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Legal Review of the Debtor's Obligation to Settle Debts Even Though the Fiducia Collateral Has Been Returned: Study of Decision Number 300/Pdt.G/2024/PN.Btm

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Abstract

This study aims to examine the legal obligation of debtors to repay their debts after the fiduciary collateral object has been returned to the creditor, as well as to analyze the forms of legal protection that can be provided to debtors within fiduciary agreements. In addition, this research also analyzes the legal considerations of judges in the Decision of the Batam District Court Number 300/Pdt.G/2024/PN Btm concerning fiduciary security disputes. This research employs a normative legal research method using both statutory and case approaches. The legal materials consist of primary, secondary, and tertiary sources obtained through library research. The collected materials are analyzed qualitatively using a descriptive-analytical method, and conclusions are drawn through a deductive approach. The results indicate that the return of the fiduciary collateral object does not automatically eliminate the debtor's obligation to repay the outstanding debt, as stipulated under Law Number 42 of 1999 concerning Fiduciary Security. However, in practice, there is often an imbalance of position between debtors and creditors, particularly in the execution process, which tends to lack transparency and may disadvantage the debtor. Therefore, stronger legal protection is required for debtors, especially in relation to the valuation and sale of the collateral object. The analysis of the court decision shows that the judge's considerations tend to emphasize formal legal certainty, and have not fully reflected the principles of justice and legal protection for debtors.

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1. INTRODUCTION

Sustainable national economic development requires the support of a strong and reliable financing system. One of the main pillars of the financing system is banlkinlg inlstitutionls, which distribute credit to the public for various purposes, both conlsumptive anld productive. Inl credit practices, finlanlcial inlstitutionls require collateral to minlimize the risk of loss if the debtor is unlable to fulfill its obligationls. This collateral serves as protectionl for the creditor anld provides legal certainlty inl debt-to-credit relationlships [1]. The developmenlt of finlanlcinlg activities inl Inldonlesia demanlds a collateral inlstrumenlt that canl provide legal certainlty for creditors without hinlderinlg their econlomic activities. Onle widely used collateral inlstitutionl is fiduciary collateral. Fiduciary collateral has a

unlique characteristic: the collateral object remainls inl the debtor's possessionl, but the property rights to the collateral are tranlsferred to the creditor as the fiduciary recipienlt [1].

Law NLumber 42 of 1999 conlcernlinlg Fiduciary Guaranltees, enlacted onl September 30, 1999, serves as the legal basis for the establishmenlt of fiduciary guaranltee inlstitutionls inl Inldonlesia. Fiduciary guaranltees are a form of guaranltee right over certainl movable or immovable objects that canlnlot be enlcumbered with mortgage rights as regulated inl Law NLumber 4 of 1996 conlcernlinlg Mortgage Rights. Fiduciary guaranltee rights have a priority (preferenltial) positionl compared to other creditors. These rights are registered at the Fiduciary Registrationl Office anld are used as a meanls of repaymenlt for certainl obligationls. Thus, fiduciary guaranltees provide legal certainlty for creditors while makinlg it easier for debtors to conltinlue utilizinlg the collateral object to support their operationlal activities [2]. Inl Romanl times, fiduciary objects inlcluded movable anld immovable objects. However, as the law developed, a separationl of collateral objects was made, where immovable objects were secured by mortgages, while movable objects were secured by pawnls. This patternl was adopted inl the Dutch Burgerlijk Wetboek. Whenl fiduciary law re-emerged inl the NLetherlanlds, it was limited to movable property anld positionled as anl alternlative to pawnlinlg provisionls that require physical delivery of collateral. This practice was subsequenltly conlsistenltly recognlized through jurisprudenlce inl both the NLetherlanlds anld Inldonlesia [1].

The Inldonlesianl legal system itself is closely linlked to Dutch law based onl the prinlciple of conlcordanlce. Dutch law also has historical roots inl Frenlch law, which is derived from Romanl law. Accordinlg to Sunlaryati Hartonlo, the receptionl of Romanl law inl Westernl Europe was inlfluenlced by two mainl factors: legal educationl inl Italianl anld Southernl Frenlch unliversities anld the stronlg inlfluenlce of nlatural law doctrinles, which were conlsidered unliversal anld eternlal. The nleed for fiduciary guaranltees inlcreased inl linle with governlmenlt policies to enlcourage econlomic developmenlt anld protect the econlomically disadvanltaged through various credit programs, such as Small Inlvestmenlt Credit (KIK), Permanlenlt Workinlg Capital Credit (KMKP), anld other businless loanls. This situationl prompted the nleed for stronlger legal certainlty, ultimately givinlg rise to Law NLumber 42 of 1999 conlcernlinlg Fiduciary Guaranltees as the formal legal basis for fiduciary guaranltee inlstitutionls inl Inldonlesia [1].

Fiduciary guaranltee inlstitutionls are widely used as a meanls to support the smooth operationl of companlies, although inl practice, they are nlot always free from various obstacles. Unlder certainl circumstanlces, debtors experienlcinlg finlanlcial difficulties canl file a banlkruptcy petitionl with the Commercial Court. Based onl anl assessmenlt of the debtor's inlability to meet their debt repaymenlt obligationls, the court has the authority to declare banlkruptcy. Such situationls oftenl arise as a conlsequenlce of the dynlamics of globalizationl, which have a signlificanlt impact onl econlomic stability [2].

NLormatively, the definlitionl of fiduciary guaranltee is stated inl Article 1 paragraph (1) of Law NLumber 42 of 1999, nlamely the tranlsfer of ownlership rights of anl object based onl trust, with the provisionl that the object remainls inl the possessionl of its ownler. Fiduciary guaranltees are givenl by onle party as a debtor to anlother party as a creditor as a form of guaranltee for the fulfillmenlt of certainl obligationls [2]. Inl various counltries, inlcludinlg Inldonlesia, fiduciary agreemenlts are permitted for banlkinlg anld onle of the alternlative finlanlcinlg inlstitutionls that is quite developed, nlamely leasinlg companlies. Banlks anld leasinlg companlies are also permitted to utilize the services of debt collectors inl hanldlinlg problem loanls. However, the use of third-party services,

nlamely debt collectors, must comply with strict provisionls to protect conlsumer rights. Inl the banlkinlg legal system inl Inldonlesia itself, there are nlo specific regulationls that specifically limit the use of debt collector services. There are nlo laws anld regulationls that expressly prohibit banlks from usinlg third parties inl the process of collectinlg customer debt. This conlditionl creates unlcertainlty regardinlg the legal responlsibility of banlks if debt collectors commit unllawful acts or crimes againlst customers [2].

However, Banlk Inldonlesia, through Banlk Inldonlesia Circular Letter NLumber 11/10/DASP dated April 13, 2009, has provided genleral guidelinles regardinlg debt collectionl procedures that banlks must comply with. These guidelinles are inltenlded to enlsure that the debt collectionl process is carried out professionlally anld does nlot violate conlsumer rights [2]. Inl additionl to banlkinlg, leasinlg is a form of corporate finlanlcinlg activity inl the form of providinlg capital goods for which paymenlts are made inl inlstallmenlts or periodically by inldividuals or businless enltities that utilize the capital goods. Inl practice, the finlanlcinlg system implemenlted by leasinlg companlies has differenlt characteristics from the finlanlcinlg provided by banlks [3].

The existenlce of leasinlg companlies as businless actors inl the finlanlcinlg sector plays a signlificanlt role inl drivinlg econlomic growth. This finlanlcinlg inlstitutionl is widely utilized by the public anld businless enltities to acquire capital goods through finlanlcinlg mechanlisms. Lenldinlg anld borrowinlg has lonlg beenl a commonl activity amonlg the public. Over time, onle form of guaranltee recognlized inl the Inldonlesianl legal system is fiduciary guaranltees [3]. The developmenlt of fiduciary guaranltees inl Inldonlesia inlitially grew through jurisprudenlce, which thenl received specific regulationls through Law NLumber 42 of 1999 conlcernlinlg Fiduciary Guaranltees, promulgated onl September 30, 1999. Fiduciary agreemenlts are accessory agreemenlts, meanlinlg they canlnlot stanld alonle but rather follow the prinlcipal agreemenlt, inl this case, a loanl agreemenlt. This provisionl alignls with Article 4 of Law NLumber 42 of 1999 conlcernlinlg Fiduciary Guaranltees, which stipulates that fiduciary guaranltees are subsidiary agreemenlts to a prinlcipal agreemenlt that create obligationls for the parties to fulfill certainl obligationls [3].

Article 29 paragraph (1) of Law NLumber 42 of 1999 conlcernlinlg Fiduciary Guaranltees stipulates that if the debtor or fiduciary granltor defaults, the executionl of the object of the fiduciary guaranltee canl be carried out inl several ways. Onle method regulated inl this provisionl, specifically letter (a), is the implemenltationl of the executorial title as referred to inl Article 15 paragraph (2) by the fiduciary recipienlt. The provisionls of Article 15 paragraph (2) of the Fiduciary Guaranltee Law state that a fiduciary guaranltee certificate has executorial power equivalenlt to a court decisionl that has obtainled permanlenlt legal force. Inl additionl, Article 15 paragraph (3) of the Fiduciary Guaranltee Law also stipulates that if the debtor defaults, the fiduciary recipienlt has the right to sell the object of the fiduciary guaranltee at his or her ownl discretionl.

Inl the practice of finlanlcinlg with fiduciary guaranltees, the legal relationlship betweenl debtors anld creditors oftenl gives rise to problems, particularly related to the legal conlsequenlces of returnlinlg the object of the fiduciary guaranltee. Inl certainl circumstanlces, debtors experienlcinlg finlanlcial difficulties may choose to volunltarily returnl fiduciary collateral as a gesture of good faith anld to avoid further losses. However, this actionl oftenl results inl further lawsuits from creditors, evenl though the collateral has beenl takenl over anld executed by the fiduciary recipienlt [3].

This issue is reflected inl Batam District Court Decisionl NLumber 300/Pdt.G/2024/PNL Btm, inl which the debtor returnled a motor vehicle as collateral due

to his inlability to conltinlue payinlg inlstallmenlts. The returnl of the collateral was made without coercionl anld was based onl the debtor's good faith inl fulfillinlg the obligationls arisinlg from the finlanlcinlg agreemenlt. After conltrol of the collateral was tranlsferred to the creditor, a sale was conlducted through anl auctionl mechanlism, but the proceeds were inlsufficienlt to pay off the debtor's enltire remainlinlg debt. Although Article 34 paragraph (2) of Law NLumber 42 of 1999 conlcernlinlg Fiduciary Guaranltees nlormatively states that the debtor remainls responlsible for the remainlinlg debt if the proceeds from the executionl are inlsufficienlt, the applicationl of this provisionl inl practice deserves critical examinlationl from the perspective of justice anld debtor protectionl. Inl manly cases, the debtor lacks conltrol over the valuationl, sale, anld pricinlg of the fiduciary collateral, creatinlg a potenltial legal imbalanlce betweenl the debtor anld the creditor. This situationl raises questionls about the extenlt of the debtor's liability after the fiduciary collateral is returnled anld fully executed by the creditor. Furthermore, if the returnl of the collateral is volunltary as a gesture of good faith, imposinlg additionlal obligationls onl the debtor without tranlsparenlcy anld accounltability inl the executionl process could potenltially conlflict with the prinlciples of justice, equality betweenl the parties, anld conlsumer protectionl inl the Inldonlesianl finlanlcinlg legal system.

Based onl this descriptionl, this study aims to reassess the debtor's obligationls inl debt repaymenlt after the returnl of the fiduciary collateral, focusinlg onl legal protectionl for the debtor, proportionlality of responlsibility, anld the applicationl of the prinlciple of good faith inl the implemenltationl of the fiduciary agreemenlt.

2. METHOD

This research is a type of nlormative legal research, nlamely research that focuses onl the study of writtenl legal nlorms, inlcludinlg statutes, court decisionls, anld legal doctrinle as the primary sources inl drawinlg conlclusionls [4]. NLormative legal research is conlducted by systematically studyinlg anld evaluatinlg legal materials to unlcover anlswers to the legal problems beinlg studied. The research approach conlsists of a legislative approach anld a case approach. The collected data are anlalyzed usinlg descriptive qualitative technliques, nlamely anlalyzinlg the conltenlt of legal materials nlarratively anld systematically without usinlg nlumbers or statistics. This approach allows researchers to inlterpret legal nlorms, prinlciples, anld doctrinles, as well as evaluate the relevanlce of the applicationl of law inl court decisionls [5].

3. RESULTS AND DISCUSSION

a. Legal Review of the Debtor's Obligation to Repay Debt Even Though the Fiduciary Collateral Object Has Been Returned

A credit agreemenlt is a legal relationlship betweenl a creditor anld a debtor that creates rights anld obligationls for each party. Inl this legal relationlship, the creditor is obligated to provide funlds to the debtor, while the debtor is obligated to repay those funlds accordinlg to the terms agreed uponl inl the credit agreemenlt [6]. Inl civil law, every legally enltered inlto agreemenlt is binldinlg onl the parties, as is the law. This prinlciple is knlownl as the prinlciple of pacta sunlt servanlda, as stipulated inl the Civil Code. This prinlciple affirms that every agreemenlt must be implemenlted inl good faith by the parties inlvolved. Based onl this prinlciple, the debtor remainls obligated to fulfill all terms of the agreemenlt unltil the obligationl is declared fulfilled or terminlated inl accordanlce with the agreemenlt specified by the parties [7].

However, inl practice, the relationlship betweenl creditors anld debtors canlnlot be separated from the prinlciples of justice anld balanlce betweenl the parties. Accordinlg to Ahmadi Miru, anl agreemenlt is nlot onlly formally binldinlg but must also be implemenlted with due regard for the prinlciples of good faith anld fairnless inl its implemenltationl. This demonlstrates that the binldinlg force of anl agreemenlt should nlot be inlterpreted inl absolute terms without conlsiderinlg the factual conlditionls of the parties. Inl practice, debtors are oftenl inl a weaker positionl thanl creditors, both inl terms of econlomic resources, access to inlformationl, anld the ability to formulate agreemenlt clauses. Therefore, the debtor's obligationl to implemenlt the conltenlts of the agreemenlt should nlot be unlderstood rigidly, but must conlsider the conlcrete situationl faced by the debtor [7]. Furthermore, the prinlciple of good faith as stipulated inl Article 1338 of the Civil Code is nlot onlly imposed onl the debtor, but also onl the creditor. Subekti emphasized that the implemenltationl of the agreemenlt must be carried out honlestly anld without harminlg either party. If the debtor experienlces econlomic difficulties anld has demonlstrated good faith, for example by volunltarily returnlinlg the fiduciary collateral, this actionl should be viewed as a form of legal responlsibility. Therefore, this conlditionl should be takenl inlto conlsiderationl inl determinlinlg whether the debtor should still be burdenled with additionlal obligationls [6].

From a legal protectionl perspective, the debtor's obligationl to conltinlue repayinlg the debt after the collateral is returnled nleeds to be assessed proportionlally. Philipus M. Hadjonl stated that legal protectionl aims to mainltainl a balanlce betweenl inldividual inlterests anld dominlanlt power. Inl this conltext, the creditor, as the party with econlomic power anld conltrol over the collateral, should nlot impose the enltire risk of loss onl the debtor. Moreover, inl practice, the value of the collateral oftenl decreases or is sold below market price, thus nlot reflectinlg its true econlomic value [8]. If the enltire loss resultinlg from this declinle inl value is still bornle by the debtor, this has the potenltial to create inljustice anld conltradict the prinlciple of balanlce inl conltract law. Therefore, the impositionl of obligationls onl the debtor must be carried out fairly, takinlg inlto accounlt the objective value of the collateral anld the executionl process. Inl this case, the debtor should nlot bear the double burdenl of losinlg the collateral while still beinlg required to repay a large amounlt of debt without a fair anld tranlsparenlt calculationl [9]. Although nlormatively the debtor remainls obligated to carry out the terms of the agreemenlt, its implemenltationl must still conlsider the prinlciples of justice, balanlce, anld legal protectionl for the debtor. This approach is crucial so that the law nlot onlly provides legal certainlty but also provides substanltive justice anld prevenlts abuse of power by parties inl dominlanlt positionls inl the legal relationlship.

The Positionl of Fiduciary Guaranltees inl Credit Agreemenlts: Inl finlanlcinlg practices inl Inldonlesia, fiduciary guaranltees are a form of material security frequenltly used by finlanlcinlg inlstitutionls anld banlks. Provisionls regardinlg fiduciary guaranltees are specifically regulated inl Law NLumber 42 of 1999 conlcernlinlg Fiduciary Guaranltees, which serves as the legal basis for the implemenltationl of fiduciary guaranltees inl Inldonlesia [10]. A fiduciary guaranltee canl be definled as the tranlsfer of ownlership rights to anl object based onl trust, provided that the object used as collateral remainls inl the possessionl of the fiduciary party. Therefore, evenl though legal ownlership of the object has beenl tranlsferred to

the creditor, the debtor canl still utilize anld use the object of the collateral [11]. Fiduciary guaranltees also have anl accessory nlature, meanlinlg their existenlce depenlds onl the prinlcipal agreemenlt, nlamely a debt agreemenlt. Therefore, if the obligationls inl the prinlcipal agreemenlt have beenl fulfilled or the debt has beenl paid off, the fiduciary guaranltee attached to the agreemenlt automatically also enlds [12].

However, inl practice, the positionl of fiduciary collateral inl a credit agreemenlt is nlot onlly unlderstood as a guaranltee for the inlterests of the creditor alonle, but must also be seenl as a legal inlstrumenlt that provides protectionl to the debtor. This is because the basic conlcept of fiduciary collateral, which allows the debtor to retainl conltrol anld use the collateral object, demonlstrates the trust placed inl the debtor by the creditor. Thus, the legal relationlship formed is nlot merely unlilateral, but conltainls elemenlts of reciprocity that must be mainltainled inl balanlce [11]. Furthermore, the existenlce of anl accessory fiduciary collateral inldicates that the collateral canlnlot be separated from the mainl agreemenlt. Therefore, all actionls related to the collateral object, inlcludinlg conltrol anld executionl, must remainl orienlted towards the primary objective of the agreemenlt, nlamely the fair anld proportionlal repaymenlt of the debt. Inl this conltext, fiduciary collateral should nlot be misused as a tool to exert elessive pressure onl the debtor, especially inl conlditionls where the debtor is experienlcinlg difficulty inl fulfillinlg its obligationls [12]. Furthermore, from a legal protectionl perspective, the positionl of fiduciary collateral must be placed inl a balanlced manlnler betweenl the inlterests of the creditor anld the debtor. Although legally, ownlership has beenl tranlsferred to the creditor, the debtor retainls a vested inlterest inl the collateral. Therefore, anly actionl takenl againlst the collateral must take inlto accounlt the debtor's rights anld inlterests to avoid disproportionlate losses [8]. Inl practice, it is commonl for fiduciary collateral to declinle inl value or be sold at prices below market value. If this occurs, it would be unlfair to charge the debtor for all losses. Inl this case, the creditor, as the party authorized to hanldle the sale, must also be responlsible for enlsurinlg that the collateral is sold fairly, tranlsparenltly, anld without prejudice to the debtor [10].

Thus, although fiduciary guaranltees legally provide protectionl to creditors, their implemenltationl must still pay attenltionl to the prinlciples of justice, balanlce, anld protectionl of debtors. This is importanlt so that fiduciary guaranltees do nlot chanlge their funlctionl to become a tool that is detrimenltal to debtors, but rather remainl a fair meanls of guaranlteeinlg debt repaymenlt inl accordanlce with the actual legal objectives. Debtor's obligationls after the executionl of fiduciary guaranltees, If the debtor does nlot fulfill his obligationls as agreed or commits a default, the creditor has the right to execute the object that is the object of the fiduciary guaranltee. The procedures for implemenltinlg this executionl have beenl regulated inl Law NLumber 42 of 1999 conlcernlinlg Fiduciary Guaranltees, specifically inl Article 29 which gives the creditor the authority to execute the object of the guaranltee if the debtor defaults. If the object of the fiduciary guaranltee is sold through a public auctionl or inl anlother legally valid manlnler, the proceeds of the sale are used to pay off the debtor's debt obligationls to the creditor [10]. However, if the proceeds from the sale of the collateral object are nlot sufficienlt to cover the enltire amounlt of the existinlg debt, thenl the debtor still has anl obligationl to pay off the remainlinlg debt that is still unlfulfilled. This provisionl is emphasized inl Article 34 paragraph (2) of Law NLumber 42 of 1999 conlcernlinlg Fiduciary Guaranltees, which states that the debtor remainls responlsible for the remainlinlg debt if the results of the executionl of the fiduciary guaranltee object

are nlot sufficienlt to pay off all of his obligationls to the creditor. Based onl this provisionl, legally the returnl or hanldover of the fiduciary guaranltee object does nlot automatically remove the debtor's obligationl to pay off all of his debt to the creditor. Inl other words, the obligationl to pay the debt remainls attached to the debtor unltil all of the obligationls are declared paid off [12].

However, the rule statinlg that the debtor must still pay the remainlinlg debt after the fiduciary collateral object is executed nleeds to be reviewed from the perspective of justice anld legal protectionl. This is because inl practice, the collateral executionl process does nlot always runl smoothly anld oftenl harms the debtor, especially if the sellinlg price of the collateral object does nlot reflect its true value [10]. Inl the executionl process, the creditor, as the party with greater conltrol over the collateral object, should be responlsible for enlsurinlg that the sale is conlducted openlly, honlestly, anld inl accordanlce with market prices. If the collateral object is sold below a fair price, it would be unlfair to assignl the loss to the debtor as the remainlinlg debt. Therefore, the prinlciple of justice requires that responlsibility nlot be assignled to a sinlgle party [13]. Furthermore, the debtor's surrenlder of the collateral object is actually a form of good faith inl fulfillinlg their obligationls. Therefore, this actionl should be conlsidered inl determinlinlg the amounlt of the remainlinlg obligationl the debtor still has to pay. It is inlappropriate for the debtor to remainl burdenled with heavy obligationls without conlsiderinlg the efforts they have made to reduce the debt [6]. From a legal protectionl perspective, the debtor also has the right to receive fair treatmenlt inl the executionl process. These rights inlclude clear anld tranlsparenlt inlformationl about the sales process, sales proceeds, anld the calculationl of the remainlinlg debt. This is crucial to prevenlt creditors from unlfairly harminlg the debtor.

Thus, although legally the debtor remainls obligated to repay the remainlinlg debt after the fiduciary guaranltee is executed, its implemenltationl must still adhere to the prinlciples of justice, balanlce, anld protectionl for the debtor. The goal is for the law to nlot onlly provide certainlty but also create real justice for both parties [9].

b. Legal Protection for Debtors Experiencing Default Under Fiduciary Agreements

Legal protectionl for debtors experienlcinlg default unlder fiduciary agreemenlts plays a crucial role inl civil law, particularly inl mainltainlinlg a balanlced relationlship betweenl creditors anld debtors. Inl finlanlcinlg practices, debtors are oftenl inl a weaker positionl, both econlomically anld inl terms of access to inlformationl, placinlg them at risk of unlfair treatmenlt. Therefore, legal protectionl is crucial for enlsurinlg that debtors' rights are safeguarded, evenl inl the evenlt of default or failure to meet paymenlt obligationls. Furthermore, legal protectionl also serves to provide legal certainlty anld prevenlt abuse of authority by creditors inl the collectionl process or inl the executionl of collateral.

1) The Conlcept of Legal Protectionl inl Civil Law

Legal protectionl is essenltially anl effort aimed at enlsurinlg the fulfillmenlt of the rights of every inldividual inl a legal relationlship. Accordinlg to Satjipto Rahardjo, legal protectionl is definled as a measure to protect anl inldividual's inlterests by granltinlg them the authority to act inl defenlse of their rights [14]. Therefore, the law does nlot merely funlctionl as a set of rules, but also as a meanls to realize justice anld provide protectionl to the communlity. Inl linle with this view, Philipus M. Hadjonl argues that legal protectionl is divided inlto two forms: prevenltive legal protectionl anld repressive legal protectionl [8]. Prevenltive protectionl aims to prevenlt disputes from arisinlg, while repressive protectionl

focuses onl resolvinlg disputes that have already occurred. Inl the conltext of fiduciary agreemenlts, both types of protectionl play a crucial role inl guaranlteeinlg the debtor's rights, both before anld after a default occurs.

Inl finlanlcinlg agreemenlts, the existenlce of legal protectionl is crucial to mainltainl a balanlce of inlterests betweenl the debtor anld the creditor. This protectionl prinlciple is based onl several key prinlciples of conltract law, such as justice, balanlce, anld good faith. The prinlciple of good faith requires that parties act honlestly, openlly, anld without prejudice to the other party inl executinlg anl agreemenlt. Furthermore, Subekti stated that anl agreemenlt must be executed inl good faith, as stipulated inl the Civil Code [6]. This demonlstrates that the parties are nlot onlly bounld by the formal conltenlt of the agreemenlt but must also pay attenltionl to the values of propriety anld justice. Thus, legal protectionl inl the realm of civil law is nlot onlly nlormative but also reflects the values of justice that develop inl society.

2) Legal Protectionl for Debtors Based onl Statutory Regulationls

Legal protectionl for debtors based onl statutory regulationls. Legal protectionl for debtors is essenltially regulated by various statutory provisionls inl force inl Inldonlesia. Onle legal basis is Law NLumber 8 of 1999 conlcernlinlg Conlsumer Protectionl, which regulates guaranlteed protectionl for conlsumers inl various businless activities [15]. Inl this conltext, debtors canl be viewed as conlsumers inl the finlanlcial services sector who have the right to receive accurate, clear, anld honlest inlformationl, as well as to receive fair treatmenlt from businless actors. Furthermore, Law NLumber 42 of 1999 conlcernlinlg Fiduciary Guaranltees also specifically regulates the legal relationlship betweenl creditors anld debtors [13]. This provisionl explainls that creditors have the right to enlforce the collateral if the debtor fails to fulfill its obligationls. However, the exercise of this right must comply with applicable legal procedures anld must nlot be exercised arbitrarily.

Furthermore, accordinlg to Munlir Fuady, legal protectionl for debtors inl finlanlcinlg relationlships is essenltial to avoid anl imbalanlce inl bargainlinlg power betweenl the parties [13]. This is because, inl practice, finlanlcinlg agreemenlts genlerally take the form of stanldard agreemenlts that tenld to provide greater benlefits to the creditor. Therefore, the existenlce of laws anld regulationls is crucial as a meanls to limit anld protect parties inl a weaker positionl. Furthermore, regulationls issued by the Finlanlcial Services Authority (OJK) also play a role inl strenlgthenlinlg debtor protectionl, particularly inl the finlanlcial services sector [10]. Prinlciples such as tranlsparenlcy, fairnless, anld conlsumer protectionl form the basis for finlanlcinlg activities. With these regulationls, it is hoped that practices detrimenltal to debtors canl be minlimized anld a more balanlced legal relationlship betweenl the parties canl be created.

3) Legal Protectionl inl the Fiduciary Guaranltee Executionl Process

Inl executinlg fiduciary collateral, the creditor is obligated to sell the collateral inl anl openl, tranlsparenlt manlnler, anld inl accordanlce with applicable law. The purpose of this provisionl is to enlsure that the collateral value remainls optimal anld does nlot result inl losses for the debtor. Furthermore, the debtor also has the right to obtainl clear anld complete inlformationl regardinlg the process anld results of the sale of the collateral.

Accordinlg to R. Setiawanl, the executionl of fiduciary collateral must always be based onl the prinlciples of justice anld fairnless, so as nlot to cause elessive losses to either party [16]. Inl this case, the creditor is nlot solely focused onl fulfillinlg debt repaymenlt but is also obliged to pay attenltionl to anld respect the debtor's rights as the ownler of the collateral. Inl practice, the executionl of fiduciary collateral oftenl gives rise to various problems, particularly those related to forced repossessionl by third parties, such as debt collectors. Inl responlse, the Conlstitutionlal Court emphasized that the executionl of fiduciary collateral canlnlot be carried out unlilaterally if there is anl objectionl or dispute from the debtor, but must inlstead follow valid legal procedures [17]. This provisionl provides stronlger protectionl for debtors from arbitrary actionls.

Furthermore, the executionl of a fiduciary guaranltee must also adhere to humanlitarianl values. Anly form of actionl, such as threats, inltimidationl, or violenlce, canlnlot be justified as it violates applicable legal prinlciples. Therefore, legal protectionl inl the executionl of a fiduciary guaranltee is nlot merely formal but also reflects substanltive protectionl, nlamely truly guaranlteeinlg the debtor's rights anld dignlity as a legal subject.

c. Legal Analysis of Decision Number 300/Pdt.G/2024/PN.Btm

1) Case Positionl

Inl this case, a legal relationlship exists betweenl the debtor anld creditor based onl a finlanlcinlg agreemenlt with a motor vehicle as collateral. The agreemenlt is legally valid because it meets the requiremenlts for a valid agreemenlt unlder the Civil Code, thus creatinlg binldinlg force for both parties [6]. Therefore, both the debtor anld creditor have rights anld obligationls that must be fulfilled inl accordanlce with the terms of the agreemenlt. Inl practice, the debtor faces finlanlcial difficulties that prevenlt him from fulfillinlg his inlstallmenlt paymenlt obligationls withinl the stipulated timeframe. This situationl places the debtor inl default [15]. This situationl nlot onlly impacts the legal relationlship betweenl the parties but also creates legal conlsequenlces inl the form of the creditor's right to demanld fulfillmenlt of his obligationls or pursue other legal remedies, inlcludinlg executinlg the fiduciary collateral [10]. As a show of good faith, the debtor thenl volunltarily surrenlders the fiduciary collateral to the creditor. This surrenlder reflects the debtor's efforts to fulfill his obligationls despite limited econlomic conlditionls [18]. The creditor thenl sells the collateral through a public auctionl with the aim of securinlg repaymenlt of the debtor's debt [10]. However, the proceeds from the auctionl sale were inlsufficienlt to cover the debtor's remainlinlg obligationls. This raised a nlew legal issue, nlamely the debtor's responlsibility for the remainlinlg unlpaid debt [19]. Genlerally, debtors assume that the surrenlder of the collateral has enlded their obligationls. Meanlwhile, creditors conltinlue to demanld that the remainlinlg debt be repaid inl accordanlce with the terms of the agreemenlt. This differenlce of opinlionl betweenl the two parties thenl escalated inlto a legal dispute that was resolved through the courts. This case was subsequenltly examinled anld decided by the Batam District Court inl Decisionl NLumber 300/Pdt.G/2024/PNL.Btm, which is the focus of this research [20].

2) Judge's Legal Conlsiderationls

Inl his legal reasonlinlg, the judge emphasized that the legal relationlship betweenl the debtor anld creditor arose from a finlanlcinlg agreemenlt that met the requiremenlts for legal validity, thus subject to the prinlciple of pacta sunlt

servanlda, meanlinlg that a legally conlcluded agreemenlt is enlforceable as law for the parties. Therefore, every obligationl agreed to inl the agreemenlt must be carried out responlsibly anld inl good faith [15]. The judge further determinled that the debtor's failure to fulfill inlstallmenlt paymenlts conlstitutes a form of default. This conlditionl results inl the legal conlsequenlce of the debtor's conltinlued obligationl to repay the enltire debt, inlcludinlg anly remainlinlg unlfulfilled obligationls after the executionl of the fiduciary collateral [15].

Furthermore, the judge referred to the provisionls of Law NLumber 42 of 1999 conlcernlinlg Fiduciary Collateral, which essenltially stipulates that the executionl of the collateral does nlot extinlguish the debtor's obligationls if the proceeds from the sale are inlsufficienlt to cover the enltire debt. Therefore, fiduciary collateral is positionled as a meanls to guaranltee debt repaymenlt, nlot as a mechanlism for debt forgivenless [10]. Furthermore, the judge also conlsidered the prinlciples of justice anld legal certainlty inl decidinlg the case. The aspect of legal certainlty is reflected inl the applicationl of the provisionls of the agreemenlt anld applicable laws anld regulationls, while the aspect of justice is seenl inl the protectionl of the creditor's right to obtainl repaymenlt of his debt without nleglectinlg the debtor's rights inl the court process [21]. Overall, these conlsiderationls inldicate that the judge does nlot onlly use a nlormative approach, but also accommodates aspects of substanltive justice anld the actual conlditionls of the parties inl resolvinlg disputes betweenl debtors anld creditors [20].

3) uthor's Anlalysis of the Decisionl

Based onl a review of Decisionl NLumber 300/Pdt.G/2024/PNL.Btm, it canl be conlcluded that the judge's decisionl is inl prinlciple inl linle with civil law provisionls, particularly regardinlg the implemenltationl of agreemenlts anld the debtor's responlsibilities. The applicationl of the prinlciple of pacta sunlt servanlda demonlstrates that the judge adheres to the prinlciple that a legally conlcluded agreemenlt binlds the parties like a law, anld therefore must be implemenlted inl good faith [15]. However, uponl closer anlalysis, the approach used inl this decisionl tenlds to emphasize legal certainlty over substanltive justice, particularly for debtors who are inl a weaker positionl. Inl finlanlcinlg practice, debtors oftenl face econlomic pressures, which are a major factor inl defaults, so it would be inlappropriate to impose absolute responlsibility without conlsiderinlg the actual circumstanlces of the debtor [6].

Inl this case, the debtor demonlstrated good faith by volunltarily surrenlderinlg the fiduciary collateral to the creditor. This actionl should be conlsidered a mitigatinlg factor anld assessed more proportionlately by the judge. However, inl this decisionl, the aspect of good faith does nlot appear to have received adequate attenltionl, givinlg the impressionl that the judge's conlsiderationls were more focused onl fulfillinlg formal obligationls thanl onl substanltive justice. Furthermore, there is anl importanlt issue that should have received more attenltionl, nlamely the executionl anld sale of fiduciary collateral. Inl practice, collateral is oftenl sold at prices that do nlot reflect market value, ultimately harminlg the debtor by inlcreasinlg the remainlinlg debt [10]. Inl this decisionl, there is nlo apparenlt inl-depth anlalysis of whether the auctionl process was conlducted openlly, fairly, anld inl accordanlce with the prinlciples of justice.

From a legal protectionl perspective, this inldicates that the judge's conlsiderationls have nlot fully accommodated the protectionl of debtors.

Accordinlg to Satjipto Rahardjo, the law should funlctionl to protect the inlterests of society, especially those inl vulnlerable positionls [14]. Therefore, anl approach that places too much emphasis onl formal aspects canl potenltially override the primary purpose of law, nlamely the creationl of justice. Furthermore, the theory of legal protectionl put forward by Philipus M. Hadjonl emphasizes the existenlce of prevenltive anld repressive protectionl [8]. Inl the conltext of this case, repressive protectionl through a court decisionl should be able to strike a balanlce betweenl the inlterests of creditors anld the protectionl of debtors. However, if the decisionl favors the inlterests of creditors, thenl the goal of legal protectionl has nlot beenl optimally achieved.

Onl the other hanld, although this decisionl canl be conlsidered legally correct because it complies with the provisionls of the Fiduciary Guaranltee Law, from a sociological perspective, there are still issues of justice [10]. This is evidenlt inl the conltinlued impositionl of obligationls onl the debtor, evenl though the debtor has lost the collateral anld is inl a less favorable econlomic situationl. To strenlgthenl debtor protectionl, the provisionls of Law NLumber 42 of 1999 conlcernlinlg Fiduciary Guaranltees actually provide a clear legal basis. Article 29 stipulates that the executionl of the fiduciary guaranltee must be carried out through a legitimate mechanlism, nlamely through a public auctionl or a private sale agreed uponl by the parties. This provisionl emphasizes that the executionl process must be carried out openlly, tranlsparenltly, anld without harminlg the debtor. Furthermore, Article 34 of the Law states that if the proceeds from the sale of the collateral eleed the debt, the eless must be returnled to the debtor. This provisionl demonlstrates that the law nlot onlly protects the inlterests of creditors but also guaranltees the protectionl of the debtor's rights. Implicitly, this nlorm also requires that collateral be sold at a fair market value, thus avoidinlg losses for the debtor. Therefore, if the executionl process is carried out without tranlsparenlcy, or if the collateral is sold below its fair value, this could violate the provisionls of the Fiduciary Guaranltee Law anld harm the debtor. Therefore, the debtor essenltially has a stronlg legal basis for protectionl againlst unlfair executionl.

As a form of conlstructive criticism, the judge should delve deeper inlto the aspect of fairnless by conlsiderinlg the debtor's actual circumstanlces, inlcludinlg the good faith demonlstrated anld the potenltial losses arisinlg from the executionl process. A more progressive, socially justice-orienlted approach would be able to create more balanlced protectionl for all parties.

Therefore, it canl be conlcluded that this decisionl fulfills the elemenlt of legal certainlty, but still requires strenlgthenlinlg inl the applicationl of substanltive justice, particularly inl providinlg protectionl for the debtor. Therefore, a more comprehenlsive approach is nleeded inl hanldlinlg similar cases inl the future, so that the law funlctionls nlot onlly formally but also truly reflects the values of justice inl society.

4. CONCLUSION

Based onl the discussionl that has beenl outlinled, it canl be conlcluded that the debtor remainls obligated to pay off the remainlinlg debt evenl though the fiduciary collateral object has beenl hanlded over to the creditor, conlsiderinlg that fiduciary collateral essenltially onlly funlctionls as a meanls of guaranlteeinlg debt repaymenlt anld nlot as a substitute for the debt itself. Legal protectionl for debtors inl fiduciary agreemenlts canl be

realized through the applicationl of the prinlciple of good faith, the prinlciple of balanlce betweenl the parties, anld the provisionls of laws anld regulationls related to conlsumer protectionl. This is inl linle with Decisionl NLumber 300/Pdt.G/2024/PNL.Btm, where the judge has applied the applicable legal provisionls by conlfirminlg that the debtor's responlsibility to pay off the remainlinlg debt remainls evenl though the executionl of the fiduciary collateral object has beenl carried out.

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