



The Meaning of Indigenous Rights in Fidusian Guarantee in the Perspective of Law Number 42 of 1999 Concerning Fidusian Guarantee

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Abstract

The purpose of this article is to discuss the meaning of material rights in fiduciary security in the perspective of Law Number 42 of 1999 concerning Fiduciary Security. The research method used is document review with the Statute Approach approach to fiduciary legislation as primary legal material, as well as various secondary legal materials such as the results of fiduciary scientific studies and literature reference materials about fiduciary. The analysis used is Content Analysis of articles related to fiduciary law. The results showed that the meaning of property rights in nature is always attached to the owner. On the other hand, according to customary law, the meaning of property rights is essentially communal/collective (family/community) as the basis for their rights, both for movable or immovable objects in their possession. Essentially fiduciary property rights are handed over from the debtor's hands to the creditor, with a belief that the property rights will be handed over again if the debtor has paid off his debts, but in the process of surrender, control and his debts often cause legal problems, even though the Fiduciary Guarantee Institute has been formed. The conclusion that the meaning of material rights in fiduciary security lies in the matter of 'Delivery' and 'Mastery' of the items guaranteed.

Keywords: *Material Rights; Fiduciary Security; Law*

Introduction

In order to ensure legal certainty in carrying out economic development (economic development), the State has guaranteed that all act activities, especially in the economic field have been expressly declared by the State based on law in accordance with Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, reads: State of Indonesia is the rule of law. Law is one of the means or means to achieve the goals of a just and prosperous society. Law is very important in the life of human society and the law is not possible apart from human life throughout his life.

Borrowing and lending activities carried out by lenders and loan recipients require protection through a guarantee institution that is able to provide legal certainty and also protection for both lenders and loan recipients. Without legal certainty, chaos will emerge in society. It is clear that the functioning of law to create order, justice, and certainty in society (Ibrahim, 2006). The law determines which actions can be performed and which actions should not be done or are obligatory and which are prohibited.

The existence of a guarantee institution is regulated in Article 1131 Burgerlijk Wetboek (BW), which is known as general collateral, namely "all items of the debt, both movable and immovable, both existing and new will be in the future, becoming dependents or collateral. for all engagement individually ". Furthermore Article 1132 BW states "the material is a joint guarantee for all those who use it: the proceeds from the sale of the objects are divided according to balance or proportionality, that is, as the size of the debt, except between the debtors have a valid reason first." This article implicitly gives the meaning of the existence of the rights of the separatist creditor or the preferred creditor that takes precedence so as to give an exception to the principle of creditorium parity which applies only to concurrent creditors. In this case, the recipients of special guarantees include mortgages, mortgages, fiduciary mortgage rights (Usman, 2011). Having status as a separatist creditor or preferred creditor. This type of material guarantee can be divided into a priority on non-sense objects (Pai, 2014).

As regulated in the Civil Code Article 499 objects are all things that can be given/placed a right on it, mainly in the form of property rights. Property rights are the rights to enjoy the usefulness of an object freely and to do free of that object with full sovereignty. Material rights are rights (legal subjects) to an object (goods) as stipulated in the Law of Things. Whereas what is meant by the Law of Things is a series of regulations governing objects or goods (zaken) and material rights (zakelijk recht). The material rights are absolute rights over something which the right gives direct power over something and can be defended against anyone, so the material rights are absolute (absolute rights).

From the description above, the 'Law of Things' is divided into two categories, namely: Moving Objects and. Inanimate objects. In the legal context of the engagement, the arrangement that distinguishes ownership rights over 'Movable Property' and 'Immovable Property' is in the case of its Submission, Bazitter, and 'Expiry Date'.

The problem is that in trade transactions through the fiduciary scheme lies in the issue of 'Delivery' and 'Mastery' of the guaranteed items. In terms of how the debtor defaults, this is not expressly regulated in UUJF, particularly with respect to submission to Parate-Execution. Then the right of the creditor's authority to withdraw the collateral goods/objects which are in the possession of the Debtor (Fiduciary Giver), especially with the Parate-Execution have caused many cases of physical conflict. Likewise, the issue of Execution with Under-the-Deed Acts results in complex and risky legal consequences, because Creditors can exercise their execution rights unilaterally and can lead to arbitrariness of creditors (Article 1365 of the Civil Code Jo. Article 368 of the Criminal Code). This situation has often happened, creditors in the execution carried out coercion and take goods unilaterally, even though the legal facts in the collateral are partially or wholly owned by the debtor or others. Conversely, it is also known as a legal fact that some of the collateral belonged to creditors who wanted to execute but were not or have not been registered at the fiduciary registration office.

Furthermore, the imposition of other articles is also possible to occur in Article 372 of the Criminal Code), bearing in mind that the surrender of property rights through this execution is not easy to resolve. Therefore, legal guarantees and legal support are needed as a form of balanced legal protection between creditors and debtors. Next will be discussed related: the nature of the meaning and history of material rights, and the philosophical meaning of material rights in fiduciary guarantees under Law No. 42 of 1999 concerning Fiduciary Guarantees. Therefore the purpose of this article is to discuss the

meaning of material rights in fiduciary security in the perspective of Law No. 42 of 1999 concerning Fiduciary Security.

Methods

This type of research is a legal research, which is a study that examines the laws and regulations namely 'Law Number 42 of 1999 concerning Fiduciary Guarantees' (LN No. 168, Supplement to State Gazette No. 3889') in a coherent legal system. In this case, the law as a positive norm that applies at a certain time and is published as a product of a certain political force that has legitimacy. Legal research is a series of actions or processes to find the law caused by the incomplete regulation (uncompletely norm) in the implementation of fiduciary guarantee execution or finding the principle of legal certainty. Including the model of granting the same authority and position and for the recipient to secure the execution. The research method used is document review with the Statute Approach approach to fiduciary legislation as primary legal material, as well as various secondary legal materials such as the results of fiduciary scientific studies and literature reference materials about fiduciary. The analysis used is Content Analysis of articles related to fiduciary law.

Results and Discussion

The Nature of the Meaning and History of Material Rights

The nature of the guarantee rights can be distinguished, namely material guarantees and individual guarantees. The material rights give direct power over the object and aim to provide verhaal rights (the right to request the fulfillment of its receivables from the creditor) on the proceeds of the sale of certain objects for the fulfillment of the receivables. to those who obtain rights, both based on general and special rights, also to the creditor and his counterpart and always follow the object and its rights but also the authority to sell the object and the execution (*droit de suite*; *zaaksgevolg*) while the individual right creates a direct relationship between individuals who aim to give the creditor the verhaal right to the overall object of the debtor to obtain fulfillment of their receivables (Retnowati & Markum, 2015).

The nature of a fiduciary agreement is an *accessoire* (meaning a contract of agreement), meaning that this fiduciary agreement may not stand alone, but follows another agreement which is the principal agreement, namely the debt and credit agreement (Martin, 2018).

Zakelijk Recht material rights are absolute rights to an object, that right gives direct power over an object and can be defended against anyone. The right of guarantee in fiduciary is a material right, whereby the creditor pledges a special guarantee for a particular group or object that takes precedence in taking repayment of the results of the execution or also referred to as the preferential right (Usanti, 2012).

The material rights have priority characteristics that have meaning, meaning that material rights born first will take precedence over those born later. Pattern like this does not exist in the figure of personal rights, so that born first or later will have the same position. To prove that personal rights are not adhered to in priority features, it can be seen among others by the presence of article 1132 BW that from this provision a conclusion can be drawn that ordinary receivables, meaning not special receivables, will be treated the same when they want to receive repayments with the *Pari Pasu* model. , without having to pay attention to when those rights were born, whether one being first or later than the other. As we all know that a debt arises from an obligatory agreement, for example, a credit agreement in a bank environment, which from the womb of the agreement will give birth to personal rights and not material rights.

Situations that can cause the boundary line between material rights and personal rights become blurred, which can be caused by relativizing material rights may also be due to the occurrence of personal rights *verzakkelijking*. Relativizing material rights means that material rights which were originally relatively relative or absolute, in certain situations have turned out to be weak. Conversely, if *verzakkelijking* personal rights, according to the original rights are patterned weak, it turns out in certain situations can strengthen like material rights (Satrio, 1996; Mumek, 2017; Widjaja & Putra, 2019).

Philosophical meaning of material rights in fiduciary security based on Law Number 42 of 1999 concerning fiduciary guarantees

No one will be able to continue the rotation of life, without the aid of objects. The position of objects must be recognized as having a central role in any level of life. Even the so-called necessities of life, much focused on matters of matter. Is that the necessities of life on a primary, secondary, tertiary scale, all involving objects as fulfillment elements. This style has become the nature of human life, and is too naive when this pattern is called hedonism as long as it is still within the limits of propriety. As long as the objects are to cover biological needs in order to continue to exist as creatures, of course, this pattern is still within reasonable limits. Only excessive attitudes deify things, that's a shame of life that would be reviled by society. But if we look carefully, the rotation of social life basically has a lot of dwelling on objects without the need for negative prejudices that lead to meteoric labels. It should be remembered that objects are one of the important materials in the order of social life which of course do need to be mixed with a wise character, so as not to fall into the behavior of *ofriminating* objects over everything. The assumption that things are merely a means of sustaining to achieve the goal of a prosperous life and being born, it is this mind which must be confirmed.

With the existence of objects that are chained with an innumerable number, considering that the objects are very close to each person's personal self, the law must appear to regulate them in a norm arrangement that is loaded with legal certainty. This is none other than the result of the fact, that the object is always used as the center of business in society, and the severity of the demands of entrepreneurs to get certainty overall business activities they do (Isnaeni, 2017). For this reason, finally, the law is swift to normalize the intricacies of objects specifically. Arranged, what are the important roles of object classification, how to obtain property rights of objects, then also how to mobility of objects in the market get certainty about the transfer of property rights, and so on. All of these norms, in order to uphold legal certainty, are worthy of norms that frame objects labeled *dwingend recht* (de Winter, 1964).

Humans who live in groups in a group called society, always equip themselves with objects as a support for the continuity of their existence as creatures. The behavior in pursuing a more prime quality of welfare, every member of the community can be sure to never escape from objects, even their daily activities aim to multiply various objects of wealth which are often used as symbols of their social position. The more various objects owned by one party, the increasing appreciation of the surrounding community by saying, that the person concerned is classified as rich and successful.

In general, objects that are needed by members of the community that support their way of life, are any objects that have economic value and ownership rights can be transferred. Objects with characteristics like this will be used as transaction objects in the social order. Regarding the type of transaction, there can be various types, for example, it can be in the form of buying and selling, leasing, guarantee or exchange transactions. Transactions involving objects, in people's lives wherever and whenever, never recede in detail. The hustle and bustle of the market, many involving objects as objects of legal relations between the parties who are in a business relationship.

Table 1: The Findings of Philosophy of Right of Materiality in Fiduciary Security

| Problem | Finding | Theory | Result |
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| The meaning of material rights in fiduciary security in Indonesia. | <p>1. Property rights have become part of human life, including the use of obtaining economic prosperity, including transactions in the sale and purchase of goods through leasing (collateral system), where the transfer of ownership rights is no longer sufficient with the Trust but through a guarantee of legal certainty for all parties concerned.</p> <p>2. Property rights in relation to fiduciary property rights have not touched on the relationship between the nature of the meaning of the right of execution as the process of surrender of the promised material rights. According to BW, the meaning of property rights in essence is always attached to the owner.</p> <p>3. On the other hand, according to customary law, the meaning of property rights is essentially communal/collective (family/community) as the basis for their rights, both for movable or immovable objects in their possession. In customary law, the matter of surrender of property rights is based on deliberation and consensus in the bond of brotherhood between the parties to the transaction and the principle of expiration is unknown.</p> <p>4. Essentially fiduciary property rights are handed over from the debtor's hands to the creditor, with the belief that the property rights will be handed over again if the debtor has paid off his debt. However, in the process of surrender, mastery and fundamentals often lead to legal problems, even though the Fiduciary Guarantee Institute has been formed.</p> | <p>1. Legal certainty theory: Has been met hierarchically through: ~ Civil Code; ~ Law No. 42/1999 Concerning Fiduciary Guarantees. LN RI 1999 No. 168, TLN No. 3889; ~ Court Decision Number 18 / PUU-XVII / 2019 dated January 6, 2020; ~ PP RI No. 21/2015 Regarding the Procedures for Fiduciary Guarantee Registration and Costs for Making Fiduciary Deed, LN RI / 2015 No. 80, TLN No. 5691; ~ "PP RI No. 86/2000 concerning Procedures for Registration of Fiduciary Guarantees and Costs for Making Fiduciary Deeds" ("LN RI / 2000 No.170"). ~ "Perkap Polri RI Number 08 of 2011 Concerning Security of Fiduciary Execution Security".</p> <p>2. The theory of law formation: The Principle of Legal Certainty, and the Obvious Purpose seems to have been governed by the laws and regulations, except Practicality can be done, and Can be done based on the ability of individual implementers who seem to have inadequate regulatory norms.</p> <p>3. Legal Protection Theory: Fiduciary legislation appears to have adequately protected the interests of debtors and creditors. But in many cases on the field, the debtor is most often harmed. However, the Constitutional Court Decision Number 18 / PUU-XVII / 2019 dated January 6, 2020, reinforced the fairness of legal protection for debtors.</p> <p>4. Theory of Guarantee Law: Norms of guarantees on the part of the transaction (creditors and debtors) fairly and fairly appear to be accommodated by legislation, but it appears in the field in cases, the creditor gets a stronger and profitable</p> | <p>1. Legal certainty theory: Has been fulfilled hierarchically through statutory regulations. The main problem is that there are still many cases of executions outside the provisions of the applicable laws and regulations; The main cause is that formal execution processes and mechanisms are considered far more expensive and long compared to Parote Execution or unilateral executions.</p> <p>2. The theory of law formation: The Principle of Legal Certainty, and the Principles of Clear Purpose appear to have been accommodated by legislation. Unless normalization Practicality and convenience can be done by the implementer needs to be arranged more appropriate.</p> <p>3. Legal Protection Theory: Fiduciary legislation appears to have adequately protected the interests of debtors and creditors. However, with the Constitutional Court Decision Number 18 / PUU-XVII / 2019 which emphasizes the fairness of legal protection for debtors, it must still be followed by the PP and Perkap Polri regarding cheap and fast execution procedures by comparing the value of the object of execution.</p> <p>4. Guarantee Legal Theory: Norms of guarantees on the part of the transaction (creditors and debtors) are fairly and fairly accommodated. The problem is not with the legal norms of guarantees, but rather raising the bargaining position of the debtor more balanced than the Debtor.</p> <p>5. Agreement Theory: Having been accommodated in the legal norms of the engagement, only in the field did the debtor not get the same portion to understand the entire contents of the discussion dictum made.</p> <p>6. Legal Concept of Fiduciary Security: Fiduciary Guarantee Institutions have benefited a lot and have become the final legalization instrument for controlling ownership of collateral by the creditors, but it is necessary to regulate both the time and cost-efficiency of the execution process by considering the collateral value factor to be executed.</p> <p>7. Execution Concept: Law No. 42/1999 Concerning Fiduciary Guarantees. LN RI</p> |

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| | | <p>bargaining position compared to the Debtor.</p> <p>5. Agreement Theory: Having been accommodated in the legal norms of the engagement, only in the field did the debtor not get the same portion to understand the entire contents of the discussion dictum made.</p> <p>6. Legal Concept of Fiduciary Guarantee: The Fiduciary Guarantee Institute has been established for a long time but its use has not been maximized by creditors because of the efficiency of the execution process.</p> <p>7. Execution Concept: Execution norms are very important and have been regulated in Law No. 42/1999 Concerning Fiduciary Guarantees. LN RI 1999 No. 168, TLN No. 3889, Decision of the Constitutional Court Number 18 / PUU-XVII / 2019 dated January 6, 2020, and Indonesian Police Decree No. 08 of 2011 concerning Safeguarding the Execution of Fiduciary Guarantees, but in the field, the execution process is still often carried out outside the mechanism stipulated in the legislation .</p> | <p>1999 No. 168, TLN No. 3889 jo. MK Decision Number 18 / PUU-XVII / 2019 dated January 6, 2020 jo. Republic of Indonesia Police Decree No. 08 of 2011 concerning the Safeguarding of Fiduciary Security Execution, needs to be improved by considering the time and cost efficiency factors compared to the value of collateral goods.</p> |
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Objects that complement all activities of daily life, can be freely enjoyed having a property label. As a result, each member of the community will pursue the objects needed for the purpose of becoming the owner. Because a person who is the owner of an object, as stipulated in Article 570 BW, will be very free in carrying out legal actions against his property, with the limitation of not being able to violate the law or harm the rights of others. The freedom to carry out legal actions on property, including also enjoying for the sake of self-interest, or to alienate it according to the intended purpose. Freedom to take legal action on an object like that, is not owned by someone other than the owner. Real possession of an object, is not yet a guarantee that the person concerned can freely carry out legal actions, if for example the person concerned is only positioned as a borrower to use or only as a tenant (Isnaeni, 2017).

Conclusion

Property rights have become part of human life, including the use of obtaining economic prosperity, including transactions in the sale and purchase of goods through leasing (collateral system),

where the transfer of ownership rights is no longer sufficient with the Trust but through a guarantee of legal certainty for all parties concerned. Property rights in relation to fiduciary property rights have not touched on the relationship between the nature of the meaning of the right of execution as the process of surrender of the promised material rights. According to BW, the meaning of property rights in essence is always attached to the owner. On the other hand, according to customary law, the meaning of property rights is essentially communal/collective (family/community) as the basis for their rights, both for movable or immovable objects in their possession. Essentially fiduciary property rights are handed over from the debtor's hands to the creditor, with the belief that the property rights will be handed over again if the debtor has paid off his debt. However, in the process of surrender, mastery and expiration often leads to legal problems, even though the Fiduciary Guarantee Institute has been formed

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