EISSN: 2654-525X| PISSN: 0216-6534
Volume 21 Nomor 1 February 2025: 60-73
DOI: 10.30996/dih.v0i0.12102

DiH: Jurnal Ilmu Hukum

Legal Perspectives on Debtor's Responsibility in Fiduciary Guarantee Violations Under the *Inbezitstelling* Doctrine

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Article History:
Submitted:
27-10-2024
Received:
02-11-2024
Accepted:
18-11-2024

Keywords:
Guarantee; Fiduciary; Inbezitstelling

Abstract

A fiduciary guarantee is a type of special guarantee based on article 1132 which is included in material guarantees interpreted as absolute rights. In Indonesia, there are cases of default committed by debtors against debtors on fiduciary guarantees. Among the incidents that took place in Indonesia is the case in Decision Number 27/Pdt.G.S/2022/PN SGN. In this case, default occurred because the debtor did not fulfill his obligation to pay installments 3 times and did not hand over the fiduciary guarantee object after defaulting in paying off his debt. The urgency of this research is related to the responsibility of the defaulting debtor and the handover of the fiduciary guarantee object based on the legal principle of guarantees, namely the principle of *inbezitstelling*. To analyze this case, a qualitative method and a normative juridical approach were used by applying the Case Approach, the Legislation Approach, and the Conceptual Approach. This is because this research is based on doctrine, library sources and analyzes real cases that are related to the law. The creditor's rights are not fulfilled by the debtor based on the principal agreement between the two parties, so that the debtor must fulfill the principal agreement in the form of handing over the fiduciary guarantee object.

1. Introduction

Debt is defined as an agreement between one party and another regarding an object that is agreed upon through a specific agreement, which is generally a sum of money.[1] The positions of the parties in the debt agreement are as follows: the first party is the creditor who provides a sum of money as a loan, and the second party is the debtor who receives that money with the agreement to repay the debt to the creditor according to the time and other terms specified in the debt agreement.[2] The debt agreement, as a borrowing transaction, is regulated under Article 1754 of the Civil Code, which states that a debt is a loan for use that is a type of agreement, which states that a loan is defined as a use loan, a type of agreement stipulating that the First Party is obliged to deliver consumable item to the Second Party and that the Second Party must return comparable things to the First Party in the same condition and amount.[3] Based on the definition above, the person who receives the loan becomes the absolute owner of the borrowed item, and if the item is destroyed, the borrower themselves is

[1] Patricia Caroline Tiodor, Murendah Tjahyani, and Asmaniar. 2023. "Pembuktian Wanprestasi Perjanjian Utang Piutang Secara Lisan." Krisna Law : Jurnal Mahasiswa Fakultas Hukum Universitas Krisnadwipayana 5 (1). https://doi.org/10.37893/krisnalaw.v5i1.208.
[2] Shabrina, Lina. 2022. "Analisis Asas Kebebasan Berkontrak Terhadap Perjanjian Pinjaman Bridging Financing." Law, Development and Justice Review 4 (2). https://doi.org/10.14710/ldjr.v4i2.13582.
[3] Putri Purbasari Raharningtyas Marditia, and Michelle Widjaja. 2022. "Model Pertanggungjawaban Kreditur Pinjaman Online Kepada Pemilik Kontak Seluler (Non Debitur) Atas Akses Ilegal Pada Kontak." Majalah Hukum Nasional 52 (2).

responsible. Debt agreements between creditors and debtors can include a collateral agreement. The term "guarantee" originates from Dutch, namely *zekerheid* or cautie. Zekerheid or caution encompasses methods applied by creditors to ensure claims are met, in addition to the general responsibility of debtors towards their assets.[4] A guarantee, according to Hartono Hadisoeprapto, is something that is provided to the creditor to reassure them that the debtor will fulfill commitments that have a monetary value.[5] The guarantee in debt between the debtor and creditor in fulfilling their obligations can be agreed upon by both parties in accordance with binding, mandatory provisions, and implemented nationally with specific sanctions. The term "guarantee" comes from the Dutch language, specifically "*zakerheidesstelling*" or "security of law," and is generally regulated in Indonesia in Book II of the Civil Code, which contains provisions on pledges (pand) outlined in Articles 1150 to 1160 of the Civil Code.[6] In terms of guarantees, the Civil Code divides several types of objects or collateral, such as maritime mortgages, guarantees in the form of land rights or security rights, and during the reform era, there were fiduciary guarantees.

The applicable legal provisions in Indonesia categorize guarantees into two categories: special guarantees and general guarantees. Section 1131 of the Code of Civil, general collateral is a guarantee offered for the interests of all creditors and pertains to all of the debtor's assets. [7]Meanwhile, a special guarantee, in Section 1132 of the Civil Code, is a guarantee in the form of the delivery of a specific item as collateral for the payment of the debtor's obligation/debt to a specific creditor according to the agreement, which applies to that specific creditor, whether in terms of individuals or property.[8] Individual security rights arising from a guarantee agreement between a creditor (bank) and a third party, or from a specific person who is willing to pay or fulfill obligations in the event of a debtor's default, are known as personal guarantees, or "*personlijk*."[9] A personal guarantee agreement is a relative right, meaning it is a right that can only be enforced against specific individuals bound by the agreement. Personal guarantees include: collateral, joint liability, and bank guarantees.[10]

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[4] Saraswati, Luh Putu Prema Shanti. 2021. "Peranan Perusahaan Penjaminan Dalam Mengatasi Permasalahan UMKM Mengakses Kredit Di Sektor Perbankan." Jurnal Hukum Dan Pembangunan 2 (2).

[5] Febri Atikawati Wiseno Putri. 2023. "Sosialisasi Hukum Tentang Perlindungan Hukum Terhadap Pemegang Jaminan Kebendaan Di Balai Desa Karangmojo, Kecamatan Tasikmadu, Kabupaten Karanganyar." J-ABDI: Jurnal Pengabdian Kepada Masyarakat 3 (3). https://doi.org/10.53625/jabdi.v3i3.6308.

[6] Renwarin, Merlin Kristin, Asmaniar, and Grace Sharon. 2023. "Perlindungan Hukum Bagi Pemberi Gadai Jika Terjadi Wanprestasi Dalam Perjanjian Gadai." Krisna Law : Jurnal Mahasiswa Fakultas Hukum Universitas Krisnadwipayana 5 (1). https://doi.org/10.37893/krisnalaw.v5i1.195.

[7] Kitab Undang-Undang Hukum Perdata (KUHPER)

[8] Agustina, Amaliasyifa, and Suwaebatul Aslamiyah. 2022. "Perlindungan Hukum Dan Penyelesaian Jaminan Fidusia Terhadap Debitur Cidera Janji Di Masa Pandemi Covid-19." YUSTISIA MERDEKA : Jurnal Ilmiah Hukum 8 (1). https://doi.org/10.33319/yume.v8i1.123.

[9]Yunianti, Nur Intan, and Ambar Budhisulistyawati. 2020. "Efektivitas Jaminan Perorangan (Personal Guarantee) Dalam Menunjang Penyelesaian Kredit Bermasalah Di Bank Bri Cabang Surakarta Dan Bank Bni Syariah Cabang Surakarta." Jurnal Privat Law 8 (1). https://doi.org/10.20961/privat.v8i1.40383.

[10] Bahri, Bahri, Cicilia Julyani Tondy, and Irhamsah Irhamsah. 2024. "Kepastian Hukum Personal Guarantee Sebagai Penjamin Kredit Bank Yang Juga Menjadi Penjamin Untuk Debitur Lain Di Bank Lain." ARMADA : Jurnal Penelitian Multidisiplin 2 (1). https://doi.org/10.55681/armada.v2i1.1156.

Meanwhile, a security interest is defined as an absolute right over a specific object that serves as collateral for a debt, which can be liquidated at some point for the debtor's debt repayment, in the event that the debtor defaults.[11] With a number of benefits, such as its absolute nature, which requires everyone to respect the right, its droit de préférence and droit de suite, as well as the principles it contains, like the principles of publicity and specialization, it has given the holder of the right or creditor a position and special rights, making creditors more favored in real life than personal guarantees.[12] Collateral is often used in Indonesian society in loan agreements. In practice, collateral is divided into two types: collateral with tangible (material) assets and collateral with intangible (immaterial) assets. Tangible collateral (material) can consist of movable and/or immovable property. Movable collateral includes items such as pledges and fiduciary guarantees, while immovable collateral includes mortgage rights, fiduciary guarantees specifically for apartments, maritime mortgages, and aircraft mortgages. Meanwhile, intangible collateral (immaterial) refers to non-physical assets that are commonly accepted by banks as credit collateral, which consists of the debtor's claims against third parties. Tangible collateral (material), particularly for movable assets, is a preferred form of collateral in Indonesia, as evidenced by the presence of various financing institutions that accept such collateral, such as Pegadaian, Adira Finance, BFI Finance, BCA Finance, PT. Federal Internasional Finance, PT. Reksa Finance, and others. Based on the latest statistics from Otoritas Jasa Keuangan (OJK) regarding financing institutions, as of April 2024, there are 146 financing companies established in Indonesia.[13] This proves that Indonesian society, in terms of the economy or in fulfilling their basic needs, often engages in agreements regarding financing, such as in matters of debt and credit. However, the reality in the implementation of agreements between debtors and creditors in financing matters, such as loans between individuals or between individuals and financing institutions, often encounters problems that violate the agreements (default) that have been mutually agreed upon by both parties. Default can occur due to several reasons, whether due to the debtor's fault, either intentional or negligent, or due to force majeure, which is beyond the debtor's control.

The general public often uses fiduciary agreements as collateral for a sum of money based on mutual agreement between both parties. Fiduciary guarantees are specifically regulated under Law Number 42 of 1999 in relation to Fiduciary Guarantees. It is not uncommon for a fiduciary agreement to experience a breach of contract, as seen in the case of PT. Reksa Finance, particularly at the Semarang branch, involving one of its debtors, identified as EP and P (EP's wife), as the defendant based on the decision of the Sragen District Court, namely Decision Number 27/Pdt.G.S/2022/PN Sgn. [14]In that case, there was a breach of contract regarding the repayment of debt and interest by the debtor to the creditor, as well as

[11] Renee, Rodrico Agustino. 2021. "Hipotek Sebagai Jaminan Hak Kebendaan Setelah Berlakunya Undang-Undang Nomor 4 Tahun 1996 Tentang Hak Tanggungan." LEX ET SOCIETATIS 9 (1). https://doi.org/10.35796/les.v9i1.32193.
[12] Ukus, Y. W. F, Rudy Mamangkey, and V. F Taroreh. 2023. "Eksistensi Lembaga Jaminan Fidusia Dalam Kaitannya Dengan Pemberian Kredit Perbankan." Lex Privatum XI (2).
[13] RI), O. J. (2024, Juni 27). Statistik Lembaga Pembiayaan Periode April 2024. Diambil kembali dari ojk.go.id.:https://www.ojk.go.id/id/kanal/iknb/data-dan-statistik/lembaga-pembiayaan/Pages/Statistik-Lembaga-Pembiayaan-Periode-April-2024.aspx
[14] Putusan Nomor 27/Pdt.G.S/2022/PN Sgn

the debtor's reluctance to hand over the collateral in the form of fiduciary security. Therefore, the debtor who signed a contract involving fiduciary collateral and has committed a breach of contract should be held accountable for their actions in accordance with legal provisions and the terms of the agreement. In this case, it can be examined through the principle related to fiduciary guarantees, namely the principle of *inbezittstelling*, because the debtor did not hand over the pledged item to the creditor. The application of the principle of *inbezittstelling* in this case presents confusion and ambiguity, as the debtor did not provide the fiduciary object as a fiduciary guarantee in the loan agreement with a multipurpose financing facility through installment payments provided by the creditor to the debtor. In addition, in that case, there were several demands from the plaintiff, namely the creditor, which were not granted by the Sragen District Court, such as the seizure in the form of conservatory attachment or security seizure, as well as the demand for the surrender of substitute security. Therefore, in this research, it is necessary to understand the rights and obligations of the debtor towards the creditor in fiduciary guarantee agreements, as well as the accountability of the defaulting debtor in fiduciary guarantees based on the principle of Inbezittstelling.

2. Methods

The writing of this scientific research applies a qualitative approach that uses a normative legal method. Studying an object's natural state is done through qualitative research, in which the researcher serves as the primary tool. Qualitative research is based on data, utilizing existing theories as explanatory material and concluding with a theory.[15] According to Moleong, qualitative research is study conducted to provide a comprehensive understanding of the phenomena studied, including behavior, perceptions, motivations, and actions, through verbal and written descriptions in a particular natural setting using a variety of natural methods.[16] Normative legal research is based on doctrine, examining sources from literature or readings, and analyzing a real case through the workings of law within the general community.[17] To solve the legal challenges at hand, normative legal research entails a process of identifying legal principles, legal doctrines, and legal steps/rules.[18] According to Abdulkadir Muhammad, normative legal research is a case study of normative law as items that promote lawful behavior, such as examining draft laws.[19] The inventory of positive law, principles, doctrines, specific legal rulings, systematics, and the degree of legal synchronization are the main areas of attention for normative legal research.[20]

In addition, this research also implements several approaches, namely the Case Approach, the Statute Approach, and the Conceptual Approach. The case approach is related to issues faced that have been established or decided as a court ruling that has ongoing legal

[15] Fadli, Muhammad Rijal. 2021. "Memahami Desain Metode Penelitian Kualitatif." HUMANIKA 21 (1). https://doi.org/10.21831/hum.v21i1.38075.
[16] Mawardi, *Praktis Penelitian Kualitatif*, (Sleman: Deepublish, 2020).
[17] Dr. Jonaedi Efendi, S.H.I, M.H., Prof. Dr. Johnny Ibrahim, S.H.,S.E., M.M., M.Hum., *Metode Penelitian Hukum*, (Depok: Prenada Media, 2018).
[18] Dr. Mukti Fajar Nur Dewata and Yulianto Achmad, MH., *Dualisme Penelitian Hukum Normatif dan Empiris*, (Yogyakarta: Pustaka Belajar, 2019), 104
[19] Debi Permana, and Agus Nurudin. 2023. "Pelaksanaan Eksekusi Jaminan Fidusia Dalam Kredit Macet Di Lembaga Pembiayaan." Jurnal Akta Notaris 2 (2). https://doi.org/10.56444/aktanotaris.v2i2.1244.
[20] Asmaniar, Asmaniar, and Fiter Jonson Sitorus. 2022. "Pendaftaran Objek Fidusia Sebagai Jaminan Utang." Justice Voice 1 (1). https://doi.org/10.37893/jv.v1i1.32.

authority, to study the application of norms or legal principles as can be reviewed in jurisprudence concerning the cases that are the focus of the research.[21] This research analyzes a case based on Decision 27/Pdt.G.S/2022/PN SGN. Furthermore, the statute approach will examine the law as a closed system that possesses comprehensive, all-inclusive, and systematic characteristics. Comprehensive refers to the legal norms within it that logically discuss one another in thought, all-inclusive means that the various collections of legal norms are deemed sufficient to accommodate existing legal issues, ensuring there will be no legal gaps in resolving those legal matters, and systematic indicates that, in addition to being interconnected among laws, the legal norms are also organized systematically according to their hierarchy.[22] In this research, several legal foundations serve as the basis for resolving the case, namely the Civil Code (KUHPer) and several other provisions such as the legal basis related to fiduciary guarantees, specifically Law Number 42 of 1999 concerning Fiduciary Guarantees, to examine the violations committed and the accountability of the debtor who defaults. Lastly, in legal studies, the conceptual approach is a sort of methodology that applies an analytical viewpoint to problem-solving within legal studies based on doctrines, fundamental legal concepts, and various values and other aspects contained in regulations related to the concepts used.[23]

3. Results and Discussion

3.1. Application of the Principle of *Inbezitstelling* in Breach of Fiduciary Guarantee Agreement

Indonesian society often makes agreements in various matters, such as fulfilling basic needs or conducting business activities. An agreement is one of the outcomes of a consensus reached between two or more parties. Yahya Harahap defines about contract as a legal relationship concerning wealth between two persons or more persons that can grant rights to one party to obtain a performance and obligate the other party to fulfill a specific performance.[24] According to R. Subekti, a contract is defined as a situation in which one individual pledges to another or others who mutually agree to do something.[25] An agreement in a contract is defined as an adjustment between the intentions and statements made by both parties, with responsibility for the consequences if any harmful possibilities arise[26] An agreement between two or more parties will give rise to an obligation, in the Kitab Undang-Undang Hukum Perdata (KUHPer) or Civil Code Article 1233 as a consent that can occur due to applicable laws. In Article 1313 of the Civil Code, an agreement in an obligation is defined as a specific act in which one party binds itself to another party. An agreement will be considered valid under the Civil Code if it meets various requirements such as the

[21] Ramadhina, Eva Andari. 2017. "Penerapan Asas Jaminan Fidusia Dan Perjanjian Pada Pendaftaran Jaminan Fidusia Dalam Pembiayaan Konsumen." Privat Law V (1).
[22] H.P.Panggabean, *Penerapan Teori Hukum Dalam Sistem Peradilan Indonesia*, (Bandung: PT. Alumni Bandung, 2014)
[23] Peter Mahmud Marzuki, *Penelitian Hukum*, (Jakarta: Penerbit Kencana, 2007).
[24] Agung Dewi Utari, Anak, Yusika Riendy, and Edi Sofwan. 2022. "Akibat Hukum Wanprestasi Dalam Perjanjian Sewa Menyewa Menurut Kitab Undang-Undang Hukum Perdata." PLEDOI (Jurnal Hukum Dan Keadilan) 1 (1). https://doi.org/10.56721/pledoi.v1i1.30.
[25] Nanda Amalia, SH., M.Hum., *Hukum Perikatan*, (Nanggroe Aceh Darussalam: Unimal Press, 2013).
[26] Endro Martono, S.H., M.Hum., Sigit Sapto Nugroho, S.H., M.Hum. *Hukum Kontrak dan Perkembangannya*, (Solo: Pustaka Iltizam, 2017).

achievement of a binding consensus, the parties involved being competent to enter into obligations, the existence of a specific matter, and a cause that does not have any prohibitions. Subekti defines an obligation as a relationship between two individuals or parties wherein one party may bring a claim against the other, while the other party has the responsibility to fulfill it.[27] Agreements can be implemented in debt agreements that occur within society, either to meet living needs or as capital for business fulfillment. Under a debt arrangement, the debtor, or party in debt, is required to fulfill all of his responsibilities to the creditor, or party that is lending the money.

In its implementation, the debtor as the party taking out the loan must fulfill the payment obligations and hand over the collateralized goods so that in the event of default, the collateral can be seized, or if they are unable to meet these obligations after being granted tolerance or relief, they can voluntarily surrender the goods in accordance with the fiduciary guarantee agreement with the creditor. This complies with Article 1 Number 2 of Law Number 42 of 1999 about Fiduciary Guarantees, which stipulates that collateral is pledged as one of the means by which debtors repay creditors for a variety of debts. In circumstances of fiduciary guarantees, creditors who have granted the debtor a number of debts have the right to collect receivables from the debtor in line with the terms of the agreement between the parties. According to Article 4, fiduciary guarantees are contracts that create duties for the parties and are connected to the main contract in order to carry out the agreed-upon performance. In order for the creditor's rights to be upheld in the event of a default on the agreed-upon agreement and a breach of the agreed-upon performance, the debtor must turn over the fiduciary guarantee object to the creditor. Concerning the process of transferring fiduciary guarantee objects According to Article 29 on the performance of fiduciary guarantees, in the event of a default, the creditor is entitled to sell the collateral item in order to satisfy the obligation owed by the debtor.

Fiduciary guarantees provide legal defense for creditors in the case of default or non-payment by the debtor. Referring to Article 15 point 3, which explains that if the debtor breaches the agreement, the Fiduciary Payee is entitled to sell the Fiduciary Guarantee's asset in compliance with its guidelines. Additionally, the agreement on fiduciary guarantees includes Executive Power, which is the creditor's right as the lender to provide legal protection to the creditor. This is since The Certificate of Fiduciary Guarantee has a position almost equivalent to a ruling from the court that is enforceable forever (*inkracht van gewijsde*) and executive power (execution title), allowing the creditor to carry out the fiduciary agreement's onerous object if the debtor violates the agreement in the contract that has been agreed upon or defaults. this is in accordance with Point 2 Article 15 Paragraph 1 of Law Number 42 of 1999, which stipulates The Certificate of Fiduciary Guarantee possesses the same executorial authority as a judicial decision that has been granted permanent legal effect.[28] The explicit obligation of the debtor to the creditor regarding fiduciary collateral is to fulfill the terms of the agreement as long as it does not violate the laws in force in Indonesia.[29] This is in

[27] Subekti, *Pokok-Pokok Hukum Perdata*, (Jakarta: PT. Intermasa, 2017).
[28] Undang- Undang Nomor 42 Tahun 1999 Tentang Jaminan Fidusia
[29] Maharani, R., & Badriyah, S. M. 2024. "Perlindungan Hukum Terhadap Kreditur Dalam Perjanjian Kredit Dengan Jaminan Fidusia". *Notarius*, *17*(1), 1-14.

accordance with Article 27 of Law Number 42 of 1999 in relation to Fiduciary Guarantees, where in this case the creditor, namely PT. Reksa Finance, particularly at the Semarang Branch, as the fiduciary recipient, must be prioritized in terms of fulfilling the obligations carried out by the debtor in the form of debt repayment, regardless of whether the debtor is in a state of bankruptcy or liquidation of the fiduciary provider or debtor.

According to the Civil Code and Law No. 42 of 1999 concerning Fiduciary Guarantees, the ownership of the Fiduciary Guarantee Object is legally fully held by the Fiduciary Provider (debtor), and is also controlled (*bezit*) by the Fiduciary Provider (debtor), in accordance with the principle of *constitutum possessorium*, because the Fiduciary Guarantee Object is needed by the debtor to meet their daily needs. The benefit of the Fiduciary Guarantee Object for the debtor is economically beneficial, where this economic utility serves as the basis for the debtor to be able to repay the debt to the Fiduciary Recipient (creditor), and following the fundamental elements of property about the Fiduciary Guarantee Object as stated in the Fiduciary Guarantee Law. Ownership of the Fiduciary Guarantee Object can only be held by the creditor if there is a default on the main debt agreement committed by the debtor. This constitutes perfect ownership right held by the creditor if the debtor defaults under a suspensive condition (*opschortende voorwaarde*). In addition, ownership rights in fiduciary agreements are limited, creating security rights rather than ownership rights. However, these rights can transform into ownership of a collateral object, which, before ownership by the debtor, becomes the property of the creditor in accordance with Article 33 of Law No. 42 of 1999 regarding Fiduciary Guarantees. [30] This may occur if the debtor fails to fulfill their end of the bargain with the creditor.

In each situation, fiduciary promises can be used in connection with the *inbezitstelling* principle. This is in line with Article 9 of Law Number 42 of 1999 concerning Fiduciary Guarantees, which states in paragraph 1 that receivables, among other units or types of objects, may be the subject of fiduciary guarantees, regardless of whether they were already in existence at the time the guarantee was given or acquired later. Consequently, on a piece of collateral secured by a loan and given to the creditor. The article's second paragraph explains that a separate collateral agreement is not required to encumber collateral on goods or receivables acquired subsequently as mentioned in paragraph (1). The fiduciary guarantee of debts and receivables thus becomes a single entity that requires the transfer of the guarantee under the fiduciary guarantee, which is the application of the principle of *inbezitstelling*, since the object of the guarantee under a fiduciary guarantee does not require another agreement. Furthermore, the Fiduciary Provider is required to transfer the Fiduciary Guarantee's object during the execution process, according to Article 30 of Law Number 42 of 1999 respecting Fiduciary Guarantees. To execute the fiduciary collateral in the event of credit default, it is therefore clearly and unequivocally declared that the delivery of the fiduciary collateral object is required and absolute. This is the application of the principle of *inbezitstelling* in fiduciary collateral.

[30] Hedistira, Dija, and ' Pujiyono. 2020. "Kepemilikan Dan Penguasaan Objek Jaminan Fidusia Apabila Terjadi Sengketa Wanprestasi Dalam Perjanjian Kredit." Jurnal Privat Law 8 (1). https://doi.org/10.20961/privat.v8i1.40372.

Regarding the Sragen District Court Ruling, specifically Decision Number 27/Pdt.G.S/2022/PN Sgn, the debtor violated terms of credit, resulting in the agreement in the debt contract with fiduciary as collateral not being properly executed. In that regard, the fulfillment of obligations and rights in the fiduciary guarantee agreement should primarily be carried out by the debtor. In this case, the creditor is known to be a financing institution, while the debtor is an individual who owes money with a fiduciary guarantee. This case discusses fiduciary relationships, often referred to as "the transfer of ownership in trust." This means that in an agreement, the creditor requires more than just a promise from the prospective debtor to fulfill their obligations, as issues typically arise when the debtor fails to repay the loan by the agreed-upon time.[31] According to Law Number 42 of 1999's Article 1 Number 1, fiduciary guarantees are the transfer of ownership rights of a moveable or immovable item based on a feeling of trust, on the condition that the owner of the thing retains custody of the object whose ownership rights are transferred, as stated therein. Trust in this matter involves the transfer of ownership rights over an object as security for the debt of the borrower's repayment to the creditor when the debtor is still in control of the item.[32]

3.2. The Debitor's Responsibility in Contract Violation on Fiduciary Collateral Based on *Inbezitstelling* Principle

The Fiduciary Law's Article 1, Paragraph 2 describes the fiduciary guarantee agreement as a security right over both intangible and tangible movable objects Apart from stationary objects, especially structures that are not covered by mortgage rights. The fiduciary recipient is given preference over other creditors since these assets are controlled by the fiduciary grantor and can be used as collateral to fulfill certain debts. Fiduciary guarantees, then, are supplementary agreements with several features, one of them being their reliance on the primary agreement.[33] The fiduciary guarantee is tied to the principal, making it an accessory and following the basic agreement. Thus, the invalidity of the basic agreement will legally invalidate the accessory agreement that follows it. The legality of the main agreement determines the characteristic of validity.[34] Furthermore, because it is a conditional agreement, it can only be carried out in the event that the terms outlined in the primary agreement are met or not.[35] In this case, it explicitly states that a fiduciary agreement is a contract made based on the law, so if there is negligence or default that fails to fulfill the agreement in the main contract, then the negligent party must be held accountable according to the agreement of both parties, based on the positive law applicable in Indonesia. Responsibility in the legal dictionary

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[31] Sugianto, Fira Amalia, and Rani Apriani. 2021. "Pandangan Aspek Hukum Terhadap Peranan Dan Efektivitas Fidusia Sebagai Lembaga Jaminan." Jurnal Meta-Yuridis 4 (2). https://doi.org/10.26877/m-y.v4i2.8407.

[32] Suryandari, Wieke Dewi. 2023. "Penerapan Jaminan Fidusia Dalam Prespektif Hukum Islam." JPeHI (Jurnal Penelitian Hukum Indonesia) 4 (2). https://doi.org/10.61689/jpehi.v4i2.505.

[33] Asrika Fazlia, Shelly, Dwi Suryahartati, and Lili Naili Hidayah. 2022. "Penjaminan Fidusia Dengan Objek Hak Cipta." Zaaken: Journal of Civil and Business Law 3 (3). https://doi.org/10.22437/zaaken.v3i3.18693.

[34] Paris Alfitra, Diva. 2021. "Kepastian Hukum Penghapusan Objek Jaminan Fidusia Secara Elektronik." Recital Review 3 (1). https://doi.org/10.22437/rr.v3i1.10049.

[35] Nagita Pujiastuti Djafar, Nirwan Junus, and Mohamad Taufiq Zulfikar Sarson. 2023. "Perlindungan Hukum Bagi Kreditur Apabila Akta Jaminan Fidusia Tidak Didaftarkan Oleh Notaris." Jurnal Hukum Dan Sosial Politik 2 (1). https://doi.org/10.59581/jhsp-widyakarya.v2i1.2196.

can be referred to as liability and accountability, the term liability refers to legal accountability, which is the obligation to answer for the mistakes made by a legal subject, while the term accountability is defined as political accountability.[36] The theory of responsibility is understood as the responsibility imposed by legal provisions, thus the theory of responsibility is defined as liability.[37] In this case, absolute liability can be applied due to an infringement of contract in the fiduciary guarantee, whether it is caused by bad debts or by the debtor's failure to deliver the creditor is the beneficiary of the fiduciary guarantee. Absolute liability for unlawful acts without questioning fault (strict liability) according to Abdulkadir Muhammad is based on the act itself, whether intentional or unintentional, that leads to a legal violation.[38] In this case, the debtor has committed a default that violates the main agreement in the accessory agreement regarding fiduciary guarantees, resulting in a legal breach.

Initially, an arrangement existed among the creditors, namely the plaintiff, and the debtor, along with the wife as Defendant I and Defendant II, to make payments over 36 (thirty-six) months, with installments to be paid monthly starting from May 2, 2020, until March 2, 2023. However, at the time of maturity, it turned out that the defendant did not fulfill the promise to pay the monthly installment of Rp. 4,001,000 (four million and one thousand rupiah) to the plaintiff. In this case, the creditor did not directly pursue litigation but instead provided relief in the form of a deferment following OJK Regulation Number: 11/POJK.3/2020 on the countercyclical nature of the National Economic Stimulus in response to the impact of the spread of the Coronavirus Disease 2019. The plaintiff granted a deferment of payment to the defendant for four (4) months from March 2020 to June 2020, and as a result, the term that was originally 48 (forty-eight) months was extended to 52 (fifty-two) months. Furthermore, the Creditor again verbally warned the Debtor regarding the obligation to pay installments, as the defendant has only paid their obligations for 12 (twelve) installments, from April 2020 to March 2021, after which payments ceased. The fact is that the debtor has not acted in good faith to settle the overdue installments with the creditor, despite sending a collection letter three times. The creditor waited for this good faith until the lawsuit was registered, but the debtor still did not pay the installments amounting to Rp.107,325,361 (one hundred seven million three hundred twenty-five thousand three hundred sixty-one rupiah). Due to the failure to make installment payments and the resulting arrears that have caused a default on the loan in compliance with the established terms, the Debtor should surrender the collateral to fulfill the payment obligations and compensate for the arrears to the creditor. In this case, Article 1243 along with Article 1766 paragraph (2) of the Civil Code, as mentioned in points 5 and 6 of this straightforward lawsuit alleging contract breach, provides sufficient grounds for the Creditor to demand that the Debtor return all costs or penalties, losses, and

[36] Hartono, Naoval Mauladani, and Kholis Raisah. 2023. "Pertanggungjawaban Notaris Dalam Pembuatan Akta Berkaitan Dengan Pertanahan." Notarius 16 (1). https://doi.org/10.14710/nts.v16i1.38986.
[37] Kristianty, Erosa, and Luluk Lusiati Cahyarini. 2021. "Pertanggung Jawaban Pejabat Pembuat Akta Tanah Dalam Pendaftaran Hak Tanggungan Elektronik." Notarius 14 (2). https://doi.org/10.14710/nts.v14i2.43755.
[38] Abdulkadir Muhammad, *Hukum Perusahaan Indonesia*, (Bandung: Citra Aditya Bakti, 2010), hlm. 336

also interest to the Creditor in accordance with the agreement.[39] Thus, the debtor is required to hand over to the plaintiff the fiduciary collateral in the form of: "One unit of a motor vehicle with 4 or more wheels, with the BRAND/Type ISUZU-TRUCK/ISUZU ELF NKR71 120PS 6 wheels (uero2) Year 2012, WHITE COMBINATION color, Chassis No. MHCNK71LYCJ041718, Engine No. B041718, Police No. AD 1456 HN, BPKB No. K-06554292, BPKB in the name of MAWARDI, which has been registered as fiduciary collateral at the Ministry of Law and Human Rights office on 08-05-2020 at 11:44:19 with the Fiduciary Guarantee Certificate number: W13.00368748.AH.05.01 YEAR 2020, because the object is legally valid as collateral to fulfill/pay the obligations of the defendant. However, the creditor filed a lawsuit against the debtor in this instance because he failed to turn over the collateral object listed as the collateral object in the agreed-upon fiduciary arrangement. This is in line with HIR's (*Het Herziene Indonesisch Reglement*) Article 118, paragraph (1), which mandates that civil cases be filed in the District Court (PN) in accordance with relative competence.

Fiduciary guarantees are non-possessory, meaning they are a type of security for movable property. This fiduciary guarantee allows the debtor, as the party providing the collateral, to control and benefit from the guarantee object.[40] One of the main requirements for registering fiduciary collateral is that the fiduciary recipient (creditor) generate A deed of fiduciary guarantee made by a notary deed. The encumbrance of property with fiduciary promises must be made with a notary deed in Indonesian, which comprises A deed of fiduciary guarantee, according to Law Number 42 of 1999 about Fiduciary promises, Article 5, paragraph 1. Article 11, paragraph 1 states that property encumbered with fiduciary guarantees must be registered, which can be registered at the Office of Fiduciary Registration, as outlined in Article 12, which is currently under the Ministry of Law and Human Rights.[41] The creditor of a fiduciary guarantee wishes to register the object to make changes to the rights over the collateral if the debtor of the fiduciary guarantee defaults on the creditor. This allows the creditor the freedom to be prioritized, both in and out of bankruptcy and/or liquidation, as explained in Article 37.[42] In this case, the collateral has been registered and there is A deed of fiduciary guarantee, namely the Fiduciary Guarantee Certificate number: W13. 00368748. AH. 05. 01 YEAR 2020, in the form of a motor vehicle ISUZU-TRUCK/ISUZU ELF NKR71 120PS 6 wheels from the year 2012, colored white. Therefore, the debtor in this case should fulfill the responsibility of delivering the fiduciary collateral after defaulting on the loan agreement four times. Thus, the debtor should prioritize the rights of the creditor over certain assets that are pledged to that creditor. That right is referred to as Droit de preference, which is a characteristic of property securityThe ability for creditors to execute on fiduciary collateral

[39] Irawan, R., Handayani, T., & Harrieti, N. 2023. "Analisis Pertimbangan Hakim Terhadap Kedudukan Jaminan Fidusia Dalam Putusan Pn Jakarta Selatan No. 345/Pdt. G/2018: Perspektif Asas Keseimbangan". *COMSERVA: Jurnal Penelitian dan Pengabdian Masyarakat*, *3*(07).
[40] Putri, D S, E H Sukma, F Amalia, P P Septiani, and ... 2022. "Fungsi Notaris Pada Jaminan Fidusia Online Dikaitkan Dengan Prespektif Hukum Di Indonesia." Civilia: Jurnal Kajian ….
[41] Manggala, Ferdiansyah Putra. 2023. "Dinamika Pembebanan Jaminan Fidusia Terkait Dengan Prinsip Spesialitas." Jurnal Ilmu Kenotariatan 4 (1). https://doi.org/10.19184/jik.v4i1.37999.
[42] Yadev, Marconery, Paramita Prananingtyas, and Anggita Doramia Lumbanraja. 2020. "Perlindungan Hukum Bagi Kreditor Dari Penyalahgunaan Barang Jaminan Oleh Debitor Dalam Perjanjian Kredit Usaha." NOTARIUS 13 (2). https://doi.org/10.14710/nts.v13i2.31294.

in the event of a default or inability to uphold the principal provisions of the loan arrangement secured by the fiduciary guarantee is outlined in Article 27 of Law Number 42 of 1999 respecting Fiduciary Guarantees. The right of preference in fiduciary guarantees is closely related to the application of the principle of Inbezittstelling on the pledged items, especially after a default or failure to fulfill the main agreement of a fiduciary guarantee, as seen in this case involving bad credit and the debtor's untimely payment of installments.

Although the execution method of the Fiduciary Guarantee institution allows the fiduciary debtor to control the collateralized assets to carry out commercial activities backed by loans utilizing fiduciary guarantees, when the creditor stops making payments or breach of contract, the creditor can execute the items that have already been pledged through the fiduciary guarantee. According to Subekti, execution refers to the efforts of the winning party in a decision to obtain what is rightfully theirs with the assistance of legal authority, compelling the losing party to comply with the ruling.[43] In this case, the defaulting debtor allows the creditor to directly execute the collateral that has been pledged fiduciarily, one of which is by handing over the collateral object to settle the debt due to bad credit. The principle of *Inbezitstelling* refers to the surrender of a secured object to the creditor, thereby removing the object from the debtor's control.[44] Therefore, the principle of *Inbezitstelling* aligns with the demands in Decision 27/Pdt.G.S/2022/PN SGN, which was granted by the judge. In Decision 27/Pdt.G.S/2022/PN SGN, based on the Statement of Account report (History of the Defendant's payments) dated June 30, 2022, it shows that the debtor has never fulfilled their obligation to pay the installments of their debt since the 4th installment, which was due on April 2, 2021. As a result, the Defendant's credit installments are in arrears for a total of IDR 107,325,361 (one hundred seven million three hundred twenty-five thousand three hundred sixty-one rupiah), thus the agreed-upon surrender of the collateral should be carried out. In this case, the debtor should take responsibility by surrendering the collateral because they have violated the main agreement to pay the installments for the loan with the four-wheeled vehicle of the Isuzu Elf brand, type NKR 71 HD E2-2, with license plate number AD 1994 AY from the year 2012 as collateral, thus transforming the collateral's object the right of the creditor and in accordance with the application of the principle of *inbezitstelling* in collateral law.

4. Conclusions

Based on the Sragen District Court, namely Decision Number 27/Pdt.G.S/2022/PN Sgn, there was a breach of contract regarding the repayment of debt and interest by the debtor to the creditor, as well as the debtor's reluctance to hand over the collateral in the fiduciary security mechanism. The debtor has not acted in good faith to settle the overdue installments with the creditor by sending a collection letter three times. The creditor has awaited this good faith until the lawsuit is registered, but the debtor still has not paid the installments amounting to Rp. 107,325,361 (one hundred seven million three hundred twenty-five thousand three hundred sixty-one rupiah). This is based on Article 1243 along with Article 1766 paragraph (2) of the Civil Code, as mentioned in points 5 and 6 of this Easy Lawsuit for Contract Violation. Therefore, it is reasonable for the Creditor to demand that the Debtor return all costs or

[43] Lolong, R. N. C. 2023. "Persoalan Eksekusi Objek Jaminan Fidusia Terhadap Pihak Ketiga". *LEX PRIVATUM*, *12*(2).
[44] Kasenda, N C. 2019. "Perlindungan Hukum Terhadap Masalah Jaminan Fidusia." LEX PRIVATUM.

penalties, losses, and also interest to the Creditor in accordance with the agreement. In that case, it can be examined based on the principle related to fiduciary guarantees, namely the principle of *inbezittstelling*, because the debtor did not hand over the pledged item to the creditor. The application of the principle of *inbezitstelling* is necessary because, in this case, there is confusion and ambiguity with the debtor who did not hand over the fiduciary object as collateral in the loan agreement for a multipurpose financing facility through installment payments provided by the creditor to the debtor. This is according to Article 33 of Law No. 42 of 1999 in relation to Fiduciary Guarantees, which states that ownership rights in fiduciary are limited rights, resulting in the creation of a security right rather than ownership rights. However, it can change into ownership rights over a collateral object that was previously owned by the debtor and becomes the property of the creditor due to a default committed by the creditor. Therefore, it can be concluded that in this case, the principle of *inbezitstelling* can be implemented because the default committed by the debtor causes the transfer of ownership rights that were previously held by the debtor to become the property of the creditor. This is predicated on the Sragen District Court's ruling, namely Decision Number 27/Pdt.G.S/2022/PN Sgn, as well as the proven fact that the debtor is not able to carry out the primary agreement's requirements that have been agreed upon by both parties. In addition, the debtor should, if unable to fulfill the main agreement of the fiduciary guarantee regarding the fiduciary object with the amount of debt that has been agreed upon, take the initiative to surrender the fiduciary guarantee object due to their inability.

5. Acknowledgments

Grateful to all of the instructors from Faculty of Law, Universitas Pembangunan Nasional Veteran Jakarta who have contributed valuable expertise that has enabled the author to write this article. Additionally, the author would like to thank Mr. Surahmad, the supervisor, for his guidance and involvement up to this point.

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