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JURIDICAL REVIEW OF THE EXECUTION OF FIDUCIARY GUARANTEES IN INDONESIA

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Abstract

The purpose of this study is to analyze: 1) What is the legal basis for fiduciary guarantee? 2) How is the execution of fiduciary guarantee? The research method used is empirical juridical with a statutory approach, concept approach, and case studies. The results showed that: 1) As for what is meant by fiduciary guarantee according to article 1 number 2 of Law number 42 of 1999, namely: "The right of security for movable objects, both tangible and intangible, and immovable objects, especially buildings that cannot be encumbered with the right of dependents, as referred to in Law Number 4 of 1996 concerning Rights of Dependents who remain in the control of the fiduciary, as collateral for the repayment of certain debts, which gives the fiduciary a preferred position over other creditors."2) as per article 29 of Law Number 42 of 1999 concerning Fiduciary Guarantee, it can be done by: a) The execution of *the executory title* is carried out by the Fiduciary Beneficiary; b) The sale of objects that are the object of the Fiduciary Guarantee on the Fiduciary Beneficiary's own power through public auction and taking repayment of his receivables from the proceeds of the sale; c) An underhand sale made pursuant to the agreement of the grantor and the Fiduciary if in such a way the highest price in favor of the parties can be obtained.

Keywords: Review, Juridic, Execution, Fiduciary Assurance, Indonesia.

INTRODUCTION

Background

Indonesia recognizes 4 material guarantee institutions, namely Lien, Lien, Fiduciary, and Mortgage. One of the recognized guarantee institutions is fiduciary guarantee. This Fiduciary Guarantee is different from other material guarantees, a fiduciary institution is the only institution in which the debtor controls movable collateral and money from credit agreements.

Fiduciary guarantees are carried out by means of constitutum possessorium, which is an object that has been handed over ownership to creditors but is still physically controlled by the fiduciary for the benefit of the fiduciary recipient.

So this means that the transfer of property rights on the basis of trust gives the fiduciary a position to remain in control of the collateral, even if only as a borrower for a while or no longer as an owner. Meanwhile, the provisions of Article 1152 of the Civil Code state, that: "If the collateral is still left in the possession of the debtor, the guarantee will be invalid".

When a fiduciary institution is associated with the provisions of Article 1152 of the Civil Code, it seems to be very contradictory, because according to the provisions of the Article requires collateral to be physically handed over to the creditor.[1]

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Fiduciary Guarantee or *Fiduciaire Eigendomsoverdracht* is often referred to as a guarantee of property rights in trust, is a form of security for objects other than liens. A fiduciary is different from a lien, because the legal relationship between the fiduciary grantor and beneficiary is different. A fiduciary is a legal relationship based on trust. The fiduciary or so-called debtor believes that the fiduciary is willing to return the property rights that have been given to him. The fiduciary or creditor also believes that the fiduciary will not misuse the collateral and will maintain the collateral.[2]

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

Fiduciaries are regulated in Law Number 42 of 1999. In the law, the definition of Fiduciary is the transfer of ownership rights of an object on the basis of trust provided that the object whose ownership rights are transferred remains in the possession of the owner of the object (fiduciary).

The process of occurrence of a fiduciary guarantee agreement based on Law No. 42 of 1999 is carried out through 2 (two) stages, namely the encumbrance stage and the fiduciary guarantee registration stage. Based on Article 5 paragraph (1) of the UUF it is stated: The encumbrance of objects with fiduciary guarantees is made by Notarial Deed in Indonesian and is a fiduciary guarantee deed. Notarial Deed is one form of authentic deed as referred to in Article 1868 of the Civil Code. After the encumbrance stage is carried out based on the provisions of UUF No. 42 of 1999, the deed of fiduciary guarantee agreement is required to be registered based on the provisions of Article 11 paragraph (1) of the UUF, which states that the object encumbered with fiduciary guarantee must be registered.[4]

Problem Statement

1. What is the legal basis for fiduciary guarantees?
2. How is the execution of fiduciary guarantees carried out?

Theoretical Framework

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

1. Theory of Legal Protection

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

Legal interests are concerned with human rights and interests, so that the law has the highest authority to determine human interests that need to be regulated and protected. Legal protection must see stages, namely legal protection born from a legal provision and all legal regulations

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provided by the community which is basically an agreement of the community to regulate behavioral relations between community members and between the company and the government which is considered to represent the interests of the community. According to Satjipto Raharjo: Legal protection is to provide protection for human rights (HAM) that are harmed by others and that protection is given to the community in order to enjoy all the rights provided by law.[6]

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

2. Law Enforcement Theory

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

Another opinion regarding law enforcement was explained by Sudikno Mertokusumo that: "The law serves as the protection of human interests. In order for human interests to be protected, laws must be implemented.

The implementation of the law can take place normally, peacefully but it can occur also due to violation of the law. In this case the law that has been violated must be enforced, It is through the enforcement of this law that the law becomes a reality. In enforcing the law there are three elements that must always be considered, namely: legal certainty *(Rechtssichherheit*), expediency (*Zweckmaasigkeit*) and justice (*Gereichtigkeit*)".[9]

Furthermore, Selo Sumardjan as quoted by Sidik Sunaryo stated that law enforcement is closely related to efforts to instill the law in society in order to know, respect, recognize and obey the law, community reactions based on the prevailing value system and the period of time to instill hUkum.[10] Regarding law enforcement, Leden Marpaung explained that: Law enforcement that contains compliance, arises not suddenly but through a process formed from the awareness of every human being to carry out and not carry out according to existing regulations.

The process does not come from top to bottom or vice versa but does not care where it comes from, because the obligation to comply with all forms of laws and regulations belongs to all Indonesians.

In everyday reality, there are citizens who uphold the law, there are citizens who mistakenly or mistakenly live up to their rights and obligations so that those concerned are considered to have violated the law. The assumption that someone has violated the law must first be proven to be true carefully and thoroughly because of the principle of *presumption of innocence*.[11]

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RESEARCH METHODOLOGY

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

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

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

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

RESEARCH RESULTS

Legal Basis of Fiduciary Guarantee

According to the origin of the word, Fiduciary comes from the word "fides" which means "trust". Indeed, the legal relationship between the fiduciary debtor and the fiduciary beneficiary creditor is a legal relationship based on trust. The fiduciary trusts that the fiduciary's creditor is willing to return the title that has passed to him, after the debtor has paid off the debt. Conversely, the creditor also believes that the fiduciary will not misuse the collateral in his power and is willing to maintain the item as a "*Father of a good house*". Such a fiduciary construct is consistent with what Asser says, that:[20]

> *"People speak of a legal relationship on the basis of fides. When a person in the legal sense is entitled to a basic item while the goods are socioeconomically controlled by others*.

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Fiduciary guarantee institutions arise on the basis of the community's need for credit with movable goods guarantees without (physically) releasing the goods used as collateral. Pawns known in the Civil Code or Roman legal constructions, *Penal* Code or *Welboek Burger/ijk in* force, require the delivery of property or movable property used as collateral to creditors. Because the debtor still needs an object that becomes collateral, such as a transportation company that is unlikely to release the vehicle it has, the pawn guarantee institution cannot be used by many parties.[21]

Fiduciary guarantees are guarantees that emphasize material guarantees and not individual guarantees. The next stage in the fiduciary guarantee agreement process is the provision of collateral in the form of a notary deed, and the obligation to register that fiduciary guarantee. At this stage a material agreement (*zake/ijk overeenkomst) is executed*. Material agreements are realized in a process that begins with an agreement and ends with registration. One of the principles of a fiduciary encumbrance agreement is the principle of publicity. With the registration of fiduciary guarantees, the principle of publicity is fulfilled and at the same time is a guarantee of certainty to other creditors regarding objects that have been encumbered with fiduciary guarantees. Fiduciary guarantees are born from the same date as the date on which the fiduciary guarantee is issued in the fiduciary registration book.[22]

Article 1 point 1 of Law number 42 of 1999 concerning Fiduciary Guarantee states that a fiduciary is a transfer of ownership rights of an object on the basis of trust provided that the object whose ownership rights are held remains in the control of the owner of the object. As for what is meant by fiduciary guarantee according to article 1 number 2 of Law number 42 of 1999, namely:

> *"The right of security over movable objects, both tangible and intangible, and immovable objects, especially buildings that cannot be encumbered with the right of dependents, as referred to in Law Number 4 of 1996 concerning Dependent Rights that remain in the control of the fiduciary, as collateral for the repayment of certain debts, which gives the fiduciary a preferred position over other creditors."*

Therefore, it can be concluded that a fiduciary is a trust transfer of property rights to an object from the debtor to the creditor, because only the transfer of property rights in trust, then only the ownership is handed over while the object is still controlled by the debtor on the basis of trust from the creditor.

Some of the properties of Fiduciary Guarantee, which are as follows:

1. A fiduciary guarantee agreement is an accessoir *agreement, as explained in Article 4 of Law No. 42 of 1999 concerning Fiduciary Guarantee, which reads "Fiduciary Guarantee is a follow-up agreement to a principal agreement that creates an obligation for the parties to fulfill an achievement."*
2. Always follow the object (*droit de suite*).
3. Fulfill the principles of speciality and publicity so as to bind third parties and provide legal certainty to interested parties.

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4. If the debtor defaults, the execution can be carried out through the parate *executie institution*.
5. Fiduciary guarantee contains a preemptive right also called *a preference* right, meaning that the fiduciary recipient has a precedence over other creditors in repaying their receivables, as stipulated in Article 27 of Law No. 42 of 1999 concerning Fiduciary Guarantee.

Fudasia Guarantee based on article 4 of Law nomoe 42 of 1999 concerning Fudasia Guarantee is a follow-up agreement of a principal agreement that creates an obligation for the parties to fulfill an achievement.

According to the Fiduciary Guarantee law, the Fiduciary Guarantee agreement is carried out through two stages, namely the encumbrance stage and the fiduciary guarantee registration stage. And those that can be objects of fiduciary guarantees are movable or immovable objects and other objects that cannot be encumbered by collateral.

Based on article 5 paragraph 1 of the Fudasia Guarantee Law, it is stated that the destruction of objects in the fudasia guarantee is made by notarial deed in Indonesian and is a fudasia guarantee deed. Article 1868 of the Civil Code states that an authentic deed is a deed made in the form prescribed by law, made by and before the public officer in charge of the deed for which it was made. Therefore, a notary deed is one form of authentic deed. If the encumbrance stage has been carried out, the fiduciary guarantee deed must be registered.[23]

Furthermore, the registration of fiduciary guarantees is regulated in Article 11 of Law Number 42 of 1999 concerning Fiduciary Guarantees which states that:

1. Objects encumbered with fiduciary guarantees must be registered.
2. In the event that the object encumbered with fiduciary guarantees is outside the territory of the Republic of Indonesia, the obligations as referred to in paragraph (1) shall still apply.

The purpose of fiduciary registration is to create a fiduciary guarantee for the fiduciary beneficiary, provide certainty to other creditors regarding the objects that have been encumbered with fiduciary guarantees and to give precedence to creditors and to satisfy the principle of publicity because the fiduciary registration office is open to the public.

In the regulation of Law no.42 of 1999 concerning Fiduciary Guarantee, Indonesian state official regulation N.86 of 2000 concerning Procedures for Registration of Fiduciary Guarantees and the budget for the issuance of Fiduciary Guarantee Deed; Article 13 states: "The Fiduciary *Registration Office (article 12 paragraph 1) is located at the Directorate General of General Legal Administration of the Ministry of Justice and Human Rights. The Presidential Decree Rl No.139 of 2000 concerning the procurement of Fiduciary Registration Offices in all Provincial Capitals in the territory of Indonesia*; Article 2 "*The Fiduciary Registration Office in the Provincial Capital as in article 1 shall be located in the Regional Office of the Ministry of Justice and Human Rights*".[24]

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Pursuant to Articles 12 and 13 of the Law on Fiduciary Assurance, registration of fiduciary guarantees is carried out at the Fiduciary Registration Office. If there is no fiduciary office at level II (regency/city), it is registered at the regional Fiduciary Registration Office of the Ministry of Law and Human Rights of the Republic of Indonesia at the provincial level. Those entitled to apply for registration of fiduciary guarantees to the Fiduciary Registration office, fiduciary beneficiary, power of attorney, or representative through a notary, by attaching a statement of registration of fiduciary guarantees, which contains: (Article 13 of Law Number 42 of 1999):

a. Identity of the giving party and fiduciary beneficiary.
b. Date, number of the deed of fiduciary guarantee, name, place of residence of the notary who holds the deed of fiduciary guarantee.
c. Fiduciary guaranteed principal agreement data.
d. Description of the objects that are the object of Fiduciary Assurance.
e. Guarantee value.
f. The value of the object that is the object of the Fiduciary Guarantee

Then, what is meant by the removal of fiduciary guarantees is the invalidity of fiduciary guarantees. There are three reasons for the elimination of fiduciary guarantees, as stipulated in Article 25 of Law Number 42 of 1999 concerning Fiduciary Guarantees, namely:

a. Write-off of fiduciary collateralized debts
b. Waiver of fiduciary guarantees by the fiduciary beneficiary.
c. Destruction of the object that is the object of Fiduciary Assurance.[25]

The legal basis for fiduciary guarantees include:

1. Law Number 42 of 1999 concerning Fiduciary Guarantee;
2. Government Regulation Number 86 of 2000 concerning Procedures for Registration of Fiduciary Guarantees and Costs for Making Fiduciary Guarantee Deed;
3. Government Regulation Number 87 of 2000 concerning Amendments to Government Regulation Number 26 of 1999 concerning Tariffs on Types of Non-Tax State Revenues Applicable to the Ministry of Law;
4. Presidential Decree of the Republic of Indonesia Number 139 of 2000 concerning the Establishment of Fiduciary Registration Offices in Each Provincial Capital in the Territory of the Republic of Indonesia;
5. Decree of the Minister of Law and Human Rights of the Republic of Indonesia Number M01. UM.01.06 of 2000 concerning Form Form and Procedure for Registration of Fiduciary Guarantee;

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6. Decree of the Minister of Law and Human Rights of the Republic of Indonesia Number M.08 PR.07.01 of 2000 concerning the Opening of a Fiduciary Guarantee Registration Office;
7. Decree of the Minister of Law and Human Rights of the Republic of Indonesia Number M 03.PR.07.10 of 2001 concerning the Opening of Fiduciary Registration Offices in All Regional Offices of the Ministry of Law and Human Rights of the Republic of Indonesia;
8. Decree of the Minister of Law and Human Rights of the Republic of Indonesia Number M 02.PR.07.10 of 2002 concerning Amendments to the Decree of the Minister of Law and Human Rights of the Republic of Indonesia Number M-03. PR.07.10 of 2001 concerning the Opening of Fiduciary Registration Offices in All Regional Offices of the Ministry of Law and Human Rights of the Republic of Indonesia;
9. Circular Letter of the Director General of General Legal Administration Number C.UM.01.10-11 of 2001 concerning Calculation of Determination of Adjustment Period and Registration of Fiduciary Guarantee Agreement.
10. Circular Letter of the Director General of General Legal Administration Number C.UM.02.03-31 dated July 8, 2002 concerning Standardization of Fiduciary Registration and Registration Reports.
11. Circular Letter of the Director General of General Legal Administration Number C.HT.01.10-22 of 2005 concerning Standardization of Fiduciary Guarantee Registration Procedures.[26]

Execution of Fiduciary Guarantees

If the debtor or Fiduciary defaults, the execution of the Object that is the object of the Fiduciary Guarantee as per article 29 of Law Number 42 of 1999 concerning Fiduciary Guarantee can be carried out by:

a. The execution of *the executory title* is carried out by the Fiduciary;
b. Sale of objects that are the object of the Fiduciary Guarantee on the Fiduciary Beneficiary's own power through public auction and taking repayment of his receivables from the proceeds of the sale;
c. An underhand sale made pursuant to the agreement of the grantor and the Fiduciary if in such a way the highest price in favor of the parties can be obtained.

The provisions of Article 29 Paragraph (1) sub a of the Fiduciary Law, the execution of the object of fiduciary guarantee can be carried out based on the *Grosse* certificate of Fiduciary Guarantee or by the executory title of the certificate of fiduciary guarantee granted by Article 15 Paragraph (2) of the Fiduciary Act. The provisions in Article 15 Paragraph (2) of the Fiduciary Law, a fiduciary guarantee certificate has the same executory power as a court decision that has obtained permanent legal force, but a fiduciary guarantee certificate is not a substitute or substitute for a clear court decision, although it is not a court decision. Because a fiduciary guarantee certificate has the same executory power as a court decision that has

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obtained permanent legal force, the execution of the fiduciary guarantee object based on the grosse of the fiduciary guarantee certificate or with the executory title of the fiduciary guarantee certificate follows the execution of a court decision. The provisions in Article 29 Paragraph (1) sub b of the Fiduciary Law, it is given the right to make sales of objects that are the object of fiduciary guarantee, provided that the debtor (fiduciary) is injured and even then must be done through or through a public auction (Auction Office) without requiring the consent of the debtor (fiduciary). The proceeds of such sale after deducting state *preferred rights (*including auction costs), creditors (fiduciary beneficiaries) can take repayment on receivables. The execution of the object of fiduciary guarantee of this type does not require execution fiat from the court. Execution of the object of fiduciary guarantee may be made by underhand sale, provided there is an agreement between the fiduciary and the fiduciary beneficiary. Underhand sales may be made even if sales through public auction have been made, but are less profitable for the parties. The provisions in Article 29 Paragraph (1) sub c of the Fiduciary Law are efforts by lawmakers to properly fulfill the interests of the parties to the fiduciary guarantee agreement. Not all items, such as a bill in name, can and are commonly sold through an auction.[27] With the provision on the determination of execution procedures in Article 29 Paragraph (1) of Law Number 42 of 1999, it provides an understanding that the method of execution of objects used as fiduciary objects is as mentioned above, and no other way is possible. The execution of the object of fiduciary guarantee, based on Article 32 of Law Number 42 of 1999 is closed, meaning that it is not possible to enter into agreement by other means, other than those stipulated in Articles 29 and 31 of Law Number 42 of 1999 concerning Fiduciaries, with the threat of null and void. There are 2 promises that are prohibited in the execution of fiduciary guarantee objects, namely:

a. Promise to execute objects that are objects of fiduciary guarantee in a manner contrary to Articles 29 and 31 of Law Number 42 of 1999 (Article 32 of Law Number 42 of 1999), and

b. A promise that authorizes the fiduciary recipient (creditor) to own the object that is the object of fiduciary guarantee, if the debtor defaults (Article 33 of Law Number 42 of 1999).

The Constitutional Court through Decision Number 18/PUU-XVII/2019 stated that the order in the context of fiduciary aminan execution, especially when creditors want to parate the execution of an object of fiduciary guarantee, regardless of the executory power possessed by a fiduciary guarantee certificate. The Constitutional Court of the Republic of Indonesia issued Decision Number 18/PUU-XVII/2019 related to a judicial review of Article 15 Paragraph (2) and Paragraph (3) of Law Number 42 of 1999 concerning Fiduciary Guarantee The Constitutional Court interprets the executory power of the Fiduciary Guarantee Certificate to depend on a situation, namely: (a) If there has been an agreement on default and the debtor does not object to voluntarily surrendering the object of the fiduciary guarantee, then the Fiduciary Guarantee Certificate has the same executory power as a court decision that has obtained permanent legal force. (b) In the event of a defaulting debtor, the fiduciary beneficiary (creditor) has the right to sell the property which is the object of fiduciary security in his own power, provided that on the basis of an agreement between the creditor and the debtor, or on

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the basis of legal remedies that determine the occurrence of a default.[28] Darma (2020) stated that there are several causal factors that can affect the execution of parate execution, from internal factors (debtors) and external factors (creditors) that can cause the taking of fiduciary guarantee objects by parate execution by creditors in the process of implementing the execution of debtor fiduciary guarantees.

a. Internal Factors

1. Debtors who are Laymen of the Law. Unilateral execution occurs due to the debtor's incomprehension of the execution procedure against the object of fiduciary guarantee. The importance of the debtor's understanding of the execution of the creditor in accordance with the procedure starting from: giving a warning letter, The officer who executes the fiduciary guarantee object is an employee of the finance company who has a letter of duty to carry out the execution and has a fiduciary guarantee certificate, and the debtor must understand The process of selling goods resulting from the execution of the fiduciary guarantee object must be carried out in accordance with the provisions of laws and regulations regarding fiduciary guarantees.
2. Unilateral determination of the debtor's default. The debtor is considered to have defaulted and there is no good faith from the debtor to pay the credit in accordance with the agreed agreement and within the agreed period or maturity. Sometimes the creditor often overrides the debtor's reasons for late payment of credit, the maturity is not in accordance with the tenor but the creditor carries out direct execution, by forcibly seizing the object of the debtor's fiduciary guarantee.
3. Not Regulated Deed of Fiduciary Guarantee Agreement in Default of Debtor Article 4 of UUJF Number 42 of 1999 states that a fiduciary agreement is a follow-up agreement or assessor. A fiduciary agreement will not be born if there is no principal agreement, the principal agreement referred to is a debt receivable agreement between the Debtor and the Creditor. The problem lies in the debtor's default, because usually the agreement between the two parties regarding default is only contained in the principal agreement. In fact, the matter of default must also be included in the fiduciary agreement itself with the intention of providing legal protection space for the debtor. The word default must get an agreement between the debtor and the leasing company (creditor) as to what the element of default in question is.
4. In submitting the object of fiduciary guarantee, the debtor does not declare voluntarily. External factors. In the process of executing fiduciary guarantee objects, leasing companies that use debt collector services should pay close attention to good and correct execution procedures and procedures. One of them is that the debtor states voluntarily surrendering the object of fiduciary guarantee that has obtained an agreement between the two parties and is contained in the fiduciary guarantee deed agreement. If the debtor does not declare voluntarily surrendering the object of his guarantee, then the leasing company should apply for execution through the court.

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b. External factors

1. Fiduciary Guarantee Certificates Are Not Used In Good And Proper Legal Procedures. Fiduciary guarantee certificates already exist, but they are not used according to good and correct legal procedures.
2. Vigilante Acts and Companies Declare Unilateral.
3. The fiduciary guarantee deed is not registered by the company.[29]

CONCLUSION

The results showed that;

1. As for what is meant by fiduciary guarantee according to article 1 number 2 of Law number 42 of 1999, namely: *"The right of security for movable objects, both tangible and intangible, and immovable objects, especially buildings that cannot be encumbered with the right of dependents, as referred to in Law Number 4 of 1996 concerning Rights of Dependents who remain in the control of the fiduciary, as collateral for the repayment of certain debts, which gives the fiduciary a preferred position over other creditors."*
2. as article 29 of Law Number 42 of 1999 concerning Fiduciary Guarantees can be done by: a) The execution of the *executory title* is carried out by the Fiduciary Beneficiary; b) The sale of the object of the Fiduciary Guarantee on the Fiduciary Beneficiary's own power through public auction and taking repayment of his receivables from the proceeds of the sale; c) An underhand sale made pursuant to the agreement of the grantor and the Fiduciary if in such a way the highest price in favor of the parties can be obtained.

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