

Reconstruction of Legal Arrangements of Fiduciary Guarantees Reviewing Effectiveness In Leasing Practices

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Article History: Received: March 19, 2025; Accepted: May 22, 2025

ABSTRACT

This article examines the reconstruction of the regulation of fiduciary security rights in order to improve the effectiveness of implementation and legal protection of collateral objects, especially in leasing practices in Indonesia. This research is motivated by various problems in the field, such as non-compliance of leasing companies in registering fiduciary guarantees, unilateral execution without a fiduciary certificate, and unlawful forced withdrawal of vehicles when the debtor defaults. In fact, registration of fiduciary guarantees is very important because it provides executorial power and gives birth to property rights attached to the principles of *droit de suite*, *droit de preference*, *specialty*, and *publicity*. Through a normative juridical approach by analyzing the applicable regulations and case studies in the field, this research finds that the weak compliance of business actors and the lack of government supervision are the main factors for the low effectiveness of the implementation of fiduciary guarantees in leasing. Therefore, it is necessary to reconstruct legal arrangements that emphasize the obligation to register fiduciary guarantees and strengthen fair execution mechanisms, in order to create balanced legal protection between creditors and debtors. In addition, education for the public and strengthening supervision from relevant authorities are important steps so that the implementation of fiduciary in leasing runs according to the principles of justice and legal certainty.

Keywords: Reconstruction, Fiduciary Guarantee, Leasing, Execution, Legal Certainty

1. INTRODUCTION

Fiduciary guarantees play a crucial role in leasing agreements, especially in ensuring that they are executed and providing legal protection for the parties involved. The existence of this guarantee provides a sense of security for the creditor against the risk of default or the debtor's inability to fulfill payment obligations. However, the application of fiduciary guarantees in leasing practices in the field often encounters various obstacles. (Nuriyah, 2019) One of the problems that often arises is the discrepancy between the implementation of fiduciary guarantees and the normative legal provisions.

The process of fiduciary guarantee registration, which aims to ensure legal certainty for the parties, is often ignored by a number of leasing companies. This non-compliance in fulfilling registration obligations has an impact on the emergence of complex legal issues when defaults or

non-performing loans occur.(Ahyani, 2011) The lack of registration causes the collateral object to lose its executorial power, so some leasing companies choose to use the services of debt collectors to forcibly withdraw the collateral object from the debtor.(Ramadhanneswari et al., 2017)

In addition, dispute resolution in the leasing context is also characterized by disharmony in understanding the role and authority of dispute resolution institutions. The overlapping authority between the Consumer Dispute Resolution Agency (BPSK) and the District Court creates legal uncertainty for consumers and business actors. Consumers tend to choose BPSK because the process is faster and more affordable, while leasing companies are more inclined to go to the District Court to obtain a decision that has permanent legal force. This condition reflects the need to improve regulations to ensure clarity and legal certainty in the settlement of fiduciary guarantee disputes.(Agustin, 2024)

Another issue that has been highlighted is the charging of fiduciary fees to consumers in leasing agreements. In practice, although consumers have been charged a fiduciary fee, not all leasing companies carry out the obligation to register the guarantee with the Office of the Ministry of Law and Human Rights. This has the potential to harm consumers because the legal status of the collateral object becomes unclear and loses its executorial power in the event of default.(Yani, 2020)

Departing from these various problems, this research aims to review the effectiveness of fiduciary guarantee arrangements in leasing practices, as well as analyze the extent to which existing regulations are able to provide legal certainty and protection for the parties to the transaction. This research also focuses on identifying the root causes of problems in implementation in the field and formulating solutions that can strengthen the effectiveness of the legal regulation of fiduciary guarantees. Thus, an active role of the government is needed in improving supervision and ensuring that leasing companies carry out their obligations in accordance with applicable laws and regulations.

Fiduciary security is a form of legal transfer of ownership rights to a certain object based on the principle of trust, where the object remains in the physical control of the fiduciary (debtor). In this mechanism, the debtor still has the freedom to use the pledged object as long as it fulfills its obligations, while the creditor obtains a security right over the object as a form of debt repayment guarantee.(Khairina & Bustamam, 2018) As a material security, fiduciary provides privileges to the creditor in the form of priority rights in terms of debt repayment if the debtor defaults.(Fanny Kusumaningtyas, 2016)

The legal basis for fiduciary security in Indonesia is regulated in Law Number 42 of 1999. This regulation ensures legal protection for the creditor, but still allows the debtor to control and use the object of collateral as long as the debt obligation has not been repaid.(UUJF, 1999)

Fiduciary guarantees have specific characteristics that distinguish them from other types of guarantees. One of the main characteristics is that physical control over the object of collateral remains in the hands of the debtor, while legally ownership is transferred to the creditor as debt collateral.(Paparang, 2014) This condition allows the debtor to continue utilizing the object of collateral for business purposes without disrupting daily business activities.(Rufaida & Sacipto, 2019) In addition, fiduciary is accessoir in nature, meaning that its existence depends on the underlying agreement that gave birth to the debt; if the debt is repaid, the fiduciary guarantee is automatically erased.(Gozali, 2021)

Another advantage of fiduciary lies in the flexibility of the security object, which includes not only tangible movable objects such as vehicles or machinery, but also intangible objects such as intellectual property rights.(Supainto et al., 2025) However, in the context of collateral objects in the form of inventories, the strength of the principle of “droit de suite” or the right to follow the object may be weakened due to the changing nature of the object or its diminishing value, known as “relativering”.(Usman, 2021)

Fiduciary guarantees play a strategic role in leasing agreements because they provide certainty and legal protection for both the lessor (financing provider) and the lessee (financing beneficiary). In practice, leasing objects such as motorized vehicles or production equipment remain in the control of the lessee to be used according to the terms of the contract, while the ownership rights are juridically transferred to the lessor as a form of guarantee for the lessee's payment obligations. This kind of arrangement guarantees the lessor special rights (priority) to the object of collateral if the lessee fails to fulfill its obligations or defaults. On the other hand, fiduciary guarantees also provide flexibility for lessees to utilize leasing objects in business activities without having to immediately bear the burden of full ownership from the start. This concept supports efficiency in operations and financial management of the lessee in a more optimal manner. Nonetheless, the successful application of fiduciary guarantees in leasing schemes is highly dependent on compliance with legal provisions, particularly the fiduciary registration process. Such registration is an important requirement to provide legal executorial power to the lessor in the event of default. If the registration procedure is not implemented, the lessor risks facing legal obstacles in the process of executing the collateral, which ultimately leads to legal uncertainty and potential financial losses.(Winarno, 2013)

Law No. 42/1999 on Fiduciary Guarantee is the legal basis for the implementation of security rights over movable and immovable objects that cannot be used as objects of mortgage rights. (Tanjung, 2017) Fiduciary guarantees provide security for movable objects, both those that have physical form and those that are intangible, as well as immovable objects that are not included in the scope of Law Number 4 of 1996 concerning Mortgage Rights. If the debtor fails to fulfill its obligations or defaults, the creditor as the fiduciary receiver has the right to execute the object of the guarantee. (Dewi, 2024) This execution can be carried out through a public auction or through direct sale (under hand) based on a mutual agreement between the grantor and the fiduciary. The main requirement of the underhand sale is to be able to provide the highest sales results that benefit both parties. The provisions regarding the execution mechanism are expressly regulated in Article 29 paragraphs (1) and (2) of the Fiduciary Guarantee Law. (Lumbanraja et al., 2021)

Regulations through ministerial regulations are issued as an effort to ensure that the process of registering fiduciary guarantees is optimally implemented and to provide legal certainty in financing practices that use fiduciary guarantees. One such regulation is Minister of Finance Regulation No. 130/PMK.010/2012 (PMK 130/2012), which requires finance companies to register fiduciary guarantees. This provision aims to provide legal certainty for creditors and debtors in the context of fiduciary transfer of property rights. (Harniwati, 2021) In addition, Government Regulation No. 21/2015 (GR 21/2015) also regulates the procedure for registering fiduciary guarantees as well as the fees for making fiduciary deeds. This regulation emphasizes the importance of registration as a form of legal protection for all parties involved in financing transactions with fiduciary guarantees. (Sadiqah et al., 2017)

2. RESEARCH METHOD

This research applies a qualitative method with a library research approach. This approach was chosen because the main focus of the study is to analyze theoretically and conceptually the reconstruction of legal regulations on fiduciary guarantees in order to strengthen its effectiveness as a property guarantee. The data collection technique is carried out by collecting and reviewing various relevant written references, including scientific journals, books, laws and regulations, official reports, and articles from highly credible media. (Siyoto & Soduk, 2015)

This research does not involve a field data collection process, such as interviews or surveys, but instead relies entirely on secondary data that has been published academically. The data sources in this research are divided into two categories, namely primary sources and

secondary sources. Primary sources include the provisions of laws and regulations governing fiduciary guarantees, including Law No. 42/1999 and its derivative regulations, as well as various policies from related institutions such as the Financial Services Authority (OJK), the Consumer Dispute Resolution Agency (BPSK), and the Ministry of Finance. Meanwhile, secondary sources consist of academic journals, scientific books that review digitalization and collateral-based financing systems, and articles from trusted media that contain developments in issues related to leasing practices. (Hafid Hudzaefi et al., 2023)

3. RESULTS AND DISCUSSION

The effectiveness of legal regulations on fiduciary guarantees in leasing practices

Law No. 42/1999 on Fiduciary Guarantee has regulated in detail the mechanism of registration and execution of fiduciary security objects, which aims to provide legal certainty in financing transactions, including in leasing practices. In the leasing system, the finance company as the creditor has the right to the pledged leasing object, while the debtor can still use the item as long as the installment obligations are fulfilled. In order to protect the rights of creditors, registration of fiduciary guarantees is required so as to provide executorial power as stipulated in Article 15 paragraph (2) of the Fiduciary Guarantee Law. With this registration, the creditor does not need to file a lawsuit to the court to execute the object of collateral if the debtor defaults. However, the effectiveness of this arrangement still faces challenges in the field, where not all leasing companies comply with the fiduciary registration obligation. Many leasing companies continue to use the fiduciary system but do not register the collateral, so that when a dispute or default occurs, the right of execution becomes legally unclear and often causes problems between creditors and debtors. (Rois & Puspitasari, 2018)

On the other hand, the effectiveness of fiduciary guarantee law in leasing practices is also constrained by execution actions carried out unilaterally by creditors without following the applicable procedures. Based on Article 29 of the Fiduciary Guarantee Law, the execution of the security object can be carried out through public auction or sale under the hand with the agreement of both parties, but in practice, leasing companies often directly withdraw the security object from the debtor without going through the proper legal mechanism. This is contrary to the Constitutional Court Decision Number 18/PUU-XVII/2019 which emphasizes that the execution of fiduciary guarantees cannot be carried out unilaterally by the creditor without an agreement with the debtor or a court decision. However, in practice, there are still many direct executions carried out by debt collectors that often lead to conflict, even leading to acts of violence and violations of consumer

rights.(Nggabut et al., 2024) Weak supervision of the implementation of this rule further exacerbates the situation, because although the rules are clear, their implementation is not always in accordance with applicable law. In addition, debtors' lack of understanding of their rights in leasing transactions also makes them vulnerable to unauthorized execution practices.

Even though the government has issued a credit relaxation policy, there are still many leasing companies that continue to withdraw fiduciary security objects without going through the mechanism stipulated in the law. In addition, there is an imbalance in leasing dispute resolution, where creditors tend to have a stronger position than debtors in the legal process. The Consumer Dispute Resolution Body (BPSK) and the District Court often experience overlapping authority in handling leasing cases, which in turn creates legal uncertainty for the parties. Under these conditions, it is necessary to strengthen law enforcement and compliance with fiduciary rules so that leasing practices can run more fairly and effectively.(Dirkareshza et al., 2021) Therefore, although legal regulations regarding fiduciary guarantees in leasing practices are quite comprehensive, their effectiveness still depends on the compliance of business actors, government supervision, and public understanding of their rights in leasing transactions.

Legal implications for leasing companies that do not register fiduciary guarantees

Leasing companies that do not register fiduciary guarantees face significant legal implications regarding execution rights against the collateral object. According to Law No. 42/1999 on Fiduciary Guarantees, registration of fiduciary guarantees provides executorial power equivalent to a court decision with permanent legal force. Without registration, leasing companies lose the right to execute the collateral object directly if the debtor defaults. In this situation, the creditor must go through litigation in court to execute the collateral, which requires additional time and costs.(Yulianti, 2020)

In addition, not registering the fiduciary guarantee may result in administrative sanctions for the leasing company. The Financial Services Authority (OJK) confirms that finance companies that do not comply with fiduciary guarantee registration obligations may receive warning letters and, in certain cases, suspension of business activities. Minister of Finance Regulation No. 130/PMK.010/2012 also emphasizes the fiduciary guarantee registration obligation for finance companies that conduct consumer financing for motor vehicles with fiduciary guarantee encumbrance.(Sopamena, 2021)

Furthermore, non-compliance in fiduciary guarantee registration can be detrimental to state finances. Fiduciary guarantee registration is a source of Non-Tax State Revenue (PNBP) for the Ministry of Law and Human Rights. When leasing companies do not register fiduciary guarantees,

the potential state revenue from PNBP is reduced, which may affect the optimization of state revenue. Therefore, compliance with the fiduciary guarantee registration obligation is not only important for the protection of creditors' rights but also for state revenues.

Forced vehicle towing when the debtor defaults

The forced withdrawal of a vehicle by a leasing company when the debtor defaults is a complex and sensitive legal issue. Law No. 42/1999 on Fiduciary Guarantee regulates that the execution of fiduciary security objects must be carried out in accordance with applicable legal procedures. In practice, leasing companies often use the services of debt collectors to withdraw vehicles from defaulting debtors. However, the act of forced withdrawal without legal procedures can be considered an illegal act and violate consumer rights. (Perwitasari et al., 2021)

The Constitutional Court Decision Number 18/PUU-XVII/2019 confirms that the execution of fiduciary guarantees cannot be carried out unilaterally by the creditor without an agreement regarding default or a court decision with permanent legal force. This means that if the debtor does not acknowledge the default and is not willing to surrender the object of collateral voluntarily, the leasing company must submit a request for execution to the district court. Forced withdrawal without fulfilling this provision can be considered a vigilante action and has the potential to cause legal consequences for the leasing company.

In addition, leasing companies that conduct forced withdrawals without legal procedures may face criminal and civil charges from debtors. Debtors can file a lawsuit on the basis of unlawful acts and demand compensation for losses suffered as a result of such actions. Therefore, it is important for leasing companies to comply with applicable legal procedures in executing fiduciary guarantees to avoid legal risks and maintain the company's reputation. (Novia Dwi Khariati, 2020)

Legal protection for debtors against the execution of fiduciary collateral objects without a fiduciary certificate by a leasing company

Legal protection for debtors against the execution of fiduciary security objects without a fiduciary certificate by leasing companies is an important issue in financing practice. The fiduciary certificate, which is issued after the registration of the fiduciary guarantee, gives the creditor direct executorial power. Without this certificate, the leasing company has no legal basis to directly execute the collateral object. In such a situation, the act of withdrawing the collateral object without a fiduciary certificate may be considered an unlawful act and violate the debtor's rights. (Regita Cahyani et al., 2021)

The debtor has the right to obtain legal protection against improper execution. If the leasing company withdraws the collateral object without a fiduciary certificate, the debtor can file a civil lawsuit on the basis of unlawful acts. In addition, acts of forced withdrawal without a clear legal basis may be subject to criminal sanctions in accordance with applicable regulations. Therefore, it is important for debtors to understand their rights and legal execution procedures to protect themselves from unlawful execution actions. (Attahariq Trysnanda Putra, 2023)

Leasing companies that execute without a fiduciary certificate may also be subject to administrative sanctions. The prevailing regulations require finance companies to register fiduciary guarantees and obtain certificates before conducting executions. Failure to comply with these provisions may result in administrative sanctions, including written warnings, suspension of business activities, or revocation of business licenses. Thus, compliance with fiduciary guarantee registration procedures not only protects the rights of debtors but also ensures that leasing companies operate in accordance with the applicable legal framework. (Fathi, 2020)

4. CONCLUSIONS

Based on the description above, it can be concluded that normatively Law No. 42/1999 on Fiduciary Guarantee has provided a strong and comprehensive legal basis in regulating the mechanism of registration and execution of fiduciary guarantees in leasing practices. This regulation is intended to provide legal certainty for creditors and protection of rights for debtors in financing transactions. However, the effectiveness of these legal arrangements still faces various challenges in the field. One of the main problems is the non-compliance of some leasing companies in registering fiduciary guarantees, which has an impact on the weak executorial power and creates legal uncertainty when defaults occur. In addition, execution practices that are often carried out unilaterally and outside the applicable legal mechanisms show weak supervision and a lack of understanding of the public, especially debtors, regarding rights and obligations in leasing transactions.

The non-compliance of leasing companies in registering fiduciary guarantees not only has implications for the obstruction of creditors' execution rights, but also creates the potential for wider legal violations. Without registration and a fiduciary certificate, the creditor's right of execution loses its legal force and may expose the leasing company to unlawful acts when forcibly withdrawing the collateral object. Legal provisions that clearly and unequivocally regulate the execution mechanism, including the obligation to obtain the debtor's agreement or a court decision, are often ignored, resulting in legal disputes between creditors and debtors, potentially causing

both material and immaterial losses to the parties. In addition, this non-compliance has an impact on reducing state revenue from the Non-Tax State Revenue (PNBP) sector that should be obtained from the fiduciary registration process, as well as opening up space for leasing practices that harm consumers.

Therefore, to realize leasing practices that are fair, transparent, and in accordance with applicable legal principles, it is necessary to strengthen the aspects of supervision and law enforcement by relevant authorities, especially the Financial Services Authority (OJK) and the Ministry of Law and Human Rights. In addition, leasing companies must improve compliance with the obligation to register fiduciary guarantees and execute according to legal procedures, so as not only to protect their business interests but also to provide adequate legal protection for debtors as consumers. In addition, it is necessary to conduct massive education and socialization to the public regarding the rights and obligations in leasing agreements, so that debtors have a good understanding and are able to protect themselves from unlawful execution practices. Thus, it is hoped that leasing practices in Indonesia can run more effectively, fairly, and be able to create legal certainty for all parties involved.

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