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LEGAL CONSEQUENCES OF LOSS OF FIDUCIARY GUARANTEE OBJECT IN BANK CREDIT AGREEMENT

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Abstract: The banking industry is one of the important components in the national economy which aims to maintain a balance in the progress and unity of the national economy itself, the stability of the banking industry itself is very influential in overall economic stability as experienced from the occurrence of the monetary and banking crisis in Indonesia in 1998, With the existence of a guarantee agreement that was agreed at the beginning when the agreement was being held that the debtor must provide a fiduciary guarantee like movable property such as a car, with this way the collateral object must exist so that with the collateral object (car), then this has been limited to other collateral objects such as immovable collateral objects such as certificates of houses, land and so on. The formulation of the problems to be discussed are (1) What are the legal consequences of the bank's credit agreement for the loss of the fiduciary guarantee object due to the negligence of the debtor? (2) What are the legal remedies taken by creditors for the loss of fiduciary collateral objects due to the debtor's negligence? The research method of this thesis uses normative research method, it means that the issues raised, discussed and described in this research are focused on applying the rules or norms in positive law. The problem approach uses a statutory approach and a conceptual approach with legal materials consisting of primary, secondary and tertiary legal materials. The research results show that: First, the legal consequences of the agreement for the loss of the fiduciary guarantee object due to the debtor's negligence is the credit agreement does not have a fiduciary guarantee, so that the debtor's position changes from a preferred creditor (prefent) with special material guarantees (fiduciary) to a concurrent creditor who does not have special material guarantees. Second, the legal remedies taken are (a) asking the debtor to immediately return the credit loan to the creditor as a responsibility for the collateral that has been lost; and/or (b) suing for compensation for lost fiduciary collateral objects based on article 1365 of the Civil Code

Keywords: loss of objects of fiduciary guarantees, bank credit agreements

1. Introduction

Legal development in Indonesia focuses on the development of laws and regulations in the form of supporting economic development in Indonesia. However, in addition, development in the field of law itself must be able or able to follow the development of society which is currently developing towards a more modern direction, where legal development must be able to accommodate all regulatory needs in society based on the progress of society itself.

In order to support the business world that aims to create public welfare, of course, this cannot be separated from the main capital problems so that in capital provision institutions that we know better as the banking world. Banking itself in this case has a very important role in economic change because it functions as a strategic institution in economic development activities where this can also be said to be the heart of the economy itself. In order to implement economic development which is from national development itself, it is necessary to have a large amount of funds from some of these funds obtained through banking activities.

Guarantee of a debt or credit is very important for creditors because an engagement that occurs between creditors and debtors greatly affects the creditor's confidence that the debtor must be able to fulfill his obligations. Collateral for a credit is not merely a guarantor but has a meaning for the protection of creditors who have released some of their money to debtors who need to be used as capital, as well as this provides legal certainty to creditors that later will return the amount of money that has been given to debtors with a credit system.

Similar to other material guarantees, the recipient of the fiduciary guarantee also has a preferent right, which is the right to take precedence over the repayment of receivables from other creditors over the fiduciary property if there is an excess from the sale of the fiduciary security object. Then the recipient is also required to return to the fiduciary because usually the amount of value of the fiduciary security object is higher than the amount of debt, which is around 125% of the principal value of the debt. Along with the rapid cross-economy, these receivables often arise in the legal relationship of wealth. For example in the world of trade where in a sale and purchase agreement where the buyer is entitled to receive goods and is obliged to pay for the goods with a sum of money for payment, while the seller himself is obliged to deliver the goods when the buyer has paid for it.

On September 30, 1999, Law No. 42 of 1999 concerning Fiduciary Guarantees was passed and promulgated. Hopefully with this promulgation, the figure of fiduciary guarantee will be able to obtain a more definite legal arrangement which in this case is in the form of law and also the obligation to register for fiduciary guarantee. So that in essence the law of this fiduciary itself is jurisprudence where this is the ratification of a money agreement, with the provision of trust guarantees that transfer ownership of the debtor's movable property to creditors but the goods are still controlled by the debtor before an arrangement in the fiduciary guarantee law does not have an official legal procedure regarding the fiduciary agreement so that each of these agreements is a race against the Civil Code.

In practice, many fiduciary agreements are stated in underhand deeds, not with authentic deeds or notarial deeds, so that with the enactment of the law, it is hoped that arrangements regarding fiduciary guarantees will easily get legal certainty and very certain legal aspects. In the banking park itself, this fiduciary guarantee is widely used, but this does not provide a legal protection for creditors, in the event that there will be bad credit, which is because the execution of fiduciary guarantees is very difficult or may not be implemented.

A fiduciary agreement is an agreement that arises due to a bank credit agreement. So that later the debtor defaults on the bank can itself take debt repayment by selling fiduciary collateral. Moreover, in practice there is a tendency that the object of the fiduciary guarantee will be controlled by the bank if the debtor does not pay off the debt.

So that in the event of bankruptcy from the debtor, what is the status of the fiduciary guarantee, will the fiduciary creditor be recognized as a pure separatist creditor as referred to in article 27 paragraph (3) of the Fiduciary Guarantee Law. So this requires clarity of the relationship with the position in the preferences of the fiduciary.

The provision of credit given by the right to the debtor is based on trust so that the provision of credit is a provision of trust to the debtor's customers. So that the provision of credit by the bank intends to be one of the bank's own efforts in getting a profit, then this way the bank can only or can continue the community's deposits to customers in the form of a credit system . With a guarantee agreement that has been agreed at the beginning when the agreement is being carried out that the debtor must provide a form of fiduciary guarantee in the form of movable goods, namely in the form of a car so that with this it is certain that the collateral object exists so that with the collateral object in the form of a car, this has been limited to other collateral objects such as immovable collateral objects such as house certificates, land and so on.

In lending itself, this is a very risky activity for banks so that it needs to be balanced with a provision in the form of a law so that this is a clear legal guarantee considering that every credit distribution by banks requires a strong guarantee. So that with the promulgation of Law No. 42 of 1999 concerning Fiduciary Guarantee, it intends to be able to assist a business activity and provide strong legal certainty to parties who have agreed to make an agreement, especially in the banking world.

2. Method

The method of legal research is one of the main means in the development of science and technology artfully so that research aims to be able to reveal a truth systematically, methodologically and consistently.

The type of research used in this study is normative juridical, which examines the subject matter of law using a *conceptual approach* and *statutory approach*. The legal materials used in this study consist of primary legal materials in the form of laws and regulations and secondary legal materials in the form of books and legal journals both printed and digital whose contents are related to the legal issues studied in this study. The two sources of legal material are then analyzed in a qualitative descriptive manner based on legal interpretation and argumentation.

3. Legal Effects of the Credit Agreement for the Loss of Fiduciary Guarantee Objects Due to the Debtor's Negligence

The fiduciary guarantee institution is one of several guarantee facilities and infrastructure used in the process of accounts receivable used by creditors and debtors. Where this guarantee itself is used for the purpose of fulfilling an interest and security of the creditor himself on an agreement that has been agreed upon together with the debtor, the objects included in this guarantee are movable and immovable objects which cannot be encumbered against the rights of dependents or mortgages, intangible and tangible objects, Registered and unregistered objects. So that on the basis of the previous agreement, in this way, one or several of the objects that have been pledged are burdened with a fiduciary through a notarial deed.

The form of fiduciary guarantee itself consists of 2 (two), namely the first fiduciary creditore which is a promise of trust which is made directly by the creditor that the debtor will transfer an object in his ownership to the creditor as a form of security against his debt with an agreement that the creditor will take over the collateral from the debtor after the debt is paid off, and the second *fiduciary amico* arising as a result of an agreement called a fiduciary pactum followed by the surrender of a right *in iure cession*.

The guarantee agreement itself is divided into two groups, namely material guarantee agreements and individual guarantee agreements, first a material agreement which is an act of separating a part of one's wealth where this aims to guarantee and provide for the fulfillment of obligations of a debtor, this right is because in its own material guarantee which is used as the object of collateral for the property then in this case requires a principle of rights Material guarantees as below:

a. This security right is a position that takes precedence for the creditor as the holder of this security right over other creditors, the existence of a preferred right

b. This right of guarantee itself is the right of accessoir to a principal agreement that has been guaranteed by the guarantee, which means that the termination of the agreement depends on the underlying agreement itself

c. Objects that are the object of the guarantee are movable objects or immovable objects

d. Have a real right material property as stipulated in article 528 of the Civil Code, where the nature of the property right itself is absolute which means it can be defended against everyone, and *droit suite* is material things that follow whoever it is.

Material security itself is an absolute right to a certain object which has become the object of collateral for a debt, which can one day be cashed to pay off debts from debtors if the debtor defaults. The wealth can be in the form of a wealth from a debtor or a third party, where the provision of collateral objects from one's own material security is for an interest and benefit for certain creditors after requesting it, so that this has given rights or privileged position to the creditor. Where the creditor has a position as a preferred creditor who takes precedence over other creditors in taking repayment of debts from the objects that are the object of the guarantee, even in the bankruptcy of the debtor he has a separatist creditor position.

The second is an individual guarantee agreement arising from an agreement between a creditor and a third party, an individual guarantee agreement is a relative matter that is a right that can be defended against a certain person related to the agreement. In this individual guarantee agreement, a third party acts as a guarantor in the repayment of the debtor's debt, where this agreement is a promise to fulfill the debtor's obligations if the debtor breaks the promise, in this agreement there is no specific object that is used as collateral, so it is not clear what objects and which are used as collateral for the debtor if the debtor breaks the promise, so that the creditor holding individual security rights is only domiciled as a concurrent creditor. So that in the event of bankruptcy of the debtor or guarantor (third party), a general guarantee provision will apply as described in articles 1131 and 1132 of the Civil Code.

Individual guarantees can be in the form of a guarantee / borgtocht, bank guarantee, company guarantee, which has been explained in article 1820 of the Civil Code which states that "underwriting is an agreement by which a third party for the benefit of the debtor binds himself to be able to fulfill the debtor's engagement if he does not fulfill it. An individual agreement like other guarantee agreements is an accessoir as mentioned in article 1821 paragraph (1) of the Civil Code, so that even so with all the weaknesses that exist in individual guarantee agreements, creditors will still feel safer than no guarantee at all.

In Law Number 42 of 1999 concerning Fiduciary Guarantee itself does not explain in detail how about a cause of destruction or loss of a collateral. Where in this case a matter related to an item that is destroyed or the loss of collateral only mentions that the destruction of goods that have become the object of the guarantee is one of the elimination of fiduciary guarantees. Article 4 of Law No. 42 of 1999 concerning Fiduciary Guarantee states that "Fiduciary Guarantee is a follow-up agreement to the main agreement that creates an obligation for the parties to fulfill a performance", while in the characteristics of the *accessoir* agreement itself is an agreement that cannot stand alone and also the termination of the agreement depends on the expiration of the main agreement.

If later the insured or debtor as the fiduciary guarantee giver deliberately omits as if making the fiduciary guarantee destroyed or lost with the intention of obtaining a claim against the insurance company which is the insurer, so that later after an investigation the debtor is proven to have committed unlawful acts, the insurer who is the insurer is free from responsibility to do A compensation against the insured, namely the debtor as the fiduciary guarantor. So that way the debtor as the party of the fiduciary guarantee provider remains fully responsible for the bank as the creditor by replacing the object of the fiduciary guarantee that has been lost as long as the credit agreement is still running and has not ended with the fiduciary guarantee debtor marked in full.

So that the legal consequences that will arise if the problem or lawsuit is due to a mistake committed by the debtor, whether it is due to intentional or careless care on the part of the debtor from the fiduciary in connection with the use or transfer of fiduciary collateral, the fiduciary will be fully responsible. This has been affirmed in article 24 of Law No. 42 of 1999 concerning Fiduciary Guarantees which states that "the fiduciary beneficiary does not bear liability for an act or mistake whether committed intentionally or negligent on the part of the fiduciary, whether it arises from a contractual relationship or arises from a legal act, so that in connection with the use and transfer of objects that are the object of fiduciary guarantee.

Provisions as stipulated in articles 19-24 of Law No. 42 of 1999 concerning Fiduciary Guarantees regarding the transfer of fiduciary guarantees. Also regarding the prohibition on the transfer of objects of fiduciary guarantees that are not an object of inventory is contained in article 23 paragraph 1 of Law No. 42 of 1999 concerning Fiduciary Guarantees which states that "without prejudice to the provisions referred to in article 21 if, the fiduciary beneficiary who praises the fiduciary may use, combine, mix, or transfer objects or proceeds from objects that have become objects of fiduciary guarantee or agreeing to bail or compromise receivables does not mean that the fiduciary waives the fiduciary guarantee.

Criminal provisions are also regulated in the provisions of articles 35 to 36 of Law No. 42 of 1999 concerning Fiduciary Guarantees where there are two criminal acts that have been regulated, namely deliberately to commit forgery, giving fiduciaries without the written consent of the fiduciary recipient and eliminating them where this has been regulated in article 35 which reads "everyone who intentionally falsifies, alter, omit misleadingly, which if known by either party does not give birth to a fiduciary guarantee, shall be punished with imprisonment for a minimum of 1 year and a maximum of 5 five years and a fine of at least Rp. 10,000,000.00 ten million rupiah and a maximum of Rp. 100,000,000.00 one hundred million rupiah.

Regarding one of the abolition of fiduciary guarantees stipulated in the Act itself, the following matters regarding the abolition of fiduciary guarantees are:
1. The existence of one of the repayment of debts owned by the debtor has been paid off, then remove the fiduciary guarantee, of course, with a written statement
2. Waiver of the right to fiduciary security by the fiduciary beneficiary, namely the creditor, just as the creditor no longer wants the object of the fiduciary guarantee to be a security for the repayment of his debt such as replacing it with another object to be used as security for his debt.
3. The destruction of objects that have become the object of this fiduciary guarantee such as the loss of objects so that the object of this fiduciary guarantee is no longer known to exist or the destruction of the object of this fiduciary guarantee due to a natural disaster or an accident.

Article 29 paragraph 1 of Law No. 42 of 1999 concerning Fiduciary Guarantees can examine how the responsibility of a debtor if he commits a default that has been contained therein states that:
(1) If the debtor or fiduciary guarantor defaults on the promise, the execution of the object that has become the object of the fiduciary guarantee can be done by:
a. Executory title as referred to in article 15 paragraph 2 by the fiduciary beneficiary
b. Sale of objects that have become the object of fiduciary guarantees on the fiduciary beneficiary's own power through public auction and taking repayment of receivables from the proceeds of the sale.

So that from the description of article 29 paragraph (1) above, this responsibility of the debtor can be explained to the fiduciary who has defaulted on the promise, then the execution of the goods which has become the guarantee is carried out.

'The lawmaker himself has held 2 (two) groups of movable objects, namely movable objects because of their nature and moving objects because a law is explained as follows:
1. Movable objects by their nature (Article 509 of the Civil Code and Article 510 of the Civil Code) Objects that can be moved or moved are movable objects by their nature (Article 50 of the Civil Code). In Article 510 of the Civil Code, several examples are given, including ships and so on. The formulation of section 509 is too broad. Not all objects that can be moved or moved are moving objects. For example, factory equipment, construction materials derived from the renovation of the building used to rebuild the building and many objects mentioned in Article 507 of the Civil Code can be moved or moved, but these objects according to Article 507 of the Civil Code are immovable because of their designation and thus are not movable objects. A ship is a movable object, as it can be moved, but regarding surrender and registration, ships whose deadweight exceeds 20 M3 are treated as immovable.
2. Movable property due to statutory provisions (Article 511 of the Civil Code) Movable property of this group is bodily property, namely rights and demands. As well as regarding movable property by its nature, we can say, that movable property due to the provisions of the law are rights and demands that are not considered immovable because of the provisions of the law. In general, the objects of these demands are movable (bodily)

objects. It should be noted that shares of trading companies are considered movable (incorpodied), also if the companies have immovable property (Article 511 sub 4 of the Civil Code).

Regarding the object of this fiduciary guarantee, it must be mentioned in real terms in the fiduciary guarantee deed (Article 6 of the UUJF). Mention is not only directed to the number / unit and type, but usually further details such as the brand, size, quality, condition (new or used), wamanya, serial number, and motor vehicle also mentioned frame number, engine number, Police number and Proof of Motor Vehicle Ownership (BPKB). Especially regarding this motor vehicle, the owner of the object is not the name listed in the BPKB, so the fiduciary must attach a receipt / invoice. So that there is a limitation in it against immovable objects, this is clearly stated in the deed of agreement in the credit agreement.

The position or position of the creditor where the bill is pledged by a fiduciary but the object of the guarantee is lost, the position will not change to a concurrent creditor with a general guarantee, namely this in the form of objects owned or to be owned by the debtor as stated in article 1131 of the Civil Code. As a result of the destruction or loss of such collateral so that this is a reason or part of the termination of the fiduciary agreement.

Thus, the position of the creditor himself, who was originally a preferred creditor, in this case the preferred creditor, is a creditor who has the right to precede because of the nature of his receivables by the Act is given a privileged position. In this case, it also consists of special preferred creditors as stipulated in article 1139 of the Civil Code and also general preferred creditors as stipulated in article 1149 of the Civil Code. Changing to a concurrent creditor which is a party that has an equal position with other creditors, if the debtor has debts on several parties, the concurrent creditor has the right to collect his rights in accordance with the bills agreed at the beginning of the agreement.

Thus, the legal consequence of the credit agreement for the loss of the object of fiduciary guarantee due to the debtor's negligence is that the credit agreement does not have a fiduciary guarantee, as a result the creditor's position changes from a preferred creditor with a special material guarantee (in this case in the form of a fiduciary guarantee) to a concurrent creditor who does not have a special material guarantee.

4. Law by the creditor for the loss of the object of fiduciary guarantee due to the debtor's negligence

Legal protection for creditors themselves in general has been regulated in the Civil Code, namely in article 1131 and article 1132 and has also been regulated in Law No. 42 of 1999 concerning Fiduciary Guarantees which in essence has stated that objects that have been burdened with fiduciary guarantees are obliged to: Registered and then made a certificate of fiduciary guarantee. The creditor himself has a right to execute an execution as stated in the fiduciary guarantee certificate if the debtor later defaults.

Law No. 42 of 1999 concerning Fiduciary Guarantees in detail has not been able to provide a legal protection if there is a default committed by the debtor as a fiduciary because there are several reasons which will be explained as follows:

a. Creditors and third parties in this case are not protected their interests if in this case they have not registered objects or objects that have become credit collateral

b. In this case the collateral is an inventory object, so hereby the position of the creditor is very weak because the collateral both the amount, movement and position or existence of the goods are difficult to detect so that the fulfillment of the principle of publicity is only a decorative fulfillment of a rule of law.
c. This is only beneficial for large creditors with a guarantee that already has a large value, which on the practical side of the registration system in Law No. 42 of 1999 concerning Fiduciary Guarantees which is temporarily only beneficial for large creditors with guarantees that have a large value.
d. The location of the fiduciary registration office is far and inadequate in the provincial capital city is very difficult to carry out fiduciary registration, because not all provinces have adequate transportation facilities so that it does not provide a benefit in terms of practicality.
e. No registration of the Fiduciary Guarantee Deed to the Fiduciary Registration Office, where the word fiduciary guarantee which should have been registered was in fact Most were not registered with the fiduciary registration office. Which with this aims to create order and provide legal certainty for business actors by making fiduciary guarantees as one of the Sources of financing are used to support the dynamics of business activities, but the opposite is true, namely legal irregularity and uncertainty.

Thus, it can be affirmed that a fiduciary guarantee has a material nature and applies to it a droit de suite principle, but this can be excluded from the transfer of the property that is the object of the fiduciary guarantee. So that the same protection can be seen in article 23 paragraph 2 of Law No. 42 of 1999 concerning Fiduciary Guarantees which states that: "Fiduciaries are prohibited from transferring or leasing to other parties objects that are objects of fiduciary guarantees that are not objects of inventory, except with prior written consent and fiduciary recipients".

So that sanctions against a provision above are criminal as stated in article 36 of Law No. 42 of 1999 concerning Fiduciary Guarantees which states that "fiduciaries who transfer, mortgage, or lease as referred to in article 23 paragraph 2 without the prior written consent of the fiduciary recipient, shall be punished with a maximum imprisonment of 2 two years and a maximum fine of Rp. 50,000,000 (fifty million rupiah).

So that for all acts and omissions of the fiduciary himself, the fiduciary based on an irresponsible negligence, as stated in article 24 of Law No. 42 of 1999 concerning Fiduciary Guarantees which states that "the fiduciary does not bear a liability for the consequences of the fiduciary's actions or omissions whether arising from the contractual relationship or arising from unlawful acts in connection with the use and transfer of objects that are the object of fiduciary guarantee". So the purpose and purpose of granting a fiduciary agreement in terms of legal protection for the creditor himself is the granting of a privilege or precedence for him to pay off the debtor's debt receivables to him, the principle of *schuld* and *haftung*.

So for more information about legal protection of the right to receivables that have taken precedence can be seen in the explanation of article 27 of Law No. 42 of 1999 concerning Fiduciary Guarantees, namely:

1. The fiduciary has precedence over other creditors

2. The right of precedence as referred to in paragraph 1 is the right of the fiduciary beneficiary to take repayment of his receivables on the proceeds of execution of the object of the fiduciary guarantee
3. The fiduciary's precedence and beneficiary rights are not terminated due to a bankruptcy and/or liquidation of the fiduciary.

So that overall there are several things as can show the existence of a legal protection for existing creditors in this case as fiduciary beneficiaries according to Law No. 42 of 1999 concerning Fiduciary Guarantees, namely as follows:

a. The existence of a fiduciary guarantee registration institution, which in this case is nothing but to be able to guarantee the interests of the party receiving the fiduciary
b. There is a prohibition on the fiduciary to re-fiduciary the object of the fiduciary guarantee (article 17)
c. There is a provision that the fiduciary will not be allowed to transfer, mortgage or lease (article 23 sub 2)
d. There is a provision to the fiduciary that it is obligatory to deliver an object of security if the creditor wants to carry out the execution of the object of fiduciary guarantee
e. The existence of a criminal provision in the Fiduciary Guarantee Act.

Therefore, in article 12 paragraph 1 of Law No. 42 of 1999 concerning Fiduciary Guarantees which states that the registration of fiduciary guarantees is carried out at the fiduciary registration office, the fiduciary registration office itself which is intended to be within the scope of duties of the Ministry of Public Affairs and Human Rights (article 12 paragraph 3) which at this time is carried out in the legal field of the regional office of the Ministry of Law and Human Rights in each provincial capital city which in this case is the service and services section law. Therefore, the imposition of fiduciary guarantees is carried out through two stages, namely the encumbrance stage and the fiduciary guarantee registration stage. In article 5 paragraph (1) of Law No. 42 of 1999 concerning Fiduciary Guarantee which states "the encumbrance of objects with fiduciary guarantees is made by notarial deed in Indonesian and is a fiduciary guarantee deed".

The notarial deed itself is a thing or a form of authentic deed as already in article 1868 of the Civil Code. The second stage of a fiduciary guarantee agreement process is the provision of security in the form of a notarial deed and the obligation to register the guarantee, which action to be able to fulfill one of the principles of the agreement to impose an expense with fiduciary guarantee, namely the principle of publicity, then by registering the fiduciary guarantee so that the principle of publicity can be fulfilled as well as a guarantee of the certainty of other creditors regarding a objects that have been encumbered with fiduciary guarantees.

It has been explained in the Law itself regarding the insurance business, we can understand about a regulation related to coverage or commonly referred to as insurance, which is an agreement in which between two or more parties with which the insured party which in this dal binds itself to the insurer. Where by receiving an insurance premium to provide a reimbursement to the insured party as a result of loss experienced, loss or damage to something which in this case will make an expected profit or where legal liability to third parties arising from an event that may be suffered by the insured party or to provide a payment which is based on the death or life of an insured person.

The debtor is actually obliged to insure the goods that will be used as a guarantee to the recipient. This is to aim to avoid something that we cannot want to happen while this credit agreement is in progress, so this explanation is in line with article 10 letter b of Law No. 42 of 1999 concerning Fiduciary Guarantee. A credit agreement itself which in this case uses a fiduciary object guarantee which does not have insurance is actually not recommended by law.

This sale or auction will later be carried out if the debtor in this case does not pay off its debt to the creditor or in other words has defaulted on the promise which was agreed at the beginning of the agreement. So this can be done to make a sale of the collateral object that has become the collateral where this has become the calculation of the creditor in repaying the debtor's debt that has been declared stuck. Where later the results of the sale or auction can be done through a public sale because of a promise in advance *parate executie* on the object which has been used

In this case, as explained in the above problem, the creditor can make an effort to the debtor in 2 two ways, namely as follows:

1. Litigation method where this can be done by the creditor by giving a warning to the debtor of the remaining unpaid and overdue debt so that the debtor can prepare a replacement for the destroyed or lost collateral with the same value as the previous collateral
2. The next non-litigation method is to conduct a mediation between both parties, namely creditors and debtors to be able to settle credit agreements that have been mutually agreed upon in a familial and preventive manner.

So in this case the creditor can give a warning to the debtor that must pay off the remaining debt that must be paid to the creditor, and also then the creditor can also try to make a new agreement by abolishing or not the previous agreement. So that the creditor can emphasize to the debtor related to the debt as mentioned in the fiduciary guarantee deed to make repayment as a result if the collection results of the fiduciary guarantee object are lost, some of which are not sufficient in making repayments.

So that the efforts made by the creditor are not responded well by the debtor itself, in this case the creditor can file a lawsuit to the court. Where the debtor who is unable to pay his debt cannot be subject to a criminal sanction as long as the debtor does not deliberately commit his malicious intention to commit fraud on the existence of the receivable debt. If the loss is due to a deliberate intention on the part of the debtor to avoid the remaining credit or debt to the creditor, then with this the creditor can take legal action by filing this case in legal channels or court.

The effort taken against this legal route is with the aim of confiscating the assets of other debtors to be used as a substitute for the object of fiduciary guarantees that have been lost. As has been in line with article 1131 of the Civil Code where the creditor has a right to execute another debtor's property to be used as a substitute for the lost fiduciary guarantee. This has also been regulated in article 29 paragraph (1) letter a and b of Law No. 42 of 1999 concerning Fiduciary Guarantee which states that "if the debtor or fiduciary commits a default, the execution of the object that has become the object of fiduciary guarantee can be carried out by:

a. Implementation of titeleksecutory as referred to in article 15 paragraph (2) by the fiduciary beneficiary

b. Sale of objects that are the object of fiduciary guarantee themselves through public auction and take repayment of debts from the proceeds of the sale. Also, in the provisions of article 15 paragraph (2) of Law N0 42 of 1999 concerning Fiduciary Guarantee, states "the fiduciary guarantee certificate as referred to in paragraph (1) has the same executory power as a court decision that has obtained permanent legal force".

In this case, it is also in line with what has been explained in article 1365 of the Civil Code that "every unlawful dispute that brings a loss to another person, obliges the person for wrongfully publishing the loss, to compensate for the loss". So that the legal remedy taken by the creditor for the loss of the fiduciary security object due to the debtor's negligence is (a) to ask the debtor to immediately return the credit loan to the creditor as a form of responsibility for the lost collateral; and/or (b) claim compensation for the loss of the object of fiduciary guarantee under article 1365 of the Civil Code.

5. Conclusion

The legal consequence of the credit agreement for the loss of the object of fiduciary guarantee due to the debtor's negligence is that the credit agreement does not have a fiduciary guarantee, as a result the creditor's position changes from a creditor who is preferred with a special material guarantee (in this case a fiduciary guarantee) to a concurrent creditor who does not have a special material guarantee.

Legal remedies taken by the creditor for the loss of the fiduciary security object due to the debtor's negligence are (a) asking the debtor to immediately return the credit loan as a form of responsibility for the lost collateral; and/or (b) claim compensation for the loss of the object of fiduciary guarantee under article 1365 of the Civil Code.

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