SINCRONIZATION OF REGISTRATION PERIOD ARRANGEMENT FOR MOTOR VEHICLE FIDUCIARY INSURANCE REVIEWED FROM LEGAL CERTAINTY PRINCIPLE

By:
Beni Kerista, Herawan Sauni, Tito Sofyan

ABSTRACT

To apprehend and analyse how a period of fiduciary guarantee of motor vehicles in the city of Bengkulu due to differences in the arrangement between the Ministry Of Finance Regulation No. 130/PMK/0.10/2012 with the Government of Regulation No. 21 Year 2015, and synchronisation of registration period arrangements of fiduciary motor vehicle insurance from legal certainty principle. This is an empirical juridical research. The result was: implementation of the regulation period of registration of fiduciary motor vehicle carried out in accordance with the provisions of Article 4 of Government Regulation No. 21 of 2015, which is 30 (thirty) days from the time of manufacture warranty deed fiduciary, but in practice is becoming less effective because there are no provisions on sanctions for violations provisions period referred to. There was unsynchronised arrangement of registration period of fiduciary insurance of motor vehicle in legislation, as the result of Article 4 Government Regulation Number 21 Year 2015 that was different from Article 2 Minister of Finance Regulation of that which in the implementation of Article 2 Minister of Finance Regulation resulting in the inability in conducting one-day service. This was caused by huge number of registrants exceeding facilities and human resources, therefore resulting service that was not maximum and tended to invite illegal extortion.

Keywords: Implementation of Period Arrangement, Fiduciary Insurance of Motor Vehicle.
A. Introduction

Fiduciary insurance is one of material insurances that is recognised in positive law of fiduciary insurance. In order to obtain legal certainty in fiduciary insurance contract at credit contract or debt in Bank and finance environment, Article 11 Constitution Number 42 Year 1999 about Fiduciary Insurance that ask for and obligate to fiduciary insurance registration at fiduciary registration office has made an affirmation.

In fact, registration obligation norm as regulated in Article 11 Constitution Number 42 Year 1999 about Fiduciary Insurance is considered to be weak, because it does not regulate the registration schedule and the deadline of Fiduciary Insurance, and an absence of sanction for infringement/ not conducting Fiduciary Insurance registration. In 2012, Minister of Finance Regulation Number 130/PMK.010/2012 about Fiduciary Insurance registration for finance company that budget customers of motor vehicle with imposed Fiduciary was passed.

Article 2 Minister of Finance Regulation as mentioned above mentions as follows:

Finance Company is obliged to register Fiduciary Insurance at Fiduciary Registration Office at longer than 30 (thirty) days from the date of customer finance contract.

Government Regulation Number 21 Year 2015 about procedure of Fiduciary Insurance Registration and Cost for issuing Fiduciary Insurance Certificate that is passed in fact has different point from Article 2 Minister of Finance Regulation Number 130/PMK.010/2012 deadline of Fiduciary Insurance Registration, in which in Article 4 Government Regulation No. 21 Year 2015 regulates:

Registration application of Fiduciary Insurance which is meant in Article 3 that the registration application should be no longer that 30 (thirty) days since the date of issuing Fiduciary Insurance Certificate process. In addition, it was found that this government regulation did not regulate sanction on infringement/ not registering for Fiduciary Insurance.

Based on the explanation above, therefore, the title of this thesis is: “The Implementation of Registration Period Arrangement of

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1 Tan Kamelo, Hukum Jaminan Fidusia Suatu Kebutuhan yang Didambakan, Alumni, Bandung, 2006, Page 2
2 Article 11 of Law No. 42 of 1999 on Fiduciary Insurance.
Fiduciary Insurance of Motor Vehicle in Bengkulu City”.

B. Research Methodology

The research methodology that was used as the fundamental basis of this thesis entitled: “The implementation of Registration Period Arrangement of Fiduciary Arrangement of Motor Vehicle” can be seen as the following:

1. Type of research

Juridical empirical research is a study of primary data done in order to support secondary data.¹³

2. Research Location

The location of the research was conducted in Notary Office of Bengkulu City, and the Directorate of General Legal Administration, cq. Directorate of General Legal Services, cq. Sub-Directorate of Fiduciary of Ministry of Justice and Human Rights of the Republic of Indonesia.

3. Data Collection Methods

1. Primary Data

Primary data was obtained by researcher from field research directly (observation) associated with variables research through in-depth interviews.

1.1 Deep interview

In-depth interviews are used to collect data relating to legal security of registration period of motor vehicles fiduciary, which is done to:

1) a notary in Bengkulu city,

2) Head of Sub-Directorate of Fiduciary, Directorate of General Legal Services, Directorate of General Legal Administration at the Ministry of Justice and Human Rights.

2. Secondary Data

In addition to data collected through in-depth interviews, it was also conducted secondary data collection which is the data obtained from the study of literature.

This secondary data was obtained from a variety of legal materials, namely:

1. The primary legal materials consisting of legislation, and other legal instruments, namely:

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2. Secondary legal materials, namely the legal materials that provide instructions or explanations of the primary legal materials in the form of books which contents having relevance to the discussion in this study.

3. Tertiary legal material, is materials of other laws which have relevant to the subject matter that provides information about the ingredients of primary and secondary law among other articles, dictionaries, magazines and the internet.

4. Data Analysis Methods
Data analysis method used is qualitative juridical, a method that uses an analysis based on the paradigm of law, legal principles, and theories applicable law, so that it could answer the problems that exist.

C. RESULTS AND DISCUSSION

To determine the settings synchronization period fiduciary motor vehicle registration can be done by examining the constitutional basis of legislation formation of government regulation and the regulation as an instrument of legislation.

Constitutional basis can be interpreted as granting (rules / norms) set forth in the Constitution (Constitution) which is used as the basis for the formation of legislation. The constitutional basis for any kind of legislation to use the term legal basis.

2) Regulations were ordered to be discretionary.

In general it can be further elaborated that in the formation of legislation there are three cornerstone in its formation, the foundation of philosophical, sociological foundation and legal basis.

1) Philosophical Basis Legislation is said to have a philosophical foundation (filosofische grondslag) if the formulation or norm studied philosophical justification. So get alasasn in accordance with the ideals of truth, justice, the way of life (way of life), the nation's philosophy of life, and morality.

Often it is said that the purpose of the Indonesian nation was formed just and prosperous society based on Pancasila. Interest Indonesia nation in the state that are definitely known as a destination country of the premises stated in the fourth paragraph of the preamble to the Constitution of the Republic of Indonesia Year 1945 were grains include:

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5 Ibid.

6 Ibid, Hal. 8.
a) Protecting the entire nation and the country of Indonesia;
b) To promote the general welfare;
c) Educating the life of the nation;
d) Participation establishment of world order based on freedom, lasting peace and social justice

Based on state goals, ideals of law and Pancasila as the political foundation of the law, the establishment of legislation should be based on the principles of nationality based on God, unity and integrity (integrity), equality before the law (equality before the law), non discriminatory, environmentally sound, on the human rights.

2) Platform Sociological A law is said to have a sociological foundation (sociologische grondslag) if its provisions, according to general belief, the community legal awareness, values, and laws that live in the community so that regulations made executable.

3) Basis of Juridical Legislation is said to have a legal basis (rechtsground) if you have any legal basis, the legality or grounding contained in legal provisions ih LEB highest rank. Besides, the juridical basis to question whether the regulations made on the basis of already conducted by the authority.

In drawing up the legislation also worth noting the following principles:

a) Basis of legislation always legislations.

Grounding or basic legislation judicially always legislation and no other law except the juridical basis of legislation. In drawing up the legislation there should be a clear legal basis. Although there are no laws other than the laws but merely used as an ingredient in formulating legislation. Examples of other laws such as customary law, yurisprusendi, and so forth.

b) Only certain legislation that can be used as a legal basis.

Juridical basis drafting legislation that only legislation that is equal or higher and is directly related to the legislation that would be drafted. Therefore it is not possible a legislation lesser juridical basis in drafting the legislation. Then the legislation is not directly related.
also not be used as legal basis of legislation.

c) legislation valid only be erased, removed, or modified by legislation that is equal or higher
With these principles, the very important role of a sort order or hierarchy of legislation and will not reduce the principle decision-makers to perform legal discovery through interpretation (interpretasi, legal development and the refinement of the law against legislation.

d) new legislation put aside old legislation
If there is a contradiction between the legislation are equal, then the enacted legislation is the latest. In practice on the principle ditditerapkan was not easy, because a lot of the legislation that is equal conflicting cargo material but instead are often violated by the parties who have an interest.

e) legislation that higher shelve legislation that lower
In the event of a conflict between the laws of a higher order with legislation that is lower, then the legislation that imposed higher, and the legislation that is lower ruled out

f) legislation that is specifically ruled out legislation of a general nature.
In the event of a conflict between the laws that are specific to the legislation of a general nature are equal level, then imposed is the legislation of a special nature (lex specialis derogat legi generalis)

g) Any type of legislation the charges do not matter.
Each type of legislation cargo materials should differ from each other, which means that the substantive content of legislation is higher (earlier) must not be set back in the legislation is lower. The determination of the substance of the legislation inferior no difficulty if certain material content in the legislation of a higher order clearly delegate to the legislation were lower.

Van der Villes, suggested the establishment of eleven principles of
legislation are good, which is as follows:

1) The principle of clear goals or objectives
Any legislation should clearly reflect the goals or objectives to be achieved. The destination tends to general policies and specific that exist in the field of regulated, both now and for the future to come. Included in this sense is a result (such as a burden on society or country) that would be caused by the legislation.

2) The principle of appropriate organs
Legislation should be made by the appropriate organs, within the meaning of the authorized. Here the related problem of the relationship of correspondence between the substance of the legislation and the form of formal legislation.

3) The principle purposes
Legislation should be made based purposes. Law is not the only instrument to implement a policy or solve the problem, so it is still possible to use another instrument that is more efficient and effective. A law is needed, for example if other instruments will be considered cause greater burden or restrict the rights of citizens fundamental.

4) The principle can be implemented
Legislation was made taking into account the possibility of its implementation. A law are impossible if it caused a strong reaction (rejection) of the majority of society or creating too heavy a burden for the government.

5) The principle of consensus
Legislation is the product of an agreement on the various elements of society in this context, means that the law must be responsive, accommodating the widest possible input from all components of society.

6) The principle of integrity
Legislation should reflect a complete unanimity that contains all the necessary aspects at the time of implementation. Systematic approach in the formation of legislation became the focus of this principle. Thus it would be a contradiction between the provisions of the legislation that, or contradictions with other laws and regulations are higher or equal.
7) The principle of clarity of terminology and systematics
The clarity of a legislation done in various ways, such as making annotations, selecting the right word, and maintain consistency of terminology.

8) The principle can be recognized
Any legislation should basically be known with reasonable by interested parties. This principle is implemented in ways such as the enactment or other publications.

9) The principle of equality before the law
Legislation should not contain provisions that allow for differences in treatment is arbitrary. The difference in treatment is justified only if it is done in the interests of the people or groups distinguished (positive discrimination)

10) The principle of legal certainty
Legislation should ensure legal certainty. This certainty dapatv obtained in several ways, misalny: (1) The rules should be formulated clearly and precisely, (2) amendments must consider both the interests of the people affected by transitional arrangements are adequate and sufficient.

11) The principle of attention to the individual circumstances in the implementation of the law.
At the time of manufacture must be taken into account the specific circumstances that may be encountered in its implementation. In anticipation of such special circumstances, the legislation could be determined: (1) the granting of authority to the administrative apparatus state to make decisions in the face of special circumstances Tadu, (2) giving the possibility to the apparatus of state administration, which will have a direct result of the position law of the parties concerned.

Article 2 of Regulation of the Minister of Finance No. 130/PMK.010/2012 concerning the Fiduciary Registration for Financing Companies conducting Consumer Financing For Motor Vehicles with Impostion Fiduciary as above set as follows:

Finance companies must register fiduciary at Fiduciary Registration Office no later
than 30 (thirty) days from the date of consumer financing agreement.

Article 2 as mentioned above became the answer to the lack of regulation period in Law No. 42 of 1999 and Government Regulation No. 86 of 2000, which is about when he did, and registration deadlines fiduciary, although the object fiduciary regulated limited to motor vehicles.

Then in 2015, it was established and regulated Government Regulation No. 21 of 2015 on Procedures of Fiduciary Registration and Fee of Fiduciary Creation Act which revoked and declared not applicable Government Regulation No. 86 of 2000 on Procedures of Fiduciary Registration and Fee of Fiduciary Creation Act. Arrangements regarding the period for registration of fiduciary insurance in Article 4 of Government Regulation No. 21 Year 2015 on Registration Procedures of Fiduciary Insurance and Fee of Fiduciary Creation Act are as follows:

Application for registration of fiduciary insurance referred to in Article 3 is submitted within a period of 30 (thirty) days from the date of manufacture of fiduciary certificate.

Judging from the scope of the position, Minister Regulation is under Government Regulation, then it is applied the principle of lex superiori derogat legi inferiori in legislation against it, stating that the legislation of low position must not conflict with the laws and regulations of higher position.

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Application for registration of fiduciary insurance referred to in Article 3 is submitted within a period of 30 (thirty) days from the date the deed of Fiduciary.

Judging from the scope of the position, Minister Regulation is under Government Regulation, then it is applied the principle of *lex superiori derogat legi inferiori* in legislation against it, stating that the legislation of low position must not conflict with the laws and regulations of higher position.

Based on the above discussion, by using the principle of *lex superiori derogat legi inferiori*, then the arrangements regarding the period for registration of fiduciary insurance on motor vehicles that was applied is Article 4 of Government Regulation No. 21 Year 2015 regarding Registration Procedures and Fee of Fiduciary Creation Act, which is as follows:

Fiduciary registration application referred to in Article 3 submitted within a period of 30 (thirty) days from the date the deed of Fiduciary.

In the case of managed objects, Minister of Finance Regulation No. 130/PMK.010/2012 set limitedly to fiduciary insurance of motor vehicles, but the principle of *lex specialis derogate legi generalis* cannot be applied toward the Minister of Finance Regulation as referred to in this matter, because this principle applies only to the legislation with equal position, while it is clear that Minister Regulation is not on the same level with Government Regulations, even
though the setting is the same realm
that is on the subject of fiduciary
insurance registration.

D. CLOSING
There are discrepancies in the
regulation regarding the period for
registration of fiduciary insurance of
motor vehicles in the legislation, which
is among the provisions of Article 4 of
Government Regulation No. 21 Year
2015 on Procedures of Fiduciary
Registration and Fee of Fiduciary
Creation Act, with Article 2 of
Regulation of the Minister of Finance
No. 130/PMK.010/2012 concerning
the Registration of Fiduciary Insurance
for Finance Company in the field of
Consumer Financing for Motor
Vehicles with Imposition Fiduciary. In
the context of the rule of law, by using
the principle of *lex superiori derogat
legi inferiori*, instrument of legislation
applicable is the provisions of Article 4
of Government Regulation No. 21
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and Fee of Fiduciary Creation Act.

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