

Legal Protection of Recipients of Fiduciary Guarantees for Supply Goods With Delivery Orders as Proof of Ownership of Collateral Goods

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ABSTRACT

When talking about trade at the highest level, of course, it cannot be separated from other industries, namely the financing industry, both by bank financial institutions and non-bank financing institutions. At the highest level of traders who directly trade with producers in requiring large enough funds to make purchases even though their existence makes prices The purchases to be obtained are certainly at the lowest level with the number of purchases at a high level as well, so this is where the role of the financing industry, where the institution Financing will support traders by providing loans or credits, of course, with a certain repayment guarantee. This research uses normatic juridical research so that it is expected that from this research can be obtained the truth based on the logic of legal science from the normative side, especially with the considerations of the panel of judges in deciding case No. 781/Pdt.G.2015/PN. JKT. Cell. The research approach that will be used is the *statutory approach* (statute approach), concept approach and case approach. The results of this study found the fact that in the fiduciary UUJF the author argues that there is no provision related to legal protection for Special fiduciary guarantee beneficiary as a fiduciary guarantee beneficiary whose object of fiduciary assurance is not in the possession of the owner or fiduciary guarantor due to characteristics The *Delivery Order* does not contradict the provisions of article 1 of the UUJF.

Keywords: Fiduciary, Trade, *Delivery Order*

ABSTRACT

When it comes to trading at the highest level, it cannot be separated from other industries, namely the financing industry, both by bank financial institutions and non-bank financing institutions. At the highest level traders who directly buy and sell with producers in need of substantial funds to make purchases even though their existence makes the purchase price that will be obtained of course be at the

lowest level with the number of purchases at the highest level as well, so this is where the role of the financing industry, where financial institutions will support traders by providing loans or credit, of course, with a guarantee of certain repayment. This research uses normative juridical research so that it is expected that from this research the truth can be obtained based on the scientific logic of law from a normative side, especially with the considerations of the panel of judges in deciding case Number 781/Pdt.G.2015/PN. JKT. Sel. The research approach that will be used is the statutory approach (statute approach), concept approach and case approach. The results of this study found that in the Fiduciary UUFJ the authors argue that there is no provision related to the guarantee of legal protection for special fiduciary recipients such as recipients of fiduciary guarantees whose fiduciary guarantee objects are not under the control of the owner or fiduciary giver because of the characteristics of a Delivery Order. Order) does not conflict with the provisions of article 1 UUFJ.

Keywords: *Fiduciary, Trade, Delivery Order*

A. INTRODUCTION

1.1. Background

Comprehensive development in all territorial areas and covering all sectors, has now been carried out by the Indonesian government by involving the widest possible community participation. Similarly, development in the economic sector is expected to support the development of other sectors. At a time when economic development is quite developed, business actors in developing businesses and development require large amounts of funds. The funds are mostly obtained from credit provided by banks. These economic activities are carried out by business actors called traders or entrepreneurs, be it individuals who run companies or legal entities and are not legal entities.

In the wheel of a nation's economy, the function and purpose of the bank is as an Agent of development (especially for state-owned banks) and as an *Agent of development* the bank has a function that is directed as an agent development, namely as an institution that aims to support the implementation of national development in order to increase equitable development and its results, economic growth and stability Nasional towards improving the standard of living of many people. This *Agent of Development* function serves to maintain monetary stability in Indonesia. While *financial intermediary* means financial institutions that accept finance, such as commercial banks or savings and loans for associations that accept deposits from the public and other banking activities.

Credit services obtained from funding sources originating from banks do not necessarily contain no risk in their implementation. Creditors and debtors must make an agreement by which both parties can bind themselves. In business law practice, every payable-receivable agreement provided by banking institutions and other financial institutions certainly requires collateral. Because the Bank needs certainty for the repayment of loans given to debtors or customers. So that

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the Bank always wants every credit agreement to always be accompanied by a guarantee, except for unsecured loans (KTA) which are currently widely offered by many banks, including institutions financial, both foreign and domestic.

Increased economic and business development in a country will be followed by a growing need for credit. The provision of this credit facility requires a guarantee for the security of credit. Therefore, law enforcement in the field of guarantee law is a logical consequence and is a manifestation of the responsibility of law enforcement to keep pace with the pace of activities in Trade, industry, the Company, transportation and activities in development projects.

The guarantee has a very vital role and function in economic activities in general, because it is in providing capital loans from financial institutions (such as banks and institutions Non-bank finance) almost always requires a guarantee, which must be met by capital seekers if they want additional capital in the form of good credit for the long terms well as short-term.

In order to get compensation from the source of funds, you need collateral for the repayment of the debts of the borrower of these funds. If a person borrows funds from a Bank, by law all of that person's property is a security for the repayment of the person's debt to the Bank where it borrows Funds. Although there is no guarantee specifically stipulated in the guarantee agreement. This is affirmed in Article 1131 and Article 1132 of the Civil Code.¹

One of the material guarantees is Fiduciary, the definition of Fiduciary is the process of transferring ownership rights of an object, --generally moving, on the basis of trust provided that the object (movable) whose ownership rights are held remain in the possession of the owner of the property Law.42/1999, Ps.1, v. (1). What is meant by transfer of rights and ownership is the transfer of ownership rights from the fiduciary to the fiduciary on the basis of trust provided that the property The object remains in the hands of the fiduciary.²

The term and Definition of Fiduciary Guarantee is the origin of the Dutch word, namely *Fiducie*, while in English it is called *Fiduciary Transfer of Ownership* which means trust. In most literature, fiduciaries are commonly referred to as *Eigendom overdracht* (FEO) which is the transfer of property rights based on trust.

The definition of "transfer of ownership rights" is the transfer of ownership rights from a fiduciary to a fiduciary on the basis of trust, provided that the object remains Beris in the fiduciary's possession. Basically, Fiduciary is a way of passing property rights from the owner (Debtor) based on the principal agreement (debt receivable agreement) to creditors, will But what is handed over is only the rights *juridische-levering* and is only owned by the creditor in trust (as collateral for creditor's money), while the goods It remains controlled by the debtor, but no longer as *an eigenaar* or *bezitter* but as *a detentor* or *houder* on behalf of creditors.³

¹ Irma Devita Purnamasari, *Tips Tips Intelligent Easy and Smart Understand Problem Law Guarantee Banking*, Cet-1, Bandung; Mijan, 2011, H. 3 .

² *Ibid*,

³ *Ibid*.

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Fiduciaire Eigendom Overdracht or commonly called *Fiducia* (*Fiduciary*) comes from the term *fides* which means trust. This fiduciary is one of the collateral institutions that in the past could only be guaranteed over movable objects like *liens*, but now objects remain like machines. Production can also be a fiduciary object.⁴

The Fiduciary Guarantee Institute itself for us in Indonesia is not a new institution. We have known for a long time that this guarantee has been used, even in the explanation of Law Number 42 of 1999 it is recognized that the guarantee institution has been used since the Dutch colonial era. The only difference is that the fiduciary institution as we have known it is based on jurisprudence and to borrow the word in the "weighing" section of the Act above it is recognized that the fiduciary institution that has been used has a simple, easy and fast nature, but on the other hand, this institution is considered not guaranteed legal certainty.⁵

Since the Fiduciary institution has been running and has now been stated in the form of law, then we may hope that the practice that has been running with both along with all wrongdoing that has arisen have been accommodated and accommodated in the Fiduciary Act.⁶

One form of interaction between humans in living life is through trading activities. Trading activities are spark plug activities, namely activities that connect production activities with consumers. Trade or exchange activities carried out by residents in a city have significance in the life of a city (Boediono 1992).

Basically, this activity arises because of the desire of the parties contained in it to obtain additional benefits obtained from these activities. So that the motive for humans to trade is to obtain benefits / profits from the implementation of trading activities (Boediono 1992).

Trade in civil law can be interpreted as a buying and selling relationship where one party sells goods and the other party is willing to pay the agreed price of goods. Trade as a distribution system involves parties ranging from producers, wholesalers, retail traders to buyers of goods users, differences between levels. Trading lies in the amount of goods traded and the price obtained, producers as the highest level sellers will certainly sell charcoal in large quantities with special prices to wholesalers, then among fellow wholesalers there is again a process of buying and selling with a smaller number of goods, this process will continue rolling up to the final buyer as the party who uses the goods.

This trading process occurs due to the ratio of price differences in each trading level which is compared to the number of goods traded, in short the process

⁴ Hasbullah Frieda Husni, *Law Materiality Civil, Rights that Give Guarantee Volume II*, cet-2, South Jakarta; Ind-Hill-co, 2005, p. 43.

⁵ J. Satrio Law Guarantee Rights Materiality Fiduciary, cet-2, Bandung: Citra Aditya Filial piety, 2005, h. 2.

⁶ *Ibid.*

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occurs with the principle that the more goods traded, the lower the price obtained and the fewer goods traded, the higher the price so that the Traders get the opportunity to profit from the price difference between the acquisition price and the sales price.

The condition for a buying and selling relationship to occur is the existence of goods traded, goods in material law can be categorized as movable goods and immovable goods. Especially in the process of buying and selling in the trading system generally occurs in goods that are categorized as movable objects such as rice, sugar, oil, eggs, cloth, milk, and so on. Normative definition of buying and selling is an agreement by which one person binds himself to deliver an item, and the other party to pay a price promised (Ps.1457 of the Civil Code).

From this understanding, it is clear that buying and selling is carried out with the aim of transferring ownership of an item with the obligation of the other party to pay the price. In the sale and purchase of movable objects, in general, the mechanism of transferring ownership rights is carried out in a real way, directly or in other words from hand to hand. Transfer in this way is relevant for movable objects that are not too many so as to allow delivery to be made from the hands of the seller directly to Buyer, the situation is certainly different if the goods traded are movable objects namun in large quantities where the delivery of the sale and purchase of granulated sugar as much as 1,000,000 tons then it is impossible for hand-to-hand submission to be done.

In the trading system of the amount of goods traded as one of the determining actors, an instrument is needed that can facilitate the delivery of movable goods merchandise in quantities a lot can be done. From the basis of these needs, traders other than retail traders use *Delivery Orders* as instruments that make it easier for them to make deliveries Merchandise movable objects in large quantities, especially buying and selling in the level of buying and selling with the highest amount of merchandise.

When talking about trade at the highest level, of course, it cannot be separated from other industries, namely the financing industry, both by bank financial institutions and non-bank financing institutions. At the highest level of traders who directly trade with producers in requiring large enough funds to make purchases even though their existence makes prices The purchases to be obtained are certainly at the lowest level with the number of purchases at a high level as well, so this is where the role of the financing industry, where the institution Financing will support traders by providing loans or credits, of course, with a certain repayment guarantee.

Given that financing is provided to support trading activities, in general, one of the guarantees that is expected to cover repayment in the event of payment failure by the debtor is Precisely the merchandise itself, from this it can be concluded that the merchandise will eventually become collateral for the debtor's

debt when the debtor buys the goods. The trade is from producers or from traders in a level above.

Delivery Order as a form of symbolic transfer of ownership rights does not directly explain the factual situation that the goods contained in it have not been controlled by the recipient of the *Delivery Order* because the goods are still in the control of the manufacturer until they are taken by the PIHAK who owns the ownership rights to the goods then the existence of the *Delivery Order* has ended.

One example of a dispute involving trade relations, movable objects, fiduciary guarantees and *delivery orders*, manufacturers, wholesalers and bank financing institutions is the decision of the South Jakarta District Court Number 781 / Pdt.G / 2015 / PN. Sby where the ruling is currently in permanent legal force. That in the dispute there is a situation where a *Delivery Order* has an important role in the trade mechanism, especially national trade granulated sugar. In the judgment, there is a civil dispute over the existence of Surat *Delivery Order* for unregistered tangible movable goods, namely granulated sugar issued by the manufacturer and in the process the goods become a fiduciary guarantee. From this background, the author will conduct research related to the perspective of Law Number 49 of 1999 which regulates fiduciaries against movable objects not tangible with proof of ownership in the form of a *Delivery Order*, especially with legal certainty and legal protection for the recipient fiduciary guarantees.

1.2. Problem Statement

What is the legal protection of creditors as fiduciary security holders of inventory objects with proof of ownership in the form of a *Delivery Order* (SPPB / DO)?

1.3. Research Methodology

This research uses Normative juridical research so that it is expected that from this research truth can be obtained based on the logic of legal science from the normative side, especially with the existence of Considerations of the IPR M panel in deciding case No. 781/Pdt.G.2015/PN. JKT. Cell, so that it can be known whether there is a conflict between the basis for the judges' consideration and the existing laws and regulations. Based on the type of research that has been determined above, the research approach that will be used is the statutory approach (*statute approach*), concept approach and case approach, this approach was chosen because the author focuses on the study of norms in a law. In addition, the author also uses a case approach, namely analyzing the jurisprudence of the decision of the South Jakarta district court Number 781 / Pdt.G / 2015 / PN JKT SEL. So that the focus of the approach is the ratio of decidendi or legal reason

in the form of judges' considerations as the basis for the panel of case examining judges to decide a limited case on the formulation of the problem in this study.

B. DISCUSSION

Talking about legal *protection*, we need to know in advance the true meaning of legal protection. Legal protection comes from two words, namely protection and law. Protection is the thing or act of protecting or protecting. While the law is a rule that functions in maintaining and protecting the interests of all parties, all levels in society.⁷

According to Wirjono Prodjodikoro in his book, Legal protection is an effort to protect legal subjects, about what they can do in order to maintain or protect the interests and rights of such legal subjects.⁸

Based on the concept of legal protection, if it is related to the interests of the creditor of the fiduciary beneficiary if the object of the fiduciary guarantee is in the form of unregistered goods, in this case in the form of Inventory Objects / Stock of Merchandise (*Inventory Y*), then the protection that will be received in accordance with what is agreed and guaranteed as explained in the certificate Fiduciary guarantees held by creditors.

This is also consistent with the nature of the registration of a fiduciary guarantee, i.e. that what is registered is actually the bond of the guarantee. As previously explained, the registration of this guarantee bond adheres to the principle that in the guarantee bond all matters related to the guarantee will be recorded including those who regulate objects related to the guarantee.

So for creditors or fiduciary recipients with fiduciary guarantee objects in the form of unregistered objects, there is no need to worry, because with this guarantee bond registration system by itself all Stok merchandise (*inventory*) that is used as a fiduciary object will be recorded in the fiduciary guarantee certificate, so that in the event of default from the fiduciary or debtor, then the creditor only has to execute all the merchandise as recorded, or if there is nothing as recorded then the creditor can execute the stock of goods. The existing merchandise is worth what is guaranteed, because what is guaranteed is the bond of collateral not the object.

In addition, for fiduciary guarantee objects in the form of inventory that has been transferred by the fiduciary in the event of default by the fiduciary or debtor, then the result of the transfer and/or the bill that arises, by law becomes the object of the fiduciary guarantee as a substitute for the object of the transferred fiduciary guarantee (Law.42/1999, Ps.21, v.(4)).

⁷ DepDikBud-Balai Book *Dictionary Besar Indonesian*, Hall Book Edition Third, Jakarta, 2001, H. 674.

⁸ Wirjono Prodjodikoro, *Basics Law Covenant*, Bandung: Bale Bandung, 1986, p. 20.

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The provisions of the procedure for registering a fiduciary guarantee with the Fiduciary Registration Office essentially specify that the registration statement referred to in paragraph (1) contains the identity of the Granting party and Fiduciary Beneficiary, number, number of the Deed of Fiduciary Guarantee, name and place of residence of the Notary Public who made the Deed of Fiduciary Guarantee, data on the principal agreement guaranteed by the fiduciary, a description of the Objects that are the Object of Fiduciary Guarantee, the value of guarantee, and the Object that is the Object of Fiduciary Guarantee (Law.42/1999, Ps.13, v.(2)).

From these requirements, it can be seen that in the registered Fiduciary Guarantee, there are conditions related to the description of the Object that is the Object of Fiduciary Guarantee, thus it is clear which object is The guarantee. In the event that the collateral is in the form of merchandise stock (*inventory*), it will be detailed about the stock of merchandise in accordance with the list of goods stock inagangan made by the fiduciary, contained in the Registration Statement of Fiduciary Guarantees (Law.41/1999, Ps.13.ay.(1), hr.d).

In addition, the protection also provided to fiduciary beneficiary creditors whose object of fiduciary guarantee is in the form of merchandise charcoal stock by the Fiduciary Act is provided for in the requirements for Register a fiduciary guarantee in the form of a necessity in listing the value of the goods or objects that are used as objects of fiduciary guarantee. Protection provided by fish with the inclusion of the value of goods or objects that are used as objects of fiduciary guarantee is if the objects that are used as objects of fiduciary guarantee None or not available as stated in the Appendix, the Fiduciary in this case the creditor may sue the Fiduciary Party to comply The obligation is a certain amount of value guaranteed.

This situation is very likely to occur because as is known the stock of merchandise does not always exist as recorded because as merchandise, it is possible that the goods has been traded according to its designation. So that the inclusion of the value of the guarantee will greatly protect the interests of the creditor, because even though the goods listed in the attachment or Details about the objects used as objects of fiduciary guarantee are not in accordance with those detailed, so creditors can still execute their collateral in the value of the goods guaranteed. Or in other words, changes that occur to the object of fiduciary guarantee in this case the stock of merchandise does not need to be registered every time there is an increase or decrease, Because the creditor will refer to the collateral value of the collateralized object. With this situation, the interests of creditors will naturally be better protected.

The Fiduciary Guarantee Act also makes it easy to carry out executions through execution parate agencies. This ease of execution is not solely a monopoly of Fiduciary Guarantee, because in the case of liens it is also known similar institutions. Article paragraph (1) of the Civil Code which stipulates in essence

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that if the parties do not agree otherwise, then the debtor is entitled if the debtor or the giver The lien breaks the promise, after the grace period given by the telwat, or if no grace period is specified, set a warning to pay, order to sell the pawn to be auctioned according to local customs and on customary terms, with a view to taking repayment of the amount The receivables along with interest and costs from the sales revenue.⁹

While the provisions of Article 6 of the Law on Dependent Rights regulate in essence if the debtor breaks the promise, the holder of the first dependent has the right to sell the object of the dependent right at will itself through general sales and taking repayment of receivables from the proceeds of the sale.

While article 20 paragraph (1) of the Law on Dependent Rights regulates basically a if the Debtor breaks a promise, then based on the first Dependent Rights holder to sell object of Dependent Rights or executory title contained in the Certificate of Dependent Rights.

Article 29 of the Fiduciary Guarantee Act provides principally that if the debtor or Fiduciary breaks a promise, the execution of the object to which the Fiduciary is the object may be made by way of execution of executory title by the Fiduciary Receiver, auction of the object of the Fiduciary Guarantee at the will of the Fiduciary Receiver himself through public auction and Take repayment of his receivables from HASil sales. As well as underhand sales made under the agreement of the Fiduciary grantor and beneficiary if in such a way the highest price in favor of the parties can be obtained.

One way to protect the interests of Creditors (as Fiduciary Beneficiaries) is to provide definite provisions for Creditors. The regulation of complete data that must be contained in the Fiduciary guarantee (Article 6 of the Fiduciary Guarantee Act), indirectly provides a good handle for the Creditor as The Fiduciary Beneficiary, specifically which bills are secured and the amount of the collateral value, determines how much the preferred creditor's bills are.

The legal protection and interests of creditors in the Fiduciary Guarantee Act can be seen in Article 20 of the Fiduciary Guarantee Act, which basically stipulates that the rights of the fiduciary are fixed following the object of the fiduciary guarantee in the hands of whoever the object is in, except for the transfer of the object of inventory that is the object of the fiduciary guarantee.

The provision confirming that the fiduciary guarantee has a material nature and applies to it is the *droit de suite* principle, except for the transfer of the inventory object that is the object of the fiduciary guarantee. The same protection can also be seen in Article 23 paragraph (2) of the Fiduciary Guarantee Law which basically stipulates that Fiduciaries are prohibited from transferring, mortgaging, or lease to another party Objects that are the object of Fiduciary

⁹ Widjaya, Gunawan and Ahmad That is, *Guarantee Fiduciary*, Raja Grafindo Persada, Jakarta 2001, p. 113.

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guarantees that are not stock objects, except with the prior written consent of the Fiduciary and the Fiduciary.

Sanctions against the above provisions are criminal, as referred to in Article 36 of the Fiduciary Guarantee Law which basically stipulates that the Fiduciary who transfers, mortgages or renting objects that are the object of Fiduciary Guarantee as referred to in Article 23 paragraph (2) which is carried out without the prior written consent of the Fiduciary Beneficiary, shall be punished with a maximum imprisonment of 2 (two) years and a maximum fine of IDR 50,000,000 (fifty million rupiah).

For any acts and omissions of the fiduciary, the fiduciary beneficiary based on the negligence is not liable, as referred to in Article 24 of the Fiduciary Guarantee Act which provides that the Fiduciary shall not bear liability for the acts or omissions of the Fiduciary, whether arising out of the contractual relationship or arising out of acts violate the law in connection with the use and transfer of the Thing that is the object of the Fiduciary Guarantee. In essence, the purpose of a fiduciary guarantee agreement in terms of legal protection for creditors is to provide *istimewa* rights or precedence rights for him to repay debts, debtor to him (*Schuld and Haftung principle*).

Legal protection of the right to receivables that takes precedence can be seen in the provisions of Article 27 of the Fiduciary Guarantee Act which essentially stipulates that the Fiduciary has the right to take precedence against other creditors (*preference*). The right of precedence is the right of the Fiduciary to take repayment of his receivables on the proceeds of execution of the object that is the object of the Fiduciary Guarantee. Hak takes precedence and the Fiduciary is not removed due to the insolvency and/or liquidation of the Fiduciary.

Overall, there are several things that can show the existence of legal protection for creditors (Fiduciary Beneficiaries) according to Law Number 42 of 1999 which regulates Fiduciary Guarantees. It essentially determines that it is a fiduciary guarantee registration institution, which is nothing but to guarantee the interests of the party receiving the fiduciary. There is a prohibition on fiduciaries from re-fiduciary and object of fiduciary guarantees (article 17); There is a provision that the Fiduciary is not allowed to transfer, mortgage or lease (article 23 Sub 2); There is a provision that the fiduciary must surrender the collateral object, if the creditor wants to carry out the execution of the fiduciary guarantee object; There is a criminal provision in the Fiduciary Guarantee Act.

The basis for the implementation of fiduciary guarantee registration includes UUJF Number 42 of 1999 which regulates Fiduciary Guarantee. Government Regulation of the Republic of Indonesia Number 86 of 2000 which regulates the Procedure for Registration of Fiduciary guarantees. Presidential Decree Number 139 of 2000 which regulates the Establishment of Fiduciary Registration Offices in every Provincial/Bukota in the Territory of the Republic of Indonesia. As well as the Decree of the Minister of Justice and Human Rights

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of the Republic of Indonesia Number M.08-PR.07.01 of 2000 which regulates the Opening of the Fiduciary Registration Office;

Based on Article 12 Paragraph (1), the implementation of Fiduciary Guarantee Registration is carried out at the Fiduciary Registration Office, the Fiduciary Registration Office as referred to is within the scope of duties of the Ministry of Law and Human Rights Human, whose implementation is now carried out in the Legal Field of the Regional Office of the Ministry of Law and Human Rights in the iap set of the Provincial Capital, in this case is the Legal Services and Services Section.

The imposition of fiduciary guarantees is carried out through two stages, namely the encumbrance stage and the fiduciary guarantee registration stage. In Article 5 (1) of the UUJF which basically stipulates that the distribution of objects with fiduciary guarantees is agreed in a Notary Deed in Indonesian and is called the Fiduciary Guarantee Deed.

Notarial Deed is one form of authentic deed as referred to in Article 1868 of the Civil Code. The second stage in the fiduciary guarantee review process is the provision of security in the form of a Notary Deed and the obligation to register the fiduciary guarantee. Actions taken to fulfill one of the principles of an encumbrance agreement with fiduciary guarantees are the principle of publicity.

With the registration of fiduciary guarantees, the principle of publicity is fulfilled as well as a guarantee of certainty to other creditors, related to objects that have been given the burden of fiduciary guarantees. The Fiduciary Guarantee was born on the same date on which the fiduciary guarantee was registered in the fiduciary register book.

Based on the explanation of Article 11 of the Fiduciary Guarantee Act, fiduciary registration is carried out at the place of residence of the Fiduciary, but there are still many applicants (Fiduciary Beneficiaries) who register Fiduciary guarantee at the place where the object is located which will be used as collateral object. This has led to several applications for registration at the Fiduciary Registration Office being rejected and it is recommended that they be registered at the Fiduciary Registration Office where the Fiduciary is located. In the case of this registration, the Fiduciary Registration Office may not conduct research on the correctness of the data contained in the deed to be registered. The Fiduciary Registration Office only examines the completeness of the administration and data to be requested.

Under the Fiduciary Guarantee Act, the procedure for registering fiduciary guarantees is performed by the fiduciary beneficiary at the Fiduciary Registration Office. Application for registration of fiduciary guarantee by fiduciary beneficiary is further regulated based on Government Regulation Number 86 of 2000 which regulates the Procedure for Registration of Fiduciary Guarantee.

This registration procedure is carried out by the fiduciary beneficiary, his power of attorney or representative by attaching a statement of registration of

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fiduciary guarantees containing the identities of the parties to the fiduciary agreement, namely Fiduciary and Fiduciary Beneficiary consisting of name, place of residence, place and date of birth, gender, marital status, occupation, date and the number of the deed of guarantee, the name and place of residence of the Notary who made the deed. fiduciary guarantee, principal agreement data, description of the object that is the object of fiduciary guarantee, guarantee value, proof of rights (ownership) data; and the value of the object that becomes object of fiduciary guarantee.

The official who administers the Fiduciary Guarantee Registration service after receiving the fiduciary application conducts an administrative examination of the application requirements. If it is incomplete, the application file must be immediately returned to the Applicant. And if it is complete, the Fiduciary Registration Officer provides a certificate of fiduciary guarantee and presents it to the applicant which is done on the same date as the date of record Application for registration of fiduciary guarantees.

In practice, the implementation of the fiduciary certificate is carried out one to two weeks from the date of registration, this is due to the Fiduciary Registration Office which still has the facilities and Very limited infrastructure, so it cannot support optimal service. If there is a typographical error (maladministration) in the fiduciary guarantee certificate, within 60 days after receiving the fiduciary guarantee certificate the applicant notifies the Office Fiduciary registration for issuance of a certificate of rectification. This corrective fiduciary guarantee certificate contains the same date as the date the certificate was originally issued.

The registration of fiduciary guarantees will provide information on data both regarding the bond of the guarantee, and the object, because in a fiduciary registration all these things are carefully recorded by the Office Fiduciary Registration. This service aims to achieve legal certainty, with the registration it will be known who the parties are, which principal engagement is guaranteed, the amount of debt, the amount of burden guarantees, ownership data on collateralized objects, their clauses (Law.42/1999, Ps.13, Ay.(2)).

All of them are recorded in detail, collateral objects are also recorded in detail, benefits will be obtained related to the registration of objects, the owner has relative proof of ownership Certainly, registration of a guarantee bond, creditors have definite proof of guarantee. A fiduciary guarantee certificate provides a reason for the creditor's rights. Registration of the object, the third party can no longer say that he does not know who the owner of the thing is, this is related to the existence of the principle of publicity in the encumbrance collateral objects. The registration of a third-party security bond no longer implies that he does not know that a particular property, belonging to a particular person, is shouldering the burden of security for the creditor certain.

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With the registration of the fiduciary agreement deed, the Fiduciary Registration Office will record the fiduciary guarantee deed in the Fiduciary Register Book and the creditor is given a Certificate of Guarantee Fiduciary. After the registration of the deed is carried out, the fiduciary imposition then gives birth to a fiduciary guarantee for the fiduciary person, so as to provide certainty to other creditors regarding the object to which a fiduciary guarantee has been attached and gives preference to creditors and to memeeaccording to the principle of publicity because the Fidusi Registry Office is open for the public in providing public services.

If there is a change to the data contained in the Fiduciary Guarantee Certificate, the fiduciary beneficiary must submit a registration application for such change to the Fiduciary Registration Office that authorized. Once the administrative requirements have been met by the Applicant, the Fiduciary Guarantee Registration Office issues one Certificate of Fiduciary Guarantee to the applicant (Fiduciary Beneficiary) and records in the Fiduciary Register Book remains at the Fiduciary Registration Office.

The advantage for creditors to the recipient of fiduciary guarantees is that the Fiduciary Certificate of guarantee contains a sentence commonly called *irah-irah*, "By virtue of the Supreme Godhead", hence the Registration The fiduciary directly grants the creditor a preferred right to advance repayment of his receivables, which he should keep in mind against such legal protections cannot be had by creditors if their fiduciary guarantee agreement is not registered with the Fiduciary Registry.

From the explanation above, it is clear that proof of ownership of goods is one of the requirements for registration of fiduciary guarantees at the Fiduciary registration office so that the application for fiduciary registration is carried out will have legal consequences for legal protection of fiduciary security holders. In the event that the object of fiduciary guarantee in the form of inventory of tangible movable objects is not registered, then proof of ownership of the fiduciary object of guarantee is a statement of stock or inventory that issued by the owner of the object of fiduciary guarantee.

Furthermore, Article 21 stipulates that the Fiduciary may transfer the inventory objects that are the object of Fiduciary Guarantee in the usual manner and procedure carried out in the business of trading. The Terms are declared invalid, if there has been a breach of promise by the debtor and on the third party Fiduciary. The object of the Fiduciary Guarantee that has been transferred must be replaced by the Fiduciary with an equivalent object. In the event that the Grantor of F idusia breaks the promise, then the result of the transfer and / or the bill arising from the transfer. By law it becomes the object of the successor Fiduciary Guarantee of the object of the transferred Fiduciary Guarantee.

From the provisions mentioned above, it is clear that the fiduciary guarantor is obliged to replace the collateral that has been transferred with goods

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equivalent in value so that the value of the fiduciary guarantee received by the fiduciary Guarantee Recipient will always be maintained in value, considering that the value of the guarantee is related to the value of the fiduciary guarantor's obligation to repay its debt. Further, if the fiduciary guarantor is injured by the promise, all rights arising from the transfer of the security thing by the fiduciary guarantor by law shall be a substitute for the property that Sudah is transferred, in other senses, all payments and/or rights to which the fiduciary guarantor is entitled by law shall pass to the fiduciary guarantor .

In accordance with the explanation in the previous chapter that the characteristics of a *Delivery Order* make it impossible for the goods listed therein to be a fiduciary guarantee because control of the goods listed in the Delivery Order is not by the owner but is in the control of the issuer of the *Delivery Order* even though The right of ownership is already in the hands of the owner or recipient of the Delivery Order, therefore every object that proves ownership is in the form of a *Warrant Delivery Order* does not qualify as fiduciary guarantee unless the goods have been taken from the possession of the issuer of the *Delivery Order* and controlled by The new owner of BendA is qualified to be the object of fiduciary guarantee.

However , the above turned out to be different from the reality in the practice of daily community life, this is as happened in case Number 781 / Pdt.G / 2015 / PN. Jkt.Cell in which it turns out that a *Delivery Order* can be used as proof of ownership of a fiduciary guarantee object in the form of inventory. In the decision, PT Agro Mulya Jaya has a legal relationship with PT Bank Bukopin as a Deed of Credit Agreement Using Guarantee Number 105 dated December 19, 2014 which made before Notary Dr.Ir. J. Andy Hartanto, SH., MH., MMT where the agreement as the main agreement followed by the Deed of Fiduciary Guarantee Number 107 dated December 19, 2014 was made before DR. J. Andy Hartanto, SH., MH., Ir., MMT, The notary in Surabaya then the fiduciary guarantee has been registered at the Fiduciary Guarantee Registration Office, Ministry of Law and Human Rights East Java Wilayah Office based on Certificate of Fiduciary Guarantee Number W15.00073441.AH.05.01 Year 2015 dated February 2, 2015

In the special legal relationship related to the fiduciary agreement between PT Agro Mulya Jaya and PT Bank Bukopin, the recipient of the fidusia guarantee as well as the creditor, namely PT Bank Bukopin, requires that evidence ownership of fiduciary objects is a *Delivery Order* even with the issuance of a Fiduciary Guarantee Certificate Number W15.00073441.AH.05.01 of 2015 dated February 2, 2015 , The administrative process and formal requirements of fiduciary guarantees should have been examined and confirmed to be in accordance with laws and regulations, especially UUJF.

The UUJF has determined that the object of fiduciary guarantee must be in the hands of the owner of the goods, this is the main requirement considering

the guarantee of legal protection for fiduciary guarantee holders. Regarding the ease of execution, the primacy right to take the proceeds of the sale of the fiduciary object as repayment of debts, therefore to facilitate the recipient of the fiduciary guarantee. In obtaining legal protection, the object of fiduciary guarantee must be in the hands of the owner of the goods. Case Decision No. 781/Pdt.G/2015/PN. Jkt.Sel is one example where in the end related to the Fiduciary Guarantee Object in the end becomes the object of ownership disputes in the case is between PT Agro Mulya Jaya with PT Sugar Labinta as the issuer of the *Delivery Order* and although PT Agro Mulya Jaya as the owner of the fiduciary guarantee object, with proof of ownership in the form of a *Delivery Order shows* clearly if the control of the object of fiduciary guarantee is not in the control of the owner of the goods but the producer or manufacturer *Delivery Order* in the case is PT Sugar Labinta.

One of the legal protections provided by UUJF to the Fiduciary Guarantee Recipient is the ease of carrying out the execution of fiduciary guarantees as stipulated in the provisions of article 30 of the UUJF which states: "The grantor The Fiduciary shall deliver the Object that is the object of the Fiduciary Guarantee in the course of the execution of the Fiduciary Guarantee".

With the burden of the fiduciary guarantor's obligation to deliver the object of the Fiduciary Guarantee in order to carry out the execution of the fiduciary guarantee, it will become more difficult carried out if the fiduciary guarantor as the owner of the fiduciary guarantee object does not control the fiduciary guarantee object as in decision Number 781/Pdt/2015/PN. Jkt.Sel so that even though PT Bank Bukopin has been declared as a fiduciary guarantee holder in good faith who must be protected, the legal protection will seem illusory and it is increasingly difficult to execute because the object of fiduciary guarantee in the control of PT Sugar Labinta as the issuer of the *Delivery Order* is not in the control of PT Agro Mulya Jaya as the owner of the fiduciary guarantee object and this situation is increasingly unfavorable for PT Bank Bukopin because in its ruling, PT Agro Mulya Jaya is required to return the *Delivery Order* issued by PT Sugar Labinta to PT Agro Mulya Jaya.

For PT Bank Bukopin as the recipient of fiduciary guarantee, the decision is very far away from the principle of legal certainty and legal protection as the recipient of fiduciary guarantee, even in the UUJF as part of the legal protection there is a criminal provision which is considered the last "remedy" of legal protection for the fiduciary Sureilee will be unenforceable because Letter of Perintah *Delivery Order* as proof of ownership is precisely PT bank Bukopin that requires.

C. CONCLUSION

In the fiduciary UUJF, the author argues that there is no provision related to the guarantee of legal protection for the recipient of a special fiduciary guarantee as the recipient of the fiduciary guarantee which is the object of the guarantee. The fiduciary is not in the control of the owner or fiduciary guarantee because the characteristics of the *Delivery Order* do not conflict with the provisions of article 1 of the UJF U.K.

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