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# Role of Notary in Registration Electronic Fiduciary (Study at Notary Office Weny Masitawati S.H , M.Kn)

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**Abstract :** The registration of fiduciary guarantee changed from a manual system to an online system. It is stipulated in Government Regulation No. 21 year 2015 About Fiduciary Guarantee Registration Procedures and Creation of Deed MakingFiduciary Guarantee Fees. But there are weaknesses in the implementation of its registration. The weakness contained in Article 4 that the regulation of fiduciary guarantee for registration period are 30 days after the deed was signed, but it did not give the arrangements for fiduciary guarantee which have not been registered after the government regulations was applicable. This study aims to investigate the implementation of fiduciary guarantee registration by government regulation and find out a solution to the shortcomings of the regulation. This research is an empirical jurisdiction with descriptive analytical approach, whereas the data obtained from primary data through interview the speakers, while secondary data obtained from the legislation and the literature. The Government Regulation No. 21 year 2015 About Fiduciary Guarantee Registration Procedures and Creation of Deed MakingFiduciary Guarantee Fees is an arrangement falsifies of fiduciary guarantee registration system from a manual system to an online system. That government regulation settingthe time of fiduciary guarantee period with online registration, the fiduciary guarantee who have not registered online after the government regulations was applicable, the fiduciary guarantee will fall by itself, so it must be made the a fiduciary guarantee and registered immediately with online systemat the notaryoffice.

***Keywords :*** *Registration, Fiduciary, Notary, Online System*

## 1. Introduction

Registration is an important matter in a fiduciary guarantee registration because registration is a requirement contained in the Fiduciary Guarantee Act as a condition for the birth of a fiduciary guarantee because registration itself has a juridical meaning as a series that is inseparable from the process of agreeing a fiduciary guarantee agreement.[1] Registration of fiduciary guarantees is carried out to provide legal certainty for the parties, both fiduciary givers and fiduciary recipients. Given the importance of registration for a fiduciary guarantee, Article 11 of Law Number 42 of 1999 concerning Fiduciary Guarantees expressly states that objects burdened with guarantees must be expanded because registration of fiduciary guarantees is a description of the right to own an object on the basis of trust with the provision that the object the transferred ownership rights remain in the control of the owner of the object. Prior to the introduction of online fiduciary guarantee nominations that are currently implemented, registration of fiduciary guarantees was done manually in accordance with the provisions of Law Number 42 of 1999 concerning Fiduciary Guarantees.

[1] Tan Kamelo, Fiduciary Guarantee Law A Coveted Need, Bandung: PT. Alumni (2006), p. 213.

According to UUJF provisions, fiduciary must be carried out in two stages, namely fiduciary encumbrance and fiduciary registration. To guarantee legal certainty for creditors, a deed is drawn up by a notary and registered with the Fiduciary Registration Office at the Department of Law and Human Rights (HAM), and later the creditor will obtain a fiduciary guarantee certificate that is "For the sake of Justice Based on Belief in One Almighty God". Thus it has direct executive power if the debtor violates the fiduciary agreement with the creditor (execution parate), according to the Fiduciary Guarantee Law.[2]

Notaries play an important role in people's lives, especially in making authentic deeds which are legal actions required by laws and regulations. Law Number 30 of 2004 as amended by Law Number 2 of 2014 concerning the Position of Notary (hereinafter referred to as UUJN) gives authority to notaries to make authentic deeds to guarantee certainty, order and legal protection. The role of a notary is very important in everyday legal life in society.[3]

The notary is also tasked with making deeds and contracts with the intention of giving him power and ratification, determining and confirming the date, keeping the original or minutes and issuing the grosse (copy), as well as providing a valid and correct copy. Because a notarial deed is an authentic deed that has perfect evidentiary power about what is contained therein.

In connection with the originality of this scientific writing, the following researchers describe several previous studies that have the theme of similar legal issues. Muhammad Awaludin with the title Legal Analysis of Entrusted Goods as Fiduciary Collateral Objects, discusses legal protection in credit agreements with fiduciary guarantees that do not register fiduciary guarantees and legal consequences for creditors who transfer collateral objects without the debtor's knowledge if the creditor does not register fiduciary guarantees. Rully Akbar "Legal Protection for Creditors in Fiduciary Collateral Agreements in Practice", Discusses the Bank's Mechanism in appraising movable property belonging to third parties as collateral for the debtor's debt and discussing the implementation of fiduciary guarantees for movable property registered to third parties.

Based on some of the research described previously, it is understood that there are differences in the object of study in this writing which specifically examines legal issues regarding the implementation of online fiduciary registration at the notary office of Weny Masitawati, S.H, M.Kn in Kediri so this research is very interesting to be discussed.

## 2. Method

This research method was compiled using empirical juridical research types. Empirical juridical research is a problem approach regarding matters that are juridical in nature and the existing facts regarding matters that are juridical in nature. Empirical juridical research of knowledge is based on facts obtained from the results of research and observation. The type of approach applied in this writing is using the fact approach. The fact approach is an approach used to examine facts in the field

[2] Gunawan Buntarman, Fiduciary Guarantee Law, Erresco Publisher, Bandung, 2004, p.79.

[3] Gladys Octavinadya Melati, Op.Cit. p. 62-63.

that occur and are related to the legal issues under study.

The data used in this empirical research consists of two types of data, namely primary data and secondary data. Primary data is field research, namely data collection using research at related institutions, in this case it will be carried out at the office of Notary Weny Masitawati, S.H, M.Kn in Kediri. Secondary data is library research, namely obtaining secondary data by reading legal materials. Data collection techniques using interviews, observation and documentation carried out in the implementation of research are intended to search for broader and specific data. In this study, the authors only conducted interviews with notaries at the Notary Office of Weny Masitawati, S.H , M.Kn.

## 3. Main Heading Of The First Analysis Or Discussion

### 3.1 The Role of Notaries in Online Registration of Fiduciary Guarantees According to PP No. 21 of 2015

The role of the Notary in online fiduciary registration is as a deed maker and as a recipient of power of attorney from creditors (fiduciary recipients), thus, there are two legal relationships between creditors and Notaries, namely contractual and non-contractual relationships. The contractual relationship between the creditor and the Notary is in the power of attorney agreement made by the applicant (creditor) in the fiduciary guarantee deed drawn up by the Notary. While the non-contractual relationship between the creditor and the Notary is in the provision of services performed by the Notary to the applicant (creditor). These services are regulated in the notary code of ethics and the notary office law.

This online Fiduciary registration system gives greater responsibility to the Notary because there has been no correction from the Ministry of Law and Human Rights regarding the conformity between the value of the object, the value of the guarantee, the value of the credit facility, and the name of the creditor. This is as confirmed in Article 19 of Government Regulation Number 21 of 2015 which states that all data filled in the application for registration of a Fiduciary Guarantee, application for repair of a Fiduciary Guarantee Certificate, application for amendment of a Fiduciary Guarantee Certificate and notification of the electronic termination of the Fiduciary Guarantee Certificate and physical document storage become the responsibility of the Fiduciary Recipient, his attorney or representative.

In practice, this condition can become a problem because in practice data errors may be found in the certificates and notarial deeds related to the provision of the fiduciary guarantee. There is no column facility to enter data regarding the description of objects that are objects of fiduciary guarantees. The description of objects that are objects of fiduciary guarantees in the display is only written "According to the Notary Deed" which is a problem for online fiduciaries, because it is prone to repeated fiduciary, fiduciary guarantees are more than once contrary to Article 17 of Law no. 42 of 1999 concerning Fiduciary Guarantees. In accordance with the provisions in Article 13 of the Fiduciary Guarantee Law juncto Article 3 PP No. 21 of 2015 which stipulates, that the application for registration must contain: (1) the identity of the Fiduciary Giver and Recipient; (2) date, number of the Fiduciary Guarantee deed, name and domicile of the Notary containing the Fiduciary Guarantee deed; (3) data on main agreement guaranteed by Fiduciary; (4) a description of the objects that are the object of the Fiduciary Guarantee; (5) guarantee value; and (6) the value of objects that are the object of the Fiduciary Guarantee, then the data in the authentic deed made by a Notary, whether it is an authentic deed which is the main agreement or a fiduciary guarantee deed which is an additional agreement to the main agreement, must not contain errors that impact on data input errors in the online registration system.[4]

The online fiduciary must really be received by the notary with extra care, the responsibility of the notary is greater, the input space and storage of supporting documents must be given special attention, the implementation of data input must really be considered with the mastered documents. Notary honesty is required in this case, so that things do not happen that are contrary to the applicable laws and regulations. In this case the notarial deed is an authentic deed and has the most perfect evidentiary legal force, because the imposition of objects with a fiduciary guarantee is stated in a notary deed which is a fiduciary guarantee deed. Therefore, notaries must stay away from things that contain fraud, subterfuge, concealment of facts, breach of trust, misdirection and/or circumvention of regulations and keep away from things that lead to crimes of corruption.

With the existence of the Fiduciary Law PP No. 21 of 2015 which gives authority to Notaries to register fiduciary guarantees online the system makes demands on Notaries to be able to keep pace with technological developments that occur and further improve their services to the people of Indonesia.[5]

The implementation of an electronic fiduciary registration administration system was launched to balance the increasing applications for registration of fiduciary guarantees, and cut the registration time to be shorter, as well as to minimize unwanted things such as illegal levies or KKN in other forms. Based on the results of interviews conducted with the notary:[6]

a. In terms of network, which is not every time the network is good so that the process of registering fiduciary guarantees is electronically disrupted due to network disturbances.
b. The error payment system is in the YAP application, the application only provides paid services with Bank BNI, there are times when the Bank's system experiences interference, so that it can become a hindering factor in the process of electronically registering fiduciary guarantees. When paying PNBP at Bank BNI, the indicator light is still "red light" and does not immediately indicate "green light", the payment is not processed, so a complaint must be

[4] Luthfan Hadi Darus, Notary Law and Notary Responsibilities, (Yogyakarta: UII Press, 2017), p. 24

[5] Government Regulation Number 21 of 2015 Regarding Procedures for Registration of Fiduciary Guarantees and AJB Fees

[6] The results of the interview with Ms. Weny Masitawati, on December 9, 2022.

filed to resolve the problem. This causes obstacles in the process of registering fiduciary guarantees.

c. Lack of detail in the input field
d. An application system that has an error
e. There is no application for checking Fiduciary Guarantee Objects that have been guaranteed,
f. Short time

Where the limit for processing fiduciary guarantees is given a time limit of 30 days, based on PP No. 21 of 2015 concerning Procedures for Registration of Fiduciary Guarantees and AJF Fees, namely the application for registration of Fiduciary Guarantees is submitted within a maximum period of 30 (thirty) days from the date of manufacture Fiduciary Guarantee deed (article 4).

The purpose of registering a fiduciary guarantee is to be given 30 days to register with the Fiduciary office from the date of the financing agreement, for example, if a credit or financing agreement is signed on January 1, 2023, the creditor must start submitting it to a notary at least 7 days later, namely January 7, 2023. So that the Notary still has time to prepare the deed and sign the fiduciary guarantee deed, issue a copy and register it no later than January 30, 2023. So that the 30-day period referred to in the Regulation is not as the date of issuance of the Fiduciary Certificate stated on the Fiduciary Guarantee Certificate. If the Notary registers Fiduciary more than 30 days from the date of signing the Agreement, the system will automatically reject the Fiduciary Guarantee registration input.

Since the implementation of the online administration system for registration of fiduciary guarantees, there has been an increase in applications for registration of fiduciary guarantees by up to 300% (three hundred percent) from before. Every day, applications for registration of fiduciary guarantees online are estimated to reach 2,500-3,000 applications. Fiduciary guarantee registrations from the beginning of the year to August 2018 recorded 5.41 million registrations. Meanwhile, in 2017, fiduciary registration registered 8.07 million registrations, an increase of 6.47% compared to the previous year of 7.58 million registrations. Meanwhile, in 2015, registration of fiduciary guarantees was 6.31 million registrations or a decrease of 19.51% compared to the previous year of 7.83 million registrations.[7]

### 3.2 Implementation of Online Registration of Fiduciary Guarantees at the Office of Notary Weny Masitawati S.H , M.Kn in Kediri

The current registration of fiduciary guarantees uses an electronic system in accordance with the regulation of the Minister of Law and Human Rights Number 9 of 2013 concerning the Implementation of Electronic Fiduciary Registration. The fiduciary registration process electronically is carried out by a Notary. With the issuance of AHU Director General Circular Letter No. AHU.06.0T.03.01 of 2013 concerning Implementation of the Fiduciary

[7]https://finansial.bisnis.com/read/20180909/215/836598/penregistrancertifikatjaminan-fidusia-meningkat accessed on 09 February 23 at 19:16 WIB.

Guarantee Administration System Electronically with the aim of improving services for legal services for registration of fiduciary guarantees to the public easily, quickly, cheaply and conveniently.

According to an explanation from Notary Weny Masitawati, SH., M.Kn in Kediri, electronic registration of fiduciary guarantees is based on data provided by the creditor, in the case of a fiduciary guarantee object in the form of a motorized vehicle, the creditor will first perform a physical check of the fiduciary guarantee object. These data are in the form of frame numbers, engine numbers, photocopies of STNK, and photocopies of BPKB for old vehicles, while for new vehicles in the form of photocopies of fractures, then the data will be submitted to a Notary to be input into the fiduciary registration database electronically (online). Fiduciary registration must meet the following requirements:

a. Fill out an application in 3 (three) copies

   This application is in the form of a blank fiduciary guarantee registration statement that has been provided by the fiduciary registration office. In this case, because what is conveyed is a registration statement, the fiduciary registration office does not evaluate the truth or guarantee the correctness of the data in the registration statement.

b. Power of Attorney from Creditors (Banks)

   This power of attorney is a special power of attorney drawn up by the creditor (Bank) as the principal to the power of attorney/Notary as the recipient of the power of attorney to administer and carry out fiduciary registration and carry out actions or matters relating to fiduciary registration.

c. Photocopy of Creditor's Identity Card (KTP) legalized

   This photocopy of KTP must be legalized by the authorized official to legalize it, either at the Notary's office, Lurah or other authorized official. The power of attorney here is a person appointed by the creditor (Bank) to carry out fiduciary registration which is usually carried out by a notary directly or a representative notary employee.

d. Legalized photocopy of proof of rights in 3 (three) copies

   Proof of title is documents of ownership of fiduciary object goods, for example for movable objects in the form of motorbikes, cars, proof of rights in the form of a Motorized Vehicle Ownership Book (BPKB)

e. Fiduciary deed. Original stamped copy

   The fiduciary deed in question is a fiduciary deed that has been drawn up by a Notary

f. The position or status of the fiduciary giver

g. A statement letter regarding the existence of stock of goods/trade receivables, legalized 3rd copy.

   This statement letter contains information regarding the stock of goods in the form of merchandise inventory and supporting goods, both existing and future, trade receivables, both existing and future.

h. The notary takes the certificate and submits it to the creditor (Bank)

Applications for registration of fiduciary guarantees electronically must be submitted within a maximum period of 30 (thirty) days from the date of making the fiduciary guarantee deed. Evidence of registration will be obtained after the registration application requirements have been met. The proof of registration is used to make payments through perception banks that are spread across Indonesia. Fiduciary guarantee registration will be recorded in the Fiduciary Registration Office base electronically after the applicant has paid the registration fee for the fiduciary guarantee.

The fiduciary guarantee certificate will be signed electronically by an official at the registration office. According to Weny Masitawati, SH., M.Kn, physical files in the form of photocopies and other archives do not need to be sent online or manually to the Regional Office of the Ministry of Law and Human Rights. there is an online upload of files, in contrast to the process of making a PT, etc. which still requires uploading files and sending physical data to the regional office".[8]

The process of implementing fiduciary guarantees is carried out through two stages, namely the imposition stage and the fiduciary guarantee registration stage. The encumbrance of objects with a fiduciary guarantee is made with a notarial deed in Indonesian and is a fiduciary guarantee deed. The purpose of this fiduciary registration is to create fiduciary guarantees for fiduciary recipients, provide certainty to other creditors regarding objects that have been burdened with fiduciary guarantees and provide priority rights to creditors and to fulfill the principle of publicity because the registration office is open to the public. Objects burdened with fiduciary guarantees must be registered, including objects burdened with fiduciary guarantees that are outside the territory of the Republic of Indonesia.

### 3.3 Legal Consequences of Fiduciary Guarantee Registration and Online Systems

Basically, the provisions of Article 14 Paragraph (3) of the Fiduciary Guarantee Law, a new fiduciary guarantee is born on the same date as the date the fiduciary guarantee is recorded in the Fiduciary Register Book and the creditor will receive a fiduciary guarantee certificate. By obtaining a fiduciary guarantee certificate, the fiduciary creditor/recipient immediately has the right of direct execution (parate executie), as occurs in lending and borrowing in banking. The legal force of the certificate is the same as a court decision that already has permanent legal force.

a) The legal consequences for fiduciary guarantees that are not registered in the online system have the same legal consequences as fiduciary guarantees that are not registered in the manual system. Registration of fiduciary guarantees has been regulated in Articles 11 to 18 of the Fiduciary Guarantee Law and Government Regulation Number 86 of 2000 concerning Procedures for Registration of Fiduciary Guarantees and Fees for Making Fiduciary Guarantee Deeds. In this study, the aims and objectives of the fiduciary

[8] The results of the interview with Ms. Weny Masitawati, on December 9, 2022

registration system are as follows: Providing legal certainty to interested parties, especially to other creditors regarding objects that have been burdened with fiduciary guarantees.

b) Create a fiduciary bond for creditors (fiduciary recipients)
c) Giving priority rights (preference) to creditors (fiduciary recipients) over other creditors, since the fiduciary giver continues to control objects that are objects of fiduciary guarantees based on trust
d) Meet the principle of publicity. Considering that the registration of fiduciary guarantees is very important, in credit practices within the bank there are still fiduciary agreements that are not registered. The same goes for financial institutions. The legal consequence of an unregistered fiduciary agreement is that it does not give birth to a material agreement for the fiduciary guarantee, so that material characters such as deroit de suite and preference rights are not attached to the creditor providing the fiduciary guarantee.

Registration of fiduciary guarantees will give birth to material rights so that the position of the creditor becomes a separatist creditor with all the privileges granted by law. Because the registration indirectly benefits the creditor, the obligation to register applies to the fiduciary recipient (creditor), while the debtor has no interest in whether the collateral is registered or not. Based on the results of interviews conducted with the notary, the legal force of electronic fiduciary registration is the same as manual fiduciary registration, namely having permanent legal force so that if the debtor defaults or defaults, execution can be carried out on the object of the fiduciary guarantee.

In terms of the legal force of electronic fiduciary registration, it is necessary to remember that there is no submission of physical files and the importance of a proofreader in electronic fiduciary registration to correct the validity of the data adjustments included in the fiduciary registration form which must be in accordance with the attached fiduciary guarantee deed.

Based on research, in electronic fiduciary guarantee certificates there is a barcode to authenticate the certificate, so that the legality of electronic fiduciary certificates electronically can be legally proven or has strong power as long as it is carried out by authorized institutions.[9]

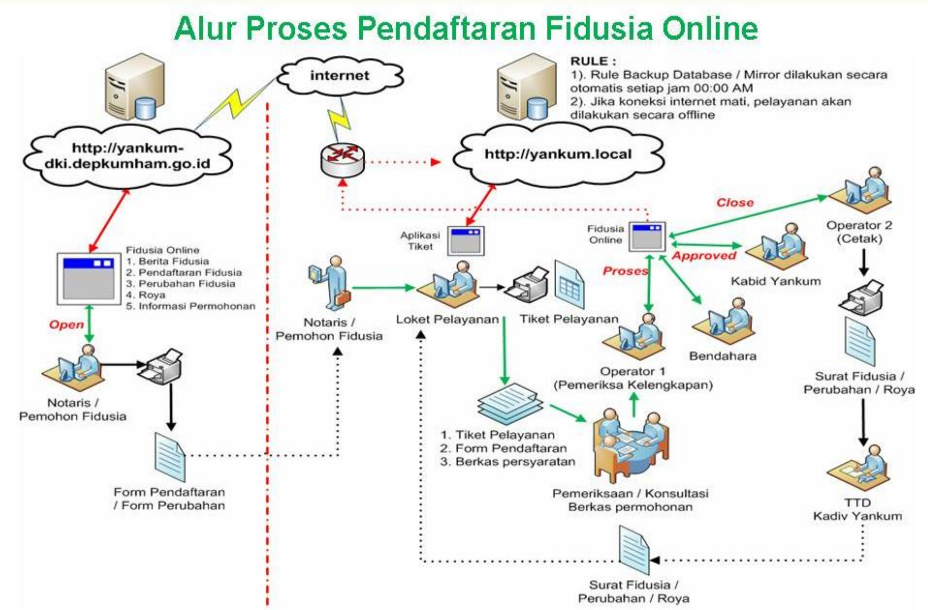
In the implementation of fiduciary guarantees, there must be an agreement between the two parties, where the agreement is binding in nature, and of course it is beneficial for both parties, such as creditors and debtors. When the debtor submits an application for a fiduciary guarantee regarding movable property, for example a car, where the debtor wants to own the car by installments, of course there must be an agreement between the two parties, in which the contents of the agreement must be agreed upon by the debtor without any coercion, because the debtor is the applicant party, when the debtor defaults on the creditor's party can claim the right to losses caused by the debtor, because there are times when the debtor does not carry out his obligations to carry out installment payments for example, then there are steps that will be carried out by the creditor to provide warning to the debtor.

[9] The results of the interview with Ms. Weny Masitawati, on December 9, 2022

When the debtor has failed to pay and has credit problems, the finance company will take credit rescue measures. If in an agreement the debtor does not carry out what has been agreed due to his mistake, then it can be said that the debtor has committed a default. The error can be intentional and underachieved, being negligent or breaking a promise or even violating an agreement by doing something that is prohibited or not allowed to be done. This has legal consequences, namely that the aggrieved party can demand the implementation of the achievements or other consequences stipulated in the agreement (compensation).[10]

## 4. Main Heading Of The Second Analysis Or Discussion

The current registration of fiduciary guarantees uses an electronic system in accordance with the regulation of the Minister of Law and Human Rights Number 9 of 2013 concerning the Implementation of Electronic Fiduciary Registration. The fiduciary registration process electronically is carried out by a Notary. With the issuance of AHU Director General Circular Letter No. AHU.06.0T.03.01 of 2013 concerning Enforcement of the Fiduciary Guarantee Administration System Electronically with the aim of improving services for legal services for registration of




fiduciary guarantees to the public easily, quickly, cheaply and conveniently.

Fiduciary guarantee services using online or online systems can be accessed via fidusia.ahu.co.id. With the implementation of this system, registrants no longer need to meet face to face with officers at the counter and on the other hand the application of this system is also to increase the ease of doing business in Indonesia. The following is the flow of registration of fiduciary guarantees:[11]

[10] Rahmad Hidayat, 2019, "Settlement of Default Debtors on Fiduciary Guarantee Objects That Have Been Registered", Master of Law, University of Semarang, Journal, Vol 2 Number 2, page 296.

[11] Https://jatim.kemenkumham.go.id/layananpublic/pelayananHukumdanham/administrasi-Hukum-umum-ahu/panduan-pengguna-ahu-online-2 accessed on 15 December 2022

The essence of registering a fiduciary guarantee is that you are given 30 days to register with the Fiduciary office from the date of the financing agreement, for example, if a credit or financing agreement is signed on January 1, 2023, the creditor must start submitting it to a notary at least 7 days later, namely January 7, 2023. So that the Notary still has time to prepare the deed and sign the fiduciary guarantee deed, issue a copy and register it no later than January 30, 2023. So that the 30-day period referred to in the Regulation is not as the date of issuance of the Fiduciary Certificate stated on the Fiduciary Guarantee Certificate. If the Notary performs Fiduciary Registration more than 30 days from the date of signing the Agreement, the system will automatically reject the Fiduciary Guarantee registration input.[12]

## 5. Conclusion

a. The role of the Notary in online fiduciary registration is as a deed maker and as a recipient of power of attorney from creditors (fiduciary recipients), thus, there are two legal relationships between creditors and Notaries, namely contractual and non-contractual relationships. The contractual relationship between the creditor and the Notary is in the power of attorney agreement made by the applicant (creditor) in the fiduciary guarantee deed drawn up by the Notary. While the non-contractual relationship between the creditor and the Notary is in the provision of services performed by the Notary to the applicant (creditor). These services are regulated in the notary code of ethics and the notary office law.
b. The implementation or mechanism for registration of fiduciary guarantees electronically is carried out by a notary by filling out several forms online on the specified website, with the following stages, namely entering the login menu by filling in the username and password, then carrying out the registration process by filling out the form, and printing electronic fiduciary guarantee certificate, which is clearly contained in the Minister of Law and Human Rights Regulation Number 10 concerning Procedures for Electronic Fiduciary Guarantee Registration and in the manual for electronic fiduciary registration issued by the Director General of AHU. Applications for registration of fiduciary guarantees electronically must be submitted within a maximum period of 30 (thirty) days from the date of making the fiduciary guarantee deed. Evidence of registration will be obtained after the registration application requirements have been met. Fiduciary guarantee registration will be recorded in the Fiduciary Registration Office base electronically after the applicant has paid the registration fee for the fiduciary guarantee. The fiduciary guarantee is born since it is recorded in the Fiduciary Registration Office database on the same date as the date the fiduciary guarantee is recorded. Then after recording the applicant will get a fiduciary guarantee certificate.
c. The legal consequence of registering a fiduciary guarantee that is not registered in the electronic system is that the Fiduciary Guarantee has not yet been born

[12] Ibid

so that it does not have the status of a creditor that takes precedence over other creditors resulting in a change in status. In terms of the legal force of electronic fiduciary registration, it is necessary to remember that there is no submission of physical files and the importance of a proofreader in electronic fiduciary registration to correct the validity of the data adjustments included in the fiduciary registration form which must be in accordance with the attached fiduciary guarantee deed.

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