PROTECTION OF PARTIES AGAINST THE DESTRUCTION OF FIDUCIARY ASSURANCE OBJECTS IN FINANCING AGREEMENTS AT FINANCING INSTITUTIONS (BCA FINANCE STUDY)

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Abstract: The purpose of this study is as follows: (a). Know and analyze legal protection for parties to financing agreements on the issue of loss of fiduciary assets in financial institutions at BCA's finances. (b). To know and analyze the accountability of the parties to fiduciary assets that have been destroyed in credit agreements at financial institutions at BCA. This thesis uses empirical juridical research method that is legal research that serves to see the law in the real sense and examines how the law works in society. It can be argued that legal research is derived from the facts that exist in society, legal entities or government agencies. The result of this research is that the legal protection for parties related to the loss of fiducia fiduciary goods in financing agreement in financial institution of BCA in the form of preventive protection that is with the guarantee of fiduciary object, hence it is a form of protection to debtor and creditor given by company insurance. While the responsibility of the debtor against the fiduciary fiduciary destruction on the financing institution BCA Finance is debtor remains responsible for repay the loan even if the fiduciary assurance object is insured or not insured. The results of this study in accordance with the theory of responsibility, especially the theory of fautes personales. According to this theory responsibility is addressed to humans personally.

Keywords: protection, object, guarantee, fiduciary, financing institution

I. INTRODUCTION

Financing Agreement between Fiduciary Giver and Financing Institution sometimes happened undesirable thing which could happen object Guarantee given by Fiduciary Giver to Financing Institution which under Fiduciary Guarantee was destroyed caused by theft, fire and others. According to Article 25 of Law No. 42 of 1999 on Fiduciary Guarantee provides that:1

1. Fiduciary security is waived due to the following matters:
   a. Remove the debt secured by fiduciary
   b. Waiver of fiduciary security by fiduciary recipients, or

c. The disappearance of objects that become the object of fiduciary guarantee.
2. The loss of objects which become the object of fiduciary guarantee shall not abolish the insurance claim as referred to in Article 10 letter b.

If you see Article 25 paragraph (1c) of the law number 42 of 1999 on Fiduciary Guaranty is deleted due to the destruction of objects that become the object of Fiduciary Guarantee. This provision is in line with Article 1444 of the Indonesian Civil Code which states that “if certain goods which become material of the treaty are destroyed, cannot be traded or lost, in such a way as to be completely unknown, the goods still exist, then remove the attachment, provided the goods are destroyed or lost in beyond the guilt of the debtor, and before he fails to deliver it.”

Article 10 of Law Number 42 of 1999 concerning fiduciary security regulates the exemption against imposition of collateral on items or receivables obtained under separate warranty agreements in letter (b) i.e. Fiduciary Guarantee covering insurance claims, in the case of objects under which the fiduciary assurance object is insured.

If the review of the law number 42 of 1999 on Fiduciary Guarantee, it is not clear the regulation about the loss of fiduciary guarantee and furthermore there is unclear arrangement of legal protection for the parties and the debtor's responsibility as the fiduciary guarantor due to the loss of fiduciary security object.

Thus, it is important to conduct research on the legal protection for the parties and the responsibility of the debtor (fiduciary guarantor) against the destruction of fiduciary security objects in credit agreements at the finance institution, especially in BCA finance.

Based on the above description raises various problems, among others: (1). How is the legal protection for the parties related to the loss of fiduciary security objects in the financing agreement at the financing institution of BCA finance. (2). How is the debtor's responsibility related to the loss of fiduciary guarantee object in the financing agreement at the financing institution of BCA finance.

The purpose of this paper is to know and analyze the legal protection for the parties in the financing agreement on the issue of the destruction of fiduciary assets in the financing institution in BCA finance. To know and analyze the responsibilities of the parties to fiduciary assets those have been destroyed in a credit agreement in a finance institution in BCA finance.

This thesis research uses empirical legal research method that is legal research that serves to see the law in the real sense and examines how the law works in the community. It can be said that legal research is derived from the facts that exist within a society, legal entity or government agency.

II. RESULT AND DISCUSSION
2.1 Legal Protection for the Related Parties Destruction of Fiduciary Assurance Objects In Financing Agreement at BCA Finance Financing Institution

Legal protection is a matter of protecting legal subjects through applicable legislation and enforced by a sanction. Legal protection can be divided into 2 (two), namely:

1. Protection of preventive law
   Protection afforded by the government with a view to preventing the occurrence of violations. It is contained in legislation with a view to preventing an offense as well as providing signs or limitations in performing an obligation.
2. Protection of repressive law.

Repessive legal sanctions constitute final protection in the form of sanction of fines, imprisonment and additional punishment given in the event of a dispute or an offense has been committed.\(^2\)

Law No. 42 of 1999 on Fiduciary Guarantee does not detail the cause of the loss of warranty. Associated with the destruction of collateral goods is only mentioned that the destruction of objects that become the object of collateral is one part or the reason of fidusia fidal loss. So it does not appear in detail which is intended with the destruction of the collateral object that became the object of fiduciary guarantee. However, based on the interpretation based on the general sense of the word “destroyed”, it is defined as the disappearance or loss of goods that become the object of collateral.

According to Ni Luh Putu Suliastini Anggraini as the operation in BCA finance said destroyed can be categorized objects that are used as collateral is lost, fire, and natural disasters such as floods, landslides, and others.\(^3\)

The issue of legal protection for the parties in fiduciary guarantee is the loss of objects that are used as collateral in the financing agreement in the financing institution of BCA finance.

In the implementation of the financing agreement, especially fiduciary guarantee in BCA finance does not cover the possibility of risk on the object of guarantee in the fiduciary agreement by the debtor and creditor (BCA finance).

As in the case of amaq masitah who made a financing agreement with BCA finance collateral object in the form of four-wheeled vehicles Suzuki type Carry Pu 1.5 fd, with guarantee value of Rp. 95,065,597,00 (ninety five million sixty five thousand five hundred ninety seven rupiah). The one where the fiduciary security object is gone.\(^4\)

With the loss of fiduciary objects in the BCA finance amaq masitah must report the loss as evidence that the object of the guarantee is completely lost which is reinforced by the bap (investigation report) which has been made at the local police office.

In accordance with the fiduciary guarantee deed No. 59 Article 5 made by the parties before the notary is stated:
1. The object of fiduciary guarantee shall be insured for fire hazard or other hazards established and at the second designated insurance company
2. The insurance premium shall be entirely imposed on the first party in the insurance contract clause designated by the second party is the party entitled to receive the insurance money (insurance) in case of loss caused by the dangers mentioned as the insurance agreement.
3. The insurance policy and the receipt or receipt of the premium payment shall be deposited to and deposited with the second party

There are several efforts that can be done by the financing institution to keep from being harmed by the debtor, in case of default by minimizing/mitigating the risk before disbursement, among others, the guaranteed object received into collateral is an object or goods that is not easily damaged and in top condition appraisal), insuring the collateral object at a premium cost

\(^2\) http://raypratama.blogspot.co.id/2015/04/teori-perlindungan-hukum.html

\(^3\) Interview with Ni luh Putu Suliastini Anggraini as part of operation of BCA Finance on July 20, 2017.

\(^4\) Interview with Weny Octavia Wardani as Head of BCA Finance operation on 24 July 2017.
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to the debtor's obligation, an additional fixed immaterial assurance tied to mortgage and after credit disbursement shall be periodically monitored against the guarantee object. This is also confirmed by the content of the Fiduciary Guarantee Deed Clause in the notarial deed which governs the transfer of Fiduciary security objects.

With the insured object fiduciary guarantee is a form of protection against the debtor and the creditor provided by the insurer. In the case of lost fiduciary security object is charged to the insurer where the debt payment from the debtor is paid half of the principal amount of the loan by the insurer and the remainder of the debt repayment shall be borne by the debtor. The period for insurance claim against the lost fiduciary object for 1 (one) week.

2.2 Declarer's Responsibility Related to the Destruction of Fiduciary Guarantee Objects in Financing Agreement at BCA Finance Financing Agency

In actual financing practice, it turns out that guarantees are a matter of great importance rather than a guarantee of the belief that the debtor will pay back. The financing institution in the framework of securing its interest as creditor is not prohibited to request the guarantee to the debtor, it has a very strong legal basis as stipulated in the provisions of Article 1131 Civil Code, namely that the entire debtor's property is a guarantee for the settlement of all creditors' receivables. Thus, then almost every form of corporate assets or personal assets can be used as collateral.

Objects or objects that may be encumbered with fiduciary assurance include:
1) The object moves tangible, for example: motor vehicles such as cars, buses, trucks, motorcycles;
2) Intangible moving goods, for example: money orders; certificate of deposit; stock; bond; time deposit; and so forth; The result of the object being the object of warranty;
3) Immovable objects, especially buildings that cannot be burdened with mortgages, namely property rights of apartment units on land of use rights to state land and building houses built on the land of others;
4) Objects including receivables already in place at the time of collateral or receivables obtained later.

The agreement by requesting a guarantee from the debtor is intended to reduce the risks arising from the agreement, but not all agreements made by the financing institution with the debtor may proceed as they should. Risks that may occur with the use of a mobile security object have a great risk because the debtor may have re-fiduciary by transferring the ownership rights of the moving asset to another party without the knowledge of the creditor as the fiduciary receiver. This matter as regulated in Article 17 of Law Number 42 Year 1999 concerning Fiduciary Guarantee, that is fiduciary giver is prohibited to fiduciary to object which become object of fiduciary guarantee already registered. In the Explanatory section of Law Number 42 Year 1999 on Fiduciary Guarantee, it is caused by the ownership a right of the object has been transferred to the fiduciary receiver (constitutum poosessorium).

6 http://asmadilaw.blogspot.co.id/2011/10/jaminan-fidusia.html
8 Gunawan Widjaja & Ahmad Yani, 2000, Fiduciary Guarantee, PT. Raja Grafindo Persada, Jakarta, hal. 113.
Law Number 42 Year 1999 on Fiduciary Guarantee does not detail the cause of the loss of collateral goods. Related to the destruction of collateral goods is only mentioned that the destruction of objects that become the object of guarantee is one part or the reason of the elimination of Fiduciary guarantee. So it does not appear in detail which is intended with the destruction of the collateral object that became the object of Fiduciary guarantee. However, based on the interpretation based on the general sense of the word “destroyed”, it is defined as the disappearance or loss of goods that become the object of collateral.

The debtor’s responsibility for the destruction of Fiduciary Collateral goods in the Financing Agreement is a consequence of the event. Related to this research, it can be explained that the term “responsibility” is defined according to Indonesian Dictionary of Greater is the action (matter) responsible or something that can be accounted for.

Associated with an agreement will basically result in an obligation for the parties to meet the achievement. If the debtor fails to comply with the obligations agreed upon in the agreement, the debtor is called default, the non-fulfillment of the obligation by the debtor due to two possible reasons that are due to the debtor’s mistake or due to force majeure.

Risk is a result and a coercive state while compensation is the result of default. If a debtor or fraudster of an appointment and injury here could be a default the debtor fulfills its repayment obligation when the debt is ripe for billing, or not fulfilled promised promises, either in the principal agreement or the guarantee agreement. In such an event, the creditor (fiduciary receiver) may execute the fiduciary assurance object. In the framework of execution of fiduciary guarantees fiduciary giver is obliged to surrender the objects which become the object of fiduciary guarantee.

The most effective way to prevent losses is the transfer of risk, because by transferring the risk to other parties that have been agreed of course the party is willing to take risks. This means that if the risks or events that are not certain really happen then the party who is willing to bear the transition risk is the insurance company that is insurance company.

The insurance company does not give full compensation for the fiduciary asset, causing the finance institution to suffer a loss, the financing institution asks the debtor to cover the remaining losses by some way of returning the loan to the creditor as the liability for the loss of lost assets, and the debtor can renew the debt. The debt renewal takes place by replacing old debt with new debt, in which case replaced is the old financing agreement with the new financing agreement.

But if the insured movable insured object is destroyed then the debtor is fully responsible for the credit repayment to the creditor. This is because the debtor has been bound in the financing agreement with the creditor.

As in the aforementioned case where Amaq Mastisah has lost the object of the fiduciary assurance object, so Amaq Masitah reports to the police station for the loss of the fiduciary car

12 Rachmadi Usman, op.cit, p.231.
13 Interview with Ni luh Putu Suliastini Anggraini as part of operation of BCA Finance on July 20, 2017.
14 Interview with Weny Octavia Wardani as Head of BCA Finance operation on 24 July 2017.
15 Ibid
and the insurance claim. Insurance claims made *amaq masitah* pay half the principal debt from underwriting fiduciary guarantee object. So *amaq masitah* responsible for the return of the remaining debt payment to the BCA Finance.\(^{16}\)

Thus, in any loan agreement, the existence of bonding or protection of debtor's securities through an insurance company, especially against a moving asset, is an important condition that aims to anticipate future unintended events. Thus, the debtor can claim insurance to the insurance company, where the collateral is insured in accordance with the contents of the agreement that has been agreed between the debtor and the insurance company.

III. CONCLUSION AND RECOMMENDATION

3.1 Conclusion

a. Legal protection for parties related to the loss of fiduciary security objects in financing agreements in financing institutions BCA finance is a preventive protection that is by insured fiduciary security object, this is a form of protection against debtors and creditors provided by the insurer. In the case of lost fiduciary security object is charged to the insurer where the debt payment from the debtor is paid half of the principal amount of the loan by the insurer and the remainder of the debt repayment shall be borne by the debtor. The period for the insurance claim against the lost fiduciary object for 1 (one) week from the loss of the fiduciary object.

b. Responsibility of debtors to the destruction of fiduciary objects at the financing institution of BCA Finance. Namely based on field research through interviews with the finance and debtors in which the debtor is still responsible for repaying the loan even though the fiduciary assurance object is insured or uninsured. If the insured fiduciary goods will be paid by the insurance company where the fiduciary assurance object is insured in accordance with the contents of the agreement, if the fiduciary assurance object is not insured then the debtor is fully responsible to return the loan. The results of this study in accordance with the theory of responsibility, especially the theory of *fautes personnelles*. According to this theory responsibility is addressed to humans personally.

3.2 Recommendation

From the above conclusions can be put forward some suggestions that are expected to be a material thought in order to provide solutions to the problems encountered, namely:

a. To BCA Finance Financing Institution, it is expected to register and insure all guarantee objects, in order to anticipate the loss of collateral object. So as to provide legal protection for the parties in case of default.

b. To BCA Finance Financing Institution, to conduct monitoring and controlling to debtor and guarantee object, thereby reducing the risk of transition or destruction of collateral object.

\(^{16}\) Interview with Amaq Masitah as debtor on 27 July 2017.
REFERENCES