

REORIENTATION OF THE ROLE OF POLICING IN THE EXECUTION OF FIDUCIARY GUARANTEES

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Abstract

Reorienting the role of policing in the execution of fiduciary guarantees. The purpose of this study is to analyze: 1) How are the obstacles faced in the implementation of securing the execution of fiduciary guarantees? 2) How is the reorientation of the role of the police in the execution of fiduciary guarantees? 3) What is the role of the police in the implementation of securing the execution of fiduciary guarantees?. The research method used is empirical juridical with a statutory approach, concept approach, and case studies. The results showed that: 1) The obstacles faced in the implementation of the execution of Fiduciary Guarantees in the settlement of bad loans in finance companies such as, a) The debtor fled with the object of his Fiduciary Guarantee or the object of his Fiduciary Guarantee had been transferred first, so that no execution could be carried out on the object of the Fiduciary Guarantee. b) The Debtor falsifies data and identity of himself and his business, for example when applying for credit attaching a fake KTP, fake KK, SIUP / TDP / NPWP, so that when the execution of the Fiduciary Guarantee object is carried out, it turns out that the Debtor does not live at the address in accordance with the ID card attached at the time of credit application. c) The debtor embezzles the object of the fiduciary guarantee by hiding or mortgaging, leasing and transferring the object of the fiduciary guarantee so that at the time of execution of the object of the fiduciary guarantee. 2) The purpose of the establishment of the Regulation of the Chief of the National Police of the Republic of Indonesia Number 8 of 2011 concerning Securing the Execution of Fiduciary Guarantees is the implementation of the execution of Fiduciary guarantees in a safe, orderly, smooth, and accountable manner as well as protecting the safety and security of Fiduciary Guarantee Recipients, Fiduciary Guarantee Providers and / or the public from actions that can cause property losses and / or life safety. 3) The police shall secure the execution not on the basis of a request from the recipient of the fiduciary guarantee but on the request of the bailiff of the court who is the executor of the execution warrant issued by the Chief Justice of the District Court. The provisions of Article 6 and Article 7 of the Chief of Police Regulation No. 8 of 2011 constitute the sole authority of the Chief Justice of the District Court in issuing a decree of execution.

Keywords: Role, Policing, Execution, Fiduciary Assurance.

INTRODUCTION

Background

Fiduciary Guarantee or *Fiduciaire Eigendomsoverdracht* is often referred to as a guarantee of property rights in trust, is a form of security for objects other than liens. A fiduciary is different from a lien, because the legal relationship between the fiduciary grantor and beneficiary is different. A fiduciary is a legal relationship based on trust. The

fiduciary or so-called debtor believes that the fiduciary is willing to return the property rights that have been given to him. The fiduciary or creditor also believes that the fiduciary will not misuse the collateral and will maintain the collateral.¹

Financing Institution is a business entity that carries out financing activities in the form of providing funds or capital goods. A Finance Company is a business entity specifically established to conduct Leasing, Factoring, Consumer Financing, and/or Credit Card business. While Consumer Finance is a financing activity for the procurement of goods based on consumer needs with payment in installments. Consumer needs include motor vehicle financing, household appliance financing, electronic goods financing and housing financing.²

Fiduciary guarantee is a security right to movable objects, both tangible and intangible, and immovable objects, especially buildings that cannot be encumbered with dependent rights as referred to in Law Number 4 of 1996 concerning Dependent Rights that remain in the control of the Fiduciary, as collateral for the repayment of certain debts, which gives priority to the Fiduciary Recipient over other creditors.³

The collateral by the fiduciary guarantee institution may be controlled by the debtor, this control is used by the debtor to carry out business activities financed from loans using fiduciary guarantees. Collateral controlled by debtors in practice often occurs new problems, namely debtors are negligent in returning loan money at a predetermined time. Protection provided to creditors can use the mechanism of securing the execution of fiduciary guarantees requested by the fiduciary security holder to the police.⁴

Therefore, the National Police as a state instrument whose duty and role is to maintain public security and order, law enforcement, protection, protection, and service to the community, is authorized to provide assistance in securing the implementation of court decisions or the execution of fiduciary guarantees. The execution of Fiduciary Guarantee has the same binding legal force as a court decision that has permanent legal force, so it requires security from the National Police. Therefore, the Regulation of the Chief of the National Police of the Republic of Indonesia Number 8 of 2011 concerning Securing the Execution of Fiduciary Guarantees was formed. Seeing this reality, the Indonesian National Police issued Regulation of the Chief of Police Number 8 of 2011 concerning Securing the Execution of Fiduciary Guarantees. Since the enactment of the Chief of Police Regulation Number 8 of 2011 concerning Securing the Execution of Fiduciary Guarantees.

Problem Statement

1. How are the obstacles faced in the implementation of securing the execution of fiduciary guarantees?
2. How is the reorientation of the police role in the execution of fiduciary guarantees?
3. What is the role of the police in the implementation of securing the execution of fiduciary guarantees?

Theoretical Framework

In accordance with the problems to be discussed in this study, it is necessary to briefly put forward several theories that are used as a theoretical framework.

1. Theory of Legal Protection

According to Fitzgerald, he explained Salmond's theory of legal protection that Law aims to integrate and coordinate various interests in society because in a traffic of interests, protection of certain interests can only be done by limiting various interests on the other hand.⁵

Legal interests are concerned with human rights and interests, so that the law has the highest authority to determine human interests that need to be regulated and protected. Legal protection must see 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 relations between community members and between the company and the government which is considered to represent the interests of the community. According to Satjipto Raharjo: Legal protection is to provide protection for human rights (HAM) that are harmed by others and that protection is given to the community in order to enjoy all the rights provided by law.⁶

In the opinion of Philipus M. Hadjon that "legal protection for the people as a preventive and repressive government action." 8 Preventive legal protection aims to prevent disputes, which directs government action to be prudent in decision-making based on discretion and protection.⁷

2. Law Enforcement Theory

Law enforcement does not solely mean the implementation of laws, although in reality in Indonesia the tendency is so, so the definition of law enforcement is so popular. In addition, there is a strong tendency to interpret law enforcement as the implementation of judges' decisions. It should be noted that this rather narrow opinion has weaknesses, "if the implementation of legislation and the decisions of judges disturb peace in society".⁸

Another opinion regarding law enforcement was explained by Sudikno Mertokusumo that: "The law serves as the protection of human interests. In order for human interests to be protected, laws must be implemented. The implementation of the law can take place normally, peacefully but it can occur also due to violation of the law. In this case the law that has been violated must be enforced, It is through the enforcement of this law that the law becomes a reality. In enforcing the law there are three elements that must always be considered, namely: legal certainty (*Rechtssicherheit*), expediency (*Zweckmaasigkeit*) and justice (*Gerechtigkeit*)".⁹

Furthermore, Selo Sumardjan as quoted by Sidik Sunaryo stated that law enforcement is closely related to efforts to instill the law in society in order to know, respect, recognize and obey the law, community reactions based on the prevailing value system and the period of time to instill hUkum.¹⁰ Regarding law enforcement, Leden Marpaung explained

that: Law enforcement that contains compliance, arises not suddenly but through a process formed from the awareness of every human being to carry out and not carry out according to existing regulations. The process does not come from top to bottom or vice versa but does not care where it comes from, because the obligation to comply with all forms of laws and regulations belongs to all Indonesians. In everyday reality, there are citizens who uphold the law, there are citizens who mistakenly or mistakenly live up to their rights and obligations so that those concerned are considered to have violated the law. The assumption that someone has violated the law must first be proven to be true carefully and thoroughly because of the principle of *presumption of innocence*.¹¹

RESEARCH METHODOLOGY

This research is a type of empirical legal research. Empirical legal research is oriented towards primary data (results of research in the field). The approach of empirical legal research is carried out through field research, namely by seeing and observing what happens in the field, and how the application of regulations in practice in society. This research is also used normative research to support empirical research with a legal approach by reviewing laws and regulations related to the role of the Police in securing the execution of fiduciary guarantees.¹²

Normative juridical research refers to legal norms contained in laws and regulations and legal norms that exist in society. In addition, by seeing the synchronization of a rule with other rules in a hierarchical manner.¹³ Law that applies at a certain time and place, that is, a written rule and norm officially established and promulgated by the ruler, in addition to written laws that effectively regulate the behavior of members of society.¹⁴

The method of data collection in this study with library research or commonly called literature study, this method is carried out to obtain secondary data both in the form of primary legal material and secondary legal material. After being inventoried, a review is carried out to make the essence of each regulation concerned. Data is collected by studying literature sources in the form of literature books, laws and regulations, and collecting existing data in the form of data that is directly related to the research conducted.¹⁵

In this study, a statutory approach and a comparative approach were used.¹⁶ Legal research conducted by examining library materials or secondary data.¹⁷ Statute approach: an approach taken by examining laws and regulations related to the focus of research. Then, the data collection taken in this study uses literature studies, namely data collection by searching, examining and reviewing secondary data.¹⁸ In this research, document studies will be carried out as a means of collecting data related to the problems raised, namely literature studies / document studies (documentary study), sourced from laws and regulations, books, official documents, publications and research results.¹⁹

RESEARCH RESULTS

Obstacles Faced in the Implementation of Securing the Execution of Fiduciary Guarantees

The obstacles faced in the implementation of fiduciary guarantee execution in the settlement of bad loans in finance companies are as follows:

1. The debtor flees with the object of his Fiduciary Guarantee or the object of his Fiduciary Guarantee has been transferred first, so that no execution of the object of the Fiduciary Guarantee can be carried out.
2. The Debtor falsifies data and identity of himself and his business, for example when applying for credit attaching a fake KTP, fake KK, SIUP / TDP / NPWP, so that when the execution of the Fiduciary Guarantee object is carried out, it turns out that the Debtor does not live at the address in accordance with the ID card attached at the time of applying for the credit.
3. The debtor embezzles the object of the fiduciary guarantee by hiding or mortgaging, leasing and transferring the object of the fiduciary guarantee so that at the time of execution of the object of the fiduciary guarantee.²⁰

The obstacles faced by the Police in carrying out their role as a safeguard for the execution of fiduciary guarantees are studied based on Lawrence Friedmann's Theory, 3 (three) components of the legal system, namely:²¹

1. The structure, namely the entire existing legal institutions and their apparatus, includes, among others, the Police with its Police, the Prosecutor's Office with its Prosecutors, the Court with its Judges;
2. Substance, namely the entire rule of law, legal norms and legal principles, both written and unwritten, including court decisions.
3. Legal Culture is opinions, beliefs (beliefs), habits, ways of thinking, and ways of acting, both from law enforcers and citizens, about the law and various phenomena related to the law.

The **structural obstacle** that exists in safeguarding the execution of fiduciary guarantee objects by the National Police is that there is only one fiduciary guarantee certificate registration institution in each province so that the period for completing the fiduciary guarantee certificate is too long. Application for securing the object of fiduciary guarantee, a certificate of fiduciary guarantee is required. The **substance obstacle faced is that neither the fiduciary guarantee law nor its implementing regulations further regulate the procedure for executing the object of fiduciary guarantee**, so that creditors who will execute fiduciary guarantees use the method they think is right. As a result, the execution of fiduciary guarantees is often considered an act of forfeiture. In addition, the fiduciary guarantee law does not explain further about the authorities who are authorized to be asked for assistance in carrying out the execution of fiduciary guarantees, it gives rise to multiple interpretations.

Perkapolri No. 8 of 2011 does not explain the definition of execution of fiduciary guarantees that require security from the National Police. This has led to speculation that the National Police does not actually have a role in securing the execution of fiduciary guarantees. If analyzed from the National Police Regulation No. 8 of 2011, the execution in question is when taking the object of fiduciary guarantee from a fiduciary recipient who has been negligent and does not want to voluntarily surrender the object, while based on article 29 of the UUJF the execution of the object that is the object of Fiduciary Guarantee can be carried out by:

1. Execution of executory title by the Fiduciary;
2. Sale of Objects that are the object of the Fiduciary Guarantee on the Fiduciary Beneficiary's own power through public auction and take repayment of his receivables from the proceeds of the sale;
3. An underhand sale made under the agreement of the Fiduciary Grantor and Beneficiary if in such a way the highest price in favor of the parties can be obtained.

The obstacle included in **the legal culture** is that people do not understand about fiduciary guarantees, so they often underestimate when they neglect their obligations to pay installments every month. The community considers that the creditor does not have the right of execution, so every time an execution is carried out the community considers it an act of deprivation. In addition, the public also does not understand that objects that are the object of fiduciary guarantee cannot be transferred because they violate the provisions of article 23 paragraph 2 of the UUJF, namely that the Fiduciary is prohibited from transferring, mortgaging, or leasing to other parties Objects that are the object of Fiduciary Guarantee that are not inventory objects, except with the prior written consent of the Fiduciary Beneficiary. Such violations can be charged with article 36 of the UUJF, namely the Fiduciary who transfers, mortgages, or rents Objects that are the object of Fiduciary Guarantee carried out without the prior written consent of the Fiduciary Beneficiary, punishable with a maximum imprisonment of 2 (two) years and a maximum fine of IDR 50,000,000 (fifty million) rupiah. It often happens that when the execution is about to be carried out, the object of the fiduciary guarantee has passed to someone else. So that the path taken by the creditor is to report the transfer action to the National Police on the grounds of violating the provisions of article 23 paragraph 2 of the UUJF.²²

Reorientation of the Police Role in the Execution of Fiduciary Guarantees

In general, the execution of the civil law field is carried out through the judiciary, either because of a judge's decision with permanent legal force or other documents that have executory power that can be executed through the fiat of the chief justice.²³ One of the characteristics of a strong fiduciary guarantee is that it is easy and certain in the execution of its execution, if the debtor defaults.²⁴

In the Fiduciary Guarantee Law, it is said that debtors and creditors in a fiduciary guarantee agreement are obliged to fulfill achievements (Article 4 of Law Number 42 of 1999). In a *contrario* it can be said that if the debtor or creditor does not fulfill the obligation

to perform performance, one of the parties is said to be in default. The focus of attention in the matter of fiduciary guarantees is the default of the fiduciary debtor. The Fiduciary Guarantee Act does not use the word default but rather injury of promise.²⁵

Executory action or better known as execution is basically the act of carrying out or carrying out a court decision. According to Article 195 HIR the definition of execution is to carry out the judge's decision by the court. This shows that creditors' receivables overlap all debtors' assets without exception. The execution of fiduciary guarantees is regulated in the provisions of Articles 29 to Article 34 of Law Number 42 of 1999 concerning Fiduciary Guarantees. In the provisions of Article 30 of Law Number 42 of 1999 concerning Fiduciary Guarantee states: "The Fiduciary must deliver the Object that is the object of the Fiduciary Guarantee in the context of carrying out the execution of the Fiduciary Guarantee. In the event that the Fiduciary does not deliver the Thing that is the object of the Fiduciary Guarantee at the time of execution, the Fiduciary Recipient shall be entitled to take the Object that is the object of the Fiduciary Guarantee and if necessary may seek the assistance of the competent authorities".²⁶

The Police / POLRI as an instrument of the state has the duty and role to maintain public security and order, law enforcement, protection, protection, and service to the community, also plays a role in providing assistance in securing the implementation of court decisions or the execution of fiduciary guarantees. Article 15 paragraph 2 of the UUJF explains that fiduciary guarantee certificates have the same executory power as court decisions that have obtained permanent legal force, so they require security from the National Police.²⁷

To secure the execution of Fiduciary guarantees, the National Police issued Chief of Police Regulation No. 8 of 2011 effective from June 22, 2011 with the aim that the execution of Fiduciary Guarantees is carried out safely, orderly, smoothly, and accountably. The process of securing the execution of the Fiduciary Guarantee is stated in Article 7 of the Chief of Police Regulation No. 8 of 2011 which states that the application for securing the execution must be submitted in writing by the recipient of the Fiduciary Guarantee or his legal representative to the Chief of Police or the Chief of Police where the execution is carried out.

The main considerations for the issuance of Perkap No.8 of 2011 include that the National Police of the Republic of Indonesia is a state instrument that is tasked and functions to maintain public security and order, law enforcement, protection, protection, and service to the community. As a state tool, the National Police of the Republic of Indonesia is authorized to provide security assistance in the implementation of court decisions or the execution of Fiduciary guarantees, other agency activities, and community activities. The execution of Fiduciary Guarantee has the same binding legal force as a court decision that has permanent legal force, so it requires security from the National Police of the Republic of Indonesia.²⁸

The purpose of the establishment of the Regulation of the Chief of the National Police of the Republic of Indonesia Number 8 of 2011 concerning Securing the Execution of Fiduciary Guarantees is the implementation of the execution of Fiduciary guarantees in a

safe, orderly, smooth, and accountable manner as well as the protection of the safety and security of Fiduciary Guarantee Recipients, Fiduciary Guarantee Providers and / or the public from actions that can cause property losses and / or life safety.²⁹ The principles of this regulation include legality, namely the implementation of safeguards for the execution of fiduciary guarantees must be in accordance with the provisions of laws and regulations.³⁰

The Role of the Police in the Implementation of Securing the Execution of Fiduciary Guarantees

An application to secure the execution of fiduciary guarantees to the Police can be made if the execution of fiduciary guarantees to be carried out is considered to endanger the parties to the fiduciary guarantee agreement. Indicators that the execution of it can be harmful are:

1. Judging from the temperament and reaction of the community in the surrounding environment, if the community has a high temperament, it is feared that there will be resistance that can physically injure creditors and the community when creditors will take goods.
2. Judging from the character of the negligent debtor, if the negligent debtor has a hard disposition and does not want to surrender the object of fiduciary guarantee, it is feared that there will be a fight to fight for the object of the fiduciary aaminan because the creditor also cannot restrain his emotions.

Security of fiduciary guarantee objects can be carried out with the requirements stipulated in article 6 of the Regulation of the Chief of the National Police of the Republic of Indonesia Number 8 of 2011 concerning Securing the Execution of Fiduciary Guarantees, namely:

- a. there is a request from the applicant;
- b. have a fiduciary guarantee deed;
- c. fiduciary guarantees registered with the fiduciary registration office;
- d. have a certificate of fiduciary guarantee;
- e. fiduciary guarantees are located in the territory of Indonesia.³¹

In carrying out executions by the police, there are several principles as stipulated in Article 3 of Perkap No. 8 of 2011, namely:

1. Legality, namely the implementation of safeguarding the execution of fiduciary guarantees must be in accordance with the provisions of laws and regulations;
2. Nesesity, i.e. the safeguarding of the execution of fiduciary guarantees is given based on an assessment of the situation and conditions faced;
3. Proportionality, namely securing the execution of fiduciary guarantees is carried out by taking into account the nature of the threat faced and the involvement of force; and

Accountability, namely the implementation of safeguards for the execution of fiduciary guarantees can be accounted for.³²

In the case of execution, the role of the police is not as an executor but only as a security for the implementation of execution safely, orderly, smoothly, and accountably, so that the execution itself must be in accordance with the civil procedure law. Execution is a continuous action of the entire civil procedural legal process.³³

If the provisions of Article 30 of the Fiduciary Guarantee Act are related to the civil procedure law, the execution of the Fiduciary Guarantee must be by order and under the Order of the Chief Justice of the District Court (*ex officio*). The execution order is issued by the Chief Justice of *the District Court (ex officio)* in the form of an order and those ordered to carry out the execution are the Registrar and Bailiff of the District Court (Article 197 paragraph (1) HIR/Article 208 Rbg). The authority of the Chief Justice of the District Court (*ex officio*) to order and lead the course of execution, is not only limited to the issuance of execution warrants, but also the authority to carry out execution, auction execution, emptying and delivery of auctioned goods to buyers. Regarding who is meant by the authorized party in the implementation of taking the object of Fiduciary Guarantee from the hands of the Fiduciary (debtor) refers to the provisions of Article 200 paragraph (11) HIR.³⁴

In this case, the police carried out the execution security not based on a request from the recipient of the fiduciary guarantee but based on a request from the bailiff of the court who was the executor of the execution warrant issued by the Chief Justice of the District Court. The provisions of Article 6 and Article 7 of the Chief of Police Regulation No. 8 of 2011 constitute the sole authority of the Chief Justice of the District Court in issuing a decree of execution.³⁵

CONCLUSION

The results showed that;

1. Obstacles faced in the implementation of the execution of Fiduciary Guarantees in the settlement of bad loans in finance companies such as, a) The debtor flees with the object of his Fiduciary Guarantee or the object of his Fiduciary Guarantee has been transferred first, so that execution cannot be carried out on the object of the Fiduciary Guarantee. b) The Debtor falsifies data and identity of himself and his business, for example when applying for credit attaching a fake KTP, fake KK, SIUP / TDP / NPWP, so that when the execution of the Fiduciary Guarantee object is carried out, it turns out that the Debtor does not live at the address in accordance with the ID card attached at the time of credit application. c) The debtor embezzles the object of the fiduciary guarantee by hiding or mortgaging, leasing and transferring the object of the fiduciary guarantee so that at the time of execution of the object of the fiduciary guarantee.
2. The purpose of the establishment of the Regulation of the Chief of the National Police of the Republic of Indonesia Number 8 of 2011 concerning Securing the Execution of

Fiduciary Guarantees is the implementation of the execution of Fiduciary guarantees in a safe, orderly, smooth, and accountable manner as well as the protection of the safety and security of Fiduciary Guarantee Recipients, Fiduciary Guarantee Providers and / or the public from actions that can cause property losses and / or life safety.

3. The police carry out the execution security not based on a request from the recipient of the fiduciary guarantee but based on a request from the bailiff of the court who is the executor of the execution warrant issued by the Chief Justice of the District Court. The provisions of Article 6 and Article 7 of the Chief of Police Regulation No. 8 of 2011 constitute the sole authority of the Chief Justice of the District Court in issuing a decree of execution.

Footnote

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