

# Pelaksanaan jaminan fidusia pada PT Pegadaian (persero) dalam kaitannya dengan fungsi PT Pegadaian (persero) sebagai lembaga pemberi gadai = Implementation of fiduciary at pt pegadaian (persero) related to the function of PT Pegadaian (persero) as a pand institution

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## Abstrak

[PT Pegadaian (Persero) dalam memenuhi kebutuhan masyarakat dalam memperoleh dana yang mereka butuhkan, berusaha untuk meningkatkan layanan dengan menambah program kegiatannya. Selama ini PT Pegadaian (Persero)

hanya dikenal dengan produk jasa gadai. Salah satu bentuk penyaluran pinjaman yang sekarang dijalankan oleh PT Pegadaian (Persero) yaitu perjanjian utang piutang dengan jaminan fidusia. Konsekuensi yuridisnya, PT Pegadaian (Persero) harus mengikuti ketentuan yang diamanatkan dalam UUJF. Perjanjian jaminan fidusia agar mempunyai kepastian hukum bagi kreditur dan debitur, harus dibuat dengan akta notaris. Perjanjian jaminan fidusia tersebut harus didaftarkan di kantor Pendaftaran Fidusia, supaya apabila terjadi wanprestasi oleh debitur, kreditur tetap dapat menjalankan ketentuan yang diatur dalam UUJF. Sehubungan dengan hal tersebut, penulis melakukan penelitian tentang pelaksanaan jaminan fidusia pada PT Pegadaian (Persero) ditinjau dari fungsi PT Pegadaian (Persero) sebagai lembaga gadai dan untuk mengetahui akibat hukumnya perjanjian jaminan fidusia yang tidak didaftarkan apabila terjadi wanprestasi. Untuk mencapai tujuan tersebut, penelitian dilakukan dengan metode deskriptif analisis dengan menggunakan pendekatan yuridis normatif. Data hasil penelitian dianalisis dengan menggunakan metode kualitatif. Hasil penelitian diketahui bahwa perjanjian jaminan fidusia pada PT Pegadaian (Persero) dengan nilai penjaminan diatas Rp.10.000.000,- (sepuluh juta rupiah), dibuat dengan akta jaminan fidusia dihadapan notaris dan didaftarkan pada Kantor Pendaftaran Fidusia. Sedangkan nilai penjaminan dibawah Rp. 10.000.000,- (sepuluh juta rupiah) hanya dibuat dengan perjanjian jaminan fidusia yang dibuat dibawah tangan dan tidak didaftarkan pada Kantor Pendaftaran Fidusia. Perjanjian jaminan fidusia yang tidak didaftarkan pada Kantor Pendaftaran Fidusia, apabila debitur wanprestasi dalam pelaksanaan eksekusi kreditur dapat menerapkan Pasal 15 dan Pasal 29 UUJF. Perjanjian jaminan fidusia yang tidak didaftarkan pada Kantor Pendaftaran Fidusia dalam pelaksanaan eksekusinya, kreditur harus mengajukan gugatan kepada pengadilan dan dapat menerapkan Pasal 1365 KUHPerdata juncto Pasal 365 KUHP. Sebab lain perjanjian jaminan fidusia yang tidak didaftarkan pada Kantor Pendaftaran Fidusia adalah karena biayanya yang mahal dan jarak Kantor Pendaftaran Fidusia yang sangat jauh, karena hanya ada di Ibukota Propinsi DKI Jakarta. Seharusnya, Kantor Pendaftaran Fidusia mempunyai kantor perwakilannya pada setiap Kabupaten/ Kotamadya di Indonesia.

.....In Meeting the Needs of communities for acquiring the funds that they need, PT Pegadaian (Persero) works hard to improve its services by adding up its programs of activities. All this time, at PT Pegadaian (Persero) as known for pand service products. One of the on the go loan programs from PT Pegadaian (Persero) is promissory notes receivable by fiduciary transfer of ownership. As a

juridical consequence, PT Pegadaian (Persero) should follow the provisions as mandated by the Fiduciary Act (UUJF). To be able to have a legal certainty for the debtor and the creditor, the agreement of fiduciary transfer of ownership should be made in notarial decree. The agreement of fiduciary transfer of ownership should be registered in Fiduciary Registering Office, so that in case of default done by the debtor, the creditor may use the provisions in the UUJF. Inconnection with that, the writer researched the unregistered agreement of fiduciary transfer of ownership by PT Pegadaian (Persero) to find out the implementation of fiduciary transfer of ownership in PT Pegadaian (Persero) related to the function of PT Pegadaian (Persero) as a pand institution and to find

out legal consequences on unregistered agreement of fiduciary transfer of ownership toward the return and in the case of default. To achieve the objective above, the study was conducted with the analytical descriptive method using normative juridical approach. Data of the research was analyzed by using qualitative method. Based on the research, the result revealed that agreement of fiduciary transfer of ownership of PT Pegadaian (Persero) with the value of guarantee above Rp. 10.000.000,- (ten millions rupiah), then made with the fiduciary deed before a notary and registered at Fiduciary Registration Office. If the value of guarantee below than Rp.10.000.000,- (ten millions rupiah), then only be made with agreement of fiduciary transfer of ownership and not be registered. In a registered agreement of fiduciary transfer of ownership, if the debtor are in default in the implementation of the execution, the creditor can apply Article 15 and Article 29 of UUJF. In a unregistered agreement of fiduciary transfer of ownership, to the execution, the creditor must must file a lawsuit to the court and could apply Article 1365 of the Civil Code juncto Article 365 of the Book of Criminal Law. There is a factor when an agreement of fiduciary transfer of ownership is not registered, its is due to expensive cost and great distance of Fiduciary Registration Office, because its only located in the Provincial Capital. The Fiduciary Registration Office shoulc have representatives in every Regency/City.

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