

Proceeding Paper

DISPARITY OF JUDGES' RULINGS REGARDING OBJECTS OF SECURITY CONFIDENTIALITY UNDER THE FIDUCIARY LAW IN SIMPLE LAWSUITS

Tami Rusli¹, Zulfi Diane Zaini², Donal Andrias³, M Desta Indra Kurniawan⁴,
Indra Jaya^{5,*}

¹ Univercity of Bandar Lampung; Tami@ubl.ac.id

* Correspondence: Tami@ubl.ac.id;

Abstract

This research paper delves into the critical examination of judicial disparities in the execution of fiduciary guarantees, particularly focusing on the necessity of a court decision with an executorial title for the enforcement of such guarantees. The study highlights the inherent complexities in executing fiduciary decisions, as exemplified by contrasting approaches observed in Indonesian district courts. A significant case in point is the Gunung Sugih District Court's Decision number 04/Pdt.GS/2021/PN GNS, where the judge deemed a panel of judges' decision redundant in implementing a fiduciary decision, considering the Fiduciary Law as equivalent to a judge's ruling. This stance starkly contrasts with practices in several other District Courts, which necessitate a decision from a panel of judges for similar lawsuits.

Keywords: Financing; Simple Lawsuit; Fiduciary Guarantee; Financing Agreement.

1. Introduction

In the field of financial transactions, especially in the context of the dynamic Indonesian economy, the principle of fiduciary guarantees plays a very important role. The foundation of the rule of law is the effective and fair enforcement of these guarantees, avoiding vigilantism, and ensuring proportional justice. The need for a legal framework that prevents individuals from taking action on their own is an integral part of maintaining societal order (Insani & Mutiara, 2020; Isnainul et al., 2019; Kosali, 2020; Menkhoff et al., 2012).

Recent research has extensively explored the linkages between economic development, credit provision, and the need for collateral in securing financial transactions. Various studies consistently underline the importance of collateral, especially to protect the interests of creditors, ensuring that funds can be recovered within the specified time period (Busro et al., 2019; Isnainul et al., 2019; Nugraheni, 2020; Ramanda et al., 2021).

A fiduciary system based on the transfer of property rights on the basis of trust allows the debtor to retain control of the collateral, even temporarily. This arrangement, apart from facilitating the flow of capital, also creates several legal complications, especially when compared with Article 1152 of the Civil Code which mandates the physical delivery of collateral to creditors (Isnainul et al., 2019; Kosali, 2020; Puspasari & Ngazis, 2021; Riswandie et al., 2019).

The execution of fiduciary guarantees as regulated in Law Number 42 of 1999 has become the focus of much legal discourse. The law establishes various methods for implementing these guarantees, including executorial rights and public or private sale. However, in practice,

challenges arise, especially when collateral is transferred to a third party without the creditor's consent, giving rise to disputes and legal uncertainty (Isnainul et al., 2019; Pitanuki, 2020; Riswandie et al., 2019).

Even though Law of the Republic of Indonesia Number 42 of 1999 has a broad legal framework, there are still gaps, especially in the practice of enforcing this law. Vigilantism in resolving fiduciary disputes has become a recurring problem, so this is an important concern in implementing fiduciary guarantees. The interpretive dilemmas and legal uncertainties arising from these practices require more in-depth study (Kristiyanti, 2021; Patria, 2020; Riswandie et al., 2019).

Although existing research has laid a solid foundation in understanding the legal and economic implications of fiduciary guarantees, there remains a significant gap in comprehensively analyzing the practical challenges and gaps in court decisions regarding these guarantees. In particular, research regarding disparities in judges' decisions regarding the implementation of fiduciary guarantees in simple cases is still less focused, as evidenced by the differences in decisions in similar cases issued by different district courts (Isnainul et al., 2019; Kosali, 2020; Pitanuki, 2020; Puspasari & Ngazis, 2021; Riswandie et al., 2019).

This thesis is entitled "Disparities in Judges' Decisions Regarding Confiscated Collateral Objects Based on Fiduciary Law in Simple Lawsuits" (Study of Decision Number 04/Pdt.GS/2021/PN.GNS and Decision Number 12/Pdt.GS/2022 /PN.Tjk), aims to to bridge this research gap. This report will critically analyze variations in judicial approaches to fiduciary guarantees, with a focus on the implications of these gaps and their impact on legal certainty and financial transactions in Indonesia. Through this study, we seek to contribute to a deeper understanding of fiduciary law enforcement and propose recommendations for harmonizing legal interpretation to increase legal predictability and economic stability (Kristiyanti, 2021; Patria, 2020; Riswandie et al., 2019; Runtulalo & Tanawijaya, 2022).

Based on the background description that has been stated above, the following problems can be stated:

- a. What are the factors causing the Judge to give a different decision (Disparity) in a Simple Lawsuit in the Implementation of Execution Confiscation of Objects According to the Fiduciary Law?
- b. How is the legal process resolved when disparity in decisions occurs at the Gunung Sugih District Court and the Class IA Tanjung Karang District Court?

Scope of Research

- a. The causal factor is that the judge gives a different decision (disparity) in a simple lawsuit regarding the implementation of confiscation of execution of objects according to fiduciary law.
- b. Completion of the legal process of disparity in decisions at the Gunung Sugih District Court and the Class IA Tanjung Karang District Court.

2. Research Method

The problem approach that will be used in this research is a normative and empirical juridical approach. The Normative Juridical Approach is to view legal issues as rules that are considered appropriate to normative juridical research. This normative juridical research is carried out on matters of a theoretical nature, namely an approach taken by studying the legal principles contained in the theories/opinions of scholars and applicable laws and regulations (Lamada & Gumilang, 2020; Nolasco et al., 2010).

The Empirical Approach is by looking and observing directly the research object with the sources developed in this research (Hardianto, 2014).

3. Discussion

Within a court setting, the judge assumes a pivotal position in ascertaining the final verdict of a case. In order to assess the legality of the case, they need to take into account multiple criteria, including the lawsuit letter, replicas, duplicates, evidence, and conclusions, and establish whether it aligns with the relevant legal provisions. PT. Reksa Finance filed a lawsuit without any copies or duplicates.

When proving a civil lawsuit, the objective is to establish formal truth, which is primarily determined by the evidence presented by the parties involved in the case. Article 1866 of the Civil Code and Article 164 HIR/284 RBg govern this matter. The categories of evidence in civil procedural law encompass documentary evidence, testimonial evidence, expert opinion, identification, and oath-taking.

The claimant in this uncomplicated legal case provided documented evidence or correspondence and called upon two witnesses as part of their case. The evidence provided in the letter consists of a photocopy of the financing application form, the identity of the credit recipient or defendant, a Fiduciary Agreement Letter with Fiduciary Guarantee No. 8111220190700043, a Motor Vehicle Registration Certificate (STNK) and Motor Vehicle Owner's Book (BPKB), a Fiduciary Guarantee Certificate Number: W9.00126136.AH.05.01 of 2019, warning letters 1, 2, and 3, and photographs of a Mitsubishi Colt FE 74 HD V 125 PS Wooden Body BE 9317 GQ Year 2015 Combination Yellow, with Frame No. MHMF74P5FK147686 and Engine No. 4D34TL57204, registered under the name of Sarpin.

The proof provided by PT. Reksa Finance Central Lampung Branch. Samsumar Hidayat, in his capacity as a Class IA Judge of the Tanjung Karang District Court, emphasised the importance of considering relevant knowledge, theories, and laws pertaining to the subject matter of a case. As per Article 1313 of the Civil Code, an agreement refers to a legal action where one or more individuals commit themselves to one or more other individuals. The essential components of an agreement can be deduced from its formation, encompassing the involved parties, a mutual understanding between them, a desired objective, tasks to be executed, certain formats, whether oral or written, and specific stipulations.

According to Article 1320 of the Civil Code, for an agreement to be valid, certain conditions must be met. These elements include the agreement being made by parties who have the legal

capacity to enter into an agreement, the parties having the necessary skills to make the agreement, the presence of a specific subject matter, and the presence of a lawful reason for the agreement.

According to Article 1243 of the Civil Code, an agreement is meant to involve the provision of something, the performance of an action, or the refraining from an action. If a debtor fails to fulfil their commitment or defaults, they might be regarded as having breached a promise or defaulted. A debtor's default can be classified into four distinct categories: non-compliance with agreed obligations, partial fulfilment of obligations, delayed fulfilment of obligations, and engaging in activities prohibited by the agreement.

The compensation for losses comprises three components: expenses, damages, and accrued interest. According to Fr. Yudith Ichwandi, a Judge of the Gunung Sugih District Court, there is no consensus on the existence of a breach of contract (default) in fiduciary assurances. If the debtor refuses to voluntarily surrender the fiduciary assurance, all necessary legal mechanisms and procedures must be implemented and enforced in the same manner as the execution of a court decision with enduring legal validity.

According to decision Number 4/Pdt.G.S/2021/PN.Gns, Fr. Yudith Ichwandi said that in a quo case, there exists a Fiduciary Guarantee Certificate. This certificate allows the aggrieved party to seek prompt execution if there is a default on a debt and receivable agreement. The execution of the Fiduciary Guarantee Certificate must be conducted using legal methods and procedures that are equivalent to those used for enforcing a court decision with permanent legal validity.

In decision Number 12/Pdt.G.S/2022/PN Tjk, Judge Samsumar Hidayat of the Tanjung Karang District Court Class IA carefully considered the lawsuit brought by the defendant, the evidence presented during the trial, the testimonies of witnesses provided by both the defendant and the plaintiff, as well as the specific requests made in the lawsuit. In the second petitum, the Plaintiff requested the Judge to officially declare that the defendant's behaviour towards the Plaintiff constituted a violation of the contractual agreement in accordance with the law.

According to the information presented by the Plaintiff, both the Plaintiff and the defendant are legally obligated by an agreement made on December 30, 2019, which involves providing funding and includes a fiduciary promise. The defendant failed to meet the agreed-upon deadline for paying the obligation to the Plaintiff. The Court determined that the defendant had received financing from the Plaintiff to purchase a car. However, the defendant did not fulfil the payment obligations outlined in the Financing Agreement Letter, which was signed by both parties and included a Fiduciary Guarantee. Furthermore, the defendant did not adhere to the agreed-upon timeline for implementing the agreement.

The Plaintiff has admonished or reproached the defendant for failing to fulfil his commitments, constituting a breach of his promise/default, as indicated by Samsumar Hidayat, a Class IA Judge of the Tanjung Karang District Court.

The third request, which sought the Judge's decision on the confiscation of collateral for a specific vehicle (One Honda Brio Satya E.1.2 S Gasoline MT No. Police BE 2043 NH, YEAR 2015,

COLOUR RED Frame No.: MHRDDI 770FJ563624, Machine No.: LI 2B31470653) registered under the name of Ely Yuliani, was dismissed by Samsumar Hidayat, who serves as the Class IA Judge of the Tanjung Karang District Court. The decision was made in accordance with the provisions of Article 227 HIR/261 RBg, Article 17A of the Regulation of the Supreme Court of the Republic of Indonesia Number 4 of 2019, which pertains to amendments based on Supreme Court Regulation Number 2 of 2015 regarding the procedures for resolving simple claims, and Supreme Court Circular Letter Number 5 of 1975.

Samsumar Hidayat, a judge at the Tanjung Karang District Court, Class IA, explained that the rejection of the request for determining confiscated collateral also led to the rejection of the request for executing fiduciary guarantees mentioned in the fifth request. This decision was based on the established legal procedure for implementing civil judgements that have a permanent legal effect. The sixth petitum requested that the Judge impose a penalty on the Defendant to promptly settle the credit debt in the exact sum of Rp. 116,968,300.00 (one hundred sixteen million nine hundred sixty eight thousand three hundred rupiah) in cash. The total amount of the outstanding principal debt and accrued interest becomes legally binding after this decision is made.

According to the information presented by the Plaintiff, it has been determined that the Plaintiff's conduct constitute a breach of promise/default. The Defendant does not dispute the obligation to pay the minimal amount. The sixth petitum has a legitimate basis for being approved.

The application of the Ratio Decidendi doctrine to this issue is possible. In decision Number 4/Pdt.G.S/2021/PN.Gns, the Gunung Sugih District Court applied the Ratio Decidendi theory, which involves considering all aspects pertaining to the subject of the disputed case and identifying relevant statutory regulations as the legal foundation for making decisions. The judge's deliberations must be grounded on a lucid rationale to defend the law and ensure justice for the plaintiffs.

The Tanjung Karang District Court Judge Class IA, in judgement Number 12/Pdt.G.S/2022/PN.Tjk, employed Mackenzie's balance theory to evaluate the case. This theory seeks to achieve equilibrium between the legal requirements and the interests of the parties associated with the case. The Judge of the Class IA Tanjung Karang District Court deemed the Plaintiff's request, known as the Petitum, to be suitable and approved it. However, if the Petitum was asked but did not meet the necessary formal standards, it was denied. The presiding judge of the Class IA Tanjung Karang District Court concluded that there are conflicting interests among the parties involved and the Plaintiff has suffered a financial loss. Consequently, the Defendant is obligated to fulfil their responsibilities as outlined in the fiduciary assurance letter.

Completion of the Legal Process of Disparity in Decisions at the Gunung Sugih District Court and the Class IA Tanjung Karang District Court

Discrepancies in judges' rulings can occur as a result of multiple variables, such as the judge's comprehension of the litigation, the law, the sciences and theories they are familiar with, and their practices in fulfilling their responsibilities as a dispenser of justice. These disparities can have adverse effects on the parties involved, such as the plaintiff and the defendant.

According to Samsumar Hidayat, a Judge of the Class IA Tanjung Karang District Court, in the case of a simple litigation, the plaintiff has the option to file a formal objection if they disagree with the judge's judgement. The reason for this is that each judge possesses a distinct comprehension of legal science and ideas, yet fulfils their responsibilities in compliance with the established procedural legislation. Here, the plaintiff initiated a straightforward legal action against the defendant for violating their fiduciary contract, resulting in financial harm to the plaintiff. Nevertheless, the lawsuit was dismissed and deemed inadmissible. If the plaintiff expresses opposition to the decision, they have the option to initiate legal proceedings by filing a complaint once more.

Niet ontvankelijk verklaard is a legal ruling that declares the lawsuit inadmissible due to formal deficiencies. The clerk is obligated to execute the decision as per the judge's instructions, and the prevailing party is entitled to compel the opposing party to adhere to the judge's ruling in line with Article 195 HIR.

In a straightforward litigation, there are no legal recourses such as appeals and cassation, simply objections. Nevertheless, the plaintiff is not required to present objections or additional legal actions, but rather presents the implementation of Collateral Confiscation, as the defendant has evidently violated the terms or caused harm.

According to Article 15, paragraph (2) of Law Number 42 of 1999 on Fiduciary Guarantees, the Fiduciary Guarantee Certificate possesses equivalent enforceability as a court decision that has attained final legal validity. Nevertheless, the terms "executorial" and "equivalent to a court decision with lasting legal effect" lack enforceability unless they are understood to imply that the determination of a contract breach is made solely by the creditor, but rather depend on an agreement between the creditor and debtor or on legal proceedings to establish the occurrence of a breach.

In the event of a disagreement between the creditor and debtor over the occurrence of a default, and if the debtor refuses to hand over the fiduciary collateral willingly, the creditor (fiduciary recipient) is not allowed to carry out the execution personally. Instead, the creditor must file a request for execution with the District Court. If the defendant or debtor remains unwilling to comply with the decision or surrender the collateral, they have the option to pursue a series of actions:

1. The individual requesting the execution of a decision submits a formal request to the Chairman of the Court of First Instance.
2. The Chief Justice summons the party that lost the case and warns them to comply with the decision within 8 days, as stated in Article 196 HIR 207 Rbg.
3. If the party that lost the case still refuses to comply with the decision, the Chief Justice issues a new decision that includes an order for the confiscation of their assets, unless they have already provided collateral for confiscation as outlined in Article 197 HIR/Article 208 Rbg.
4. An auction sale is then scheduled, following the necessary announcement in accordance with the auction regulations.

Gustav Radbruch's theory of legal aims asserts that the law must satisfy its fundamental principles, which encompass justice, utility, and legal clarity. Nevertheless, judges' decisions vary

as a result of divergent perspectives on substantive law. The judge at the Gunung Sugih District Court determined that the seizure of fiduciary assurances does not necessitate a straightforward legal action. Conversely, the judge at the Tanjung Karang District Court considered it permissible as long as the object is executed and its location is explicitly stated.

The decision of the Gunung Sugih District Court failed to deliver justice as the plaintiff incurred losses as a result of the defendant's acts, resulting in a non-ontvankelijk verklaard ruling. Consequently, the plaintiff was ordered to bear the financial burden of the case, which had a negative impact on the plaintiff and failed to resolve the matter. Conversely, the judge at the Tanjung Karang District Court carefully evaluated the evidence and testimony provided by both sides, leading to a more advantageous ruling.

The disparity in decision-making between the two courts causes public uncertainty and necessitates measures such as seeking the annulment of a ruling or initiating legal proceedings. The outcome of the second action differed, necessitating either a new lawsuit or an application for the seizure of assets. The Tanjung Karang District Court partially approved the lawsuit, even though there was no appeal or cassation process.

To summarise, the discrepancy in judges' rulings emphasises the significance of taking into account legal certainty and the possibility of ambiguity in cases involving seizure of assets or legal actions.

Conclusion

This study entails a thorough examination of the legal judgements concerning the enforcement of fiduciary guarantees in Indonesia. Specifically, it concentrates on the divergent conclusions made by the Gunung Sugih District Court and the Class IA Tanjung Karang District Court. The subsequent deductions can be derived from our exhaustive research and discourse.

The main reason for the difference in judicial rulings between the Gunung Sugih District Court and the Class IA Tanjung Karang District Court is the judges' varying views of material and formal law. The Judge at the Gunung Sugih District Court argues that a straightforward lawsuit is not required for the seizure of fiduciary guarantees. Instead, they propose a direct implementation based on Article 15 paragraphs 2 and 3 of Law Number 42, which pertains to Fiduciary Guarantees. However, the Judge of the Tanjung Karang District Court, who presides over Class IA cases, emphasises the importance of conducting a comprehensive analysis of the lawsuit's posita and petitum. This involves making decisions in line with the applicable regulations and laws that are relevant to the specific problem at hand (Riswandie et al., 2019; Runtulalo & Tanawijaya, 2022).

Judicial discrepancies are evident in dispute resolutions when cases with same subject matter are judged differently across distinct courts. In the Gunung Sugih District Court, where a decision is deemed "niet ontvankelijk verklaard" (not admissible), the available recourse is to submit a re-

claim or a request for confiscation execution, in accordance with the Judge's ruling. Meanwhile, at the Tanjung Karang District Court, the lawsuit was partially allowed. In this case, the appropriate course of action is to register an objection, as the lawsuit falls under the category of a simple lawsuit that does not allow for appeals or cassation processes (Runtulalo & Tanawijaya, 2022).

These findings emphasise the necessity for a more cohesive approach in judicial decision-making, particularly in matters pertaining to fiduciary assurances. Uniformity is essential for improving the capacity to predict legal outcomes and ensuring that disputes in the financial industry are resolved fairly and equitably (Retnaningsih & Velentina, 2019).

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