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THE EXECUTION OF FIDUCIARY COLLATERAL OBJECTS THROUGH UNDER-HAND SALES

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Abstract :
The position of the fiduciary giver is getting stronger. Therefore, in Law Number 42 of 1999 concerning Fiduciary, Article 29 paragraph (1) letter c, the provisions are added if the fiduciary giver breaks his promise. Furthermore, the fiduciary receiver can sell the fiduciary collateral object directly through under-hand sales. Article 29 paragraph (1) letter c of Law Number 42 of 1999 concerning Fiduciary authorizes the fiduciary receiver/ creditor to sell the collateral object under the hand based on an agreement between the receiver/ fiduciary creditor and the giver/fiduciary debtor. After one month after the due date of the defaulting debtor, the provision must be added with one paragraph, which contains: the agreement between the giver and the receiver of the fiduciary is stated at the beginning of the agreement. Therefore, it states that; since the fiduciary debtor defaults, there has been an agreement between the giver and the fiduciary receiver, and the fiduciary receiver has the right to sell the collateral object under the hand. In Article 29, paragraph (1) letter c, there is a provision that states that collateral sales must be announced in two newspapers within one month. This provision must be added by one paragraph so that it states; If within the book period ends, there are buyers of fiduciary collateral at favorable prices, then the replacement period of one month as regulated in Article 29 paragraph (1) is revoked.

Keywords: Execution, Fiduciary Collateral, Under-hand

INTRODUCTION

A bank can give credit to anyone whose ability through a debt agreement between the creditor and the debtor. After the agreement is agreed, then the obligation is born to the creditor, namely to hand over the agreed money to the debtor, with the right to receive the money back from the debtor on time, accompanied by interest agreed by the parties at the time the parties approved the credit agreement. The rights and obligations of the debtor are reciprocal with the rights and obligations of the creditor. If this process does not face problems and both parties carry out their rights and obligations under the agreement, then problems will not arise. Commonly, new problems arise if the debtor fails to return the loan money at the agreed time. Thus, one of the efforts to protect creditors in credit transactions is that a guarantee from the debtor is required.

In the provisions of Article 11 paragraph (1) of Law No. 42 of 1999 concerning Fiduciary Collateral, “objects that are burdened with Fiduciary Collateral must be registered".

Furthermore, the Article 12 paragraph (1) states that "Registration of Fiduciary Collateral as referred to in Article 11 paragraph (1) is carried out at the Fiduciary Registration Office", which is regulated in Law No. 12 of 2011 concerning the Establishment of Legislations that the phrase "mandatory" which in the event of a violation of the sound of the article or in other words that the Article is not implemented. Furthermore, there will be sanctions given to violators, either criminal sanctions as stated in Article 10 of the Criminal Code or administrative sanctions.

The registration carried out by the fiduciary receiver of the object charged with the fiduciary guarantee is intended to fulfill the principle of publicity, namely the principle that third parties can know that the collateral object is being carried out as collateral. In addition, the registration of the object of this fiduciary collateral also aims to provide legal certainty in executing the object of the fiduciary collateral. Therefore, in the future, it does not cause disputes or conflicts when there is a default, especially by the debtor.[1]

Financial institutions in the form of banks, whose main activity is to collect funds from the public and then channel them back to the public in various kinds of credit facilities, are a type of financing in general. Credit distribution activities contain risks that can affect the health and business continuity of the bank due to bad loans. The implementation of lending is generally carried out by agreeing. The agreement consists of the main agreement, i.e., a debt agreement. After that, it is followed by an additional agreement in the form of an agreement to provide collateral by the debtor.

Facts in the field showed that financial institutions entering into financing agreements included words such as fiduciary collateral. However, ironically, it was not made in a notarial deed and was not registered at the Fiduciary Registration Office to get a certificate. This deed can be called a private fiduciary collateral deed. Fiduciary collateral without a fiduciary collateral certificate has complex and risky legal consequences. Creditors cannot perform their right of execution because they are considered unilateral and can lead to arbitrariness from creditors.

A situation that can occur is that the creditor in the execution performs coercion and takes the goods unilaterally, even though it is known that the goods are partly or wholly owned by someone else. However, it is also known that some goods belonged to the creditor who wanted to execute them, but it was not registered at the fiduciary office. Even the imposition of other articles can occur, considering that execution is not accessible everywhere. Hence, it requires legal collateral and legal support from law enforcement officials. Even if the debtor transfers the fiduciary object carried out under the hands of another party, it cannot be charged with Law No. 42 of 1999 concerning fiduciary collateral because the fiduciary collateral agreements made are not valid or legal.

Based on the background above, the author intended to discuss several legal issues, i.e., how was the legal position of the fiduciary

[1] J. Satrio, *Fiduciary Property Guarantee Law*, Bandung, PT. Citra Aditya Bakti, 2002, p. 25

holder to the collateral object executed through under-hand sales, and how was the execution of fiduciary collateral object through under-hand sales.

The author used a normative research method, i.e., research conducted by examining the provisions of the legislation (in *abstracto*) and the doctrines of legal scholars related to this research, to analyze the legal issues above.[2] Furthermore, this research also used several approaches, i.e., the statutory approach, the conceptual approach, the analytical approach, the historical approach, and the case approach. The legal material obtained was then analyzed qualitatively; the analysis was carried out by understanding and compiling the data obtained and arranged systematically, then conclusions were drawn. The conclusion was taken by using a deductive way of thinking, namely by thinking that was fundamental to things of a general nature and then drawing specific conclusions.

DISCUSSION

The Legal Position of the Fiduciary Receiver of the Fiduciary Collateral Object Executed Through Under-hand Sales

The provisions in Article 1 paragraph (2) of the Fiduciary Law state what is meant by fiduciary collateral as follows: Fiduciary collaterals are security rights for movable objects, both tangible and intangible and immovable objects, especially buildings that cannot be encumbered with Mortgage Rights as referred to in Law No. 4 of 1996 concerning Mortgage Rights that remain in the control of the Fiduciary Giver, as collateral for the repayment of certain debts, which gives priority to the Fiduciary receiver over other creditors.

Fiduciary Collateral is an institution of guarantee rights (collateral) whose material characteristic (*zakehjk zekerheid*, security right in rem) gives priority or precedence to Fiduciary receivers against other creditors. As material rights that provide guarantees, naturally, the nature and characteristics of material rights are also attached to fiduciary collateral. It is not an individual obligatory agreement (*persoonlijk*). Fiduciary agreement give rise to *zakelik* rights, an opinion that is widely followed by authors, in line with the growth of modern credit life nowadays and the growth of the Anglo-American legal system, in this case, according to the equity system, which is analogous to guarantees with mortgages and mortgagee, which obtain *zakelijk* collateral rights and do not obtain *eigendom* rights over collateral items.

The fiduciary agreement is *zakelijk*. It means that the rights obtained by the fiduciary receiver (the creditor) are material rights (limited). Thus, they can be defended against anyone. Therefore, articles of the pawn can be applied to it. Furthermore, a fiduciary agreement does not give the creditor full ownership rights because he does not control the object and is not authorized to enjoy the object. However, it only has authority over the object under the agreed purpose, namely as collateral.

[2] Setiawan in Sultan Remy Sjahdeini, *Bankruptcy Law, Understanding the Failisementverordening Juncto. Law No. 4 of 1998*, Pustaka Utama Grafiti, Jakarta, 2002, p.108

If the debtor continues to fulfill his obligations, he can still use and control the object. He can still defend the object against third parties, namely creditors and fiduciary receivers, in case of confiscation of the fiduciary receiver. Even the debtor can still defend his rights against the curator in the event of a creditor's bankruptcy. Fiduciary agreements are obligatory, meaning that the fiduciary receivers' rights are fully proprietary, even though these rights are limited by matters stipulated jointly in the agreement. However, such restrictions are only personal. The rights obtained by the fiduciary receiver are full property rights. He is free to determine how to fulfill his receivables on objects pledged through a fiduciary. The rights that arise from the fiduciary agreement are personal rights, which are born because of the debt relationship between the creditor and the debtor. Coercive provisions and pledges cannot be applied to it. Besides, the parties are free to determine when the debtor or creditor goes into bankruptcy.

The Fiduciary Law states that the imposition of a fiduciary guarantee is intended as collateral for the repayment of a debtor's debts (fiduciary provider). It means a fiduciary collateral agreement is a follow-up agreement or the tail of the main agreement. The provisions in Article 4 of the Fiduciary Law and its explanation confirm that the Fiduciary collateral is a follow-up agreement to the main agreement that creates an obligation for the parties to write an achievement in the form of giving something or doing something, which can be valued in money. Therefore, it means that the birth of a fiduciary collateral agreement is determined by the existence of a principal agreement that gives rise to obligations and, at the same time, the parties' responsibility to fulfill an achievement as a result of the occurrence of an engagement.

The nature of the *accessoir* of this fiduciary collateral has legal consequences. The consequences include: a) automatically, the fiduciary collateral becomes null and void by law if the principal agreement ends or due to other reasons which cause the principal's agreement to be nullified; b) The fiduciary who guarantees it because of the law also passes to the new fiduciary receiver by transferring the main agreement to the other party; c) A fiduciary is an inseparable part or permanently attached to the main agreement. Therefore, the abolition of the fiduciary does not cause the abolition of the main agreement.[3]

The fiduciary agreement is an *accessoir* agreement. Under its nature, the fiduciary collateral agreement is a conditional agreement, with the condition that the cancellation as stipulated in Article 1253 Juncto Article 1265 of the Civil Code, with the consequence, the granting of the fiduciary collateral automatically ends or is abolished. However, for the main agreement, the fiduciary collateral can be canceled for specific reasons, among others, due to settlement.[4]

In our banking practice, this fiduciary agreement is often made in addition to the

[3] Rahmadi Usman, *Civil Guarantee Law*, Jakarta, 2008, p. 165

[4] J. Satrio, *Promises (Bedingeng) In the Deed of Mortgage and Mortgage,,* Notary Media, January-March Edition, Indonesian Notary Association, Jakarta, 2002, p. 197

principal collateral when the principal collateral is deemed insufficient. Sometimes, the fiduciary is also held separately. It is not in addition to the primary collateral, which small employees often use, small traders, retailers, and others as collateral for their loans requested by banks.

The Fiduciary receiver has the right to take precedence or prioritize over other creditors, i.e., the Fiduciary receiver's right to settle his receivables on the results of the execution (sale) of the Fiduciary Collateral Object. The right to take the repayment of this receivable is capital from other creditors that are not guaranteed by a fiduciary, even though the Fiduciary receiver is a person who is bankrupt or liquidated. The principal rights of the Fiduciary receiver are not nullified due to the bankruptcy and/ or liquidation of the Fiduciary receiver since the Fiduciary Collateral Object is not included in the Fiduciary Giver's bankruptcy bill. This provision relates to the provision that the Fiduciary Guarantee is a collateral right for the debt settlement object. It is in line with the provisions of Law Number 37 of 2004, as explained above, which determines that the object is the material collateral, including Fiduciary Collateral outside of bankruptcy and/ or liquidation.

Fiduciary receives is classified as a creditor with the most vital position, such as mortgage holder, whose receivables must be fulfilled first from other creditors taken from the results of the execution of fiduciary collateral objects. He is a preferred or separatist creditor.[5] Likewise if the person declared bankrupt is a creditor (fiduciary receiver), then the Fiduciary Collateral Object is not included as a bankruptcy bill from creditors (*Fiducia Receiver*). The transfer of ownership rights to an object that is the Fiduciary Collateral Object is intended as collateral only.

There is no unified opinion among the authors regarding the status of Fiduciary Collateral Objects if the creditors are bankrupt. Suppose the fiduciary agreement is deemed to give rise to *zakelijk* rights. In that case, the consequence is that the rights to the collateral items can be defended against third parties, as well as against the bankruptcy curator. The bankruptcy curator cannot withdraw these objects (*revindicatie*) and the debtor's power as long as the debtor continues to fulfill his obligations properly, namely paying his debts to creditors. The debtor can still control the object, use it, and defend it against the curator and the creditors of the bankrupt. These objects do not fall into the bankruptcy bundle.

In the event of a creditor's bankruptcy, if the debtor pays off his debts, he will get the object back, which was used as collateral. If the debtor at the time of bankruptcy does not pay off his debts, the curator can sell the object, then the remainder, after being calculated with the debt, is returned to the debtor.[6] Conversely, if the fiduciary agreement gives birth to personal rights (*personlijk*) and is an obligatory agreement, then the creditor is the owner of the collateral objects. The third party does not deal with the object.

[5] Soedewi Masjchoen Sofwan, *Association of Works on Guarantee Law*, Yogyakarta, Liberty, 1977, p. 38

[6] Sri Soedewi Masjchoen Sofwan, *Security Law in Indonesia: Basic Legal Guarantees and Individual Guarantees,*Liberty, Yogyakarta, 1980, p. 39.

In the event of a creditor's bankruptcy, the collateral items fall into the bankruptcy bill. The bankruptcy curator can control the object. If the creditor's bankruptcy, the debtor can still fulfill it correctly. The debtor can pay off his debts within a certain period, then get the object back. Meanwhile, if at the time of the bankruptcy of the creditor, the debtor defaults, the collateral will fall into the bankruptcy bundle. The debtor can, therefore, only claim the remainder of the selling price of these objects after deducting receivables from selling costs and others. However, he can only act as a concurrent creditor. Moreover, to avoid the loss of legal certainty, the provisions in Article 28 of the Fiduciary Law are interpreted in line with the provisions in Article 17 of the Fiduciary Law, which prohibits the granting of fiduciaries by a Fiduciary Giver, or broader, without limitation to the registered fiduciary, exceptions to the same Fiduciary receiver. If the Fiduciary Giver, for the collateral object that has been registered, is authorized to fiduciary again to other creditors, then what needs to be considered is whether there is still a possibility of re-fiduciary guarantee for the same collateral object to other creditors. The possibility still exists if we accept that handing over the object of collateral in trust by the debtor (the fiduciary giver) to the creditor during the guarantee period becomes the "owner" of the collateral object consequently if the creditor needs money, then shorter and the credit that the creditor gives to the first fiduciary giver.

Based on Article 2 of the Fiduciary Law, as long as it aims to burden objects with Fiduciary Collateral, the agreement is subject to and follows the Fiduciary Law. By that means, for a legal relationship with the following characteristics mentioned in the Fiduciary Law, the Fiduciary Law applies, even if it does not use a fiduciary title. One of the main characteristics that must exist is the intention to burden objects with Fiduciary Collateral. This benchmark is important to observe. It means that the Fiduciary Law does not have to apply to all kinds of fiduciary relationships, covering a wide field. Fiduciary relationships exist when there is someone who is technically a juridical owner, but socially and economically, rights could be considered someone else's property.[7]

Furthermore, regarding this fiduciary collateral object, there is a danger in connection with the recognition that the granting of collateral with *"costitutum possessorium"* may arise is that a debtor feels that he cannot fulfill his obligations as he should and has seen signs of impending confiscation of assets of his property. In other words, his property had been pledged as collateral by the trust to his family member, and the goods in his possession he held as borrowers from his creditors.[8]

The imposition of a Fiduciary Collateral Object is based on an agreement between the Fiduciary Giver and the Fiduciary Receiver. It means there must be an agreement between the two parties for the fiduciary to occur. By

[7] J. Satrio, Security Law, Property Security Rights, Mortgage Rights Book 2, Citra Aditya Bakti, Bandung, 1998, p. 189

[8] Faisal, Nova. *Juridical Review of Fiduciary Guarantees Relating to Provisions Number 2 Circular Letter of the Ministry of Law and Human Rights of the Republic of Indonesia, Directorate General of General Legal Administration Number: c. Ht. 01. L0-22 dated March 15, 2005 concerning Standardization of Fiduciary Registration Procedures." Journal of Law & Development*, Vol. 36, No. 4, 2017, pp. 421-442.

itself, the granting of a Fiduciary Collateral cannot be canceled unilaterally by either party of the Fiduciary Giver or the Fiduciary receiver. However, the Fiduciary Giver and the Fiduciary receiver cannot agree on the provision of the Fiduciary Collateral at will. It means that an agreement that aims to burden an object with a Fiduciary Collateral must comply with the provisions in the articles of the Fiduciary Law. The parties may separately deviate as long as it is permitted or does not conflict with the Fiduciary Law. Before the Fiduciary Law, the Fiduciary Collateral Objects were movable objects consisting of inventory items, merchandise, receivables, machine tools, and vehicles.

To meet the community's growing needs, according to the Fiduciary Law, the Fiduciary Collateral Object is given a broad definition: 1) Tangible movable objects; 2) Intangible movable objects; 3) Immovable objects which cannot be encumbered with Mortgage Rights. In other words, the Fiduciary Collateral Object can be 1) Tangible movable objects; 2) Intangible movable objects; 3) Registered movable property; 4) Unregistered movable objects; 5) Certain immovable property cannot be encumbered with a Mortgage; 6) Certain immovable property cannot be encumbered with a Mortgage; 7) The object must be able to be owned and transferred. The Fiduciary Collateral Objects are not only objects that have existed at the time the Fiduciary Collateral is made but also include objects obtained later, which can be given fiduciary collateral. This possibility is emphasized in Article 9 of the Fiduciary Law, namely: 1) Fiduciary guarantees can be given to one or more units or types of objects, including receivables, both existing at the time the guarantee was given or later obtained, and 2) the imposition of collateral on goods or receivables obtained later as referred to in paragraph (1) does not need to be carried out with a separate guarantee agreement. Thus, as long as it is not agreed otherwise, the Fiduciary collateral includes a) the results of fiduciary collateral objects, i.e., everything that is obtained and objects that are burdened with fiduciary collateral; b) insurance claim, if the fiduciary collateral object is insured. Furthermore, this insurance claim is the right of the fiduciary beneficiary given as collateral for the settlement of certain debts of the debtor or creditors. Therefore, a Fiduciary Collateral is an accessor to a certain receivable based on a debt-receivable agreement or other agreement. The birth, existence, transfer, execution, and annulment of the Fiduciary Collateral are determined by the existence, transfer, and write-off of receivables guaranteed to be settled. The existence or absence of a Fiduciary Collateral depends on the presence or absence of a particular receivable guaranteed to be paid off with a Fiduciary Collateral.

When the credit agreement was signed, the debtor had not owed anything because by signing the credit agreement, the new creditor provided a certain amount (ceiling) to be used (borrowed) by the debtor. Later, if the debtor uses the available credit, there is a debt owed by the debtor at that time. The debtor's debt based on the agreement can change, and the Fiduciary collateral only has its role when the creditor. Suppose the debtor has defaulted and will execute the collateral object. In that case, the amount owed by the debtor is only essential and must be known with certainty at the time of execution. The amount beforehand cannot be mentioned in most bank loans except fixed loans. When the

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Fiduciary Collateral is given, the provisions in Article 7 sub c of the Fiduciary Law above benefit the needs of credit practices. The essential thing, i.e., the amount of debt the debtor owes when the execution is carried out can be determined. Thus, based on the provisions in Article 7 of the Fiduciary Law and related to its explanation, it can be said that debts whose repayment is guaranteed by Fiduciary Collateral are not always in a specific and fixed amount (*fix loan*). However, sometimes the new amount can be determined with certainty at a later date or when the fiduciary guarantee is executed (or at least can be determined at a later date based on the master agreement). Such provisions still do not provide a way out of certainty to execute the Fiduciary Collateral object in connection with differences of opinion between creditors and debtors in determining the exact amount of money (debt).

In the banking world, in particular, credit is not granted in its entirety. However, it is given in stages up to a specific limit (ceiling) that has been previously agreed upon by the debtor and creditor (as outlined in the principal or parent agreement). Fiduciary Collaterals bind themselves in the Fiduciary Collateral agreement, consisting of the Fiduciary Giver and the Fiduciary Receiver. According to Article 1 point 5 of the Fiduciary Law, the Fiduciary Giver can be an individual or a corporation that owns the Fiduciary Guarantee object. It means that the Fiduciary Giver does not have to be the debtor himself. In this case, it can be another party acting as third-party collateral, namely those who are the owners of the Fiduciary Collateral object who surrender their property to serve as Fiduciary Collateral. Moreover, the most important thing is that the Fiduciary Giver must have ownership rights over the object that will become the object of the Fiduciary Collateral when the fiduciary grant is made. As previously stated, Article 17 of the Fiduciary Law prohibits the Fiduciary Giver from re-fiduciary on objects of registered Fiduciary Collateral.

Based on the provisions in Article 17 of this Fiduciary Law, re-fiduciary by the Fiduciary Giver, either by the debtor or third-party guarantor, is not possible for objects that have been fiduciary and registered. The ownership rights to the Fiduciary Collateral object have been transferred to the Fiduciary Beneficiary so that the debtor or third-party guarantor is not authorized to transfer it to another party. Transfer of ownership rights to the Fiduciary Collateral Object to the creditor (the Fiduciary receiver) is not in the true sense. He acts as a *bezitloos eigenaar* to the Fiduciary Collateral Object. His position is not as the actual owner of the collateral object. The purpose of the fiduciary guarantee is not to provide the Fiduciary receiver authority to own the object that is the Fiduciary Collateral Object but as a mere guarantee.

The position of the creditor (fiduciary receiver) is the collateral holder. Meanwhile, the authority the owner has is the authority that is still related to the guarantee itself. Therefore, it is also said that his authority as the owner is limited. Under the Fiduciary Law, the imposition of an object on the Fiduciary Collateral is made by a notarial deed in the Indonesian language.

The provisions in Article 5 paragraph (1) of the Fiduciary Law stipulate that the assignment of objects with Fiduciary Collaterals is made with a notarial deed in Indonesian and is a Fiduciary Collateral

VOLUME 30 | JUNE, 2022 ISSN 2456-9704

Deed. Based on Article 5 paragraph (1) of the Fiduciary Law, every legal act that intends to burden objects with Fiduciary Collateral is proven by a notarial deed. Moreover, the provisions in Article paragraph (1) of the Fiduciary Law mention that a "must", or "obligation" is not required for loading objects with Fiduciary Collaterals as stated in the form of a notary deed. Therefore, it can be interpreted that it is permissible to charge objects with Fiduciary Collateral stated in the form of a notarial deed. A notarial deed is an authentic deed and has the perfect proof power. Therefore the imposition of objects with a Fiduciary Collateral is stated in a notarial deed which is a Fiduciary Collateral Deed (AJF).

Article 1870 of the Civil Code states that an authentic deed provides perfect evidence of what is contained between the parties and the heirs or the people who get the rights and are their successors. On that basis, the Fiduciary Law "requires" or "obliges" the imposition of objects guaranteed by the Fiduciary Collateral to be carried out by a notarial deed. The choice of a notarial form is usually intended for action with extensive legal consequences. The parties are protected from rash actions and mistakes because a notary usually acts as a legal adviser to both parties in giving advice. Hopefully, parties are aware of the legal consequences of their actions and the obligation of a notary to read out the contents of the deed. Besides, it can also serve as protection against reckless and reckless actions. In addition, considering that the object of fiduciary collateral is generally a movable object that is not registered, it is only natural that the form of an authentic deed is considered to be the ablest to guarantee legal certainty regarding fiduciary collateral.

The fiduciary agreement deed is attached with a detailed list of items used as fiduciary collateral. It is stated that the attachment containing the list of items is an integral part that cannot be separated from the deed. The provisions in Article 5 paragraph (1) of the Fiduciary Law states that it is closed that the imposition of objects with Fiduciary Collateral is made with a Deed of an Appointed Official or an under-hand Deed. It means that a notary must make the Fiduciary Collateral Deed. Even though it is known that not all regions have notaries and those who take advantage of this Fiduciary Collateral institution are generally weak economic groups. Therefore, if the assignment of objects with a fiduciary guarantee is required through a notarial deed, it will increase costs and possibly slow down the process of fiduciary loading if there is no notary at the place of the fiduciary object. Therefore, the provisions for loading objects with Fiduciary Collateral, which require a notary deed, should be reviewed. At least the fiduciary loading can also be carried out through a Designated Official Deed. In the area where the fiduciary object is not located, there is no notary or the burden is only for debts (credit) up to a certain amount. Each reciprocal agreement will give rise to rights and obligations to each party, then called an engagement. Upon the emergence of these rights and obligations, those who bear the rights and legal relations are called "creditors", and opponents thereof as liability holders are called "debtors". When the agreement is agreed upon, the parties will have rights and obligations. It is a consequence of an obligatory agreement adopted by Book III of the Civil Code (BW).

A collateral agreement is an accessory agreement attached to another agreement as

to the main agreement. In principle, a guarantee agreement arises because of a debt agreement or an agreement that creates an obligation in the payment of money. Therefore, its existence cannot be separated, and the main agreement is a debt-receivable relationship. A creditor is a general term for a person entitled to a particular achievement in an engagement. It can also be formulated as a party owed in a particular debt relationship. In the collateral agreement, the creditor is the charge giver, based on the agreement of the promise given by the debtor, and the creditor obtains collateral rights, both in the form of individual collaterals and material collaterals for the settlement of his debts. In the law of guarantees, the quality of creditors is classified into several levels based on their position, including a) Separatist creditors; b) Preferred creditors; c) Concurrent creditors.

The creditor who has the right of *parate* execution always has the right to precede because the position of a creditor of the right to make sales on his power is the creditor who holds the first guarantee. Therefore it can be said that among other guarantee holders or those who are both preferred creditors. Creditors who have executive *parate* authority always occupy the highest position. It is under the legal principle in determining the ranking of material guarantees, where material guarantees that are born first occupy a higher order, and the authority to execute *parate* is only owned by the holder of the first material guarantee. Unlike concurrent creditors, who must compete with other concurrent creditors in an equal distribution in paying off their receivables, creditors with *parate* execution rights always have a particular and layered position. When they obtain a special position, the right to general security as stipulated in Article 1131 of the Civil Code also remains not lost. As a result, and the holder of material security rights, a creditor *parate* execution has all the material rights granted by law, such as recognizing the nature of the draft *de suite*, i.e., a property nature that will continue to follow the object wherever the collateral object is transferred. Hence, in the case of the object, if the guarantee is transferred to another party, the collateral holder will still be able to pay off his debt with the object. Another specialty that is a characteristic and material collateral is if the Commercial Court declares the debtor is bankrupt. Furthermore, the separatist creditor can still make repayments with the collateral object as if the bankruptcy had never occurred.

THE EXECUTION OF THE FIDUCIARY COLLATERAL OBJECT THROUGH UNDER-HAND SALES

Under-hand sales of the Fiduciary Collateral object have several requirements as stated in Article paragraph (1) letter c and Article 29 paragraph (2) of the Fiduciary Law. The provision of conditions is intended to prevent the Fiduciary receiver's creditors from arbitrarily selling under the hands without going through the auction procedure.

The conditions for selling under-hand fiduciary objects are as follows: a) There is an agreement between the Fiduciary Giver and Receiver; b) It is intended to Get The Highest Price; c) It is carried out after one month has passed since it has been notified in writing by the Fiduciary Giver and/ or Receiver to the interested parties; d) It is announced that at least two newspapers are circulating in the area concerned. The prohibition of owning collateral items by

creditors is a generally accepted principle in this guarantee agreement as also regulated in the Mortgage Institution (vide: article 12 of the Mortgage Law) and Pawn (vide: Article 1154 of the Civil Code) because the fulfillment of bills with collateral objects is not done by owning the object but by selling the collateral object based on the general sale of the proceeds and the sale is used to pay off debtors' debts that are guaranteed by the collateral object. The procedure for executing Fiduciary Collateral objects has been determined limitedly as regulated in Article 29 of the Fiduciary Law. Even though Article 32 of the Fiduciary Law stipulates that "every promise to execute Fiduciary Collateral Object in a contrary way to the provisions as referred to in Article 29 and Article 31 is null and void", according to the article, creditors can only fulfill claims through collateral objects with three options, including 1) Execution based on the executorial title with the assistance of the Head of the District Court; 2) *Parate* execution or sale of the object of Fiduciary Collateral with its power through public sales; 3) Sale of under-hand collateral objects.

The limited nature of property rights can be seen from several aspects contained in the process of paying off debt through the object of Fiduciary Collateral as follows: 1) Creditors are only entitled to sell the object of collateral either by auction or private sale; 2) Any excess from the sale of the object of the guarantee after the debt has been paid off then remains the guarantor's right; 3) If there is a shortage of proceeds from the sale of the Fiduciary Collateral object, the debtor will still be in debt even though the collection effort must be made through the lawsuit as usual; 4) If the debtor fulfills his performance well (pays all his debts), then the creditor cannot do anything about the object of collateral. The ownership rights will automatically be transferred to the debtor; and 5) Ownership rights in Fiduciary Collateral are limited by suspension conditions, meaning ownership rights to make sales (execution) of new Fiduciary Collateral objects are born if the debtor is in a state of default.

The Law on Fiduciary Collateral (UUJF) determines that the method of executing a fiduciary guarantee includes: *first*, the implementation of an executorial title; *second*, the sale of collateral objects based on *parate* execution; and *third*, the sale of fiduciary collateral objects under the hand. Suppose the collateral item is sold in private. The law stipulates that the sale is carried out after one month has elapsed since the fiduciary giver and recipient have notified the interested parties in writing and announced it in at least two newspapers circulating in the area concerned.

CONCLUSION

The fiduciary receiver towards the fiduciary collateral object executed through under-hand sales has a privileged position because this position has the power to sell the collateral object himself. In particular, the Fiduciary Law regulates the procedure for executing fiduciary collateral objects based on *parate* executie. Based on the provisions of Article 29 paragraph (1) letter (b) Juncto Article 15 paragraph (3) of the Fiduciary Law, which legally gives rights or authorities to creditors (fiduciary receivers) on their power (*parate* executie) to sell fiduciary collateral objects to get the repayment of his debts. It means that without the assistance of the Chairman or the bailiff of the relevant

District Court, the creditor can execute the fiduciary collateral object through a general sale or auction of the object that is the fiduciary collateral object. Strength of Article 29 paragraph (1) letter c of the Law on under-hand sales states the fiduciary receiver as a party whose position is vital because the law gives the fiduciary receiver the authority to sell the fiduciary collateral object on the condition that there is an agreement with the fiduciary giver.

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