Statement.

The judge considers that the loss of the object of financing for 1 (one) vehicle object does not make the defendant no longer fulfill his achievements to the plaintiff, the issue of the loss of the car and the denial of the defendant's insurance claim by the insurance company is another legal matter..

### 3. Evidence.

The evidence is also a legal consideration which is included in the civil procedural law according to the RBg/HIR and the Civil Code. Where in direct evidence before the panel of judges he can be accounted for.

### 4. Pasal-pasal yang mendukung.

In some of the judge's considerations, there were also several articles that supported the decision made. Several articles that can be used as a reference for the decision Number 26/pdt.GS/2020/PN Rap include: Regarding the material for exceptions and counterclaims that have been discussed in Chapter III, the judge is of the opinion that the exceptions and counterclaims are not based on law because they are contrary to Section III. Eighth concerning Trial Examination and Reconciliation Article 17 Supreme Court Regulation (PERMA) Number 2 of 2015 concerning Methods of Settlement of Simple Lawsuits.

Therefore, the defendant's exception and counterclaim claim are groundless under the law, and cannot be accepted.

Based on the arguments of the plaintiff's lawsuit in court and the things that were not disputed by the defendant as mentioned above, the problem that must be proven is that the defendant has defaulted.

Furthermore, the judge considered in the petition of the plaintiff's claim because the judge during the trial never placed a confiscation of collateral against the object of dispute in this case and moreover in the agreement between the plaintiff and the defendant had been burdened with a fiduciary certificate guarantee which was included in the *irrah-Irah* "FOR JUSTICE BASED ON THE ALMIGHTY GOD" which according to Article 15 paragraph (2) of Law No. 42 of 1999 concerning Fiduciary Guarantees, the fiduciary guarantee certificate has the same executorial power as court decisions which have permanent legal force so that the petitions of the four plaintiffs are irrelevant to be granted and rejected.

Furthermore, as a judge's consideration, in addition to the juridical considerations, there are non-juridical considerations of judges, which include:

#### a. Defendant's Background.

The background of the defendant is any situation that causes the desire and encouragement of the defendant to act against the law. In this case, the defendant is willing to become a debtor entering into a multipurpose

financing agreement with PT. Batavia Properindo Finance TBK (creditor) consciously and competently in law and without coercion from any party stating that the defendant must enter into a multipurpose agreement with the plaintiff or in this case the defendant's own will.

**b. Consequences of the Defendant's Action.**

The defendant's actions certainly brought material losses to the creditor in the amount of Rp. 196,653,000 (One hundred ninety-six million six hundred fifty-three thousand rupiah), which included the remaining installments and fines to be paid by the defendant..

**c. Defendant's Condition.**

Mentally and physically the defendant is a person who is capable of law, has a permanent job that can produce a basic agreement or a proper fiduciary agreement, and is an adult who is not under pardon, the panel of judges can consider the condition of the defendant rather than the defendant..

This was decided on Thursday 24 September 2020 by Welly Irianto, SH as a judge at the Rantauprapat District Court, where in the decision the plaintiff's claim was partially granted and stated that the defendant had committed an act of default and therefore punished the defendant to pay all of the financing installments, fines to the plaintiff and punish the defendant to pay the budget for the cost of the case that appears in the case.

### 3. CLOSING

#### 3.1 Conclusion

- a. Bank's legal protection for the destruction of the object of fiduciary guarantee is in its legal protection divided into two, which include preventive legal protection where protection is provided by the government with the aim of preventing it before it occurs. Then there is repressive legal protection which is the final protection in the form of sanctions such as fines, imprisonment, and additional penalties given if a dispute has occurred or a violation has been committed. In addition to the above legal protection, the basic principles of fiduciary guarantees are also a form of legal protection given to creditors, namely the principle of speciality and the principle of publicity, the principle of *droit de suite*, the principle of prevention and executive power.
- b. The judge's consideration in Decision Number 26/Pdt.GS/2020 PN Rap regarding the fiduciary guarantee case is to state that the defendant has defaulted / broken a promise to the plaintiff, which was later recognized by the defendant through the statement given by the defendant.

#### 3.2 Advice

- a. So that in legal protection for creditors or in this case banks are expected to receive repressive legal protection that aims to resolve disputes or problems regarding the issue of guaranteeing fiduciary objects to be considered by better judges and there is strict legal protection regarding these issues which are conveyed through laws and regulations. related invitation because it does not rule out the possibility of such problems in protecting parties who become creditors in the future as mandated by law.
- b. It is hoped that the debtor will be able to have good faith to pay off the debt of the object of the fiduciary guarantee, so that unwanted things do not happen.

### REFERENCES

- [1]Widjaja, Gunawan and Ahmad Yani, *Fiduciary Guarantee Business Law Series*, (Jakarta: Raja Grafindo Persada, 2000).
- [2] *Ibid.*
- [3] Oey Hoey Tiong, *Fiduciary As Guarantee of the Elements of the Engagement*, (Jakarta : Ghalia Indonesia 1983).
- [4]District Court Decision Number 26/Pdt.GS/2020/PN Rap.
- [5]Ronny Hanitijo Soemitro, *Legal Research Methodology and Jurimetry*, (Jakarta: Ghalia Indonesia, 1988).
- [6]Mezak, Meray Hendrik. *Types, Methods and Approaches in Legal Research*, (Law Review of the Faculty of Law, University of Pelita Harapan Vol.V, No.3, 2006).
- [7] Soekanto, Soerjono and Sri Mamudji. *Normative Legal Research A Brief Overview*. (Jakarta : PT. Raja Grafindo Persada, 2002).
- [8] Mezak, Meray Hendrik. *Op.Cit.*
- [9] Moleong, Lexy J. *Qualitative Research Methodology*, (Bandung: CV Mandar Maju, 2008).
- [10] Prodjodikoro, Wirjono. *Principles of Covenant Law*, (Bandung: 1986).

[11] Novita Sari. "Juridical Review of Limitation on the Period of Suspension of Obligations for Payment of Debts to Debtors", *Kertha Patrika*, vol. 39, no. 2, December, 2017.

[12] Fuadi, Munir. *Fiduciary Guarantee* (Bandung: Citra Aditya Bakti, 2003).

[13] Fuadi, Munir. *Bankruptcy Law in Theory and Practice*, Bandung: Citra Aditya Bakti, 2005).

[14] Raharjo, Satjipto. *Implementation of Justice in a Changing Society*. *Journal of Legal Issues*. 1993.

[15] Please, M. Yahya. *Scope of Execution Issues in the Civil Sector*, (Jakarta: Sinar Grafika, 2006).

[16] Interview with PT Dipo Star Finance at Bekasi Branch.