

LEGAL RECONSTRUCTION OF POLICE AUTHORITY IN SECURING THE EXECUTION OF FIDUCIARY GUARANTEES

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Abstract

This study aims to review; 1) What is the role of the police in the implementation of securing the execution of fiduciary guarantee objects according to the Regulation of the Chief of Police Number 8 of 2011 concerning securing the execution of fiduciary guarantees?; 2) What are the obstacles faced by the police in carrying out their role as a safeguard for the execution of fiduciary guarantees?; 3) What is the legal reconstruction of police authority in securing the execution of fiduciary guarantees?. The research method used is normative juridical research, which is research focused on examining the application of rules or norms in positive law. The results showed that; 1) An application to secure the execution of fiduciary guarantees to the Police can be made if the execution of fiduciary guarantees to be carried out is considered to endanger the parties to the fiduciary guarantee agreement. 2) Obstacles faced by the Police in carrying out their role as a safeguard for the execution of fiduciary guarantees based on legal components include: Structural, Substance, and Legal Culture. 3) Legal Reconstruction of Police Authority referred to in the Regulation of the Chief of Police Number 9 of 2011 concerning Securing the Execution of Fiduciary Guarantees. In Securing the Execution of Fiduciary Guarantees, the role of the police is only limited to: Implementation of the execution of Fiduciary guarantees in a safe, orderly, smooth, and accountable manner; Protecting the safety and security of the Fiduciary Guarantee Recipient, Fiduciary Guarantor, and/or the Public from actions that may cause property loss and/or life safety. While the withdrawal itself remains the responsibility of the Creditor. Then the Financial Services Authority began to hold regulations on procedures for withdrawing collateral objects.

Keywords: Reconstruction, Law, Authority, Police, Security, Execution, Assurance, Fiduciary.

INTRODUCTION

Background

To secure the execution of Fiduciary guarantees, the National Police issued Chief of Police Regulation No. 8 of 2011 effective June 22, 2011 with the aim that the execution of Fiduciary Guarantees is carried out safely, orderly, smoothly, and accountably. The process of securing the execution of the Fiduciary Guarantee is stated in Article 7 of the Chief of Police Regulation No. 8 of 2011 which states that the application for securing the execution must be submitted in writing by the recipient of the Fiduciary Guarantee or his

legal representative to the Chief of Police or the Chief of Police where the execution is carried out.¹

This is contrary to the procedure of execution *grosse deed* where the sole authority in carrying out the execution is the Chief Justice of the District Court. The main considerations for the issuance of Perkap No.8 of 2011 include that the National Police of the Republic of Indonesia is a state instrument that is tasked and functions to maintain public security and order, law enforcement, protection, protection, and service to the community.²

As a state instrument, the National Police of the Republic of Indonesia is authorized to provide assistance in securing the implementation of court decisions or the execution of Fiduciary guarantees, other agency activities, and community activities. The execution of Fiduciary Guarantee has the same binding legal force as a court decision that has permanent legal force, so it requires security from the National Police of the Republic of Indonesia.

In the event of bad debts and the execution or withdrawal of movable goods that become credit collateral, then on the basis of the Regulation of the Chief of Police, it is expected that the implementation of the execution of fiduciary guarantees is safe, orderly, smooth, and accountable. With the regulations and laws governing fiduciaries, it will further create an execution process by protecting the safety and security of fiduciary guarantee recipients, fiduciary guarantors, or the public from actions that can cause property losses and life safety. The principles of this regulation include legality, namely the implementation of safeguards for the execution of fiduciary guarantees must be in accordance with the provisions of laws and regulations.³

The Fiduciary Guarantee Act aims to ensure that the execution process can be carried out quickly with a simple, efficient process and contains legal certainty. In order to fulfill the purpose of guarantees, especially against fiduciary guarantees, the Fiduciary Guarantee Act in Article 15 paragraph (3) of the Fiduciary Guarantee Act provides a legal basis for the fiduciary beneficiary's credit to carry out execution *parate*.

Fiduciary guarantee is a security right to movable objects, both tangible and intangible, and immovable objects, especially buildings that cannot be encumbered with dependent rights as referred to in Law Number 4 of 1996 concerning Dependent Rights that remain in the control of the Fiduciary, as collateral for the repayment of certain debts, which gives priority to the Fiduciary Recipient over other creditors.⁴

The fiduciary must deliver the object of the fiduciary guarantee in the course of the execution of the fiduciary guarantee. If the fiduciary does not deliver the object of the fiduciary guarantee at the time of execution, the fiduciary has the right to take the object that is the object of the fiduciary guarantee and if necessary may seek the assistance of the competent authority. The rules regarding fiduciary guarantees do not provide further with regard to the authorities to be asked for assistance in the execution of fiduciary guarantees. Therefore, the National Police as a state instrument whose duty and role is

to maintain public security and order, law enforcement, protection, protection, and service to the community, is authorized to provide assistance in securing the implementation of court decisions or the execution of fiduciary guarantees. The execution of Fiduciary Guarantee has the same binding legal force as a court decision that has permanent legal force, so it requires security from the National Police. Therefore, the Regulation of the Chief of the National Police of the Republic of Indonesia Number 8 of 2011 concerning Securing the Execution of Fiduciary Guarantees was formed.

Problem Statement

- 1) What is the role of the police in the implementation of securing the execution of fiduciary guarantee objects according to the Regulation of the Chief of Police Number 8 of 2011 concerning securing the execution of fiduciary guarantees?
- 2) What are the obstacles faced by the police in carrying out their role as a safeguard for the execution of fiduciary guarantees?
- 3) How is the legal reconstruction of police authority in securing the execution of fiduciary guarantees?

THEORETICAL FRAMEWORK

Law enforcement is the process of making efforts to uphold or function legal norms in a real way as a guide for behavior or legal relations in public and state life.⁵ Viewed from the point of view of the subject, law enforcement can be carried out by a broad subject and can also be interpreted as law enforcement efforts by the subject in a limited or narrow sense. In a broad sense, the law enforcement process involves all legal subjects in every legal relationship. Anyone who carries out normative rules or does something or does not do something based on the norms of the applicable rule of law, means that he is exercising or enforcing the rule of law. In a narrow sense, in terms of its subject, law enforcement is only interpreted as the effort of certain law enforcement officials to guarantee and ensure that a rule of law runs as it should. In ensuring the enforcement of the law, if necessary, the law enforcement apparatus is allowed to use coercive force.⁶

The definition of law enforcement can also be viewed from the point of view of its object, namely in terms of the law. In this case, the understanding also includes broad and narrow meanings. In a broad sense, law enforcement also includes the values of justice contained in the sound of formal rules and the values of justice that live in society. However, in a narrow sense, law enforcement only involves the enforcement of formal and written regulations.⁷

Law Enforcement Theory, in general, law enforcement must meet certain criteria as stated by Soerjono Soekanto (1982: 20). There are five factors that affect law enforcement, namely: 1) The legal factor itself; 2) Law enforcement factors, namely those who form or apply the law; 3) Factors of facilities and facilities that support law enforcement; 4) Community factors, namely the environment in which the law applies or is applied; 5) Cultural factors, namely as the result of work, creation and taste based on

human charities in the association of life. The five factors mentioned above are interrelated with each other, because they are the essence of law enforcement and are also a benchmark rather than the effectiveness of law enforcement.⁸

Problems in law enforcement make the evaluation of the need for legal reform, where law development has the aim of rallying the lives of Indonesian people who are humane and just. The stage of legal reform begins with conceptual review of legal principles.⁹ So as to formulate the right method in dealing with problems regarding the law of police authority using law enforcement theory.

RESEARCH METHODOLOGY

This research was prepared using a type of normative juridical research, which is research focused on examining the application of rules or norms in positive law.¹⁰ Normative Juridical, which is an approach that uses a positivist legis conception. This concept views law as identical to written norms created and promulgated by authorized institutions or officials. This conception views law as a normative system that is independent, closed and independent of real community life.¹¹ In legal research there are several approaches, the approaches used in legal research are the statute approach, case approach, historical approach, comparative *approach*, and conceptual approach.¹²

Data sources in this study are divided into two parts, namely primary data sources and secondary data sources. A primary data source is a data source that directly provides data to the data collector; while secondary data sources are data sources obtained by reading, studying and understanding through other media sourced from literature, books, and documents¹³.

The research technique in this study is descriptive analytical, where the analysis is carried out critically. The data collected in this study will be analyzed descriptively with a *qualitative approach*, namely by providing a thorough and in-depth explanation and explanation (*holistic / verstelen*).¹⁴

RESEARCH RESULTS

The Role of the Police in the Implementation of Security for the Execution of Fiduciary Guarantee Objects according to the Regulation of the Chief of Police Number 8 of 2011 concerning Security for the Execution of Fiduciary Guarantees

According to Indonesian complete dictionary, a role is a done, a task, a thing that has a great influence on an event.¹⁵ The definition of role according to Soerjono Soekanto is that role is a dynamic aspect of a position.¹⁶ When a person exercises rights and obligations in accordance with his position, then he performs a role.

POLRI as a state instrument whose duty and role is to maintain public security and order, law enforcement, protection, protection, and service to the community, also plays a role in providing assistance in securing the implementation of court decisions or the execution of fiduciary guarantees. Article 15 paragraph 2 of the UUJF explains that fiduciary

guarantee certificates have the same executory power as court decisions that have obtained permanent legal force, so they require security from the National Police. Therefore, the Regulation of the Chief of the National Police of the Republic of Indonesia Number 8 of 2011 concerning Securing the Execution of Fiduciary Guarantees was formed.

The purpose of the establishment of the Regulation of the Chief of the National Police of the Republic of Indonesia Number 8 of 2011 concerning Securing the Execution of Fiduciary Guarantees is the implementation of the execution of Fiduciary guarantees in a safe, orderly, smooth, and accountable manner as well as the protection of the safety and security of Fiduciary Guarantee Recipients, Fiduciary Guarantee Providers and / or the public from actions that can cause property losses and / or life safety.

An application to secure the execution of fiduciary guarantees to the Police can be made if the execution of fiduciary guarantees to be carried out is considered to endanger the parties to the fiduciary guarantee agreement¹⁷. Indicators that the execution of it can be harmful are:

- a. Judging from the temperament and reaction of the community in the surrounding environment, if the community has a high temperament, it is feared that there will be resistance that can physically injure creditors and the community when creditors will take goods.
- b. Judging from the character of the negligent debtor, if the negligent debtor has a tough disposition and does not want to give up the object of fiduciary guarantee, it is feared that there will be a fight to fight for the object of fiduciary guarantee because the creditor also cannot restrain his emotions.

Security of fiduciary guarantee objects can be carried out with the requirements stipulated in article 6 of the Regulation of the Chief of the National Police of the Republic of Indonesia Number 8 of 2011 concerning Securing the Execution of Fiduciary Guarantees, namely:

- a. there is a request from the applicant;
- b. have a fiduciary guarantee deed;
- c. fiduciary guarantees registered with the fiduciary registration office;
- d. have a certificate of fiduciary guarantee;
- e. fiduciary guarantees are located in the territory of Indonesia

The procedure for securing the execution of fiduciary guarantees at the National Police is carried out in 2 stages, namely:

- a. application stage;
- b. Implementation stage

The application for securing the execution of the fiduciary guarantee object at the police station is submitted by the creditor to the Head of the Police (Kapolres) in writing by attaching the files, namely:

- a. Copy of fiduciary deed of guarantee
- b. Copy of fiduciary guarantee certificate

The purpose of attaching a fiduciary guarantee certificate is as evidence that the creditor has executory power over the object or object of fiduciary guarantee. Registration of fiduciary guarantee certificate is submitted to the Office of Jurisdiction and Human Rights. The large number of parties entering into fiduciary guarantee agreements and having to register a fiduciary guarantee certificate in only one place, resulting in a fiduciary guarantee certificate is usually only finished after 3 to 4 months calculated from the date of registration. If within that period there are negligent consumers, while execution must be carried out immediately, then the fiduciary guarantee certificate is represented by a fiduciary guarantee certificate registration letter that includes the registration number. This registration number is the same as the fiduciary guarantee certificate number.¹⁸

- c. Warning letter or summons to consumers to fulfill their obligations

In the credit or consumer financing agreement, there is a clause stating that consumers are required to pay installments once a month per the date the financing agreement is made.

- d. Identity of execution executor
- e. Execution Assignment Letter
- f. Additional files as consideration for granting permission for mentoring

Files that must also be attached in addition to the 5 files regulated in article 8 paragraph 1 of the National Police Regulation No. 8 of 2011, namely credit or financing agreements that have been made by consumers and creditors, consumer identities and objects to be executed and proof of installments that have been paid by consumers

Then the Chief of Police submits the application files to the Head of the Legal Subdivision (Kasubbagkum) to research the completeness and validity of the requirements in the security application. After conducting research, the Kasubbagkum gave written advice to the Chief of Police on whether or not the requirements for the application for security of execution were met. In the event that the requirements for the security application are declared incomplete, the Chief of Police shall notify the applicant in writing to complete the requirements. In the event that the application for security is declared ineligible, the Chief of Police shall notify the applicant in writing with the reasons. If the security application is declared qualified, the Chief of Police notifies the applicant that the security application has met the requirements and is accepted, then the Chief of Police orders the Head of Operations (Kabagops) to prepare, plan, and implement execution security.

The process of securing the execution of this fiduciary guarantee is contained in Article 7 of the Regulation of the Chief of Police which states that the application for securing the execution must be submitted in writing by the recipient of the Fiduciary Guarantee or his legal representative to the Chief of Police or Chief of Police where the execution is carried out. The execution of Fiduciary Guarantee has the same binding legal force as a court decision that has permanent legal force, so it requires security from the National Police of the Republic of Indonesia. The position of the Chief of Police is formed on the basis of certain authorities which in the ranks of the Chief of Police have qualifications as laws and regulations. The National Police has the force of law that is binding on the public. In this case, the assistance in the execution of fiduciary guarantees involving the Police is based on Article 30 of the Fiduciary Guarantee Law that: In the event that the Fiduciary does not deliver the object that is the object of the Fiduciary Guarantee at the time the execution is carried out, the Fiduciary Recipient has the right to take the object that is the object of the Fiduciary Guarantee and if necessary can request the assistance of the competent authority. If the Police officers assess that the execution of fiduciary guarantees has met the above requirements, the Police will carry out their duties to maintain security and order in the execution of fiduciary guarantees. In the case of execution, the role of the police is not as an executor but only as a security for the implementation of execution in a safe, orderly, smooth, and accountable manner, so that the execution itself must be in accordance with the civil procedure law.¹⁹

Obstacles Faced by the Police in Carrying Out Their Role as a Safeguard for the Execution of Fiduciary Guarantees

The obstacles faced by the Police in carrying out their role as a safeguard for the execution of fiduciary guarantees are studied based on Lawrence Friedmann's Theory, 3 (three) components of the legal system, namely:²⁰

- 1) Structural, namely the entire existing legal institutions and their apparatus, including, among others, the Police with its Police, the Prosecutor's Office with its Prosecutors, the Court with its Judges;
- 2) Substance, namely the entire rule of law, legal norms and legal principles, both written and unwritten, including court decisions.
- 3) Legal Culture is opinions, beliefs (beliefs), habits, ways of thinking, and ways of acting, both from law enforcers and citizens, about the law and various phenomena related to the law.

The structural obstacle that exists in safeguarding the execution of fiduciary guarantee objects by the National Police is that there is only one fiduciary guarantee certificate registration institution in each province so that the period for completing the fiduciary guarantee certificate is too long. Application for securing the object of fiduciary guarantee, a certificate of fiduciary guarantee is required. Certificate of fiduciary guarantee registered at the jurisdiction and human rights office²¹.

The substance obstacle faced is that neither the fiduciary guarantee law nor its implementing regulations further regulate the procedure for executing the object of fiduciary guarantee, so that creditors who will execute fiduciary guarantees use the method they think is right. As a result, the execution of fiduciary guarantees is often considered an act of forfeiture. In addition, the fiduciary guarantee law does not explain further about the authorities who are authorized to be asked for assistance in carrying out the execution of fiduciary guarantees, it gives rise to multiple interpretations.

Perkapolri No. 8 of 2011 does not explain the definition of execution of fiduciary guarantees that require security from the National Police. This has led to speculation that the National Police does not actually have a role in securing the execution of fiduciary guarantees. If analyzed from Perkapolri No. 8 of 2011, the execution in question is when taking the object of fiduciary guarantee from the fiduciary recipient who has been negligent and does not want to surrender the object voluntarily.

The obstacle included in the legal culture is that people do not understand about fiduciary guarantees, so they often underestimate when they neglect their obligations to pay installments every month. The community considers that the creditor does not have the right of execution, so every time an execution is carried out the community considers it an act of deprivation. In addition, the public also does not understand that objects that are the object of fiduciary guarantee cannot be transferred because they violate the provisions of article 23 paragraph 2 of the UUJF, namely that the Fiduciary is prohibited from transferring, mortgaging, or leasing to other parties Objects that are the object of Fiduciary Guarantee that are not inventory objects, except with the prior written consent of the Fiduciary Beneficiary. Such violations can be charged with article 36 of the UUJF, namely the Fiduciary who transfers, mortgages, or rents Objects that are the object of Fiduciary Guarantee carried out without the prior written consent of the Fiduciary Beneficiary, punishable with a maximum imprisonment of 2 (two) years and a maximum fine of IDR 50,000,000 (fifty million) rupiah. It often happens that when the execution is about to be carried out, the object of the fiduciary guarantee has passed to someone else. So that the path taken by the creditor is to report the transfer action to the National Police on the grounds of violating the provisions of article 23 paragraph 2 of the UUJF.

Legal Reconstruction of Police Authority in Securing the Execution of Fiduciary Guarantees

Fiduciary guarantee law is intended when the execution process can be carried out appropriately with a simple, efficient process and contains legal certainty. In order to fulfill the purpose of guarantees, especially for fiduciary guarantees, the Fiduciary Guarantee Act in Article 15 paragraph (3) of the Fiduciary Guarantee Act provides a legal basis for the credit recipient of fudisia to carry out parate execution. The parate power of execution of a Fiduciary Guarantee is immediately enforceable without trial and is final and binding on the parties to carry it out.²²

The difference between the execution of the fiduciary beneficiary creditor in Article 15 paragraph (3) of the Fiduciary Guarantee Act is that he can sell the collateral after the fiduciary debtor has injured the promise without going through the forfeiture procedure first, and therefore without involving the bailiff, without intermediary or court permission, essentially as if he were auctioning his own goods. In fact, he does not need to use a grosse notarial deed²³.

The law of execution is regulated in the Code of Civil Procedure, so here the creditor of the fiduciary beneficiary executes outside the procedural law. By using this means of parate execution, the creditor receiving fudisia has a cheaper, simpler and better prepared means for any time applied. That is why it is said that the fiduciary beneficiary creditor has a means of taking repayment that is not only precedence (separatist) but also simpler so that it is said to have a means of execution ready at hand.²⁴

In Indonesia itself, the procedures for implementing Parate Execution are not specifically regulated. So far, the execution of collateral is usually subject to the general provisions of criminal law and civil provisions of Unlawful Acts. Forced withdrawal of collateral can be categorized as a criminal offense under Article 368 (1) of the Criminal Code. In addition, to implement Article 30 of the Fiduciary Guarantee Law, it can also be referred to the Chief of Police Regulation Number 9 of 2011 concerning Securing the Execution of Fiduciary Guarantees.

This regulation is not intended to involve the Police to make withdrawals, but the purpose of this regulation regulates the role of the police to the extent of:

- 1) Implementation of the execution of Fiduciary guarantees in a safe, orderly, smooth, and accountable manner
- 2) Protecting the safety and security of the Fiduciary Guarantee Recipient, Fiduciary Guarantor, and/or the Public from actions that may cause property loss and/or life safety.

While the withdrawal itself remains the responsibility of the Creditor. Then the Financial Services Authority began to hold regulations on procedures for withdrawing collateral objects. Financial Services Authority Regulation (POJK) Number 35/POJK.05/2018 concerning Financing Company Business Operations. Article 29/POJK 035/POJK.05/2018 stipulates that in carrying out the execution of fiduciary collateral, the Finance Company must comply with the following conditions:

- 1) The debtor is proven to be in default (the debtor's inability to fulfill obligations as stated in the agreement);
- 2) The debtor has been given a warning letter in accordance with the financing agreement
- 3) The Finance Company has a fiduciary certificate.

The execution of fiduciary guarantees is regulated in articles 29 to 34 of Law Number 42 of 1999 concerning Fiduciary Guarantees²⁵. Where execution has the meaning of carrying out a court decision, the purpose of which is none other than forcible. Efforts in the form of forced actions to realize the judgment to those entitled to receive from the party burdened with the obligation which is execution. Meanwhile, Fiduciary Guarantee is a security right to movable objects, both tangible and intangible, and immovable objects, especially buildings that cannot be encumbered with dependent rights as referred to in Law Number 4 of 1996 concerning Dependent Rights that remain in the control of the Fiduciary, ²⁶as collateral for the repayment of certain debts, which gives priority to the Fiduciary Recipient over other creditors²⁷.

One way of execution of objects that are the object of fiduciary guarantee can be done by executing the executory title. The fiduciary guarantee certificate has the same executory power as a court decision that has obtained permanent legal force, so that when the debtor defaults, the creditor by using the fiduciary guarantee certificate can immediately execute without going through the court, police and is final and binding, the parties to implement the decision.²⁸

CONCLUSION

Based on the results of research and discussion, several things can be concluded as follows:

- 1) An application to secure the execution of fiduciary guarantees to the Police can be made if the execution of fiduciary guarantees to be carried out is considered to endanger the parties to the fiduciary guarantee agreement.
- 2) Obstacles faced by the Police in carrying out their role as a safeguard for the execution of fiduciary guarantees based on legal components include: Structural, Substance, and Legal Culture.
- 3) The legal reconstruction of the Police Authority refers to the Regulation of the Chief of Police Number 9 of 2011 concerning Securing the Execution of Fiduciary Guarantees.

In Securing the Execution of Fiduciary Guarantees, the role of the police is only limited to:

- a) Implementation of the execution of Fiduciary guarantees in a safe, orderly, smooth, and accountable manner
- b) Protecting the safety and security of the Fiduciary Guarantee Recipient, Fiduciary Guarantor, and/or the Public from actions that may cause property loss and/or life safety.

While the withdrawal itself remains the responsibility of the Creditor. Then the Financial Services Authority began to hold regulations on procedures for withdrawing collateral objects.

Footnotes

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