




Legal Consequences for Debtors Due to Failure to Remove Fiduciary Guarantees

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Abstract

Introduction: The issue of the non-deletion of fiduciary security remains a matter that continues to be overlooked. In many cases, the deletion is not carried out by the fiduciary recipient, their representative, or attorney after the termination of the principal agreement. This situation causes harm to the fiduciary grantor, even though the loss may not be felt directly. One of the consequences is that when the fiduciary grantor applies for a loan from a financial institution, the application may be rejected because the collateral object is still recorded as active in the fiduciary registry.

Purposes of the Research: To identify and analyze the factors behind the non-deletion of fiduciary security and the legal consequences for the fiduciary grantor if the fiduciary security is not deleted.

Methods of the Research: The research method used is normative legal research with a statutory approach and case approach. The sources of legal materials used include primary legal materials, secondary legal materials, and tertiary legal materials. The technique for collecting legal materials is carried out through literature study using a qualitative method, along with limited interviews as supporting field data to strengthen the normative analysis.

Findings of the Research: The research results show that the failure to delete fiduciary security by the fiduciary recipient is caused by their negligence and lack of awareness regarding the obligation to carry out the deletion. In addition, the absence of strict sanctions for failing to perform the deletion contributes to the issue. This situation causes harm to the public, resulting in disruptions to their economic activities. Therefore, there is a need for stricter regulations concerning the deletion process, and the Ministry of Law and Human Rights must continuously supervise these financing institutions.

Keywords: Fiduciary Security; Deletion; Legal Consequences.

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INTRODUCTION

Indonesia As one of the developing countries, economic growth will be highly concerned to achieve a just and prosperous society based on the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution of the Republic of Indonesia). Economic growth in Indonesia, which is getting faster every day, has the potential to increase credit needs. The government and the community, both individuals and legal entities to increase development require costs in increasing development activities. With that, a financing institution is needed to make it easier for development actors to obtain funds. A financing institution according to Article 1 number 1 of Presidential Regulation Number 110 of 2020 concerning the Revocation of Presidential Regulation Number 9 of 2009 concerning Financial Institutions (hereinafter referred to as the Presidential Regulation on Financial Institutions) is a "business entity that carries out financing activities in the form of providing funds or capital goods". These activities are carried out without withdrawing funds directly from the community.

Financing institutions that distribute funds to consumers must first make an agreement between the financing company (creditor) and the consumer (debtor). The agreement made between the parties is called a principal agreement. An agreement based on Article 1313 of the Civil Code stipulates that an agreement is a legal act in which one or more people bind themselves to another or more people. An agreement in this case refers to a credit agreement where each agreement must meet the conditions for the agreement to be recognized and to be binding on the parties who made it. The validity of a credit agreement must meet the conditions for the validity of the agreement: 1) There is an agreement between the parties; 2) The parties involved are legally competent; 3) a certain thing; 4) There is a reason that is not against the law. If all such conditions have been met, then the agreement is considered a valid and binding agreement, and cannot be cancelled apart from the two parties to the agreement.¹

However, to prevent the occurrence of injury in an agreement, the financing institution requires a guarantee as a form of legal protection. Guarantees in civil law are divided into two, namely individual guarantees and material guarantees as follows: 1) Personal *guaranty*, which is a form of guarantee involving a third party that guarantees that the debtor will fulfill his obligations to creditors;² 2) Tangible guarantee (*persoonlijke en zekelijke zekerheid*), which is a guarantee in the form of material rights to certain objects that guarantee the fulfillment of the debtor's debt.³

One form of collateral that can be used in financing institutions, especially in credit, is Fiduciary guarantees. Fiduciary guarantees are included in material guarantees because the guarantee is in the form of property as debt collateral. The material nature of the fiduciary guarantee can be seen in Article 1 number 2 and Article 20. With the material character possessed, the Fiduciary is a preferred creditor."⁴

The existence of collateral in an agreement is considered very important to minimize injury to promises or defaults caused by one of the parties. The form of default can be in the form of not fulfilling the agreed achievements at all, fulfilling achievements inappropriately, fulfilling achievements not in accordance with the agreed period of time and doing things that are prohibited according to the agreed agreement. In the Fiduciary guarantee agreement, there are parties involved, namely the Fiduciary and the Fiduciary giver. Based on Article 1 number 5 of Law Number 42 of 1999 concerning Fiduciary Guarantees (hereinafter referred to as the Fiduciary Guarantee Law), the Fiduciary is the owner of the object whose object is used as the object of Fiduciary guarantee, in this case the owner of the object is an individual or corporation. Meanwhile, the Fiduciary beneficiary according to Article 1 number 6 of the Fiduciary Guarantee Law is an individual or corporation who has receivables with payments guaranteed by the Fiduciary Guarantee.

Fiduciaries who enter into credit agreements using Fiduciary guarantees, by the Fiduciary Guarantee Law get several privileges and advantages such as the right of *preference* for receivables and the application of *the principle of droit de suite* on collateral given to the Fiduciary beneficiary. The fiduciary cannot own the property of the fiduciary if the fiduciary is in default. However, in accordance with the right of *preference* given by law to

¹ Rizka Astri Husen, Nancy Silvana Haliwela, and Agustina Balik. "Pertanggungjawaban Debitur Terhadap Kreditur Pada Perjanjian Kredit Dengan Jaminan Fidusia." *PATTIMURA Law Study Review* 1, no. 1 (2023): 102-110, p.103.

² R Subekti. *Jaminan-jaminan Untuk Pemberian Kredit Menurut Hukum Indonesia*, (Bandung: Alumni, 1982), p. 5

³ Muhammad Djumhana. *Hukum Perbankan di Indonesia (Ilmu Hukum)*. (Bandung: Citra Aditya Bakti, 1996), p. 248

⁴ Tan Kamello. *Hukum Jaminan Dalam Suatu Kebutuhan yang Didambakan*, (Bandung: Alumni, 2004), p. 248.

the Fiduciary recipient, the object is sold for the repayment of receivables.⁵ Protection for the fiduciary is obtained from the right to use the fiduciary collateral to conduct a business. In this case, what is handed over by the Fiduciary is only the right of ownership of the object juridically or known as the *constitutum possessorium* (the transfer of the property ownership rights from the Fiduciary to the Fiduciary recipient without having to hand over the physical of the pledged object).⁶

A credit agreement using a Fiduciary guarantee facility to perform credit binding must be made before a Notary to obtain a Fiduciary Guarantee Deed. Fiduciary registration is carried out to provide legal certainty for the parties, especially for the Fiduciary recipient to be able to guarantee credit loans. Material rights to the Fiduciary guarantee are born after the guarantee is registered with the Fiduciary Registration Office and the issuance of a Fiduciary Guarantee Certificate which is proof that the guarantee has been registered. However, there are also juridical consequences if the fiduciary guarantee is not registered. Therefore, in order to provide legal certainty, and provide protection to the parties involved, the fiduciary guarantee must be registered.

In line with the importance of registration on the Fiduciary guarantee. Cancellation or roya is also important if the credit has expired, this is in accordance with Article 25 paragraph (3) of the Fiduciary Guarantee Law. According to Article 25 paragraph (3) Fiduciary Guarantee Law, the Fiduciary is obliged to notify the Fiduciary registration office of the removal of the Fiduciary guarantee when the Fiduciary has fulfilled its obligations. The removal of the Fiduciary guarantee because the secured debt has expired, this is a legal consequence of the Fiduciary guarantee agreement which is accessory in nature. Therefore, if the Fiduciary has paid off its credit agreement, the Fiduciary guarantee must end because the principal agreement has expired.⁷

But in reality, in credit agreements that occur in society, many problems often occur regarding the elimination of Fiduciary guarantees, one example is where Fiduciary "A" makes a credit loan by guaranteeing his Toyota car as a Fiduciary guarantee in one of the *leasing* companies in the city of Ambon where the Fiduciary Guarantee registration procedure begins with making a Fiduciary Guarantee Deed by a Notary together with the Fiduciary beneficiary. After making a Fiduciary Guarantee Deed in front of Notary "N", then Notary "N" registers Fiduciary on the <https://fidusia.ahu.go.id> website which is the official website for Fiduciary Guarantee registration owned by the Ministry of Law and Human Rights.

Along with the credit run on January 26, 2018, the Fiduciary "A" had paid off his credit payments, according to his statement at that time the Fiduciary only received certificate of ownership of motor vehicles without a Certificate of Elimination of Fiduciary Guarantee. When Fiduciary "A" wanted to make a credit at bank "Y" with the guarantee of his Toyota car, but Bank "Y" refused the credit applied by Fiduciary "A" because the collateral object was still bound by the Fiduciary guarantee at the previous *leasing* company. The problem that occurs can be seen that one of the factors that triggers these things is the ignorance of the Fiduciary itself regarding the Fiduciary guarantee procedure further after the credit has been repaid.

⁵ Tan Kamello, *Ibid*, p.18.

⁶ Rachmadi Usman. "Makna Pengalihan Hak Kepemilikan Benda Objek Jaminan Fidusia Atas Dasar Kepercayaan". *Jurnal Hukum Ius Quia Iustum* 28, no. 1 (2021): 139-162. <https://doi.org/10.20885/iustum.vol28.iss1.art7>, p. 150.

⁷ Gatot Supramono. *Perjanjian Utang Piutang*. (Jakarta: Kencana, 2013), p. 92-93.

Based on this, if the Fiduciary guarantee has expired, it is in accordance with the Regulation of the Minister of Law and Human Rights Number 25 of 2021 concerning Procedures for Registration, Amendment, and Elimination of Fiduciary Guarantees (hereinafter referred to as Regulation of the Minister of Law and Human Rights Number 25 of 2021), within a maximum period of 14 days from the date of the removal of the Fiduciary guarantee, the Fiduciary, his or her attorney or representative is obliged to notify the Minister. With that, the Fiduciary guarantee will be crossed out from the Fiduciary register book and will issue a certificate stating that "The Fiduciary Guarantee Certificate Belonging to the Fiduciary Provider is no longer valid".

This paper uses a normative legal research method because the focus of the study starts from the ambiguity of norms, using a statutory approach and a case approach. The writing technique uses primary legal materials, namely the 1945 Constitution, the Civil Code, the Fiduciary Guarantee Law, the Banking Law, Government Regulation Number 21 of 2015, Regulation of the Minister of Law and Human Rights Number 25 of 2021. Secondary legal materials, namely literature books, papers and scientific works using document study techniques, and study analysis using qualitative analysis. As well as primary legal materials, namely the Legal Dictionary and internet articles.

METHODS OF THE RESEARCH

This paper uses a normative legal research method because the focus of the study starts from the ambiguity of norms, using a statutory approach and a case approach. The writing technique uses primary legal materials, namely the 1945 Constitution, the Civil Code, the Fiduciary Guarantee Law, the Banking Law, Government Regulation Number 21 of 2015, Regulation of the Minister of Law and Human Rights Number 25 of 2021. Secondary legal materials, namely literature books, papers and scientific works using document study techniques, and study analysis using qualitative analysis. As well as primary legal materials, namely the Legal Dictionary and internet articles.

RESULTS AND DISCUSSION

A. Factors Causing Non-Removal of Fiduciary Guarantees at the Fiduciary Registration Office

Fiduciary guarantees are generally born from a legal relationship in the form of a credit agreement between creditors and debtors. Credit according to Article 1 paragraph (11) of Law Number 10 of 1998 amending Law Number 7 of 1992 concerning Banking (hereinafter referred to as the Banking Law), according to Article 1 paragraph (11) of the Banking Law, Credit is the provision of money or bills that can be equated with it, based on the agreement or loan agreement between the bank and other parties that obliges the borrower to pay off its debt after a period of time certain with the granting of interest. According to Gatot Wardoyo, credit agreements have several functions, including 1) A credit agreement has a function as a principal agreement, meaning that the cancellation or not of the guarantee agreement depends on the credit agreement; 2) Credit agreements become a means of evidence, which regulates the rights and obligations between creditors and debtors; 3) Credit agreements as a means to carry out credit implementation.

Credit agreements, which are principal agreements, in practice, often use additional agreements or guarantee agreements, with the purpose of being a form of protection for the

parties. For creditors, this protection is to ensure debt repayment, while for debtors, it is to ensure that the implementation of the right to guarantee is carried out in accordance with legal procedures. Credit agreements are juridically divided into two types, namely credit agreements under hand and credit agreements made with a Notary Deed.⁸ A credit agreement using a Fiduciary guarantee must be made with a Notary Deed referred to as a Fiduciary Guarantee Deed.

At the time of making a Fiduciary Guarantee Deed, there are requirements for documents that must be met, namely: a). Photo *Copy* of Identity Card (credit borrower); b), Copy of Identity Card wife/husband (credit borrower); c). Copy of Family Card (credit borrower); d). Photo *Copy* of Identity Card (lender); e). Credit Agreement; f). Photo *Copy* of Vehicle Number Certificate; h). Copy of Certificate of Ownership of Motor Vehicles. Once the Fiduciary Guarantee Deed is created and signed, it must be registered with the Fiduciary registration office to meet the principle of publicity. The principle of publicity aims to provide access to information to the public regarding the legal status of the pledged property, this prevents the occurrence of re-fiduciary which is prohibited in Article 17 of the Fiduciary Guarantee Law.⁹

The next process after the Fiduciary Guarantee Deed has been signed is to carry out the registration process, in practice the registration is carried out by the Notary as a proxy of the Fiduciary beneficiary. The new Fiduciary Guarantee is born on the same day and date as the one registered in the Fiduciary register book. Fiduciary which is an *accessoir* (additional) agreement to the principal agreement made between the Fiduciary and the Fiduciary. The agreement contains a statement regarding the assignment of ownership rights on the basis of trust, to the movable objects belonging to the Fiduciary to the Fiduciary beneficiary. Moving objects can consist of items in inventory, merchandise, receivables, machine tools and motor vehicles.

These objects are mandatory to be registered and previously have been clearly described in the Fiduciary Guarantee Deed, the registration is based on Article 11 of the Fiduciary Guarantee Law, namely, 1). Objects encumbered with Fiduciary guarantees must be registered; 2). in the event that the object encumbered by the Fiduciary guarantee is outside the territory of the Republic of Indonesia, the obligations as intended in paragraph (1) remain in effect. Fiduciary guarantee registration is carried out at the Fiduciary Registration office through the online <https://fidusia.ahu.go.id> website owned by the Ministry of Law and Human Rights. In accordance with Article 13 paragraph (1) of the Fiduciary Guarantee Law who is obliged to apply for Fiduciary guarantee registration, namely the Fiduciary recipient, his or her attorney or representative. Based on Article 4 of Governing Regulation Number 21 of 2015 concerning Fiduciary within a maximum period of 30 days from the date of signing the Fiduciary Guarantee Deed, the Fiduciary recipient is required to make an application for registration. The following are the procedures for registering Fiduciary guarantees, namely: 1) Registration of Fiduciary guarantees is carried out electronically by the Fiduciary or Notary; 2) Application for registration of Fiduciary guarantee: This application for Fiduciary registration is made by the Fiduciary beneficiary, his or her attorney or representative by containing: Identity of the Fiduciary and the Fiduciary by including full name, religion, place of residence, place and date of birth, gender, marital

⁸ H Budi Untung. *Kredit Perbankan di Indonesia*. (Yogyakarta: Andi, 2000), p. 31

⁹ Supianto, and Nanang Tri Budiman. "Pendaftaran Jaminan Fidusia Sebagai Pemenuhan Asas Publisitas." *Indonesian Journal of Law and Islamic Law (IJLIL)* 2, no. 2 (2020): 192-223. <https://doi.org/10.35719/ijl.v1i3.84>.

status, occupation, a) The date and number of the Fiduciary Guarantee Deed as well as the name and position of the notary who made the Fiduciary Guarantee Deed; b). Fiduciary-guaranteed principal agreement data; c). Description of the object that is the object of the guarantee; d). Guarantee value; e). The value of the object that is the object of the fiduciary guarantee; 3) If the application for registration of Fiduciary guarantees has fulfilled the provisions as referred to in Article 3 of Governing Regulation Number 21 of 2015 concerning Fiduciary, obtain proof of registration that contains, a). Registration number; b). Date of application filling; c). Name of the applicant; d). Name of the Fiduciary registration office; e). Type of application; and f). Fiduciary guarantee registration fee

The registration fee for the Fiduciary guarantee is paid by the applicant through the perception bank, accompanied by proof of registration. In practice, this financing is charged by the Fiduciary in the initial administration, or included in a credit agreement that has been approved by both parties. Once the registration fee is paid, the Fiduciary guarantee is recorded electronically in the Fiduciary register book and then a Fiduciary Guarantee Certificate is issued. This Fiduciary guarantee certificate can be used for the purpose of Fiduciary guarantee data or the elimination of Fiduciary guarantee if the Fiduciary has paid off its debt.¹⁰

The Fiduciary guarantee always follows the principal agreement. Therefore, if the principal agreement (credit agreement) has expired or in other words the Fiduciary has fulfilled its obligations, then the Fiduciary guarantee agreement as an additional agreement (*accessoir*) also ends legally.¹¹ The purpose of abolishing the Fiduciary guarantee is to provide legal certainty for the object of the guarantee if the Fiduciary has paid off its debt to the Fiduciary recipient. The elimination of the fiduciary guarantee has an important meaning that the guarantee is no longer the object of collateral of a debt, this is strengthened by the issuance of a certificate of cancellation of collateral. When the Fiduciary Guarantee is removed, it will be replaced with a certificate stating that the Fiduciary Guarantee Certificate in question is no longer valid. According to Article 25 paragraph (1) of the Fiduciary Guarantee Law, the Fiduciary guarantee can end due to several things, namely, a). the elimination of debts secured by fiduciaries; b). the release of the right to the Fiduciary Guarantee by the Fiduciary; or c). destruction of the object that is the object of the Fiduciary Guarantee. The cancellation of debts guaranteed by Fiduciary guarantees, this is in accordance with the accessory nature of Fiduciary guarantees, if receivables are written off due to debt cancellation, then Fiduciary guarantees will be erased by themselves. However, this only ends legally but not administratively.¹²

The expiration of these matters requires the Fiduciary Beneficiary, his or her attorney or representative to immediately carry out the Fiduciary guarantee within a period of 14 days from the date of deletion of the Fiduciary guarantee agreement, and calculated based on working days in accordance with Regulation of the Minister of Law and Human Rights Number 25 of 2010. The mechanism for the removal of Fiduciary guarantees by the Fiduciary recipient, his or her attorney or representative is carried out by accessing the <https://fidusia.ahu.co.id> website in accordance with Regulation of the Minister of Law and Human Rights Number 25 of 2021 Article 19 by attaching the following things. a). Notaries,

¹⁰ Soritua Halomoan Siregar. "Al-Iqtishadiyah Manfaat Akta Jaminan Fidusia bagi Konsumen (Debitur)". *Al-Iqtishadiyah: Ekonomi Syariah dan Hukum Ekonomi Syariah* 4, no. 2 (2019): 150-159. <http://dx.doi.org/10.31602/iqt.v4i2.2046>

¹¹ Gatot Supramono, *Op. Cit.*, p. 92.

¹² Riky Rustam, *Hukum Jaminan* (Yogyakarta: UII Press, 2017), p. 154

Corporations and Retailers can log in with their existing user ID and Password, notice of cancellation of Fiduciary guarantees as intended in paragraph (1) by filling out the cancellation notification form. b). The applicant can fill out the Removal form by including; 1). Registration Certificate Number, 2). Fiduciary Certificate Date, 3). Registration Certificate Time, if registration is done manually, 4). Notary Name and Notary Position, 5). Warranty Removal Date. c). After the data has been completed and found, the applicant will complete the New Data Roya form and will attach the date of deletion because the debt has been paid off, then the old Roya Data fill form will appear, the applicant will fill out the Old Roya Data fill form by attaching: 1). Fiduciary Guarantee Certificate information to be deleted, 2). Identity of the Fiduciary, 3). Identity of the Fiduciary, 4). Details of the Fiduciary Guarantee Value, 5). Fiduciary Guarantee Notary Deed, 6). Removal Date Due to Settlement. d). Based on the data of the cancellation notice, the Fiduciary guarantee will be removed from the Fiduciary guarantee list book and a Certificate of Elimination of Fiduciary Guarantee will be issued stating that the Fiduciary Guarantee in question is no longer valid.

Based on the application that has been simplified, the Fiduciary Beneficiary or his representative should apply for the removal of the Fiduciary guarantee. But the reality that happened in the field was different. According to information from Notary Lidia Gosal, he said that applications for deletion in his office are rare and almost never deleted from the many registrations, thus allowing the percentage of removal to be only 0.1% of the 10% of the registration amount. The following is the mechanism for the elimination of fiduciary guarantees.

The Fiduciary as the party obliged to remove the Fiduciary guarantee at the Directorate General of AHU has not fully implemented this obligation. This can be seen in the data on the elimination of Fiduciaries obtained by the author from the Ministry of Law and Human Rights, namely in 2014, 2015 to 2016 there were around 1,050 Fiduciary guarantees that had not been abolished. From the acquisition of this data, it shows that from year to year the non-implementation of the abolition of fiduciary guarantees is increasing. The provisions regarding the elimination of Fiduciary guarantees that are not subject to tariffs do not guarantee that the Fiduciary or his or her proxies or representatives voluntarily perform such expungement.¹³

The ignorance of the parties, both the Fiduciary as the party who should have the abolition and the Fiduciary as the party who has the object of the guarantee, do not know that the abolition of the Fiduciary guarantee is an obligation, the ignorance results in the non-implementation of the abolition of the Fiduciary guarantee.¹⁴ Often the Fiduciary only returns proof of ownership of the collateral object and a certificate of completion. Then the Fiduciary who thinks that the removal of the Fiduciary guarantee will be carried out by the Notary or the Fiduciary recipient after the debt is paid off.

In addition to internal factors in the form of understanding between the Fiduciary and the Fiduciary recipient, the factor of access to information regarding the status of the Fiduciary guarantee is also important. The Ministry of Law and Human Rights provides <https://ahu.go.id/pencarian/fidusia> that can be accessed by the general public. However, the page does not provide specific information about whether a Fiduciary guarantee has been removed or is still active. The information available includes only general data such as

¹³ Tsuroyyaa Maitsaa' Jaudah, Puji Sulistyarningsih, and Dakum. "Konsekuensi atas Penghapusan Jaminan Fidusia yang Tidak Dilakukan", *Media of Law and Sharia* 5, no. 4 (2024): 282-292. <https://doi.org/10.18196/mls.v5i4.148>.

¹⁴ *Ibid*, p. 289.

certificate numbers, names of grantees and beneficiaries of the Fiduciary and descriptions of the object of the collateral. As a result, public access to the bail status is still limited, so the public needs assistance or information from the Notary, the Fiduciary or the public can apply directly to the regional office of the Ministry of Law and Human Rights.

Another factor that causes the Fiduciary guarantee not to be removed is due to cost and time issues. The cost of the removal of the Fiduciary guarantee in the Fiduciary Guarantee Law and related regulations is not subject to additional administrative fees. However, usually the abolition of Fiduciary often involves a Notary, thus incurring additional costs in the form of Notary Honorarium. Based on the provisions of the Fiduciary Guarantee Law and related regulations, it is not regulated which party bears the cost of removing the Fiduciary guarantee. However, because the authority to abolish the Fiduciary guarantee lies with the Fiduciary recipient, the Fiduciary is the one who bears the costs. However, in practice these fees are often charged back to the fiduciary, either directly or indirectly by making provisions in the credit agreement.

Another supporting factor for the non-removal of the Fiduciary guarantee is the absence of the application of sanctions regulated in the Fiduciary Guarantee Law, Regulation of the Minister of Law and Human Rights Number 25 of 2021 and Governing Regulation Number 21 of 2015 concerning Fiduciary to the Fiduciary Beneficiary if they do not carry out their obligations. According to the author, sanctions can be a tool to force someone and a form of punishment if a person does not obey the existing rules. Therefore, the absence of strict sanctions against the Fiduciary causes the Fiduciary to not carry out their obligations. Access that is not given to the Fiduciary is not solely because the Fiduciary holds the right to the collateral. However, there may be misappropriation on the part of the fiduciary to remove or eliminate the right of guarantee even though the debt has not been paid off. For this reason, it is important for the Fiduciary as a party authorized by law to carry out its obligations, so that in this case no party will be harmed, since the elimination depends on the initiative of the creditor. This dependency is what causes many fiduciary guarantees to be not eliminated.

Therefore, an understanding of the registration procedure to the abolition of fiduciary guarantees must always be provided with education and socialization to the public, with the aim of not relying on creditors' initiatives. However, so that they understand and there is encouragement from them for the implementation of the abolition of fiduciary guarantees. For this reason, the Government must provide more supervision to financial institutions in the elimination of fiduciary guarantees, so that there are no losses experienced by fiduciaries that result in their economies being hampered. To make the process easier to understand, the author presents the following flow of registration to the elimination of fiduciary guarantees.

B. Legal Consequences for Fiduciaries If Fiduciary Guarantees Are Not Abolished

The abolition of the Fiduciary guarantee is an obligation for the Fiduciary to carry out the Abolition (roya) of the Fiduciary guarantee. If the deletion is not carried out, it will cause legal consequences in the form of losses for the Fiduciary. Responsibility is related to the legal provisions in carrying out a task or obligation.¹⁵ Ridwan Halim, defines responsibility as a further consequence of the awareness of roles that include the rights and obligations as

¹⁵ Ninik Meiyudianti. "Akibat Hukum Kelalaian Kreditur Dalam Melakukan Roya Atas Jaminan Fidusia", *Jurnal Hukum Das Sollen* 2, no. 1 (2018): 1-13. <https://doi.org/10.32520/das-sollen.v1i4.328>

well as the authority of a person.¹⁶ In general, legal responsibility is defined as the obligation to act or behave in accordance with existing rules.¹⁷ Based on the Fiduciary guarantee legal system in Indonesia, the responsibility for abolishing the Fiduciary guarantee lies with the Fiduciary Beneficiary, this is expressly regulated in Article 25 paragraph (3) of the Fiduciary Guarantee Law: "The Fiduciary notifies the Fiduciary Registration Office of the abolition of the Fiduciary Guarantee as intended in paragraph (1) by attaching a statement regarding the cancellation of the debt, the release of rights, or the destruction of the Object that is the object of the Fiduciary Guarantee"

Article 19 paragraph (2) of Regulation of the Minister of Law and Human Rights Number 25 of 2021 regulates: "In the event that the Fiduciary Guarantee is deleted as intended in paragraph (1), the Applicant must notify the Minister within a maximum period of 14 (fourteen) days from the date of the deletion of the Fiduciary Guarantee." Article 16 paragraph (2) of Fiduciary Government Regulation Number 21 of 2015 regulates: "In the event that the Fiduciary Guarantee is deleted as intended in paragraph (1), the Fiduciary, his attorney or representative, shall notify the Minister within a maximum period of 14 (fourteen) days from the date of the removal of the Fiduciary Guarantee."

The author argues that in this case, judging from the responsibilities given by the Fiduciary Guarantee Law, Regulation of the Minister of Law and Human Rights Number 25 of 2010 or Governing Regulation Number 21 of 2015 concerning Fiduciary to the beneficiary of the Fiduciary power of attorney or his representative to register until the removal process. If the Fiduciary does not perform such obligations, it indicates that the Fiduciary is not responsible for the authority granted to the Fiduciary.

Therefore, the existence of authority given to the Fiduciary signifies that the legal system places full authority on the Fiduciary Beneficiary. The Fiduciary Guarantee Law does not require the Fiduciary to perform the abolition, the absence of this form of legal obligation makes the Fiduciary less aware of their obligations. However, in the latest regulations regarding fiduciary guarantees such as Governing Regulation Number 21 of 2015 concerning Fiduciary Article 16 paragraph (2) and Regulation of the Minister of Law and Human Rights Number, it has been required that the application for deletion be made by the Fiduciary, his or her attorney or representative. So, in the future, this ignorance is not the reason for the Fiduciary not to carry out its obligations.

Responsibility is closely related to rights and obligations, because every right possessed by an individual is accompanied by an obligation that must be carried out with full awareness. The responsibility regarding the Fiduciary who is obliged to make the request for deletion is not necessarily carried out as it should. This violates the fiduciary's right, which is to receive back ownership of the property if it has paid off the debt. The absence of strict sanctions to the Fiduciary can make the Fiduciary negligent in carrying out their obligations. However, based on the results of the interview obtained by the author with Muhammad Idrus Nurbaty as the First Expert Legal Counselor at the Office of Legal Territory and Human Rights, there is no regulation that explains the sanctions received by the Fiduciary recipient if they do not remove the Fiduciary guarantee. However, the Ministry of Law and Human Rights can provide a warning letter to the financing institution in this case as the Fiduciary recipient to immediately remove the Fiduciary guarantee,

¹⁶ *Ibid.*

¹⁷ *Ibid.*

because the Fiduciary guarantee that is not removed can cause a buildup in the Directorate General of AHU data bank resulting in a system error. If the Fiduciary does not follow up on this, the Ministry of Law and Human Rights can notify the performance of the institution concerned to the Financial Services Authority still many practices of not abolishing fiduciary guarantees, this can be seen from the efforts of the Ministry of Law and Human Rights to disseminate fiduciary services.

One of the Fiduciary Services Dissemination activities carried out in Southeast Maluku Regency, which was carried out by the Regional Office of the Ministry of Law and Human Rights of Maluku Province which was attended by the Regional Head of the Ministry of Law and Human Rights of Maluku, the Head of the AHU Subdivision and several other resource persons who discussed Fiduciary services. The Head of the AHU Subdivision in his presentation delivered material on the Urgency of Notification of Cancellation of Fiduciary Guarantees by the Fiduciary Beneficiary or his representative.¹⁸ The material emphasizes that there are still many cases where the object of the Fiduciary guarantee that should have been deleted is still recorded as active, due to the negligence of the Fiduciary recipient or their ignorance about the removal procedure. Therefore, the Ministry of Law and Human Rights provides this understanding as an urgency to the community.

Fiduciary guarantees that are not removed (Roya) do not mean that they do not have any consequences. If the Fiduciary guarantee is not removed. If the fiduciary guarantee is not removed, then the status of the object becomes unclear, administratively the guarantee is still registered as a fiduciary guarantee at the Directorate General of AHU even though the principal agreement has expired. Therefore, the Fiduciary cannot re-credit if the guarantee is still registered. This is also based on the principle of *Droit de Suite* because the attachment of this principle to the object of collateral, the rights of the Fiduciary are still attached to the collateral wherever and in the hands of whoever the object is, which results in the Fiduciary being unable to re-guarantee the object. The obligation to remove the Fiduciary guarantee after the Fiduciary has paid off its debts is the responsibility of the Fiduciary and is part of the effort to create orderly legal administration.¹⁹ The abolition of the Fiduciary guarantee that is not carried out also violates the rights of the Fiduciary after fulfilling the obligation to repay the debt to the Fiduciary beneficiary.

This can cause the Fiduciary to lose legal certainty over the ownership status of the goods in question. Furthermore, it is emphasized in Article 17 paragraph (2) of the Fiduciary Regulation, "If the Fiduciary, his or her attorney or representative does not notify the abolition of the Fiduciary Guarantee, the relevant Fiduciary Guarantee cannot be re-registered". Based on these provisions, it can cause losses for the Fiduciary, especially if after the repayment of the debt, the Fiduciary wishes to re-pledge the object.²⁰ Legally, if the Fiduciary Agreement ends, the status of the collateral object will return completely to the Fiduciary. However, the restoration of the ownership status needs to be accompanied by administrative removal, so as not to cause disputes in the future.

¹⁸ Humas Kanwil Kemenkumham Maluku, *Diseminasi Layanan Fidusia di Maluku Tenggara, Dorong Pertumbuhan Ekonomi Daerah Melalui Pemahaman Hukum Yang Komprehensif*, <https://maluku.kemenkum.go.id/berita-utama/diseminasi-layanan-fidusia-di-maluku-tenggara-dorong-pertumbuhan-ekonomi-daerah-melalui-pemahaman-hukum-yang-komprehensif>. 2023.

¹⁹ Reodha Noer Ishak Tuanaya, Bambang Eko Turisno, and Novira Maharani Sukma. "Akibat Hukum Dan Penyelesaian Atas Objek Fidusia Yang Di Fidusia Ulang Apabila Debitur Wanprestasi." *Notarius* 13, no. 2 (2020): 629-641.

²⁰ Ni Putu Sawitri Nandari, Dewa Krisna Prasada, Kadek Julia Mahadewi, Tania Novelin, and Dewa Ayu Putri Sukadana. "Akibat Hukum Terhadap Tidak Dilakukan Penghapusan (Roya) Jaminan Fidusia Setelah Kredit Lunas". *Jurnal Hukum Sasana*, 9, no. 1 (2023): 57-68. <https://doi.org/10.31599/sasana.v9i1.2249>.

In addition to administrative losses for the Fiduciary, the non-elimination of the Fiduciary guarantee can also cause bad faith from the Fiduciary recipient. The collateral object that is still registered may be misused by the Fiduciary Party, because it can continue to hold control of the collateral object even though there is no longer a legal relationship between the Fiduciary and the Fiduciary. Fiduciary guarantees that are not removed will certainly hinder the economic activities of the fiduciary, in the community this impact must occur frequently. The losses that will be received are not felt directly at the time of repayment of the loan, but usually the Fiduciary will feel the impact if they want to re-pledge the collateral object but the object is rejected, because it is still registered as the Fiduciary collateral object on the previous credit.

Despite the many losses experienced by the Fiduciary, there are legal remedies that can be taken by the aggrieved Fiduciary. As a result of this negligence, the fiduciary can claim compensation. However, if you meet the following elements,²¹ 1). There is an act of the Fiduciary that harms the Fiduciary because it does not carry out its obligations or commits default, 2). Unlawful acts can include the following; a. Acts of the Fiduciary in violation of applicable laws, b. Acts that violate the rights of others guaranteed by law, c. Acts that are contrary to legal obligations; d. Acts that are contrary to morality; 3). There is an error on the part of the Fiduciary who meets the following elements; a). There is an element of intentionality; b). The existence of an element of negligence; 4). Causing losses to the Fiduciary who due to the actions of the Fiduciary Recipient causes material and immaterial losses. 5). There is a causal relationship, where due to unlawful acts of the Fiduciary can cause the Fiduciary to suffer losses.

Based on the description above, all elements of unlawful acts have been fulfilled by the act of not abolishing the Fiduciary guarantee by the Fiduciary to the Fiduciary giver. Based on the Civil Code, it is regulated regarding the liability of those who violate the law and have a detrimental impact on others. This is based on Article 1365 of the Civil Code which stipulates that "every act that is unlawful and causes harm to another person, obliges the person who caused the loss due to his fault to replace the loss" Based on the above provisions, the Fiduciary due to negligence causing losses to the Fiduciary giver, can be held liable to remove the Fiduciary guarantee and if it is not done, the Fiduciary is obliged to to compensate the Fiduciary for his actions.²²

CONCLUSION

The factors that cause the non-removal of the Fiduciary guarantee are ignorance on the part of the Fiduciary recipient, even the negligence of the deletion because it is considered not important enough. then the absence of strict rules regarding sanctions against the Fiduciary who does not carry out their obligations is a crucial matter, as well as a lack of understanding from the public as a Fiduciary giver whose goods are guaranteed by Fiduciary guarantees, this lack of understanding is what causes the absence of encouragement from the Fiduciary to the Fiduciary recipient to immediately remove the Fiduciary guarantee. These factors cause legal consequences for the fiduciary, such as the inhibition of the fiduciary's economic activities because they cannot re-pledge their property to other parties and potentially re-fiduciary. Cancellation that is not done by the Fiduciary

²¹ Sidharta. *Hukum Perlindungan Konsumen Indonesia*, (Jakarta: Gramedia Widiasarana Indonesia, 2006), p. 73.

²² I Putu Budi Arta Yama, and & I Made Udiana. Sanksi Terhadap Penerima Fidusia Yang Tidak Menghapuskan Jaminan Fidusia Elektronik. *Acta Comitas: Jurnal Hukum Kenotariatan* 5, no. 1 (2020): 138-149. <https://doi.org/10.24843/ac.2020.v05.i01.p12>.

after the repayment of the debt will cause administrative losses to the Fiduciary, because the collateral is still recorded in the Fiduciary collateral list. This can cause the Fiduciary to lose legal certainty over the ownership status of the goods in question, to avoid unwanted things, there are legal remedies that the Fiduciary can do, namely by demanding compensation from the Fiduciary for having committed an Unlawful Act, which results in losses to him this can refer to Article 1365 of the Civil Code.

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