

NOTARY ROLE IN ONLINE REGISTRATION IMPLEMENTATION OF FIDUCIARY GUARANTEE ON CREDIT AGREEMENTS

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Abstract

This study aims to determine the Notary's role toward creditors in the *online* registration of the Fiduciary Guarantee Deed and the Notary's responsibility if there is an error in the *online* registration of the Fiduciary Guarantee Deed. Empirical legal research is conducted in this study using a descriptive design that includes field and library research, utilizing a qualitative data analysis approach. The findings of this study suggest that notary play a significant role in people's lives, particularly when creating authentic deeds following statutory requirements. A notary is authorized by the Law on Notary Positions to create an authentic deed to provide legal protection and certainty. A notary's role is crucial in everyday transactions involving agreements, including those involving fiduciary guarantees. A notary's duties in the *online* registration of a fiduciary guarantee include creating the fiduciary guarantee deed and acting as the fiduciary recipient, or the person who accepts the creditor's power of attorney to register the fiduciary guarantee. The *online* Fiduciary Guarantee registration process is connected to 3 (three) different types of notary liability. Given their significant role in the *online* registration of fiduciary guarantees, notary must follow the precautionary principle to reduce the possibility of mistakes when preparing the deed and to register the fiduciary.

Keywords: notary, fiduciary guarantee, online fiduciary

INTRODUCTION

According to the provisions of Article 1 Point 1 of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of a Notary (after this referred to as UUJNP), a Notary is a public official who is authorized to do an authentic deed and has other powers as intended under this law or other laws. The rule of law stipulates that a notary position be present to assist the community in need of genuine written proof of legal circumstances, events, and actions¹.

It is necessary to have a written agreement made before a notary, referred to as a deed, to ensure legal certainty for the parties who carry out legal actions, in the form of agreements, which is intended so that the notarial deed can be used as solid evidence. If there is a third party, file a disagreement between the parties or a lawsuit. The material truth of the deed the notary executed is covered by the scope of his responsibility, specifically:²

1. The notary's civil liability for the material truth of the deed he or she executed;
2. The notary's criminal liability for the material truth of the deed he or she executed;
3. The notary's obligation to uphold the material truth of the deed he executed following the Notary Position Regulations;
4. A notary's obligations in performing his duties are based on a notary code of ethics.

Offering credit is one way that banks conduct business. Banks can continue doing business as usual because they are profitable. Credit must be mentioned in a loan agreement between the bank, the lender, and the customer, the borrower, following the Banking Law. A bank must ensure that the debtor will repay the loan following the terms of the credit agreement because lending is essential to the success of the bank's business. Extending credit or depositing money in credit facilities is the business that brings in the most money, but lending also carries many risks³.

The fiduciary is used in lending and borrowing transactions as a form of guarantee because the loading procedure is regarded as easy, quick, and straightforward. A fiduciary must meet community needs balanced with precise and comprehensive regulations to achieve legal certainty⁴. Law Number 42 of 1999 Concerning Fiduciary Guarantees (referred to as UUJF) gives interested parties legal certainty that a fiduciary guarantee is a guarantee right on movable objects, tangible and intangible and immovable objects, particularly buildings that cannot be encumbered by Mortgage Rights.

A notarial deed is a genuine document with perfect proof power. A notary's role in creating a fiduciary guarantee deed is to assist the general public in creating a legally binding document, as per Law Number 30 of 2004 concerning Notary Positions (after this referred to as UUJN and UUJNP). A notary must make every fiduciary guarantee deed because they are the only ones with authority to do so, as stated in Article 1 Point 1 UUJNP.

Every Fiduciary Guarantee is required to register with UUJF and is governed by its rules. Through the Director General of General Legal Administration, the Indonesian government published Government Regulation Number 21 of 2015 (after this referred to as PP Number 21/2015), which replaces Government Regulation Number 86 of 2000 concerning Procedures. Government Regulation Number 86 of 2000, which dealt with procedures, is replaced by this regulation, which is about implementing the electronic fiduciary registration administration system (*Online System*).

A notary's duties in the *online* registration of a fiduciary guarantee include creating the fiduciary guarantee deed and acting as the power of attorney's fiduciary recipient. There are two types of legal relationships between creditors and notary: contractual relationships (like the power of attorney agreement the creditor makes in the notary's Fiduciary Guarantee Deed) and non-contractual relationships (like the provision of services by a notary to creditors)⁵. Article 19 PP Number 21/2015, which emphasizes that all information entered in the Fiduciary Guarantee registration application, requests for repair of Fiduciary Guarantee Certificates, requests for changes to Fiduciary Guarantee Certificates, and notification of deletion, places more responsibility on the notary as a result of the Fiduciary Guarantee *online* system registration. The Fiduciary Recipient, their proxy, or their

¹ Habib Adjie, *Hukum Notaris Indonesia Tafsir Telematik Terhadap Undang-Undang Nomor 30 Tahun 2004 Tentang Jabatan Notaris*, (Bandung: Refika Aditama, 2011), pg. 2.

² Herlien Budiono, *Kumpulan Tulisan Hukum Perdata di Bidang Kenotariatan*, (Bandung: Citra Aditia Bakti, 2013), pg. 33.

³ Gunarto Suwandi, "Resiko Dalam Pemberian Kredit Perbankan", *Jurnal Hukum Projustitia Vol. 24*, (Januar 2006): 2.

⁴ Oey Hoey Tiong, *Fidusia Sebagai Jaminan Unsur-Unsur Perikatan*, (Jakarta: Ghalia Indonesia, 1984), pg. 21.

⁵ Richard Lalo, "Tinjauan Yuridis Pelaksanaan Pendaftaran Fidusia Secara Elektronik (Online)", *Lex Privatum Vol. 7 No. 1*, (Januari 2019): 125.

representative is accountable for maintaining the physical documents associated with the Fiduciary Guarantee Certificate and its electronic counterpart. As a result, it is essential to properly store the documents required in the application for registration of a fiduciary guarantee and to check that they do not contain any mistakes that could affect *online* data entry.

The notary must exercise caution when creating the fiduciary guarantee deed and registering it *online*. The completeness and validity of all information or documents received must be thoroughly examined by the notary, who must also consider the statements of the parties when creating the deed⁶. In other words, a notary must follow the precautionary principle to safeguard the interests of the community in question—the existence of UUJF *jo.* PP No. 21/2015, which grants notary the ability to *online* register Fiduciary Guarantees, creates demands for notary to keep up with technological advancements and further improve their services to the people of Indonesia⁷.

RESEARCH METHOD

This study employs a descriptive research design and normative juridical legal research, or *library research*, methodology. Data from numerous legal works of literature, as well as relevant legislation and regulations, were gathered through a literature review. Qualitative analysis is the technique utilized for data analysis.

RESULTS AND DISCUSSION

A notary has the authority to create an authentic deed regarding all actions, agreements, and stipulations required by laws and regulations and/or desired by the interested parties to be stated in an authentic deed, guaranteeing the certainty of the date. This authority is outlined in detail in Article 15 of the UUJNP. As long as the act of creating the deed is not delegated to or excluded from by other officials or individuals specified by law, the deed may be created, kept, provided in gross, copies, and quotations.

A notary deed is perfect written evidence because it has 3 (three) powers of proof:⁸

1. The strength of outward evidence, which is the ability of the deed to prove its authenticity as a deed;
2. The strength of formal evidence that provides certainty that an event and fact mentioned in the deed is known and heard by the Notary and explained by the parties who appear, which is stated in the deed following the procedures that have been determined in the making of the notary deed;
3. Giving tangible proof that identifies the substance of a deed.

Notaris adalah Pejabat Umum yang berfungsi menjamin otoritas pada akta yang dituliskannya. Notaris diangkat oleh pengurus tertinggi negara dan diberikan kepercayaan dan pengakuan dalam memberikan jasa bagi kepentingan masyarakat⁹.

The imposition of Fiduciary Security consists of 2 (two) stages; the first is the making of a basic agreement, such as a credit agreement, and the second stage is the making of the Fiduciary Guarantee Deed¹⁰. Based on Section 1 of Article 5 of the UUJF, a Fiduciary Guarantee Deed, a notarial document in Indonesian, is used to impose fiduciary guarantees. According to letter c of Article 15, paragraph (2) of the UUJN, a notary is qualified to offer legal advice regarding the creation of a deed. As a result, before expressing the appearers' wishes in the form of a notarial deed, the notary is allowed to explain the legal requirements of their legal actions. According to his authority under the UUJN, the notary's role in creating the Fiduciary Guarantee Deed is to ensure the certainty of the creation date, as long as the date of the Fiduciary Guarantee Deed coincides with the date the deed was signed.

The fiduciary recipient, his proxy, or his representative must electronically submit applications for registration of fiduciary guarantees, requests for repair of fiduciary guarantee certificates, requests for changes to fiduciary guarantee certificates, and notifications of the abolition of fiduciary guarantee certificates to the Minister of Law and Human Rights, according to Article 13 paragraph (1) UUJF and Article 2 PP Number 21/2015. According to Article 8 UUJF, a representative is a person who is legally

⁶ *Ibid.*

⁷ Supriadi, *Etika dan Tanggung Jawab Profesi Hukum di Indonesia*, (Jakarta: Sinar Grafika, 2006), pg. 29.

⁸ Habib Adjie, *Op. Cit.*, pg. 26-27.

⁹ Husni Thamrin, *Pembuatan Akta Pertanahan oleh Notaris*, (Yogyakarta: Laksbang Pressindo, 2010), pg. 72.

¹⁰ Riky Rustam, *Hukum Jaminan*, (Yogyakarta: UII Press, 2017), pg. 142.

regarded as representing a fiduciary recipient in receiving a fiduciary guarantee. In contrast, a proxy is defined as a person who receives special authority from a fiduciary recipient to represent his interests in receiving a fiduciary guarantee from a fiduciary giver.

In reality, a notary serves as an intermediary for *online* fiduciary registration. When registering Fiduciary Guarantees *online*, a notary serves as both the creator of the deed and the beneficiary of the creditor or fiduciary recipient¹¹. As a result, there are two legal relationships between the creditor and the notary: a contractual relationship, which is established by the power of attorney agreement the creditor makes in the Fiduciary Guarantee Deed made by the notary, and a non-contractual relationship, which is established by the provision of services by a notary to creditors¹². The notary uses the information provided by the creditor to create the Fiduciary Guarantee Deed. The object of the fiduciary guarantee will first be verified, after which the information will be given to a notary for entry into the *online* fiduciary registration system¹³.

A notary registers an *online* fiduciary by filling out the Online Fiduciary Application, which is accessible at <https://fidusia.ahu.go.id/>. The user must enter their *username* and *password* from the Directorate General of AHU on the *login* page. Furthermore, there are 3 (three) applicant menu options available, namely:¹⁴

1. Registration menu is used to fill out the fiduciary guarantee registration form.
2. Change menu is used to make changes to the fiduciary guarantee certificate.
3. Transaction List menu is used to view a list of transactions made.

The data fields of the fiduciary guarantee agreement will appear on a form during the registration process. After filling out these fields, the applicant continues access by checking the box next to the statement they have read and agreed to the form's warning provisions. The applicant chooses which step to save into the database before moving on to the subsequent step. A confirmation that the data has been processed successfully will show up after the data has been *submitted*. To make payments to the perception bank, the applicant can print a copy of the proof of registration application at that point. If the applicant has paid for the registration of the fiduciary guarantee and obtained proof of the registration of the fiduciary guarantee, then the applicant can then print the certificate through the Applicant Menu on the *online* fiduciary site.

When creating the Fiduciary Guarantee Deed and registering the Fiduciary Guarantee *online*, the notary must follow the precautionary principle. When the notary is not careful in checking the data or documents provided and is needed in making a deed and registration of guarantees, then the notary can be said to be not careful in acting. A notary is required by the UJJP Article 16 paragraph (1) letter to act in a reliable, honest, thorough, independent, and impartial manner and to protect the interests of the parties involved in legal proceedings. The notary must use the precautionary principle to safeguard the interests of the people entrusted to him¹⁵.

A notary has a moral obligation to uphold the standards of his profession during his duties. The Code of Ethics, a reference available to notaries, functions as a compass for them, providing guidance and ensuring their moral standing in society¹⁶. A notary can be held criminally liable if he violates the Criminal Code (KUHP) while performing his duties and positions, which carries administrative liability and compensation for civil losses¹⁷.

The notary bears a great deal of responsibility when registering fiduciary guarantees *online* because, after completing the form's data entry, the notary must certify that all of the information is accurate¹⁸. That way, the immense responsibility regarding the *online* registration of Fiduciary Guarantees rests with the notary because the Ministry of Law and Human Rights does not re-examine the data inputted by the notary into the *online* registration system. As a result, it is possible in real life for a notary to enter information incorrectly when registering for a Fiduciary Guarantee.

¹¹ Hasil Wawancara dengan Notaris EN di Bekasi pada tanggal 29 Juli 2022.

¹² Richard Lalo, *Loc. Cit.*

¹³ Hasil Wawancara dengan Notaris EN di Bekasi pada tanggal 29 Juli 2022.

¹⁴ Direktorat Jenderal Administrasi Hukum Umum, *Buku Petunjuk Pendaftaran Jaminan Fidusia Online (e-book)*, (Jakarta: Kementerian Hukum dan HAM, 2013), pg. 4.

¹⁵ Luthfan Hadi Darus, *Hukum Notariat dan Tanggungjawab Jabatan Notaris*, (Yogyakarta: UII Press, 2017), pg. 24.

¹⁶ E. Sumaryono, *Etika Profesi Hukum: Norma-Norma Bagi Penegak Hukum*, (Yogyakarta: Kanisius, 1995), pg. 147.

¹⁷ Luthfan Hadi Darus, *Op. Cit.*, pg. 49.

¹⁸ Hasil Wawancara dengan Notaris EN di Bekasi pada tanggal 29 Juli 2022.

There are 3 (three) forms of notary accountability, namely:¹⁹

1. Notary Administrative Responsibilities

The administrative responsibilities of a notary are closely related to the work of a notary. The notary's responsibility will arise if the provisions in the Notary Position Act are not heeded, which will have legal consequences; namely, the deed made by the notary can become an underhand deed, the deed can be cancelled, or the deed is null and void. The existence of administrative responsibility related to the actions of a notary violates the elements that are expressly regulated in the Law on Notary Positions.

When drafting the Fiduciary Guarantee Deed, the notary must consider all of the rules in the Law on Notary Positions. In particular, the deed must be precise when it is created and read so that the parties can correct any mistakes or discrepancies with the information provided.

2. Notary Civil Responsibilities

It is possible to say that someone has broken a contract if they violate the terms of the agreement that has been reached. According to Abdulkadir Muhammad, default means not fulfilling the obligations set in the engagement, both engagements arising from agreements and engagements arising from law. There are 2 (two) possibilities for non-fulfilment of obligations, namely:²⁰

- a. Due to the debtor's fault, either intentionally or by negligence;
- b. Due to force majeure.

Civil responsibility is also closely related to unlawful acts and compensation for actions carried out. According to Article 1365 of the Civil Code, a person who intentionally harms another person is said to have committed an unlawful act. Notary may be liable for mistakes and oversights made while performing their duties.

Seeing the contractual relationship between a notary and a creditor or as a fiduciary recipient, a notary plays a role as an attorney over a fiduciary applicant in registering an *online* Fiduciary Guarantee. The notary can default if they perform an achievement negligently, in which case payment of damages is required [21]. If the notary makes a mistake when registering the fiduciary guarantee *online*, such as a discrepancy between the object data for the fiduciary guarantee contained in the deed and the data *inputted* into the system, which is then printed on the fiduciary guarantee certificate, or a mistake when including the applicant's data, then the notary must make the necessary corrections to the fiduciary guarantee certificate to make up for his errors. The Minister of Law and Human Rights must receive an application for repair of a Fiduciary Guarantee Certificate from a notary as the beneficiary of a fiduciary registrar no later than 30 (thirty) days after the date the certificate was issued, according to Article 9 paragraph (1) and Article 10 of PP Number 21/2015.

Then looking at the non-contractual relationship of the notary with the creditor or fiduciary recipient, the notary can be said to have committed an unlawful act if the making of the Fiduciary Guarantee Deed is not following the provisions for doing the deed, which is regulated in the law. Following Article 16, paragraph (1) of the UJNP, a notary must use the precautionary principle to prevent potential errors or omissions.

3. Notary Criminal Responsibilities

If it is established that a criminal act has been violated, the notary may be held legally, administratively, or criminally liable for the deed he performed. The concept of legality is used to establish the existence of a criminal act, whereas an error is used to establish criminal responsibility²¹. The three (three) forms of notary responsibility in the area of criminal law are as follows:²²

- a. Responsibilities as suspects, defendants, and convicts;
- b. Responsibilities as witnesses;
- c. Responsibilities as experts in providing information and explanations in court proceedings.

It is reasonable to suspect that a notary has committed, assisted in committing, or participated in committing a crime related to the authority of the notary listed in Article 15 UJNP if the deed made by the notary contains elements of a criminal act, causes losses to the parties involved, and is supported by sufficient circumstantial evidence.

¹⁹ *Ibid.*, pg. 57.

²⁰ Abdulkadir Muhammad, *Hukum Perdata Indonesia*, (Bandung: PT. Citra Aditya Bakti, 2017), pg. 241.

²¹ Luthfan Hadi Darus, *Op. Cit.*, pg. 77.

²² *Ibid.*, pg. 79.

According to Articles 263 and 264 of the Criminal Code, a notary who *inputs* information into the Fiduciary Guarantee registration system and later discovers that the information was false may be held criminally liable for the *online* registration of Fiduciary Security. Meanwhile, in making the Fiduciary Guarantee Deed, the notary must correct the deed if there is an error or the deed has not explained the statements of the parties adequately, following Article 48 UUJNP.

The notary may be held accountable if an error is established. Because this can happen when the debtor replaces the guaranteed collateral without the creditor's knowledge, errors in the fiduciary registration, such as incompatibility of the collateral object stated in the deed and the Fiduciary Guarantee Certificate, may exist. However, this does not necessarily mean that the notary is at fault.

CONCLUSION

A notary is permitted to provide legal counselling concerning the creation of a deed. According to Article 15, paragraph (2) letter c of the UUJN, it can be inferred from the above description. A notary's deed has legal certainty and can be used as proof. Based on Section 1 of Article 5 of the UUJF, a Fiduciary Guarantee Deed, a notarial document in Indonesian, is used to impose fiduciary guarantees. A Circular Letter of the Director General of General Legal Administration Number AHU-06.OT.03.01 of 2013 regarding the Implementation of the Electronic Fiduciary Guarantee Registration Administration System was published by the Indonesian government through the Director General of General Legal Administration (*Online System*). When registering Fiduciary Guarantees *online*, a notary acts as a beneficiary of the creditor or fiduciary recipient and as a deed. As a result, there are two legal relationships between the creditor and the notary: a contractual relationship established by the creditor's power of attorney agreement in the Fiduciary Guarantee Deed prepared by the notary; and a non-contractual relationship established by the provision of services rendered by a notary to creditors.

To safeguard the interests of the people entrusted to them, notary must use the precautionary principle when creating Fiduciary Guarantee Deeds and registering Fiduciary Guarantees *online*. The Ministry of Law and Human Rights does not re-examine the data *input* into the *online* registration system, so the data that a notary *inputs* will then be stored in the system and listed in the Fiduciary Guarantee Certificate. As a result, notary have a significant responsibility concerning the *online* registration of Fiduciary Guarantees. The notary must correct the Fiduciary Guarantee Certificate by applying if there was an error in the data input and the certificate had already been printed.

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