LEGAL POLICY FOR THE USE OF FIDUCIARY DEED ON THE LOANS AGREEMENT

RR. Dewi Anggraeni,[1] Nur Rohim Yunus,[2] Annissa Rezki[3]

Abstract:

Committing into a loan agreement for a motor installment is a transaction involving a risk of loss. It has occurred particularly when the installment object is lost, or when the payment is stuck in the last months of repayment. As a consequence, this creates its own problems for the parties involved. Therefore, a fiduciary guarantee becomes an alternative in reducing the risk of loss to the parties. This study applied a juridical normative approach while a case approach adopted a qualitative research method by reviewing existing laws and regulations. The results of the study stated that fiduciary collateral can be utilized as a solution to disputed cases in the loan agreement for motorcycle installments.

Index Terms: Legal Policy, Debts or Loans, Fiduciary Collateral

1. Introduction

Debts or loans are transaction activities between two parties by giving an amount of money voluntarily to another party to be returned to first-party by a second party with the same act, or someone gives money to another party for their benefit and the second party returns it as a replacement. Usually, this activity took place because of an agreement between the two parties involved. To conclude, it is noticeable that debts, as are categorized as a form of non-cash transactions where someone gives property–both money and goods–to others and, will be returned to the creditor.

Debts as an economic activity carried out among humans aimed to help each other in fulfilling certain needs. This transaction is not only appeared on the need for money, but also for the other secondary needs such as a vehicle used to work or other personal needs. Consequently, this need arises on credit sales and require a loan agreement called a fiduciary guarantee purposed to provide guarantees for the buyer of the goods purchased on credit.

In other words, in Fiduciary practice, the original owner simply handed over ownership in the name of the object to another party; however, both the existence or utility remains owned by the original owner. Therefore, the term of Fiduciary guarantee is also known, where the transfer of ownership as such practice occurs in granting guarantees to other parties. In this case, fiduciary collateral is used as a solution in dealing with the problem of debts or loans in the form of installments or credit. Since practically the loan agreement often

[1] **RR. Dewi Anggraeni** is a senior lecturer at Law Faculty, Pamulang University, Banten, Indoensia. E-mail: dewifhunpam@yahoo.com.

[2] **Nur Rohim Yunus** is a senior lecturer at Sharia and Law Faculty, Universitas Islam Negeri Syarif Hidayatullah Jakarta, Indonesia. E-mail: nurrohimyunus@uinjkt.ac.id.

[3] **Annissa Rezki** is a researcher at Poskolegnas UIN Jakarta and also Lawyer at PBHI Jakarta. E-mail: annissa_rezki@yahoo.com.

ended with a loss to one party. Thus, this transaction requires binding collateral between the two parties.

From the discussion above, several questions emerge which become the focus of this research, namely: how is the legal policy on the use of fiduciary deeds in the loan agreement? How was the solution to reduce the risk of loss for those who lost a motorcycle in credit sale?

2. Research Methodology

This legal study applied a normative legal approach and a case approach. The legal approach is carried out by reviewing Law number 42 of 1999 concerning Fiduciary Guarantees, while the case approach is accomplished by examining the settlement of cases of motorcycle credit guarantees. This approach is used to figure out the principles of guarantees in the fiduciary deed laws and its implementation in Indonesia. This study aimed to collect, explain, systematize, analyze, interpret and assess positive legal norms related to the use of fiduciary deeds in the loan agreement. This research used both primary data in the form of Law Number 42 of 1999 and secondary data obtained from library research which includes literature on the principles of agreements in the loan transaction. The collected data, both primary and secondary, are then analyzed using qualitative descriptive methods.

3. Results and Discussions

a. Basic Term of Fiduciary

Fiduciary is a term that has long been known. [1] The term Fiduciary in Indonesian is the transfer of property rights in a trust, while in Dutch terminology, it is also called the term *fiduciare eigendom overdracht*. Fiduciary comes from the word of *fields* which means trust. Trust means that the guarantor believes that the handover of his property is not intended to actually make the creditor as the owner of the object, and if the fiduciary principle agreement is settled, the collateral will return to the collateral's owner. [2]

The function of fiduciary guarantees, based on Law Number 42 of 1999 concerning fiduciary guarantees, is to meet the legal requirements that can further push national development, to guarantee legal certainty and to provide legal protection for involved parties. Therefore, it is necessary to establish complete provisions regarding the Fiduciary Guarantee, in addition, required to be registered at the Fiduciary Registration Office.

Law Number 42 of 1999 concerning Fiduciary Guarantee mentioned that Fiduciary is the transfer of ownership rights of an object on the basis of trust provided that the object in which ownership rights are transferred remains in the control of the owner. Fiduciary Collateral is a guaranteed right for movable objects, both tangible and intangible and immovable objects, especially for buildings which cannot be burdened mortgage rights. As referred to in Law Number 4 of 1996 concerning Mortgage Rights which remain in the possession of Fiduciary Givers, as collateral for the payment of certain debts that give priority to the Fiduciary Recipient over other creditors.

The general explanation of the Fiduciary Guarantee in the legislation as follows:

Firstly; Loan activities, with the use of mortgage rights or collateral rights, have been regulated in Act Number 4 of 1996 concerning Mortgage Rights which becomes the

implementation of Article 51 of Law Number 5 of 1960 concerning Basic Agrarian Laws, and at the same time used as a substitute for institutions Mortgage on land and *credietverband*. In addition, other collateral rights that are widely adopt at this time are Pawn, Mortgage other than land, and Fiduciary Collateral. The provision of the law governing Fiduciary Security is the provision of Article 15 of Law Number 4 of 1992 concerning Housing and Settlements. Among these arrangements, the regulation of houses built on land owned by other parties can be burdened with Fiduciary Guarantees. [3]

Secondly; This law is intended to accommodate the needs of the community regarding the regulation of Fiduciary Assurance as a means to assist business activities and to provide legal certainty to the parties concerned.

It was explained that the Fiduciary guarantee made it easy to use, especially for the Fiduciary Giver. On the contrary, since the Fiduciary Deeds are not registered, it does not guarantee the interests of fiduciary recipient. The Fiduciary Giver makes it possible to guarantee objects which have been burdened with fiduciary to other parties without the known by the Fiduciary Recipient.

Before this law was formed, generally, the Fiduciary Guarantee were in the form of movable objects consisting of objects in inventory, merchandise, accounts receivable, machine tools, and motocycle. Therefore, in order to meet the evolving needs of the community, according to the law, Fiduciary Security objects are given a broad understanding, namely tangible and intangible movable objects, and immovable objects that cannot be burdened with mortgage rights as referred to in the Act Law Number 4 of 1996 concerning Mortgage Rights.

This law regulates the registration of Fiduciary Guarantees in order to provide legal certainty to interested parties and the registration of Fiduciary Assurances gives preferential rights to Fiduciary Recipients of other creditors. Since the Fiduciary Collateral grants the right to the Fiduciary Giver to take possession of the object which is the object of the Fiduciary Guarantee based on trust, it is hoped that the registration system regulated in this law can provide guarantees to the Fiduciary Recipient and those who have an interest in the object.

b. Agreement on Buying and Selling *(Das Solen)*

In fulfilling the debt, the levels of execution and bankruptcy among creditors are not the same. Concurrent creditors have a lower position than preferred creditors. Concurrent creditors only have individual rights *(personlijk)* at the same level with others without having a position to prioritize fulfillment. In addition to the concurrent creditors, there are also preferred creditors which fulfillment of the receivables takes precedence *(voorrang)* than other receivables, because they have preference rights. According to the provisions of Article 1133 of the Civil Code, creditors holding mortgages, pawn, including fiduciaries and privileges have a higher position and take precedence over other debts. The right to take precedence arises because of two roads, namely: [4] 1). Because of deliberately agreed in advance that the creditors' debts will take precedence over other receivables, for instance on mortgages, pawns and fiduciaries. 2). Because it has determined by law. This right is only counted since the fiduciary guarantee registration applicant registers the object at the Fiduciary Registration Office (*KPF*) and will not be deleted due to bankruptcy and/or liquidation of the Fiduciary Giver. [5]

What consumers don't understand in buying and selling with leasing is the terms of the lease. Essentially, someone who buys a vehicle on credit through leasing has rented his vehicle, and every month he has to pay the rent, hence, when he is in arrears despite remaining three months, his vehicle must be taken by the creditor. This is an unfair regulation for consumers, since the consumer has paid a specified down payment, but then when he is in arrears in the middle of payment although the vehicle is almost paid off, less than two months or a month, without tolerance the vehicle is taken back by the creditor. [6]

The implementation of fiduciary before the enactment of the Fiduciary Guarantee Act is distinction from the current condition, because in the old rules the imposition of fiduciary guarantees was carried out with a deed under the hand, and that was still allowed. [7] In contrast, today, registration of fiduciary guarantees absolutely must be carried out based on a Fiduciary Deed of Guarantee made by a Notary. The reasons for the Fiduciary Guarantee Law stipulate the form of a fiduciary guarantee agreement with a notarial deed are; *First*, the notarial deed is an authentic deed, consequently, it has a perfect proofing power. What is meant by an authentic deed is a deed in the form determined by law, made before an authorized public official, and made in an area where the general official is authorized (Article 1868 of the Civil Code); *second*, because of the fiduciary collateral objects in general are movable objects; and third, because of the law which prohibited re-fiduciary. [8]

The obligation to register a Fiduciary Guarantee Item which in accordance to the provisions in Article 11 paragraph (1) of the Fiduciary Guarantee Law states that, objects burdened with a Fiduciary Guarantee must be registered and is carried out at the domicile of the Fiduciary Giver, and registration includes objects, both inside and outside the territory of the Republic of Indonesia to fulfill the principle of publicity, as well as a guarantee of certainty to other creditors regarding objects that have been burdened with Guarantees Fiduciary

To register for a Fiduciary Guarantee, it is necessary to meet the requirements which in tone with article 12 of the Fiduciary Security Law, those are: [3] 1). Application letter for registration of Fiduciary Guarantee is submitted to the Minister of Law and Human Rights; 2). Copy of Notarial Deed; 3). Power of attorney or delegation of authority or representative by attaching a Fiduciary guarantee statement; and 4). Proof of payment of non-tax state revenue.

The registration of a Fiduciary Guarantee Certificate begins with an application submitted to the Minister of Law and Human Rights of the Republic of Indonesia through the Fiduciary Registration Office in the fiduciary giver's place of residence written in Indonesian language by the fiduciary recipient, proxy or representative, by attaching a statement of Fiduciary Guarantee Registration and filling in the form and the contents are determined by Attachment to the Decree of the Minister of Law and Human Rights of the Republic of Indonesia Number M01.UM.01.06 Year 2000, the contents of which are:

a. The identity of the giver and the recipient which includes: (1). Full name; (2). Residence/domicile; and (3) Occupation.
b. Date and number of the Fiduciary Guarantee deed, name, and domicile of the Notary that contains the Fiduciary Guarantee deed.
c. The data of the main agreement is about the type of agreement and debt guaranteed by the fiduciary.

d. A description of the object of the Fiduciary Guarantee (See explanation of Article 6 of Law Number 42 the Year 1999).

e. Guarantor Value.

f. The value of the object of the Fiduciary Guarantee.

Furthermore, the Fiduciary Registration Office records the Fiduciary Guarantee in the Fiduciary Register Book on the same date of registration time. According to the existing registration, the Fiduciary Registration Office issues and submits a Fiduciary guarantee certificate to the Fiduciary Recipient on the same date as the date of receipt of the application for registration. The Fiduciary Guarantee Certificate, which becomes a copy of the Fiduciary Register, was issued on the same date as the printing date of the Fiduciary Guarantee in the Fiduciary Register.

The contents of the Fiduciary Guarantee certificate, in accordance with article 15 of the Fiduciary Security Law, contained the words "For the Sake of Justice Based on a Godhead." This Fiduciary Guarantee Certificate has the same executive power as a court decision that has permanent legal force. If the debtor fails to promise, the Fiduciary Recipient has the right to sell the object of the Fiduciary Guarantee at his own authority. In the mentioned provisions, what is meant by "Executive Power"? is that the action can be directly implemented without going through a court of law and is final and binding on the parties to implement the decision?

One of the features of the Fiduciary Guarantee is the ease of implementing the execution if the Fiduciary Giver fails the promise. Therefore, in this law, it is necessary to specifically regulate the execution of the Fiduciary Guarantee through the executing Agency. In the condition of a change in the Fiduciary Guarantee certificate, article 16 of the fiduciary guarantee law regulates the amendment to the Fiduciary Guarantee certificate, as follows:

a. If there is a change regarding the things listed in the Fiduciary Guarantee certificate, the Fiduciary Recipient must submit a request for registration of the change to the Fiduciary Registration Office.

b. The Fiduciary Registration Office, on the same day as the date of receipt of the request for amendment, records the changes in the Fiduciary Register book and issues a Statement of Amendment that is an inseparable part of the Fiduciary Guarantee Certificate. In implementing changes to the matters contained in the Fiduciary Guarantee, a Certificate must be notified to the parties. This change does not require a notarial deed in the context of efficiency, in order to meet the needs of the business world.

The interpretation of accounts receivable, as one of the fiduciary security objects in Article 9 of the Fiduciary Security Act, is followed by a sociological interpretation, meaning that the law is determined based on the purpose of making the rule of law and what is to be achieved in society. [9]

c. The Case of Losing Motorcycle *(Das Sein)*

There have been many cases that occurred when someone experienced legal problems because of dealing with the leasing party. For instance, in the case of a lost car with an on-going installment, whether the buyer is obliged to pay the remaining bills until paid off or not.

This is regulated in the Civil Code that an agreement must meet the provisions of Article 1320 of the Civil Code which stated that, in order to meet a legal agreement, it is necessary to fulfill 4 (four) conditions, namely: [10] 1). Their agreement is binding; 2). The ability to make an engagement; 3). A certain subject matter; and 4). A reason that is not forbidden.

The agreement is considered valid and is fully binding, both for the parties who make it, as long as it does not contradict applicable legal principles, does not violate decency and public order. Hence, in this case, the agreement can be said to be a "law" for each party that binds themselves to the agreement and it is forceful. The meaning of the word "force" is that anyone who binds himself to an agreement must carry out the entire contents of the agreement.

In an agreement, a legal relationship occurs between one party to another party and gives the right to one party to demand something from the other party, while the other party is required to fulfill the demand. The party who has the right to sue is called the party who is in the credit or the creditor, while the party who is obliged to fulfill the demand is called the party who is in debt or the debtor. The thing that can be sued is called "achievement", which according to Article 1234 of the Civil Code can be in the form of 1). Give up an item; 2). Do an action; 3). Not doing an act.

Regarding the sources of an agreement, that the engagement can be born from an agreement or from the law. Therefore, according to the law, an agreement between the buyer and the seller of the car has vanished because the purchased-car has been lost beyond the buyer's fault. Particularly, Article 1381 of the Civil Code governing the deletion of agreements regulating that:

> "The agreement was deleted because of payment, because of the offer of cash payment, followed by storage or safekeeping, due to renewal of debt, due to meeting debt or compensation, due to mixed debt, due to debt relief, due to the destruction of the items owed, due to cancellation or cancellation, due to the enactment of a condition cancellation, provided for in Chapter I of this book; and because it is past time, which will be arranged in a chapter itself. "

The destruction of owed goods is regulated in Article 1444 of the Civil Code, namely: "If certain items which become the subject of approval are destroyed, cannot be traded, or lost until it is unknown at all, whether the goods still exist or not, then the agreement is deleted, as long as the item is destroyed or lost beyond the debtor's fault and before he neglects to hand it over. Even if the debtor fails to handover an item that was not previously covered for unforeseen events, the engagement is still deleted. However, the debtor is required to prove the unexpected event as a form of accountability.

Related to this problem, by looking at the legal provisions in the Civil Code, if there is a loss of goods owed by the debtor accidentally, the debtor is not obliged to complete the payment of the installments. However, from the perspective of justice, it will be very detrimental to the creditor, because he will not get anything from the loss of the goods. Thus, today, there has been a developing thought to insure the risk of loss through insurance companies. Insurance companies will carry out risk management for incidents that have been promised to be certified, therefore, it is not surprising that buyers are always offered to pay insurance costs by the creditor when they first take out a vehicle loan. Then, if there is a loss one day, the Insurance will pay the creditor a number of costs, and the creditor can later replace the vehicle with a new vehicle.

In this case, if the right action has been taken because it has reported the loss of the car to the police, then the evidence of the police report can be given to the creditor or the vehicle selling party as proof that the car in installments has been lost through no fault of the car buyer, but was stolen by someone else.

The law also requires debtors to prove unexpected events experienced by debtors to creditors. This case cannot be brought into the criminal law, because in this case. it is purely about the engagement and agreement, in addition to the destruction of the goods owed, it is categorized into civil law. However, it can be added, that the problem of losing the car is under the authority of the police, who will continue the investigation process on the basis of the report made.

d. Fiduciary as a Collateral Institution

From the conflict above, there are problems that result in losses to the debtor and creditor. Therefore, there is a need for collateral as a solution if the repayment of the vehicle installment problems occurred, then the buyer will not be harmed and vice versa. Thus, this is where the role of fiduciary collateral institutions plays a role.

According to Tan Kamelo, the guarantee agency was well known since in Roman society. [11] Likewise in the Indonesian legal system which, according to Tan Kamelo, has a close relationship with the Dutch legal system because of historical links based on the principle of concordance. As well as the Dutch legal system which has a historical linkage with French law derived from Roman law. [12]

The agreement that gave rise to Fiduciary has the following characteristics: [12] a). Between the Fiduciary giver and the Fiduciary recipient, there is a committed relationship that issues the right for the creditor to request the transfer of collateral from the debtor in *constitutum posessorium*; b). The arrangement is purposed to give something because of the debtor hands over an item in a *constitutum posessorium*; c). Engagement in the framework of granting Fiduciary is an *accessory* appointment or an engagement that requires another engagement in the form of debts agreement; d). A Fiduciary Engagement is classified as an agreement with the terms of cancellation, because if the debt is repaid, then the collateral is fiduciary forfeited; e). Fiduciary arrangements are classified as agreements originating from an engagement, namely a fiduciary agreement; f). The Fiduciary Agreement is an agreement which not specifically mentioned in the Civil Code, then this agreement is classified as an anonymous agreement *(Onbenoem De Overeenkomst)*; g). The fiduciary arrangement remains subject to the provisions of the general part of the agreement contained in the Civil Code.

Furthermore, the removal of fiduciary guarantees as provided in article 25 is caused by the following reason, namely: 1). The removal of fiduciary debt guaranteed. 2). Waiver of the fiduciary guarantee by the fiduciary recipient or the destruction of the object which becomes the collateral for the fiduciary object 3). The abolition of the Fiduciary Guarantee must be notified in writing to the Fiduciary Registration Office no more than 7 days after the abolition. 4). Attachment of supporting documents are; a). Application by the fiduciary recipient, proxy or representative to the Fiduciary Registration Office at the place of the fiduciary grantor; b). Original Fiduciary Guarantee Certificate; c). The Fiduciary Registration Office deleted the records of Fiduciary Guarantee from the Fiduciary Registration Book; d). The Fiduciary Registration Office issues a certificate stating that the relevant Fiduciary

Guarantee Certificate is no longer valid and the certificate is crossed out and kept in the Fiduciary Registration Office file.

If the object guaranteed by Fiduciary is destroyed, according to article 25 paragraph (2), then it will not vanish its insurance claim. With the abolition of the Fiduciary guarantee, the Fiduciary Recipients, in accordance with paragraph (3) article 25 of the Fiduciary Security Act, must notify the Fiduciary Registration Office of the abolition of the Fiduciary Guarantee by attaching a statement regarding the debt cancellation, the relinquishment of rights, or the destruction of Fiduciary Guarantee's objects. According to the Fiduciary Guarantee nature, the existence of a Fiduciary Guarantee depends on the existence of receivables guaranteed for repayment. If the receivables are canceled because of the cancellation of debt or because they are released, then the relevant Fiduciary Guarantee becomes abolished. What is meant by "debt cancellation" is partly due to repayment and evidence of debt abolished in the form of statements made by creditors? Furthermore, if an object of the Fiduciary Guarantee is destroyed and insured, then the insurance claim will be a substitute for the object of the Fiduciary Guarantee. With the removal of the Fiduciary Guarantee, according to article 26 paragraph (1), the Fiduciary Registration Office crossed out the recording of the Fiduciary Guarantee from the Fiduciary Register. Furthermore, the Fiduciary Registration Office in accordance with paragraph (2) issues a statement stating the relevant Fiduciary Guarantee certificate is no longer valid.

e. The Analysis of Insurance Law

In the formal legal provisions, the conditions to apply for a loan in a bank are required collateral. Collateral is something used as a dependent in the form of money loans. Guarantees that can be accepted by banks are both physical or non-physical collateral. Physical collateral is in the form of goods, while non-physical collateral is in the form of an analyst. One of collateral that can be used in applying for credit is a fiduciary guarantee that including the physical guarantee.

The article 10 letter b of Law Number 42 of 1999 concerning Fiduciary Security mentioned that: [3] 1). Fiduciary Collateral covers the results of objects which becomes the object of Fiduciary collateral; 2). The Fiduciary Guarantee covers insurance claims, only when the Fiduciary Guarantee's object is insured. Also, the law Number 42 of 1999 concerning Fiduciary Guarantees claims the insurance when it becomes the object of collateral, however, in Law Number 40 of 2014 concerning Insurance, there are no rules that specifically govern fiduciary guarantees, as well as in the Law Number 10 of 1998 concerning Banking. It can be concluded that there is a blurring of norms against fiduciary guarantees in the Banking and Insurance law, due to the absence of clear rules but still implemented.

An agreement is expected to run and be fulfilled in accordance with the purpose that has been set up before, including a fiduciary guarantee, but under certain conditions, the realization of the credit agreement cannot run as it should. Therefore, the increasing credit growth is usually accompanied by an increase in non-performing loans, although the percentage of the amount and increase are small, this credit freeze will affect the health of banks. As in the credit, agreement occurred between the bank and the debtor, collateral items provided by the debtor to the bank, such as motor vehicles, machine tools that are burdened with fiduciary collateral. Then, how was the debtor's responsibility for collateral lost or

destroyed in a credit agreement? Is not the collateral used as a condition for applying for credit? whereas the debtor who provided the collateral object has removed or destroyed the collateral object. In addition, the creditor or bank that has given credit to the debtor has insured the fiduciary collateral. The Bank itself is the insured party in the insurance agreement.

The relationship between the bank and the customer is based on the two most-related elements, namely law, and trust. A bank can only carry out activities and develop if the public "believes" to place their money in the banking products which are available at the bank.

Credit criteria that can be guaranteed in insurance are loans that are given: a). Based on credit norms that are health, reasonable and generally accepted; b). In accordance with the manual lending according to the Decree of Bank Indonesia; c). To the debtor who has a business license determined by the authorities and is not contrary to law; d). To debtors who are not in the process of bankruptcy or have been declared bankrupt or disbanded by law; e). To debtors who do not have credit arrears classified as doubtful credit quality. While Risk is " uncertainty in the future about a loss" [13] or the risk that may occur during the period between the granting and repayment of the credit, therefore, in order to secure the lending and cover the possibility of default from the borrowing-fund customers, a collateral binding is held.

In the view of the standard motorcycle's insurance payment, as one of fiduciary collateral, it said that this coverage guarantees loss and or damage to the motorcycle and or insured interests that are directly caused by; a). accident, collision, overturned, slip, or fall; b). crime; c). theft, including that, was preceded or accompanied or followed by violence or threats of violence as referred to in Article 362, 363 of paragraph (3), (4), (5) and Article 365 of the Criminal Code; d). fire, including (1) fire due to the other adjacent objects or storage facilities for motorcycle; (2) fires caused by lightning strikes; (3) damage due to water and or other tools used to prevent or extinguish fires; (4) the destruction of all or part of motorcycle on the orders of the competent authority in the effort to prevent the spread of fire.

Therefore, it was agreed between the parties to determine the payment of premiums as a form of collateral in order to avoid losses to one of the parties when things happen that are not desirable. According to article 1 paragraph (26) of Law Number 40 of 2014, [14] Premiums are a sum of money determined by an Insurance Company or reinsurance company and approved by the Policy Holder to be paid based on an Insurance agreement or reinsurance agreement, or an amount of money determined based on statutory provisions the laws underlying the insurance program are mandatory to obtain benefits.

In the insurance policy, movable property or motorcycle, in the provisions of article 7 regarding payment of premiums, it is stated that:

Firstly; the requirements of the guarantor's responsibility for insurance coverage are based on the policy provided that every premium owed must be paid in full and has actually been received in full by the guarantor, in the case of a). the period of coverage is 30 (thirty) days or more, the payment of premium payment must be made within a period of 14 (fourteen) calendar days from the date that the policy starts to take effect; b). The period of coverage is less than 30 (thirty) days, payment of premium must be made at the time the policy is issued.

Secondly; Payment of premiums can fulfill through cash, check, crossed checks, transfers or by other means agreed between the Insurer and the Insured. The guarantor is considered to have received premium payments, when: a). receipt of cash payments, or b). the

premium concerned has entered the Insurer bank account or c). The guarantor has agreed to pay the premium, d). concerned in writing.

The term of the credit insurance agreement with fiduciary collateral is the expiration date of the agreement between the bank and the insurance party. The period of insurance coverage for fiduciary collateral is adjusted to the needs of the Insured. It can be applicable for one year, less than one year or more than one year and can also be adjusted to the term of the credit agreement provided by the bank to its customers. [13]

Law Number 42 of 1999 concerning Fiduciary Guarantees does not specifically explain the cause and effect of collateral damage. Regarding the destruction of collateral is only mentioned that the destruction of a collateral object is one of the reasons to remove the fiduciary collateral. Therefore, it does not appear in detail what is meant by the destruction of the collateral object of the fiduciary guarantee. However, according to the interpretation of the general understanding of the word "destroyed", it is interpreted as the disappearance or loss of goods which becomes the object of collateral. In Article 4 of Law Number 42 of 1999 concerning Fiduciary Guarantees stated that: "Fiduciary Guarantee is a follow-up agreement of a basic agreement that raises the obligation for the parties to fulfill an achievement." While the characteristics of an additional agreement *(accessoir)* are that the agreement cannot stand alone, then its termination depends on the termination of the principal agreement. Thus, the main agreement is the debt and receivable agreement as a fiduciary guarantee as an additional agreement *(accessoir).*

Since fiduciary guarantees are in the form of movable property, then the insured's goal is to avoid risk such as the destruction or loss of fiduciary collateral in the debtor which can cause a loss to the creditor. Insurance associated with the banking world is more focused on credit guarantee insurance or a field of general insurance which includes: 1). Fire insurance; 2). Marine insurance; 3). Motor vehicle insurance.

Supplementary to this, credit insurance protection is also provided by the insured party to Commercial Banks or Financing Institutions to avoid the risk of failure of debtors in paying off credit facilities or cash loans, such as working capital loans, trade loans, and others. Credit insurance is closely related to banking services, especially in the field of credit, which is always associated with credit guarantees in the form of movable and immovable property which may be subject to the risk that could result in losses to the owner of the goods and banks as credit providers. Credit insurance aims to protect credit providers from the possibility of not receiving the money given to their customers and to help the activities, direction, and security of credit, both bank loans and other credit outside the banking.

One example of a movable insurance policy is the "Motor Vehicle Insurance Standards Policy" in article 1 (3) on Guarantees for motor vehicles, says that guarantees is covering the lost caused by theft, including that was preceded or accompanied or followed by violence or threats of violence as referred to in Article 362, 363 paragraph (3), (4), (5) and Article 365 of the Criminal Code. Under these conditions, the risk of destruction of fiduciary collateral is becoming the responsibility of the guarantor or the insurance company.

Moreover, the liability of insurance against the destruction of collateral in the credit agreement is a consequence of the incident that occurred. The insurance will pay compensation to the insured namely the bank in accordance with the loss suffered or the value of the destroyed fiduciary object. Compensation for losses by the insurance company as the

guarantor for the destruction of the fiduciary security object is using the requirement that there are no intentional elements on the debtor side.

4. Conclusion

From the discussion above, it can be concluded that the problems related to the legal policy on the use of fiduciary deeds in the loan agreement are as follows:

First, the legal policy for the use of a fiduciary deed in the loan agreement stated in Article 9 of Law Number 42 of 1999 concerning Fiduciary Guarantee (*UUJF*) cannot provide legal certainty for creditors as fiduciary recipients in fiduciary guarantees for receivables, because it still contains legal obscurity and no further related arrangements (incompletely norm). In order to analyze the legal protection for fiduciary recipients who use the collateral is in the form of receivables based on the List of Receivables made by the fiduciary giver in Article 9 of Law Number 42 Year 1999 concerning Fiduciary Guarantees and appropriate forms of legal protection construction for fiduciary recipients whose fiduciary object in the form of receivables in the future.

Second, a solution to reduce the risk of loss to those who come into a motorcycle loan agreement that loses in the form of a fiduciary legal guarantee in which the creditor has preferential rights, namely the right to overtake owned by the fiduciary recipient to take repayment of the receivables from the execution of objects that are the object of collateral fiduciary, in accordance with Article 27 Paragraph (2) UUJF.

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