



## DUE TO THE LAW OF PEGADAIAN FIDUCIARY DEBTORS DEFAULT IN INDONESIA

**Mieke Anggraeni Dewi**

*Faculty of Law 17 August 1945 University of Semarang, Indonesia.*

[miekedewi1003@gmail.com](mailto:miekedewi1003@gmail.com)

**Mig Irianto Legowo**

*Faculty of Law 17 August 1945 University of Semarang, Indonesia.*

[migirianto55@gmail.com](mailto:migirianto55@gmail.com)

**Darmawan Tri Budi Utomo**

*Faculty of Law 17 August 1945 University of Semarang, Indonesia.*

[tbudarmawan@gmail.com](mailto:tbudarmawan@gmail.com)

**Abstract:** The existence of a guarantee object is that it still is in the hands of the fiduciary giving debtor in fiduciary guarantees often experience problems, including the fiduciary giving does not carry out its obligations to pay its debts resulting in default. therefore, the purpose of this study is to look at the legal consequences of defaulting on fiduciary debtors at Pegadaian companies and the obstacles faced in a study using a normative juridical approach with descriptive research specifications

The results of the study show that in KREASI credit that has been registered in accordance with the provisions of the Fiduciary Law where if the debtor is in default, persuasive subpoena efforts will be made, the act of withdrawing the goods in the hands of the debtor until carrying out the execution in accordance with the provisions of Article 15 paragraph (1) of the UUF and the Constitutional Court Decision No. 18/PUU-XVII/2019. Whereas those who are not registered according to the provisions of Article 1155 paragraph 1 of the Civil Code Pawn companies can directly sell collateral objects that are in their control. Obstacles faced by PT Pegadaian if the debtor defaults, namely the debtor does not voluntarily hand over the collateral object, the collateral object has been damaged and no longer functions, and the collateral object is intentionally transferred by the debtor to a third party.

**Kata kunci:** *Pegadaian, Fiduciary, Default.*

### INTRODUCTION

Fiduciary guarantees as a form of guarantee institution for its existence are regulated in Law Number 42 of 1999 since September 30, 1999. This fiduciary guarantee by economic actors is a necessity for developing the business world, for guaranteeing legal certainty and legal protection for them there will be a guarantee institution . Whereas

fiduciary in article 1 sub 1 of Law Number 42 of 1999 is the transfer of ownership rights to objects on the basis of trust with the provision that the object whose ownership is transferred remains in the control of the owner of the object.

Objects in fiduciary agreements that are still under the control of the owner of the object or the debtor, this is what distinguishes it from pawn in

article 1152 paragraph (1) of the Civil Code or what is known as the condition of *inbezitstelling*. others that will harm the director. (Darmawan, 2009)

Based on Government Regulation Number 51 of 2011 dated December 13, 2011 concerning the change in the form of a *Pegadaian Company Legal Entity (Perum)* to a Company, the *Pegadaian* institution is one of the creditors that can be reached by economically weak communities with the need for guarantee institutions to obtain credit safely, quickly, easy, and simple.

There are two things that make *Pegadaian Credit* a financial institution. First, financing transactions provided by Non-Bank Credit are similar to loans through bank credit, but are regulated separately on the basis of pawn law and not by regulations regarding ordinary borrowing and borrowing. Second, non-bank credit in Indonesia is legally monopolized by only one business entity, namely non-bank credit lending (Susilo, 2000) as regulated by the Financial Services Authority (POJK) Number 31/POJK.05/2016

regarding the pawnshop business in Article 13 paragraph (1) letter B, one of which reads "*Fiduciary loan distribution*". The existence of the OJK Regulations is a development of the needs of the community that require a form of collateral, in this case, people can obtain credit with collateral for movable objects but can still use it for their daily needs as well as for their business needs, namely with a fiduciary guarantee, so that they are considered more capable and more

suitable. keep up with the times and the needs of society.

With the existence of a legal umbrella in POJK Number 31/POJK05/2016 regarding the pawnshop business in Article 13 paragraph (1) letter B Pawn companies engaged in pawnshop management, both private and government, can receive fiduciary guarantees, the provisions of which are subject to Law no. 42 of 1999 concerning Fiduciary Guarantees, people can obtain credit with collateral for movable objects but can still use it for daily needs as a means to assist business activities and to provide legal certainty to interested parties, but in practice many people are do not know how far the process of implementing fiduciary guarantees.

The existence of a guarantee object that is still in the hands of the fiduciary giving debtor in fiduciary guarantees often experiences problems, including the fiduciary giving does not carry out its obligations to pay its debts to the fiduciary receiving creditor resulting in default and the fiduciary giver or the debtor does not want to surrender the fiduciary object to the fiduciary recipient voluntarily.

## MAIN PROBLEM

Based on the background above, the author then formulates the main issues discussed in this article, namely to see the legal consequences of defaulting on fiduciary debtors in *Pegadaian Companies* and the obstacles faced by PT *Pegadaian*.

## METHOD OF RESEARCH

This research approach uses normative juridical. The normative juridical research method is a library law research conducted by examining secondary data or mere library materials (Soekanto, 2013). The juridical approach uses existing laws and regulations in positive law as literature, while the normative approach will look at the existing norms in current law (Noeng, 1996). The theory used is the guarantee theory and the theory of unlawful acts in positive law against debtors who have transferred their assets in bankruptcy cases.

This study describes and describes the data that is used normatively which is collected systematically with the data source used is secondary data. Data research is carried out by utilizing qualitative data which is descriptive research and tends to use analysis with data analysis. By describing the problem without using numerical, graphic, and table information. By using this qualitative data analysis method, it is hoped that the writer will be able to target additional understanding and study of legislation and legal materials that have a correlation with the title of this writing.

## **RESEARCH RESULT AND DISCUSSION**

### **1. Legal Consequences of Default Debtors on Fiduciary Guarantees at PT. Pegadaian**

Hamzah and Senjun Manulang define fiduciary as : "*A way of transferring property rights from the owner (debtor), based on a principal agreement (debt and credit agreement) to the creditor,*

*but only the rights are handed over in a juridical levering manner and are only owned by the creditor as a trust only (as collateral for the debtor's debt), while the goods are still controlled by the debtor, but no longer as eigenaar or bezitter, but only as detentor or houder and on behalf of creditor eigenaar". (Salim, 2004)*

According to the provisions of Article 15 of the Financial Services Authority Regulation (POJK) reads "Companies that carry out activities based on fiduciary as referred to in Article 13 paragraph (1) letter b are required to carry out risk mitigation which can be done by, a. transferring business risk through credit insurance or credit guarantee mechanisms; b transfer risks through insurance mechanisms; c. registering fiduciary guarantees for goods that are collateral for business activities.

Article 11 of the Fiduciary Law states that collateral objects are registered at the fiduciary registration office of the Ministry of Law and Human Rights. The purpose of such registration on objects has consequences for third parties. With registration, the third party is considered to know the characteristics attached to the object in question and there is a guarantee bond with the characteristics attached there. (Satrio, 2002) Registration is carried out by submitting an application for registration to the Fiduciary Registration Office (KPF), which is carried out by the fiduciary recipient or the creditor himself. That the registration as

stated in Article 14 sub3 UUF is the birth of the fiduciary guarantee.

The Fiduciary Registration Office issues Fiduciary Guarantee Certificates that contain *irah-irah* (Opening) "*For the sake of Justice Based on Belief in the One and Only God*" which has executive powers based on Article 15 paragraph (1) if the fiduciary recipient does not register the fiduciary registration guarantee at the fiduciary registration office, then the fiduciary guarantee does not have executive power and cannot be executed by force through the court if in the future the debtor defaults but must first file a civil lawsuit against the fiduciary giver (debtor).

If the debtor defaults, the fiduciary recipient has the right to sell the object which is the object of the fiduciary guarantee on his own power. This is one of the characteristics of material guarantees, namely the ease of execution, namely if the fiduciary giver defaults. (Wijaya, 2000)

In practice, financial institutions in carrying out their business activities, if the debtor defaults, no subpoena or previous warning is made so that the debtor immediately carries out his achievements, but immediately executes using the services of a debt collector. Based on the description above, it can be concluded that the debtor giving the fiduciary is said to have defaulted if the debtor giving the fiduciary does not fulfill his achievements as promised. The fiduciary giver executes the fiduciary guarantee object if the

fiduciary-giving debtor has defaulted or defaulted. The executorial power of a fiduciary certificate has the same executive power as a judge's decision which has permanent power and creditors can carry out unilaterally forced executions (para te execution), this will certainly harm the debtor giving the fiduciary.

Execution of fiduciary guarantee objects prior to the entry into force of MK Decision Number 18/PUU-XVII/2019, execution of fiduciary guarantees refers to Article 29 paragraph (1) which states, execution of fiduciary guarantees can be carried out by means of; a, execution of executorial title, the fiduciary certificate contains the words "*For the sake of Justice Based on Belief in the One and Only God*" which has the same executive power as a court decision that has permanent legal force: b. the fiduciary recipient or creditor may sell objects that are collateral for the object of guarantee for the power of the fiduciary recipient through a public auction and collect the settlement of the receivable from the sale proceeds; c. and private sales which are carried out based on the agreement of the fiduciary giver and recipient in this way are obtained at the highest price that is profitable to the parties.

In accordance with the provisions of the Financial Services Regulations (POJK) PT. Pegadaian engaged in fiduciary activities must be registered in order to obtain executorial title in order to carry out the execution of

collateral objects when the debtor defaults. This is different from a PT. Pegadaian whose collateral object is subject to the law of pawning in the event of a default, the pawning director can sell pawned goods in accordance with the provisions of Article 1155 paragraph (1) of the Civil Code.

Fiduciary System Installment Credit (KREASI). This creation is a credit to individuals or micro small business legal entities individually, entrepreneurs, or each business entity as a member of the group that meets the requirements and passes the business feasibility test.

So far, what can be used as an object of temporary credit guarantees is limited to fiduciary guarantees that are registered and not registered, two wheels and four or more wheels, both black and yellow plates, for fiduciaries who are not registered with two wheels, which have requirements that have been determined by the Lender. Credit or Creditors, namely as follows: (Pegadaian, 2005)

- a. The fiduciary who is not registered is his own as evidenced by the name on the BPKB and the STNK is his own, the same as the KTP name.
- b. If the unregistered fiduciary belongs to the wife/husband/business administrator, it must include a letter of approval to guarantee the vehicle from the owner.
- c. If the unregistered fiduciary has not been renamed, there must be a statement from the previous owner that the vehicle really belongs to the credit

applicant who has not been renamed.

- d. Types and brands of vehicles are types and brands that are well known and commonly used by the public and their marketing is not difficult.
- e. The age and physical condition of the vehicle still meet the requirements as regulated according to the applicable regulations.
- f. The system and procedure for assessing unregistered fiduciaries please follow the company's provisions regarding procedures for accepting unregistered fiduciaries which are regulated in the provisions that are still in effect in Credit Lending
- g. Local police/polda number plate.
- h after the process of payables and credit has been agreed upon, the Creditor/Creditor makes a notification letter to the Head of Police (regiden unit) that the BPKB on behalf of the customer is being pledged as collateral for credit (during the credit period), as well as when the credit is paid off must notify the Directorate General of Investigation and Ditlantas local police.
- i. The credit agreement is allowed to be supported by up to 3 types of collateral, as long as it meets the specified conditions and has been renamed on behalf of the prospective customer/wife/husband who has signed an agreement to guarantee the vehicle from the owner.

- j. Especially for fiduciaries who are not registered with four or more wheels with yellow plates, must be equipped with a route permit and driver's book from the local Highway Traffic and Transport Service.

In KREASI credit, the credit period is set at a minimum of 12 months to a maximum of 36 months, if the installments go well, then the customer concerned can apply for the next credit extension, with credit repayments made in installments (installments) every month. Lease capital (interest) is paid in each installment. The amount of capital lease rate is 1% of the amount of credit received. If the customer intends to pay off before the credit period ends, the customer must pay the capital lease from the remaining unpaid loan at an effective interest calculation rate.

Determination of a credit period of more than 12 months is only made for investment loans. To facilitate the calculation of the customer's obligations if they want to pay off the loan before the expiration date, KREASI's credit term units for this investment are made in units of 18, 24, 30, and 36 months. In providing investment credit, the creditor/creditor takes into account the economic value or sale value of the collateral until the end of the term.

Fiduciary guarantees in the field of civil law are simply interpreted as granting rights to the Fiduciary giver to continue to control objects that are objects of Fiduciary Guarantees based on

trust. Then followed by a registration system to provide guarantees to Fiduciary recipients and parties who have an interest in these objects/goods in a real and certain way.

In the pawnshop system, if the customer defaults, PT. Pegadaian has the right to withdraw and execute collateral items in an effort to pay off all customer obligations. PT. Pegadaian has its own steps in resolving problem loans, namely :

1. Persuasive Efforts. In dealing with problem loans with the reasons for the problem, for example: Because the business is sluggish or, deliberately not wanting to pay, really unable to pay, even collateral items are damaged or lost, then for customers who don't want to pay in installments or don't want to pay in installments anymore, then processed settlement of credit through the mechanism of selling collateral or executing collateral.
2. Summons. Prior to confiscation of customers who have been in arrears for three months in a row or are in arrears until they are due, the branch manager will issue a subpoena in the form of a prior warning letter to the customer three times.
3. The process of carrying out the Withdrawal/Confiscation of Goods/Execution. Whereas after the Constitutional Court Decision the recipient of the fiduciary right may no longer carry out the execution himself but must submit a request for implementation to the District

Court. The Constitutional Court's decision states that not all executions of fiduciary guarantee objects must be carried out through the courts, but partial executions can also be carried out. The fiduciary agreement clause does not regulate the breach of agreement clause (default) between the creditor and the debtor, and the debtor objects to surrendering the fiduciary guarantee object voluntarily, so all legal mechanisms and procedures in implementing the fiduciary guarantee execution must be carried out and apply the same as a court decision that has permanent legal force. Conversely, if there are no default agreement criteria in the fiduciary agreement clause and the debtor is reluctant to confiscate the collateral object to the creditor, then the execution is carried out through a district court.

4. **Guaranteed Goods Auction Procedures.** In the opportunity to execute a Fiduciary Guarantee, it must begin with a breach of contract from the Fiduciary giver followed by the execution of the object that is the object of the Fiduciary Guarantee and can be carried out by means of executing the executorial title because the Deed of Fiduciary Guarantee certificate contains the word For the sake of Justice Based on Belief in One Almighty God.
4. **Sales of Fiduciary Guarantee objects on the authority of the Fiduciary recipient himself**

through a public auction. Underhand sales are carried out based on an agreement between the Fiduciary giver and recipient, the sale is carried out after 1 (one) month has passed since notification in writing by the Fiduciary giver and or recipient to interested parties and announced in two daily newspapers circulating in the area where concerned.

5. In case of the Execution of the fiduciary guarantee object and then the result of the execution exceeds the guarantee value, the Fiduciary recipient must return the remaining excess to the Fiduciary giver. Conversely, if the results of the execution are insufficient to pay off the debt, then the debtor is still responsible for the unpaid debt, while the owner of the Fiduciary object whose position is only as a guarantor, if the goods/goods of the guarantor, namely the collateral object, have been executed, then the guarantor cannot be obliged to be responsible if the results of the execution are not sufficient to pay off the debt.

## **2. Legal Obstacles Faced by PT Pegadaian**

Gadai (Pawn) is one of the material guarantee institutions regulated in the Civil Code, pawnshops have changed status, namely a state company since January 1, 1961, then based on PP No.7/1969 it became a service company (PERJAN), then based on PP Number 103/2000 it changed again to public company

(PERUM). Until 2011, based on government regulation of the Republic of Indonesia Number 51 of 2011, the form of a pawnshop legal entity was changed to a limited liability company (Persero) not only to increase the identity of the change but to take into account current economic developments and to further enhance the role of credit institutions on the basis of pawn law. which can meet the needs of the community and to increase the efficiency and productivity of company management, it is necessary to double the change in the legal entity form of PT. Pegadaian Liability Company (persero) to convert a legal entity into a limited liability company, the pawnshop has a legal basis to support it, as has been prepared and ratified as follows:

"Regulation of the Government of the Republic of Indonesia Number 51 of 2011 regarding the change in the form of a public company (perum) pawnshop company to a limited liability company (Persero)". The government changed the status of a public company legal entity (Perum) from pawnshops to a state-owned company. This is stated in article 2 paragraph 1 of government regulation no. 51 of 2011 concerning the change in the legal form of a pawnshop company to a state-owned company, it is stated in that article with a new status, the business sector of PT Pegadaian is pawning and fiduciary, both conventional and sharia and other services in the financial sector in accordance with

statutory provisions. This business is specifically aimed at middle-income people, another goal is to optimize the use of company resources by applying the principle of limited liability companies, certification, and trading of precious metals. As is known, Perum Pegadaian was founded by Government Regulation No. 10 of 1990 concerning the transfer of the form of service company (Perjan) Pawnshop to a public company (Perum) Pawnshop. This regulation was replaced by Government Regulation Number 103 of 2000 concerning Pawnshop Companies.

Then, based on the description above, the obstacles that arise for Pegadaian are as follows:

1. The debtor does not want to voluntarily hand over the collateral object that is still in his hands, so that is taken by PT Pegadaian by submitting an application for execution through the local district court;
2. Objects that are objects of fiduciary guarantees are not in the control of the debtor and he is required to guard and care for these objects, if the object is lost, the debtor must prove that the lost item was not intentional on his part, if the debtor cannot prove it, then the debtor's actions are a crime of escaping confiscated objects or embezzlement.
3. The object of the fiduciary guarantee is damaged, so the debtor who is negligent and does not take care of the

object that is the object of the fiduciary guarantee that is damaged is required to repair the object so that it does not experience a decrease in the value of the item when it is sold at auction because it is the obligation of the debtor to maintain and maintain objects that are objects of fiduciary guarantees so that they remain in good condition.

4. The debtor deliberately transfers ownership to a third party, the path taken by PT Pegadaian by reporting to the police according to article 36 of the UUF Law.

If the object that is the object of the fiduciary guarantee is lost or damaged, it remains the debtor's responsibility to replace the new collateral item and is reminded to complete the credit until it is paid off. However, if the debtor is unable to replace the damaged or lost item, the creditor can submit an insurance claim Based on Article 10 of the Fiduciary Guarantee Law.

## CONCLUSION

Based on the discussion that has been described previously, this writing can be concluded as follows:

1. The legal consequences of a debtor defaulting on fiduciary guarantees at PT Pegadaian In KREASI credit, the credit period is set at a minimum of 12 months to a maximum of 36 months, which has been registered in accordance with the provisions of the Fiduciary Law if the debtor experiences

default in the form of late payments will be subject to a fine, if it exceeds the specified time limit, it will receive a warning or warning, but if it has been categorized as jammed, the act of withdrawing the goods in the hands of the debtor will be carried out until carrying out the execution in accordance with the provisions of Article 15 paragraph (1) of the UUF. Whereas those who are not registered in accordance with the provisions of Article 1155 paragraph 1 of the Civil Code Pawn companies can directly sell collateral objects that are in their control

2. Obstacles faced by PT Pegadaian if the debtor defaults, namely the debtor does not voluntarily surrender the collateral object, the collateral object has been damaged and is no longer functioning and the collateral object is intentionally transferred by the debtor to a third party.

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