

Responsibility of the Board of Directors towards Unregistered Fiduciary Guarantees in a Fiduciary Institution by Bank Perekonomian Rakyat (Bpr) In Badung Regency

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ABSTRACT: The research focuses on three rural banks (BPR) in Badung Regency that provided credit with fiduciary collateral not registered with the fiduciary registration institution. The issues discussed are: 1) what are the legal consequences of fiduciary collateral not registered with the fiduciary institution by BPR in Badung Regency? And 2) what is the responsibility of the management in resolving credit issues regarding fiduciary collateral that is not registered with the fiduciary institution by BPR in Badung Regency? The objective of the study is to understand the legal consequences and the management's responsibility in resolving credit issues related to fiduciary collateral that is not registered with the fiduciary institution by BPR in Badung Regency. The research aims to examine and analyze fiduciary collateral not registered by BPR. The type of research used is empirical legal research with a juridical and sociological approach. The findings are: the legal consequence of fiduciary collateral not being registered is that it does not create a property right because the property right from the fiduciary collateral only arises when it is registered at the fiduciary registration office. The management is fully responsible for performing its duties in accordance with the bank's internal regulations. It can be concluded that the legal consequence of fiduciary collateral not being registered with the fiduciary institution poses significant risks to both the debtor and the creditor, and can cause legal uncertainty, potentially leading to disputes or claims. The management's responsibility in resolving credit issues related to fiduciary collateral that is not registered with the fiduciary institution in BPR in Badung Regency includes approaches through family-like discussions and negotiations with the debtor to request replacement collateral. The bank also conducts Productive Asset Write-Off Provisions (PPAP). The recommendations include: management should pay attention to bank regulations, customers must fulfill their payment obligations, and the Financial Services Authority (OJK) should conduct regular inspections of the banks.

KEYWORDS: Responsibility, Management, Fiduciary Collateral.

I. INTRODUCTION

Background : Banks are believed to be financial institutions that are present to help the economy and improve people's standard of living. The bank itself is a financial intermediary institution that was established with its main activities to provide services in payments and money circulation as well as credit provision. As stated in Article 1 Number 2 of Law of the Republic of Indonesia Number 7 of 1992 concerning Banking, as amended by Law of the Republic of Indonesia Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking, State Gazette of the Republic of Indonesia Year 1998 Number 182 (hereinafter referred to as the "Banking Law"). Banks have an important role in the economic growth of a country that supports the implementation of national development to improve equality, economic growth, and national stability towards improving people's welfare. Banks need to be managed well in carrying out their role as a fund collector and fund distributor. The implementation of good governance is one of the things that needs to be done by all banking financial institutions, both general banks and Bank Perekonomian Rakyat or the People's Economic Bank (BPR). A total of 137 BPRs are domiciled in the districts or cities throughout Bali, with the largest number spread across the Badung district area, namely 49 BPRs. BPRs are financial institutions that receive funds from the public in the form of savings, time deposits, and provide loans to the public in the form of credit. BPR is a financial institution that accepts funds from the public in the form of savings and time deposits and provides loans to the public in the form of credit. Its activities are much narrower than those of general banks because it is prohibited from accepting demand deposits, foreign exchange activities, and insurance. As part of national banking, the BPR industry needs to be improved and strengthened to improve services to the community, especially micro and small entrepreneurs, as stated in Bank Indonesia Regulation Number 6/22/PBI/2004 concerning Rural Credit Banks. BPR is believed by the community as a way that will help the community, especially micro and small entrepreneurs, through capital to develop their businesses. BPR has the main objective of helping capital or channeling funds for Micro, Small, and Medium Enterprises (MSMEs).

In carrying out its activities, the bank has organs that are selected and appointed as controllers of the running of a company. The function of the Company's organs as controllers refers to the roles and responsibilities held by the organs in the organizational structure, especially in terms of supervision and control as well as bank policies. These organs consist of the General Meeting of Shareholders (GMS), the Board of Commissioners, and the Board of Directors. In its organizational structure, the board of directors consists of the president director and the director. Both members of the board of directors have full authority and responsibility to the Company. The president director is authorized to formulate and determine a general policy and program of the company or organization in accordance with the limits of authority granted by a board of directors or a similar leadership body such as the board of commissioners (Kamus Bisnis dan Bank, 2024). Meanwhile, the director is a person appointed and selected under the articles of association or applicable provisions to lead and control the company (Kamus Bisnis dan Bank, 2024).

Each bank organ has its own duties and authorities, such as the board of directors as the leader of the Company who is fully responsible for the running of all bank activities based on good faith and respecting applicable laws and regulations. The responsibilities of the board of directors at BPR cover various aspects that focus on the management and supervision of the bank's operations. The responsibility of the board of directors in carrying out its duties is not only to the company but also to the GMS because the board of directors is an organ elected by the GMS (Budiarta, 2013). The provisions of Article 97, paragraph (3) of the Private Limited (PT) Law stipulate that each member of the Board of Directors is fully personally responsible for the losses of the Company if the person concerned is guilty or negligent in carrying out his duties. The Board of Directors can be said to be negligent if the company is declared bankrupt, namely the absence of good faith by the board of directors to pay off debts to creditors and is not based on the principle of prudence. The Board of Directors is an important organ in the organizational structure of the bank because it has the responsibility to maintain the security and confidentiality of customer funds and against all risks in accepting credit guarantees.

Collateral is something given to the lender to create confidence that the borrower will fulfill the obligations that can be valued in money arising from an agreement. Collateral law is closely related to the law of objects (Badruzaman, 1991). Based on the principle of prudence, the means of security in providing credit is the existence of collateral as a guarantee of the credit given to the debtor, either in the form of material collateral or personal collateral. One type of material collateral is fiduciary collateral. The provisions of Article 1 paragraph (1) of Law Number 42 of 1999 concerning Fiduciary Guarantees (hereinafter referred to as the "Fiduciary Guarantee Law") regulate the transfer of ownership rights of an object based on trust with the provision that the object whose ownership rights are transferred remains in the possession of the owner of the object. Some important things in fiduciary guarantees include objects of fiduciary guarantees, fiduciary registration, and creditor rights. Basically, according to the provisions stipulated on new fiduciary guarantees, born on the same date as the date the fiduciary guarantee is recorded in the Fiduciary Register Book, the creditor will receive a fiduciary guarantee certificate. By obtaining a fiduciary guarantee certificate, the creditor/fiduciary recipient immediately has the right to direct execution, as occurs in banking loans. The legal force of the certificate is the same as a court decision that already has permanent force. In addition, according to the provisions, when a movable object is used as collateral for a debtor's credit, then it must be bound by a notarial deed called a Fiduciary Guarantee deed.

In determining the sample of 49 BPRs, the researcher used 3 samples, namely PT BPR Saraswati Ekabumi, PT BPR Siwi Sedana, and PT BPR Maha Bhoga Marga because based on initial observations, credit with fiduciary collateral was found that was not registered at the Fiduciary Registration Office. At PT BPR Saraswati Ekabumi, there were 15 credits with collateral in the form of motorbikes and cars that had not been registered and 1 case in the form of a car that was in default so that the fiduciary collateral could not be executed legally. A similar condition occurred at PT BPR Siwi Sedana, there were 3 loans with collateral in the form of motorbikes that were not registered with the fiduciary institution. In addition, interestingly, in one of the loans that was not registered with the fiduciary institution, the collateral in the form of a Motor Vehicle Registration Certificate or BPKB letter was not at the bank. Likewise, it was found at PT. BPR Maha Bhoga Marga, there were 5 forms of credit with collateral in the form of motorbikes and cars that had not been registered with the fiduciary institution and there were 2 cases of fiduciary guarantees that were in default so that legal execution could not be carried out. From the discovery of cases of 23 loans that were not registered with the fiduciary institution in each of the BPRs, it was found that 2 credit guarantees in the form of cars were lost, namely at PT BPR Saraswati Ekabumi and PT BPR Maha Bhoga Marga. This will be the responsibility of the board of directors as the head of the bank for resolving the problems that occur. The problems that can be formulated are: what are the legal consequences of fiduciary guarantees that are not registered with a fiduciary institution by the BPR in

Badung Regency? And what is the responsibility of the board of directors in resolving credit problems against fiduciaries that are not registered with a fiduciary institution by the BPR in Badung Regency?

II. RESEARCH OBJECTIVES AND BENEFITS

The benefits that can be obtained from this research include theoretical and practical benefits. Theoretically, this research is expected to find results and answers to the problems to be discussed so that it can provide references and positive contributions to the development of legal science in general and banking law in particular. Practically, the results of the research in this thesis are expected to provide several benefits, namely providing ideas on things that need to be considered in providing credit, providing additional insight and knowledge in banking law, especially those related to the responsibility of directors towards the application of the principle of prudence, and providing ideas for further research on the application of the principle of prudence in providing credit has been implemented optimally or vice versa. This study aims to develop legal science in general, and business law in the field of banking law in particular, as a course taught in the postgraduate program of Master of Law, analyzing the legal consequences of fiduciary guarantees that are not registered with fiduciary institutions by the BPR in Badung Regency and analyzing the responsibility of directors in resolving credit problems against fiduciaries that are not registered with fiduciary institutions by the BPR in Badung Regency.

III. RESEARCH METHOD

This type of research is empirical legal research with the problem approaches used are the Legislation Approach, Case Approach, and Sociological Approach. The Legislation Approach is carried out by examining all Legislation related to both the responsibilities of directors and also regarding fiduciary guarantees, such as examining the Banking Law, the Fiduciary Guarantee Law, and other related regulations. The Case Approach is carried out by examining legal cases or incidents related to the research, namely fiduciary guarantees that are not registered with fiduciary institutions. Meanwhile, the Sociology approach tries to find out how much influence the law has on the behavior of society, especially corporate organs, such as the obedience of corporate organs in implementing applicable laws against banking institutions to reduce the occurrence of problems regarding fiduciary.

IV. DISCUSSION

Legal Consequences of Fiduciary Guarantees Not Registered with Fiduciary Institutions by Bank Perekonomian Rakyat (BPR) in Badung Regency : For banking institutions, especially BPR, an object is the most important thing in providing credit. The provision of credit by BPR requires the submission of an object as a credit guarantee from the prospective debtor to the bank and its assessment is carried out by the bank concerned. The object in providing bank credit is very important because it functions as a guarantee or tool to reduce the risk of the creditor (bank) if the debtor fails to pay the debt. For each credit guarantee object submitted by the debtor and approved by the bank, it must be immediately bound as a debt guarantee.

Banks should bind the object of credit guarantee perfectly, namely by following the provisions of laws and regulations governing debt guarantees (Bahsan, 2015). The method of binding the object of credit guarantee that will generally secure the interests of the bank is if it is done through a guarantee institution (Bahsan, 2015). The Financial Services Authority or OJK regulates the principle of prudence in credit distribution, which requires BPR to ensure that credit remains safe, including by legally binding the guarantee. For banks, one of the main requirements that must be met to obtain credit is the existence of collateral. The determination of collateral will be carried out after the customer has fulfilled all other requirements to then proceed to credit disbursement. When the customer has agreed to the loan terms, both parties, the debtor and the creditor, will sign a credit agreement that includes provisions regarding fiduciary collateral. The agreement will include the identity of the collateralized goods, the value of the goods, and the rights and obligations of each party. In carrying out the burden with fiduciary collateral, it must be made with a notarial deed and is known as a Fiduciary Collateral Deed, which must contain at least: the identity of the parties providing and receiving the fiduciary, data on the main agreement guaranteed by the fiduciary, a description of the object that is the object of the fiduciary collateral, the value of the collateral and the value of the object that is the Object of the Fiduciary Collateral (Vevakananda & Dahana, 2021). Fiduciary guarantees are not only completed when a notarial deed is made. However, it must be continued by registering with a fiduciary institution to obtain legal certainty and protection. The Fiduciary Guarantee Law (hereinafter referred to as the Fiduciary Guarantee Law) states, "Objects burdened with fiduciary guarantees must be registered". Accordingly, this article explains that a fiduciary guarantee that is not registered means that it does not fulfill its obligations so that legally the fiduciary guarantee is considered to have never existed (Widyari, Sirtha & Sarjana, 2017). According to Thema, the consequence of an unregistered fiduciary guarantee is that the applicable law is that the creditor and debtor are considered to

have never entered into a fiduciary guarantee agreement so that the creditor's right to execute and the right of preemptive payment (preference) cannot be fulfilled (Thema, 2019). At PT. BPR Saraswati Ekabumi, there are difficulties in executing collateral when a default occurs. Sometimes, customers can no longer pay their obligations because they are going bankrupt but still insist on not selling their vehicle collateral to pay off their debts to the bank. The bank cannot take further action to forcibly seize the collateral because the bank does not have a certificate showing that the bank has the right to the debtor's collateral.

Another legal consequence of not registering a fiduciary guarantee with a fiduciary institution is that if the execution of the guarantee is carried out by force, namely through debt collector services, this is certainly against the law. The creditor can also transfer the object of the fiduciary guarantee that is carried out underhand to another party, in this case, the debtor also cannot be charged with the UUJF because the deed of agreement underhand is not valid according to the Law in question (Akhsin & Mashdurohaturun, 2017). At PT. BPR Maha Bhoga Marga, the publicity element is not fulfilled, making it difficult to control the debtor's guarantee. In fact, the bank does not know that the debtor's guarantee has been transferred to another party. When this happens, the bank does not have strong control over the debtor's guarantee because there is no legal record of the transfer of the debtor's rights to the bank's rights.

The legal consequence of unregistered fiduciary guarantees is that they do not give rise to property rights because property rights from fiduciary guarantees are only born since registration at the fiduciary registration office and as proof is the issuance of a Fiduciary Guarantee Certificate, so that the legal consequence of not registering a fiduciary guarantee is the property character, namely *droit de suite* (property rights always follow the object in the hands of anyone where the object is) and preference rights are not attached to the creditor receiving the fiduciary guarantee or in other words, the fiduciary guarantee is of a personal nature (personlife character) (Santoso, 2024).

At the time the Fiduciary Guarantee is recorded and registered, then the property rights are born to the fiduciary holder. As in fact, what happened at PT BPR Siwi Sedana was that there was no property agreement for the fiduciary guarantee and had to carry out routine field controls to ensure the existence of the debtor's guarantee. In general, property rights will give the owner the right to a certain object, which includes the right to control, use, enjoy, and move the object. If the fiduciary guarantee is not registered, then the guarantee will not have any effect on third parties. This means that even though a fiduciary agreement between the debtor and creditor has been made, the third party as the buyer of the collateral, may not be related to the agreement, and the collateral can be legally sold by the debtor. Without registration, creditors will have difficulty obtaining legal protection if a problem occurs. This is because in the case of the sale of collateral by the debtor, the third party as the buyer cannot be blamed, and the creditor will have difficulty claiming his rights to the object. The notary as an official who makes the deed, states that most banks themselves refuse to register their fiduciary guarantees on the grounds that there will be additional costs that will be charged to the debtor. If viewed based on its function, with the registration, the Fiduciary Guarantee Certification is born, which has the same executorial power as a court decision that has permanent legal force with the inclusion of the words "FOR JUSTICE BASED ON THE ONE ALMIGHTY GOD" (Sukendarr & Santoso, 2022). Therefore, if the debtor is proven to be in breach of promise, the Fiduciary Recipient has the right to sell the fiduciary guarantee object at his own power.

The Responsibility of the Board of Directors in Resolving Credit Problems Against Fiduciaries Who Are Not Registered with the Fiduciary Institution by Bank Perekonomian Rakyat (BPR) in Badung Regency

For BPR, when it has decided to disburse credit, the bank must be prepared for all risks that will occur. Credit risk is the potential loss experienced by a financial institution or lender due to the failure of the borrower to fulfill debt repayment obligations in accordance with the agreed terms and conditions. The risk arises when the borrower cannot repay the loan, either in the form of principal or interest at the specified time. Credit risk, according to Indonesian law, focuses more on regulating how banks and other financial institutions must manage the credit risk they face to maintain the stability of the financial system. Credit risk itself is a risk faced by banks or financial institutions due to the failure of debtors to fulfill debt payment obligations or other obligations related to the credit provided. The OJK has a crucial role as a bank supervisor in managing credit risk. It is responsible for ensuring that banks in Indonesia carry out banking activities in a healthy manner and under applicable regulations, including in terms of credit risk management. The supervision carried out by OJK aims to maintain the stability of the financial system and protect the interests of customers and the public in general. Non-performing loans can have a significant impact on BPR performance whether in terms of finance, operations, and reputation. Given the nature of BPR which focuses on providing credit to certain market segments.

The impact of non-performing loans can be direct and long-term. The main impact that often occurs is for credit-providing banks such as decreased profitability. Non-performing loans can have a significant impact on bank liquidity and stability, including cash that should have come in to increase bank liquidity does not occur. The bank is unable to meet its short-term obligations. For the economy, increasing non-performing loans can slow the flow of credit to productive sectors, which can hinder investment and consumption and reduce overall economic growth. If non-performing loans are very large, this can affect the stability of the financial sector, even potentially causing a financial crisis.

According to the PT Law, the board of directors is the representative of the Company both inside and outside the court with the provisions of the articles of association. The board of directors is the one who manages all the interests of the Company, in accordance with the intent and purpose of the establishment of the Company as stated in the articles of association of the Company (Widiyono, 2005). The board of directors consists of executives or high-ranking officials who have the authority to make important strategic and operational decisions. In the context of a company, the board of directors consists of two people, namely the main director and the compliance director. The board of directors is different from workers because the legal relationship between the board of directors and the company is based on the deed or decision of the GMS, while the legal relationship between workers and the company is based on the work agreement.

As a financial institution, BPR is required to comply with various regulations set by authorities such as OJK. The Board of Directors is responsible for ensuring that BPR carries out its operations under applicable regulations. Overall, the Board of Directors provides much-needed direction and oversight for the success and sustainability of BPR, ensuring that the organization can grow and adapt to existing challenges. In corporate law, the Board of Directors can be held fully liable for the losses of the company if they are at fault in carrying out their duties. This refers to the personal liability of the Board of Directors related to violations of legal obligations, fiduciary obligations, or negligence that can harm the company and other parties. The limits of the Board of Directors' liability in a limited company are based on their authority, duties, abilities, and responsibilities. The Board of Directors has internal and external responsibilities. The internal responsibilities of the Board of Directors are towards the Company and shareholders, while external responsibilities are the duties and responsibilities of the Board of Directors towards third parties related to the Company.

The bank's board of directors, as the main decision maker in the operational management of the bank, has the power to decide and direct that a fiduciary guarantee be registered with the authorized institution. However, this decision must be taken based on the bank's internal policies and applicable regulations. The board of directors is responsible for managing the bank's legal risk. If the bank does not register the fiduciary guarantee, the bank may lose the right to execute the collateral if the debtor defaults. Therefore, the decision to register the fiduciary guarantee is part of the legal risk management obligation that must be carried out by the board of directors to protect the bank's interests. In the context of banking, if a fiduciary guarantee is not registered by applicable provisions, the bank may face serious legal problems. Without legal registration, a fiduciary guarantee has no enforceable power against a third party, meaning the bank cannot exercise its legal rights to execute or take over the collateral if the debtor defaults. Therefore, the board of directors as the main decision maker in a bank, is responsible for finding a solution if such a problem occurs.

At PT BPR Saraswati Ekabumi, there was a credit problem with unregistered fiduciary collateral where when checked in the field, the collateral was proven to be missing. The bank handled it by approaching and negotiating with the customer's closest family to replace the collateral with a land certificate, commonly called a Certificate of Ownership. Since it was enacted on September 30, 1999, in the practice of providing credit with fiduciary guarantees that should refer to the UUJF, it turns out that there are still many violations, as one example is that there are still many banks and financing institutions that do not register fiduciary guarantee objects with the Fiduciary Registration Office. Bad credit that uses fiduciary guarantees has the potential to be difficult to execute if the bank does not register the fiduciary guarantee object. In the event of a problematic credit that uses fiduciary collateral, the bank is required to carry out credit rescue. If credit rescue has been carried out and is not successful, it will be continued with the execution of the collateral. At PT BPR Siwi Sedana, there is a credit rescue against unregistered fiduciary collateral. Several steps that can be taken by creditors include negotiating with debtors to find a solution that benefits both parties. This can be in the form of debt restructuring or providing additional collateral; Voluntary seizure if the debtor is willing, the creditor can voluntarily seize the collateral. However, this must still pay attention to the principles of justice and existing legal provisions. Seeking other alternatives in cases where unregistered fiduciary collateral cannot be saved, the creditor can consider requesting other collateral from the debtor or renewing the credit agreement by including

valid collateral. This responsibility is not only about success or failure but also how the procedures and provisions for granting credit are carried out professionally and follow the principle of prudence. In dealing with problematic credit, the board of directors must be responsible for finding the best solution for the company, including restructuring debt or settlement with debtors. If there is collateral, the seizure and auction process can be carried out to recover the losses that occur.

At PT. BPR Maha Bhoga Marga, credit problems with unregistered fiduciary collateral will be the responsibility of the board of directors as the credit decision maker. Credit settlement is carried out with a gentle approach with the debtor to then be sold by the debtor himself to pay off the debt to the bank. In addition, for lost fiduciary collateral, the bank will settle it with the Provision for Removal for Write-off of Productive Assets (PPAP). The directors can be held accountable internally, either for policies that are not implemented properly or for high-risk credit if there are problems with customers or there are discrepancies in credit management. They are also responsible for taking corrective measures, such as revising policies or improving credit procedures. Overall, the board of directors' responsibilities as credit decision makers are more focused on oversight, strategy, and ensuring that the credit granting process is following the institution's policies, regulations, and long-term goals. Their credit decisions often involve greater consideration of risk and its impact on the entire organization.

V. CONCLUSION AND SUGGESTION

Conclusion

The conclusions obtained are as follows:

1. The legal consequences of fiduciary guarantees that are not registered with a fiduciary institution will be very risky for the party providing the fiduciary guarantee (debtor) and the fiduciary recipient (creditor) and can cause legal uncertainty and also potentially give rise to disputes or claims.
2. The responsibilities of the board of directors in resolving credit problems with fiduciaries that are not registered with the Fiduciary Institution at BPR in Badung Regency include:
 - a. A gentle approach with the debtor to then carry out a joint collateral sale to pay off the debt to the bank.
 - b. Negotiation with the debtor to request replacement collateral.
 - c. The bank makes settlements with Allowance for Removal for Write-off of Productive Assets (PPAP).

Suggestion: Firstly, the Bank as a financial institution should pay attention to the applicable rules, especially the regulations in the BPR, both in the Laws and Regulations or internal bank regulations such as PKPB and SOP. If the bank does not immediately register the fiduciary, the main risk is the loss of priority rights to the guarantee if there is a dispute with another party (for example, another creditor). Therefore, it is important to register fiduciary as soon as possible to protect the bank's position as a creditor. The Board of Directors, as an organ of the bank, as well as a representative of the company, should be more careful and always pay attention to the provisions in the credit granting process, and always act in good will. Second, for customers who apply for credit with fiduciary guarantees they must be able to fulfill their payment obligations on time because fiduciary guarantees give the lender the right to withdraw the guarantee if the customer fails to pay. Also, make sure that as a customer you have a clear payment plan that can be met. Lastly, the OJK institution must conduct periodic audits and inspections of BPR to ensure that the fiduciary registration process is carried out correctly and to prevent potential misuse that could harm customers or BPR itself.

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