



The Abolishment of Fiduciary on the Object of Fiduciary in Denpasar City

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Abstract

This study examines the abolishment of fiduciary listed in Articles 16 and 17 of Government Regulation Number 21 of 2015 stating that objects registered with the Ministry of Law and Human Rights through online must be deleted. This is done to ensure a legal certainty for both the debtor and the creditor. The type of research used is empirical juridical research, and data used are primary data, secondary data and tertiary data. The results of data analysis show that the abolishment of fiduciary is carried out by only a part of debtors and creditors. As a result of not abolishing the fiduciary, the debtor cannot guarantee the goods or collateral objects as a fiduciary.

Keywords: Abolishment of Fiduciary; Object of Fiduciary.

INTRODUCTION

Legal professions are generally characterized by a large range of restrictive regulations affecting both entry (such as limits on the number of occupational licenses or minimum education requirements) and conduct (such as restrictions on prices and advertising) (Noailly & Nahuis, 2010). The notaries became the articulators and enforcers of communal authority, now under popular government, and its reform programme (Carniello, 2002).

Notaries public spread throughout Europe in the thirteenth and fourteenth centuries, due to the influence of Roman law and legal institutions and the expansion of the Church's legal activities (Murray, 1986). The general duty of a Notary Public consists mostly in taking affidavits and acknowledgments of signatures on legal papers, protesting of notes, executing of bills of sale, leases, mortgages, powers of attorneys, etc (Company, Law, Notary, & Pharmacist, 1918). In recent years, A notary archive is one possible solution, as it enables the availability and integrity of digitally signed data to be proven together with precluding repudiation of data stored over lengthy preservation periods (Ruotsalainen & Manning, 2007). Along with the Bccclcs documents to be discussed below, this is perhaps the earliest indisputable evidence that the Italian notarial tradition of retaining protocols within the family after the death of the notary who wrote them, was being followed in England as WPII (Finucane, 1987).

In actualizing the legal certainty of loading objects with fiduciary guarantees, it must be executed with a notarial deed. The authority of a Notary in making an authentic deed is an authority determined by law that serves to provide legal certainty for society, especially private law. Article 1 point 1 of Act Number 2 of 2014 concerning Notary Position states, "A notary is a general official who is authorized to make authentic and other deeds as referred to in the law".

Registration of fiduciary trough electronics is registration made by the applicant, namely the fiduciary recipient or his representative by filling out the application electronically. When viewed in practice, electronic or online fiduciary registration is done through a notary intermediary in the notary office because it is the notary who has the user name and password when accessing the online fiduciary registration system. The username and password are given to the notary by the Directorate General of Public Law Administration to be able to serve the public's need for online fiduciary registration.

In this case, after the debtor has paid off the administrative fee, financial institution or creditor must abolish the fiduciary by submitting an application to the Office of the Ministry of Law and Human Rights through a notary's office. However, in reality, often the financial institution only issues a statement stating that the debtor has completed its credit without ever stating that the fiduciary of the debtor's goods has been crossed out or removed from fiduciary registration. Furthermore, based on observations conducted regarding other obstacles that often occur in the abolition of fiduciary, namely from the number of fiduciary registrants, there are still few who do their fiduciary abolition in Bali Province, especially in Denpasar City. It can be seen that public awareness, both debtors and creditors, toward the importance of eliminating fiduciary guarantees is still deficient despite the fact that it is the era of online.

Such condition will become a dizzying problem when the debtor wants to re-register the same item as an object of fiduciary in the next time or in another place because in the data base of the Ministry of Justice and Human Rights of the Republic of Indonesia, the item is still in a status of a registered fiduciary collateral. When the the object of fiduciary is not removed, it cannot be re-registered for fiduciary guarantee in another place or at the next opportunity.

This study examines the abolition of fiduciary in the city of Denpasar as well as describing possible consequences borne by the registrants for an item as collateral in the process of a fiduciary who has paid off his credit but the registration of his fiduciary item has not been removed from the list in the system.

METHOD

The type of research used in this study is the empirical juridical research that is a problem approach through legal research by looking at the applicable legal regulations that will produce theories about the existence and function of law in society. According to Ronny Hanitijo Soemitro, an empirical research is legal research whose data is primary or directly obtained from the community¹. The design of such research is in accordance with the workflow of researchers, namely by analyzing the implementation of fiduciary abolishment with an online system in the city of Denpasar, then analyzing the material for abolishing online fiduciary guarantees and the implementation of fiduciary abolition in the law. Furthermore, the researchers compared the provisions of the Law concerning the abolishment of fiduciary with the implementation of online fiduciary abolishment in real practice in the field. The technique of data analysis is descriptive analysis. A descriptive study is intended to provide as accurate data as possible about humans, including the symptoms that exist². Therefore, on the basis of this view, this research is expected to be able to create or find practical concepts and problems and obstacles that occur and develop in the community in the process of implementing fiduciary object abolition in the system after the implementation of the online fiduciary system in the city of Denpasar.

RESULT AND DISCUSSION

Imposition of Fiduciary

The imposition of fiduciary is carried out with a fiduciary deed made by or in the presence of an authorized official, in this case, is a notary. The importance of a deed in terms of proof, making the notary who has the authority to do so must be more careful in

1. Ronny Hanitijo Soemitro, 1988, *Metodologi Penelitian Hukum dan Jurimetri*, Ghalia Indonesia, Jakarta, p. 154

2. Soekanto, Soerjono. 1986, *Pengantar Penelitian Hukum*, UI Press, Jakarta., p. 10

making it. This must be done to prevent fraud, such as the possibility of a collateral object that has not been fiduciary but has been reassured as an object of fiduciary³.

Registration of Fiduciary

Fiduciary obtain a formal legal framework through Law Number 42 of 1999 concerning Fiduciary Guarantees (UUJF). Based on Article 12 of Law Number 42 of 1999 concerning Fiduciary Security, the Ministry of Law and Human Rights and its regional offices shall be appointed as Fiduciary Registration OfficeS (KPF) that accepts the registration of fiduciary in the territory of the Republic of Indonesia, where each regional office shall be authorized to registration excuted in its jurisdiction.

Registration is a mandatory thing that must be fulfilled as a condition for the birth of a fiduciary. This registration has a juridical meaning that is a series that is not separate from the process of fiduciary guarantee agreement. In addition, registration of fiduciary guarantees is a manifestation of the principle of publicity and legal certainty⁴. This confirms that objects that have been imposed as an object of fiduciary agreement but is not followed by registration are useless legal actions.

The registration of fiduciary, starting from the process of imposition of a fiduciary agreement has several purposes, namely:

- To provide legal certainty to interested parties. Registration of fiduciary as mandated by the Act of Fiduciary is for legal certainty⁵.
- Provide preferential rights to the fiduciary recipient of the other creditors⁶.

With regard to the issuance of the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 10 of 2013 concerning Procedures for Registration of Electronic Fiduciary Guarantees, changes to the procedures of registering fiduciary from manuals to on line automatically occur. In principle nothing has changed from this registration system. However, if previously the registration was made by directly coming to the fiduciary registration office by bringing a number of files as a requirement, now the applicant only needs to access the website www.sisminbakum.go.id. On the website, the applicant fills in the required data in the application form for the registration of fiduciary, makes the payment of PNBPN (Non-Tax State Revenue) at the perception bank and then re-accesses the website to print a Fiduciary Certificate⁷.

Abolishment of Fiduciary

According to Article 25 paragraph (1) Law No. 42 of 1999, fiduciary, by law, shall be abolished under the following conditions.

- abolition of the debt secured by the fiduciary;
- release by the Fiduciary recipient, or;
- destruction of the object of Fiduciary.

The implementation of fiduciary abilitation because of the repayment of debt guaranteed by fiduciary is a logical consequence of the character of the assessor agreement. So, if the debt agreement is abolished for any reason, the fiduciary guarantee shall be abolished as well. Meanwhile, the abolition of fiduciary due to the release of the right to fiduciary by the recipient of a fiduciary is reasonable because, as an entitled party, he is free to defend or give up his rights.

The abolition of fiduciary because of the destruction of the fiduciary item can be justified because there is no longer any benefit to be maintained if the fiduciary object is no

3. Purnamasari, Irma Devita. 2012. *Hukum Jaminan Perbankan*. Bandung: Kaifa.

4. Kamelo, Tan. 2006. *Hukum Jaminan Fidusia, Suatu Kebutuhan yang Didambakan*. Bandung: Alumni.

5. Aermadepa, Pendaftaran Jaminan Fidusia, Masalah dan Dilema Dalam Pelaksanaannya, *Jurnal, Dosen Fakultas Hukum Ummy Solok, Padang*, 2012, Volume 5 Nomor 1, p. 5

6. Salim HS, 2011, *Op.cit.*, p. 82

7. Windy Permata Anggun, *Kepastian Hukum Dalam Pemberlakuan Sistem Administrasi Pendaftaran Jaminan Fidusia Secara Elektronik Terkait Dengan Larangan Fidusia Ulang*, Artikel Ilmiah, Universitas Brawijaya Fakultas Hukum, Malang, 2014, p. 10-11

longer available. However, if there is insurance for it, it becomes the right of the fiduciary recipient, so the fiduciary provider must prove that the destruction of the item which is the fiduciary object occurs outside of his actions⁸.

Implementation of the Abolishment of Object of Fiduciary in Denpasar City

The implementation of fiduciary abolition is based on the existence of a Circular from the Directorate General of Public Law No. AHU-06.OT. 03.01 of 2013 concerning the implementation of the Fiduciary Security Registration Administration System conducted online (Online System). Notaries as general officials who provide services to serve the community are expected to be able to keep up with technological developments. Notaries are also required to further improve the quality of their services to the public in order to support the nation's economic growth⁹.

In the implementation of the abolition of online fiduciary guarantees in the city of Denpasar experienced many obstacles. One of the problems that occur in fiduciary abolition in Denpasar City is that there are many people who have been registered in the fiduciary data base at the Ministry of Law and Human Rights, but only a few have committed fiduciary abolitions. From the data obtained from the Bali Ministry of Justice and Human Rights Regional Office, from 2014 to 2017, information was obtained that there were 542,293 people in Bali who did fiduciary registration and there were 8,265 people who did the abolition of fiduciary. This is certainly an obstacle for the Ministry of Law and Human Rights because when the fiduciary object is not deleted, it will become a problem in the future. If the debtor wants to guarantee the item or may want to sell the item after paying off the debt, it cannot be done because the item is still listed in the data base at the Ministry of Law and Human Rights with the status as a fiduciary object. Furthermore, in carrying out the abolition of fiduciary be done in line with the provisions of the Law Article 16 PP 21 of 2015 concerning Procedures for Registration of Fiduciary Guarantees and Costs for Making Deed of Fiduciary Guarantee. In the Act, it is stated that if the fiduciary guarantee is abolished, the recipient of the fiduciary (creditor), the person has the power or the representative is obliged to notify the minister within a maximum period of 14 days, commencing from the date of fiduciary abolition carried out by the creditor. In fact, in its implementation, the creditor charged the implementation of fiduciary abolition to the debtor.

- Notification of fiduciary guarantee abolition must at least contain:
- information or reasons for the abolition of fiduciary;
- number and date of fiduciary certificate;
- name and place of domicile of the notary; and
- the date of fiduciary abolishment.

Abolishment of Fiduciary is very important but in reality, there are still many creditors and debtors who do not do fiduciary abolition. This is a new problem because it causes legal consequences for it.

By conducting the abolishment of fiduciary is one form of legal certainty supporting facilities in fiduciary law. Abolishment of fiduciary becomes an obligation in the event that it prevents loss, both for the creditor and for the debtor. So, through the abolishment of fidusia facility provided by the government, legal certainty in the UUJF is expected to be fulfilled in accordance with the objectives of the establishment of the UUJF which includes meeting the legal needs of the community, to guarantee legal certainty and to provide protection to interested parties.

Legal Consequences if Abolishment is not Concuted to a Fiduciary

In every agreement there must be expiration. Likewise, in fiduciary the must be expiration because the provision of fiduciary is accessoir or a follow-up agreement on the principal agreement, which in this case is a credit agreement. If credit and obligations

4. Munir Faudy, 2000, *Jaminan Fidusia*, Cetakan Kedua, PT.Citra Aditya Bakti:Bandung. p.50

5. Elson Surjadi Butarbutar, *Tinjauan Yuridis Cybernotary terhadap Fidusia Online di Indonesia*, Artikel Skripsi,Fakultas Hukum Universitas Sam Ratulangi, Manado, *Lex et Societatis*, Vol. II/No. 4/Mei/2014, p. 6

related to credit have been repaid, the credit agreement shall also be abolished; the fiduciary agreement shall also be abolished.

Provisions on abolition of fiduciary, based on Article 16 paragraph (2) and (3) PP Number 21 of 2015 concerning Procedures for Registration of Fiduciary and Costs for Making Deed of Fiduciary, stipulates the provisions regarding the expiration and requirements for abolishing the fiduciary:

“In the event that a fiduciary guarantee is deleted as referred to in paragraph (1), the recipient of the fiduciary, power of attorney or surrogate of him, shall notify the Minister within a maximum period of 14 days from the date of abolition of the fiduciary guarantee”.

The legal consequence that arise if the fiduciary provider or debtor does not abolish the fiduciary is the debtor can no longer use the object of fiduciary to be re-registered as a fiduciary object in the next opportunity, because in Article 17 PP 21 of 2015 it is clearly stipulated that if the creditor does not do the fiduciary abolishment, the object of fiduciary concerned cannot be re-registered. This is actually detrimental to the debtor since in Article 16 of PP 21 of 2015 it was confirmed that the one who is obliged to abolish fiduciary is a creditor but in practice the creditor charged the abolition of fiduciary to the debtor on the reason that the creditor when the credit installment has been paid off, has no interest in the goods or the fiduciary objects.

CONCLUSION

Abolishment of fiduciary guarantees based on the *UUJF* (Fiduciary Guarantee Act) and Article 17 Government Regulation no. 21 of 2015 is an obligation that must be carried out by creditor to guarantee the legal certainty of the parties. However, in its implementation there are many creditors who do not make the abolition on the fiduciary so it becomes a problem when the debtor guarantees the object in the next opportunity. In Article 17 of Government Regulation no. 21 of 2015 has clearly regulated that if a fiduciary object is not deleted in an online data base, the object can no longer be used as an object for the next fiduciary project. Unlike this provision, in the Fiduciary Guarantee Act, the consequences of not eliminating fiduciary objects were not included at all. Therefore, my study results reveal that there needs to be an effort from the government to make firmest rules regarding the provisions of fiduciary abolition obligations, especially sanctions for debtors or creditors who do not do so. In addition, notaries and the Ministry of Law and Human Rights need to provide clear definition for creditors and debtors regarding the importance of abolition of fiduciary.

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