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Juridical Analysis Of The Use Of The Company's Shares As An Object Of Fiduciary Guarantee (Research Study In Batam City)

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Abstract. This study aims to analyze juridically the use of the company's shares as an object of fiduciary guarantee in Batam City. The background of this research is rooted in the need for a deep understanding of the effectiveness and security of the company's shares used as fiduciary guarantees, as well as their influence on legal certainty and local economic stability. In Indonesia, the use of shares as fiduciary guarantees is regulated by Law Number 42 of 1999 concerning Fiduciary Guarantees and Law Number 40 of 2007 concerning Limited Liability Companies, but the implementation of this law in the field often encounters various obstacles, especially in Batam City which is a strategic business center. This study uses a qualitative method with a document study approach, in-depth interviews, and field observations to collect data. The subject of this study involves notaries, fiduciary guarantee registration officials, investors, and business actors in Batam. The results of the study show that there are several significant obstacles in the implementation of the use of shares as an object of fiduciary guarantee, which include procedural complexity, variations in notary practices, and limited administrative infrastructure. Despite this, shares are still a trusted and used instrument because of their liquidity and economic value. Based on these findings, suggestions include expanding education and training for notaries to improve understanding and thoroughness in the fiduciary guarantee administration process. The Batam City Government is advised to update and simplify related regulations to support efficiency and legal certainty. In addition, investments in information technology are needed to modernize the registration and document handling processes, which can increase the transparency and speed of the fiduciary assurance process.

Keywords: Juridical Analysis, Company Shares, Fiduciary Guarantee

1. INTRODUCTION

In the era of a dynamic global economy, the need for financing and credit security has become an important aspect in business activities. One common way to obtain financing is through asset collateral, where company shares are often used as collateral. The use of shares as an object of fiduciary collateral is an increasing practice, especially in big cities such as Batam which is a center of trade and business. Batam City, with its strategic position and as one of the gateways to the Indonesian economy, has experienced rapid business development that has driven an increase in corporate financing activities, including the use of shares as collateral. In Indonesia, the use of shares as an object of fiduciary collateral is regulated in Law Number 42 of 1999 concerning Fiduciary Collateral. However, there are challenges and complexities in its implementation, especially related to the recognition of collateral rights over shares, share valuation, and the implementation of the rights of fiduciary collateral holders in the event of default. In the business world, shares are often used as collateral in financial transactions to obtain financing. However, there are challenges in practice, including issues of share valuation, liquidity of shares as collateral, and collateral execution procedures.

Fiduciary guarantee, as¹² regulated in Law Number 42 of 1999 concerning Fiduciary Guarantee,⁷ is a form of transfer of ownership rights of an object based on trust, with the provision that the object whose ownership rights are transferred remains in the possession of the owner of the object. In other words, fiduciary guarantee allows the fiduciary giver (usually the debtor) to continue to control the object used as collateral, even though legally the ownership rights have been transferred to the fiduciary recipient (creditor) as collateral for debt.⁸ Law of the Republic of Indonesia Number 42 of 1999 concerning Fiduciary Guarantees provides a strong legal basis for the use of various objects as objects of fiduciary guarantees, including company shares. According to this Law, fiduciary guarantees can include movable objects, both tangible and intangible, as well as certain immovable objects that cannot be burdened with mortgage rights, as regulated in Article 1.³⁹

Registration of fiduciary guarantees with the Fiduciary Registration Office, in accordance with Article 11 and Article 12³² of the Republic of Indonesia Law Number 42 of 1999 concerning Fiduciary Guarantees, is an important step to ensure legal certainty and publicity of the guarantee. This registration not only provides protection to the fiduciary recipient by giving them priority rights over other creditors, but also provides transparency to third parties regarding the status of shares as collateral objects. This is important to avoid conflicts of interest and ensure that shares used as fiduciary guarantees can be traded or taken over in a clear and open manner, in accordance with applicable legal provisions. Batam City, as one of the important cities in Indonesia that is under a special economic and trade policy, has unique economic dynamics. This condition affects the practice of using shares as fiduciary collateral objects, both from the side of the companies involved and the financial institutions that provide financing. The problems in Batam may be different from other cities in Indonesia due to factors such as the characteristics of the dominant industry, transaction volume, and preference for collateral instruments.³⁷

In practice, the use of company shares as an object of fiduciary collateral is faced with significant implementation challenges, especially related to the valuation and liquidity of the shares used as collateral. Valuation of shares as collateral requires an accurate and objective approach, considering that the value of shares can fluctuate significantly along with changes in market conditions and company performance.² However, the specificity of Batam City also

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¹ D. Y. Witanto. *Hukum Jaminan Fidusia Dalam Perjanjian Pembiayaan Konsumen*, Mandar Maju, Bandung, 2018, hlm. 28

² Marulak Pardede, *Implementasi Jaminan Fidusia Dalam Pemberian Kredit Di Indonesia*, BPHN Departemen Hukum Dan HAM-RI, Jakarta, 2006, hlm. 92

brings certain challenges in implementing the use of company shares as objects of fiduciary collateral. First, regional economic and political fluctuations can have a direct impact on the value and liquidity of shares of Batam-based companies, complicating the assessment and risk management process for fiduciaries. Second, the presence of significant foreign investors and companies in Batam demands greater clarity and legal certainty regarding the use of shares as collateral.

Based on the background description above, the author raises several problems that will be discussed further. The problems are as follows:

1. What are the legal regulations for the use of company shares as objects of fiduciary collateral?
2. How is the implementation of the use of company shares as objects of fiduciary collateral?
3. How is the obstacles and efforts to the use of company shares as objects of fiduciary collateral?

Based on the formulation of the problem stated above, it can be seen that the objectives of this research are:

1. To find out and analyze the legal regulations for the use of company shares as objects of fiduciary guarantee.
2. To find out and analyze the implementation of the use of company shares as objects of fiduciary guarantee.
3. To find out and analyze the obstacles and efforts to use company shares as objects of fiduciary guarantee

2. LITERATURE REVIEW

The definition of guarantee is a form of guarantee where a guarantor (individual) is responsible for fulfilling the debtor's debt as stated in the principal debt. While in banking practice, credit guarantees are referred to as individual/person guarantees, personal guarantees are agreements between creditors and guarantors, where a person binds himself as a guarantor to fulfill the debtor's debt, either because he is appointed by the creditor (without the knowledge or consent of the debtor) or submitted by the debtor on the orders of the creditor. According to Hartono Hadisoeparto, a guarantee is something given to a creditor to create confidence that the debtor will fulfill an obligation that can be valued in money arising from an agreement. Meanwhile, what is meant by a guarantee in providing credit according to Article 2 paragraph (1) of the Decree of the Board of Directors of Bank Indonesia Number 23/69/KEP/DIR dated

February 28, 1991 concerning Credit Guarantees, namely the bank's confidence in the debtor's ability to repay the credit in accordance with what was agreed. Meanwhile, in order to obtain this confidence, the bank must previously provide credit by conducting a careful assessment of the character, ability, capital, collateral and business prospects of the debtor.³

In the context of Indonesian law, objects that can be used as fiduciary collateral are quite broad and include various types of movable and immovable objects, including tangible and intangible objects. Law of the Republic of Indonesia Number 42 of 1999 concerning Fiduciary Collateral explicitly defines the scope of objects that can be pledged, providing great flexibility for fiduciary providers and recipients in conducting financing transactions.⁴ The process of providing an object as a fiduciary guarantee involves the transfer of ownership rights from the fiduciary giver to the fiduciary recipient, but with the provision that the fiduciary giver retains physical control over the object. This means that, although legally the object has become the property of the fiduciary recipient, in practice the fiduciary giver can still use the object for daily operations or business activities, until conditions arise that cause the fiduciary recipient to execute his guarantee. This provision allows flexibility in the use of assets while still providing guarantees to the fiduciary recipient for the credit or financing provided.

Issuing shares is one of the primary ways for companies to raise capital to fund operations or expansion. When a company issues shares in the capital market, investors who purchase the shares effectively provide capital to the company in exchange for ownership of the shares. This allows the company to utilize the funds without having to pay interest as in conventional loans. The capital market and stock exchange serve as the primary platform for buying and selling shares, where the price of shares is determined by supply and demand in the market.⁵ In the context of finance and law, company shares can also be used as collateral in financial transactions, including in fiduciary guarantees. The use of shares as an object of fiduciary guarantee allows shareholders to obtain financing by pledging their shares without having to relinquish ownership or control over the shares.⁶

The legal provisions governing company shares in Indonesia are primarily contained in Law Number 40 of 2007 concerning Limited Liability Companies (UU PT). This law comprehensively regulates the formation, management, and dissolution of limited liability companies, including the rights and obligations of shareholders, types of shares, and other

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³ Salim HS, *Perkembangan Hukum Jaminan Di Indonesia*, PT. Raja Grafindo Persada, Jakarta, 2017, hlm. 7

⁴ Munir Fuady, *Jaminan Fidusia*, Citra Aditya Bakti Bandung, 2011, hlm. 92

⁵ madji, Tjiptono, *Pasar Modal Di Indonesia*, Salemba Empat, Jakarta, 2011, hlm. 281

⁶ Anoraga, Pandji dan Pakarti, Piji, *Pengantar Pasar Modal*, Rineka Cipta, Jakarta, 2012, hlm. 73

related procedures. This law aims to provide legal certainty for stakeholders in a company, including shareholders, directors, and commissioners, as well as other parties transacting with the company. Overall, the legal provisions governing corporate shares in Indonesia are designed to create a balance between the need for companies to raise capital through the stock market and the protection of investor rights. These regulations aim to ensure that companies are managed in a responsible and transparent manner, while allowing investors to make investment decisions based on accurate and complete information.

3. RESEARCH METHOD

Through a descriptive analytical approach, this study aims to examine laws and regulations relevant to fiduciary guarantees and capital markets in Indonesia, including Law Number 42 of 1999 concerning Fiduciary Guarantees and Law Number 40 of 2007 concerning Limited Liability Companies. Analysis of the practice of using company shares as objects of fiduciary guarantees in Batam City, including the method of registration, administration, and execution of guarantees. Identification and analysis of problems or obstacles faced in practice, as well as their impact on legal certainty and economic efficiency.

This study will use a normative legal approach to analyze the laws and regulations relevant to the study. Using a normative legal approach to analyze the existing legal framework and its relevance to the object of the study. Then applying qualitative analysis to data from case studies, interviews, and relevant literature to obtain a real picture of this study by adopting an empirical legal approach.⁷ The location of this research is carried out in the Riau Islands Province, precisely in Batam City. This location is determined based on the data that is the object of this thesis research.

The population is all elements related to the research object. The sample used by the researcher is a random technique to find out for sure related to the research to be studied. As for the sample used by the author is a purposive sampling technique in determining respondents and informants who will be interviewed to meet the primary data needed to complete the research.

¹⁹ Soerjono Soekanto dan Sri Mamudji, Penelitian Hukum Normatif suatu Tinjauan Singkat, Radja Grafindo Persada, Jakarta, 2013, hlm. 47.

4. RESULTS AND DISCUSSION

Legal Regulations on the Use of Company Shares as Fiduciary Collateral Objects

Legal regulations regarding the use of company shares as objects of fiduciary guarantees are primarily regulated in Law Number 42 of 1999 concerning Fiduciary Guarantees and Law Number 40 of 2007 concerning Limited Liability Companies.

a. Law Number 42 of 1999 concerning Fiduciary Guarantees

Article 1 of Law Number 42 of 1999 concerning Fiduciary Guarantees defines fiduciary guarantees as the transfer of ownership rights to objects that remain in the control of the fiduciary grantor. Shares as objects of fiduciary guarantees fall into this category because they are intangible objects whose ownership rights can be transferred while control remains with the fiduciary grantor. Fiduciary guarantees, as regulated in Law Number 42 of 1999 concerning Fiduciary Guarantees, are a legal mechanism that allows the transfer of ownership rights to an object, either movable or immovable that cannot be burdened with a mortgage, to a fiduciary recipient with the object remaining in the control of the original owner or fiduciary grantor. This guarantee is given as collateral for debt repayment, giving the fiduciary recipient a priority position over other creditors.

b. Law Number 40 of 2007 concerning Limited Liability Companies

Article 36 of Law Number 40 of 2007 concerning Limited Liability Companies explains the rights of shareholders, including the right to transfer their shares to others. This is relevant because it shows that shares can be used as an object of fiduciary collateral as long as the shareholder has the right to transfer them. According to this article, shares can be transferred to other parties in accordance with the provisions stipulated in the company's articles of association. This provides shareholders with flexibility to manage their investments and allows for more dynamic share turnover in the capital market. This article also emphasizes that the transfer of shares must comply with the rules stipulated in the company's articles of association, which may include certain restrictions depending on the company's internal policies.

Implementation of the Use of Company Shares as Fiduciary Collateral Objects in Batam City

The implementation of the use of company shares as an object of fiduciary collateral in Batam City, especially as practiced by Notaries, presents several unique dynamics related to the local economic and business structure and existing legal practices. Batam City, with its position as a strategic economic hub close to Singapore, has many companies operating in

sectors such as manufacturing, shipping, and trade. The use of shares as fiduciary collateral in this city by Notaries certainly brings specific challenges and opportunities

- a. The first and most critical implementation is to ensure that Notaries in Batam have a thorough understanding of the applicable legal regulations, especially the Fiduciary Guarantee Law and the Limited Liability Company Law. Notaries must ensure that all fiduciary guarantee deeds involving company shares are prepared in accordance with legal provisions. This includes checking the validity of the shares to be used as collateral, the rights of shareholders to transfer them, and whether all registration requirements have been met. However, in the field, sometimes there are shortcomings in this legal understanding or imperfections in implementing applicable legal provisions, which has the potential to create legal risks for the parties involved.
- b. As one of the critical aspects in the fiduciary guarantee process, the registration of the guarantee must be carried out properly and efficiently. In Batam, the registration process sometimes experiences bureaucratic obstacles that cause delays in the recognition of fiduciary guarantees. This delay can reduce the effectiveness of shares as fiduciary guarantees because in volatile market conditions, the value of shares can change significantly in a short time. Therefore, efficiency in registration and minimizing bureaucracy are areas that need to be improved to ensure that the pledged shares can immediately provide security to creditors.
- c. Notaries in Batam must uphold professional ethics in implementing fiduciary guarantees involving shares. This includes transparency in all transactions, avoiding conflicts of interest, and ensuring that all parties understand the implications of using shares as collateral. However, practice in the field often shows variations in standards of practice between notaries, where not all notaries may have the same standards in terms of diligence and compliance. This can cause legal uncertainty for the parties to the transaction, especially if there is a dispute over the pledged shares.

To address these issues, it is important for regulatory bodies of the legal profession, such as notary associations, to improve and standardize practices among their members. This could include developing more detailed and specific guidelines for transactions involving shares as fiduciary collateral, ongoing training for notaries, and a more stringent oversight system that can check and, if necessary, correct substandard practices. These steps would not only increase confidence in the fiduciary collateral system but also strengthen the integrity and reliability of the financial markets as a whole.

Obstacles and Efforts to Use Company Shares as Fiduciary Collateral Objects in Batam City

The use of company shares as objects of fiduciary guarantee in Batam City faces several obstacles that can affect the effectiveness and efficiency of this practice. These obstacles come not only from legal procedures, but also from economic, social, and technical factors in the area. Following are some of the major obstacles frequently encountered:

a. Legal and Regulatory Complexity

One of the main obstacles is the complexity of the applicable regulations. The Fiduciary Guarantee Law and the Limited Liability Company Law provide the legal framework, but the interpretation and application of these laws are often complex and confusing. Notaries and other related parties may have difficulty interpreting certain provisions relating to fiduciary guarantees, especially regarding registration procedures and the legal requirements for guarantees that must be met. Mistakes in this application can cause legal problems that can potentially invalidate the guarantee or slow down the dispute resolution process.

b. Limited Resources and Infrastructure

In Batam City, the infrastructure and resources to support the registration and management of fiduciary guarantees may not be fully adequate. This includes the availability of information technology systems for efficient data recording and storage, as well as the training of personnel who manage this legal process. These limitations can result in slow processes and excessive bureaucracy, increasing the risk of errors and delaying the implementation of guarantees.

c. Stakeholder Understanding and Awareness

Lack of understanding and awareness on the part of shareholders and creditors regarding the potential and limitations of using shares as fiduciary collateral is also an obstacle. Inadequate education regarding the benefits and risks of fiduciary collateral can result in distrust and unpreparedness in utilizing this instrument. For example, shareholders may be reluctant to pledge their shares due to concerns about the potential loss of control over the investment or lack of information on how to protect their rights in the transaction.

d. Market Fluctuations and Financial Risks

A volatile stock market can make it difficult to assess the value of the stock that will be used as collateral, increasing the risk for both parties. This fluctuation can result in unstable collateral values, putting the lender at risk of not being able to recover the full value of the loan if it were necessary to take possession of the stock. This risk may make

the lender more hesitant to accept stock as collateral, or may require discounts or additional terms that could make it more difficult to use the stock as fiduciary collateral.

5. CONCLUSION AND SUGGESTION

15 Conclusion

Based on the discussion in the previous chapter, the following conclusions can be drawn:

- a. The legal regulation of the use of company shares as an object of fiduciary collateral in Indonesia, regulated in Law Number 40 of 2007 concerning Limited Liability Companies and Law Number 42 of 1999 concerning Fiduciary Collateral, provides a framework that allows shares to be used as collateral in financial transactions. This process involves a legal assessment of the shares to be pledged, the preparation of a fiduciary collateral deed by a notary, and registration of the collateral at the relevant office to provide legal certainty and priority of rights to the fiduciary recipient over other creditors if the debtor defaults.
- b. The implementation of the use of company shares as an object of fiduciary collateral is often faced with a number of challenges that affect its effectiveness as a financial security instrument such as unclear regulations, lack of notary capacity and training, and inadequate registration infrastructure. All of this can slow down the registration and execution process of collateral, as well as increase legal risks for the parties involved.
- c. The use of company shares as an object of fiduciary collateral is faced with various obstacles, including the complexity of applicable regulations, inconsistent practices between notaries, and delays and bureaucracy in the registration process, which together can reduce the effectiveness of shares as safe and fast collateral. In addition, fluctuations in the stock market value increase the risk for creditors and affect the stability of the collateral. To overcome these obstacles, efforts are needed such as improving and simplifying regulations, increasing capacity and training for notaries, and developing technological infrastructure to support more efficient fiduciary collateral registration. Educational campaigns and increasing public awareness of the benefits and procedures for using shares as collateral are also important to reduce legal uncertainty and strengthen trust in the stock-based fiduciary collateral system.

Suggestion

From this conclusion, the author can provide several suggestions, namely:

- a. It is recommended that Notaries in Batam City should proactively improve their skills and knowledge related to fiduciary guarantee procedures and the use of shares as collateral objects.
- b. It is recommended that the public, especially investors and business owners in Batam, should be more active in informing themselves about the mechanisms and benefits of using shares as fiduciary collateral. Increasing awareness can be achieved through participation in seminars and educational activities organized by local governments or financial institutions.
- c. It is recommended that the Batam City Government should take the initiative to improve and simplify regulations related to the use of shares as fiduciary collateral. This could include revising existing regulations to reduce bureaucracy and facilitate faster and more efficient collateral registration. The government should also invest in improving technological infrastructure and human resource capacity in registration offices.

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