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BUILDING WITHOUT ACCOMPANIED BY LAND RIGHT AS FIDUCIARY COLLATERAL OBJECT

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ABSTRACT

Developing a tourism industry requires substantial funds as business capital. For those who do not possess such funds, they can use a credit facility with collateralfrom the bank. One of the collateral institutions in Indonesia is the fiduciary guaranteewhich is regulated by Law Number 42 of 1999 concerning Fiduciary Guarantee (Fiduciary Law). Based on this Law, buildings can be used as collateral without having to include their land rights. However, there are obstacles in the implementation because to date,proof of ownership of buildings and the occupied land in Indonesia are not separate. This research focuses on the legal certainty of buildings without accompanied by land rights as the fiduciary collateral object. This is normative legal research; legal materials are collected and then analyzed and presented, then further examined to find answers to existing problems. This research concluded that for buildings without land rights to become fiduciary collateral, the government must immediately issue a building ownership certificate /Surat KepemilikanBangunanGedung(SKBG) as mandated by Law Number 28 of 2002 concerning Buildings.

INTRODUCTION

Indonesia lies in a strategic geographical location along with its rich cultural and ethnic diversity which can be utilized as resources and capital to increase the prosperity and welfare of its people, namely through the tourism industry.

Building a tourism industry requires substantial funds as business capital; many that wish to participatedo not possess such funds. In this condition, credit through banking institutions is a legitimate option to fulfill these needs.

In Indonesia, banking and matters related to banking institutions are regulated in Law No.7 of 1992 concerning Banking as amended by Law No.10 of 1998. In Article 1 number 2 of Law Number 10 of 1998 concerning Banking, it is stated that the definition of a bank is a business entity that collects funds from the public in the form of deposits and distributes them to the public in the form of credit and/or other forms in the context of improving public welfare.

Based on the definition of a bank as mentioned above, it can be stated that a bank is an institution that has the main function of collecting public funds in the form of deposits and distributes them to the public in the form of credit and/or other forms. Therefore because of such bank functions, the implementation of prudential principles in banking must be implemented (Aziz, 2019).

Particular attention must be paid to the application of the prudence concept in the distribution of credit funding. Because there is a degree of risk involved in credit funding, the bank must take steps for its security. According to Djuhaendah Hasan, one of the preventive steps in an extreme-risk credit agreement is the presence ofa guaranteewhich can be used as legal protection for banks (Imaniyati & Putra, 2016). Moreover, the function of a guarantee is provided to the creditors in order to maintain the security and the interests of creditors as the owners of capital (Harahap & Hasanah, 2018).

A guarantee is a translation of *zekerheid* or *cautie*, which means the ability of the debtor to fulfil or pay off their submission to the creditor by holding certain objects of economic value as a liability for the loan or debt to the creditor. In the Banking Law Number 10 of 1998 concerning Amendment to Law Number 7 of 1992, a guarantee is defined as collateral. However, in the field of legal science and several laws regarding guarantee institutions, the term guarantee is more commonly used than collateral (Usman, 2008).

Getting collateral will protect the bank position as a creditor by certain objects belonging to the debtor which on an agreed basis are specifically used as a guarantee for funds that have been disbursed. In accordance with the statement of Ross Cranston in Principles of Banking Law: “Security, strictly defined, is an interest in property which secures the performance of an obligation, in our case payment. This in addition to being able to proceed on the person undertaking to repay, the bank as the lender has rights against the property”(Isnaeni, 2016).

Based on the description above, it shows that banks utilize collateral as a last resort for credit payments. Meaning that if it turns out that the main source of repayment of debtor customers in the form of financial results obtained from the debtor's business (first way out) is inadequate, as expected, the result of the execution of the guarantee (second way out) is expected to be the last alternative payment source that can be expected by the bank from the debtor(Nishrina, et al., 2020).

Therefore, as an anticipatory step in withdrawing credit or funding from the debtor, two factors should be considered regarding the guarantee, namely:

a. Marketable, which means that if the guarantee is to be executed, it can be immediately sold or cashed to pay off all obligations of the debtor
b. Secured, which means that credit guarantees can be held in a formal juridical manner, in accordance with legal and statutory provisions. If in the future the debtor defaults, then the bank has the juridical power to carry out an execution(Hidayat, et al., 2019).

A guarantee is a legal institution that generates the legal principles regulated in civil law that has an important position in economic law(Sanusi, 2017).

In Indonesia, there are several material guarantee institutions classified based on the types of objects used as collateral, such as pledge, hypothec, mortgage, and fiduciary.

Fiduciary guarantee that regulated by Law Number 42 of 1999 concerning Fiduciary Guarantee (Fiduciary Law) is expected to complement the existing guarantee institutions. Especially in binding immovable objects that cannot be bound with a mortgage.

Based on Article 1 number 2 and number 4 in conjunction with Article 3 of Law Number 42 of 1999 concerning Fiduciary Guarantee (Fiduciary Law), the objects of fiduciary guarantee consist of two, namely: 1. Moving objects, both tangible and intangible. 2. Objects that are not moving, especially buildings that cannot be bound with mortgage or hypothec (Ida, et al., 2020).Furthermore, the elucidation of Article 3 letter (a) of Fiduciary Law states that "based on Law Number 4 of 1996 concerning HakTanggungan (UUHT), buildings on land owned by other people that cannot be bound with HakTanggungan (Mortgage Rights) can be used as Fiduciary collateral."

Law Number 4 of 1996 concerning HakTanggungan (UUHT) states that fundamentally, a HakTanggungan (mortgage) is limited to land rights that are registered and transferable, namely property rights, cultivation rights, building rights, and usage rights over state land. Buildings or other objects fixed to the land can only be used as a mortgage if they are integrated into the land rights and are explicitly stated in the Mortgage Rights (General Explanation of number 5 and 6 of UUHT).

Based on the explanation above, a building/house can be used as a fiduciary guarantee if the land is not included.In other words, only the building/house can be used as collateral whilethe land cannot.

A fiduciary guarantee is an agreement that follows a principal agreement (e.g., credit agreements, debts, money lending or financing agreements). In this agreement, there are 2 (two) opposing parties, namely the creditor, who after the agreement will be referred to as the fiduciary recipient and the fiduciary provider who can either be the debtor himself or a third party.

The mechanism for binding fiduciary guarantees includes making a fiduciary deed before a notary and the deed is registered at the Fiduciary Registration Office which is part of the General Law Directorate, Ministry of Law and Human Rights, paying the fiduciary guarantee registration fee, and issuing a fiduciary guarantee certificate that contains an executorial title (Njatrijani, et al., 2020).

In principle, any individual or corporation can become a fiduciary provider as long as they have the authority to take legal actions against collateral for debt repayment purposes througha fiduciary guarantee. This is an implementation of the *nemo plus iuris in aliumtransferrepoest quam ipse* principle, meaning thata party cannot transfer a right beyond what is theirs. (Hasbullah, 2005). Likewise, in the case of a building/house being used as a fiduciary guarantee, only the owner of the building/house is recognized as a fiduciary provider.To be recognized as the owner, a person must be able to submit proof of ownership of rights.

Provisions regarding proof of building ownership can be seen in the explanation of Article 8 section (1) letter b of Law Number 28 of 2002 concerning Buildings (Building Law): "Ownership of a building is proven by itsbuilding ownership certificate issued by the Regional Government based on the results of building assessments. In the event of a transfer of building ownership certificate, the new owner is obliged to comply with the provisions regulated in this law."

Although the Building Law has determined the building ownership certificate /Surat BuktiKepemilikanBangunanGedung (SKBG) as the basis for the legal status of building ownership, it has not been realized to date. This is because the Presidential Regulation as an implementing regulation SKBG, as mandated by Law No.28 of 2002 concerning Buildings and Government Regulation No. 36 of 2005 on Buildings, has not been formed.

The absence of the building ownership certificate is what makes building owners, especially owners of buildings erected on land owned by others, encounter obstacles in securing their property through a fiduciary guarantee. Such obstacles can stem from Article 13 of Law Number 42 of 1999 concerning Fiduciary Guarantee (Fiduciary Law) and Article 3 section (2) of the Minister of Law and Human Rights Regulation Number 10 of 2013 concerning Electronic Fiduciary Guarantee Procedures which states thatcollaterals of Fiduciary Guarantee must be registered and the application for fiduciary guarantee must be registered by the fiduciary recipient, his proxy or representative by fulfilling the specified requirements. One such requirement is a fiduciary guarantee deed made by a notarycontaining a description of the collateral that identifies the object and details the proof of ownership.

Therefore, although buildings can normatively and economically be used as collateral without land rights, in practice they still contain legal uncertainty.

METHOD

This research will prioritize the extensive literature study to produce a comprehensive thesis concerning the legal certainty of building without land rights as a fiduciary collateral object. This is normative legal research. The research uses secondary data, which are comprised of primary, secondary,and tertiary legal material.

Primary legal material using Law No.4 of 1992 concerning Housing and Settlements, Law No. 4 of 1996 concerning HakTanggungan (Mortgage Rights), Law Number 10 of 1998 concerning Banking, Law No.42 of 1999 concerning Fiduciary Guarantee, Law No.28 of 2002 concerning Building and Government Regulation No. 36 of 2005 concerning Buildings. The secondary legal materials are in the form of reading materials/books relevant to this research, scientific papers, journals, papers, and research reports related to the topic of this study. Tertiary legal materials or supporting legal materials are to include materials which provide guidance and explanations of primary and secondary legal materials such as general dictionaries, legal dictionaries, scientific magazines, and journals, as well as relevant materials outside the field of law which may be used to support the necessary data in the study. Furthermore, the data were analyzed to test the correctness of the norm based on the existing prescriptive with deductive logic.

RESULT AND DISCUSSION

Proof of Building Ownership

According to Article 1 number (1) of Law Number 28 of 2002 concerning Buildings (Building Law), the definition of a building is a physical form of the result of construction work that is fixed to its spot, is partly or wholly on and/or underground and/or water, which functions as a place to carry out activities, whether for shelter or residence, or religious, business, social, cultural, or special activities.

Article 35 section (2) and (3) of Building Law stipulate that buildings can be erected on land owned both by themselves and by others.

A construction that is carried out on land owned by another party requires a written agreement between the land and the building owner beforehand. Furthermore, in the elucidation of Article 35 section (3) of Building Law, it is stated that:
"A written agreement is an authentic deed containing provisions regarding the rights and obligations of each party, the validity period of the agreement, and other provisions made in the presence of an authorized official. The agreement as referred to above must pay attention to the function and utilization of the building, either in whole or in part."

From the aforementioned provisions, it is known that land and building rights can be owned by two different parties. This is possible because, in Indonesia, the legal relationship between land and objects fixed to it is based on the principle of horizontal separation. According to this principle, land and fixed

objects can legally be recognized as two different objects, and each of which can be owned by different parties.

Because land and buildings according to the law can be owned by different parties, building ownership status can be used as a basis for providing legal certainty and protection for the rights of the building/house owner. Legal protection of one's ownership of buildings is in line with the obligations of local governments in managing buildings for purposes related to construction and utilization.
Rules regarding the building ownership status can be found in Article 8 section (1) of Law No.28 of 2002 concerning Buildings states that each building must meet administrative requirements which include:
a. Land rights status, and/or use permits from land rights owner;
b. Building ownership status; and
c. Building construction permits; according to the provisions of the prevailing laws and regulations.

Right over the land means control over the land-based on a certificate as material evidence of control/land ownership, such as proprietary right, right to use building (HGB), right to cultivate the land (HGU), right to manage, and right to use. Status of land rights ownership may be in the form of a certificate, girik and pethuk letters, deed of sale, and other deed/evidence of ownership.

Utilization permit is basically an approval through a written agreement entered into by holder of right over the land or landowner and building owner.
Building ownership status isevidence of ownership of a building issued by the Regional Government based on building data. In case of transfer of building ownership, the new owner must comply with regulations specified in this law.

A building construction permit (IMB) is a letter of evidence issued by the Regional Government specifying that the building owner may construct the building based on its designated function based on a building technical plan approved by the Regional Government.IMB is often considered by the general public as evidence of a person's ownership of a building. Even though the IMB is only as proof of a person's right to build a building.

Another explanation about the building ownership status can also be seen in Article 12 of Government Regulation No. 36 of 2005 concerning Buildings which states that:
1. Building ownership is proven by a building ownership certificate issued by the Regional Government, except for buildings with special functions appointed by the Government, based on the results of building assessment.
2. Building ownership can be transferred to another party.
3. If the building owner is not the landowner, the transfer of rights as referred to in section (2) must be approved by the landowner.
4. Further provisions regarding the building ownership certificate are regulated in the Presidential Regulation.

According to the aforementioned provisions, building ownership is proven by a building ownership certificate (SKBG) issued by the Regional/City Government based on the results of the building assessment.

To obtain a building ownership certificate, a building must be initially assessed before an application can be submitted to the Regional Government. This initial process includes data collection, which plays a crucial role in enabling the building owner to possess juridical ownership. For this reason, it is necessary to determine the requirements for data collection, which not only includes a building permit, but also the ownership status of the land that is fixed to the building (Badrulzaman, 2015).

If all this time, the proof of ownership of objects fixed to the land (including buildings/houses) is integrated into the land certificate, then the presence of SKBG as proof of ownership rights of a building is a consequence of adhering to the principle of horizontal separation which is expected to provide legal certainty and protection for the owner of the building, especially for buildings erected on the land of another party. The SKBG facilitates building owners in proving their position as such.

As stated by Honore: "It is not enough for a legal system to recognize the possibility of people owning things. There must be rules laying down how ownership is acquired and lost and how claims to a thing are to rank *inter se*'. A legal title to an object of property entails conditions that must be fulfilled for a person to have a claim to an asset" (Hodgson, 2015).

Law is not just a collection or summation of rules that each stands independently. The importance of a legal rule is because of its systematic relationship with other legal regulations (Mertokusumo, 2010).

In order to be able to create legal certainty, according to Bagir Manan's opinion, statutory regulations in addition to meeting formal requirements must also meet other requirements, namely: first, clear in the formulation (unambiguous); Second, consistency in its formulation, both internally and externally. Internal consistency implies that in the same laws and regulations, a systematic relationship must be maintained between the rules, the standard of structure, and the language. External consistency is the harmonization relationship between various laws and regulations; Third, precise and easy to understand language use(Tektona & Roziqin, 2020)

Law No. 28 of 2002 concerning Building Law has stated explicitly about the existence of SKBG as proof of building ownership.However, the SKBG has not been realized to date. This is because organic regulations in the form of Presidential Regulations as mandated by Government Regulation No. 36 of 2005 has not been formed. Therefore, building owners, especially for buildings that are standing on other people's land, do not fully possess legal certainty and protection of rights just yet.

Since the SKBG has not been realized until now, the only proof of building ownership, in particular, which is erected on someone else's land is a land-use agreement made between the building owner and the landowner.

Buildings as Fiduciary Collateral

Fiduciary is defined as a trust-based transfer of property rights, while in Dutch it is called *fiduciareeigendomoverdracht* (FEO). Fiduciary comes from the word *fides* which means trust. In this context, trust means that the guarantor trusts that the surrender of his property is not intended to make the creditor the owner of the property and if the principal fiduciary agreement is settled, ownership of the collateral will return to the guarantor (Yasir.M, 2016).

The existence of fiduciary institutions in Indonesia was first recognized by jurisprudence based on the decision of Hooggerechtsh of (HGH) dated 18 August 1932, in the case of BataafschePetroeumMaatschappij (BPM) against Pedro Clignett.In this case, the parties couldagree other than pledges when itcannot regulate the legal relationship between them. A fiduciary agreement is considered as providing a guarantee and is not equal to a pledge agreement (Fluita & KRH, 2017).

Fiduciary security institution began to be formally referred to in Law number 16 of 1985 concerning Apartment Unit (Sarusun Law), which states that a flat or Sarusun (apartment) can be burdened with a hypothec and mortgage, if the land is property rights or right to use building (HGB) or with Fiduciary if the land is use rights over state land (in accordance with the provisions of Article 12 and Article 13)(Meliala, 2015).

Furthermore, in the elucidation of Article 12 of Law No. 16 of 1985 concerning Apartment Unit (Sarusun Law) stated that fiduciary is in accordance with the purpose of creating the institution by the community to fill the gaps in existing legal provisions. Although it is not regulated in the laws and regulations, fiduciary institutions are justified and confirmed by jurisprudence. With this Law, fiduciary, which is a living legal institution and is in fact required by the community, is confirmed as positive law. Meanwhile, in order to prevent its misuse, the fiduciary imposition is limited to use rights over State land. The fiduciary imposition must also be carried out with the deed of the Land Deed Maker Officer and then registered at the Agrarian Office of the Regency or Municipality concerned. In such registration, the existence of fiduciary is recorded in the land book and the right of use certificate concerned, so that it can also be known by all interested parties.

Recognition of fiduciary as a guarantee institution can also be found in Law No.4 of 1992 concerning Housing and Settlements, based on Article 15 it can be seen that house ownership can be used as collateral through fiduciary security with authentic deeds made by a notary.

Furthermorein the elucidation of Article 15 Law No.4 of 1992 concerning Housing and Settlements stated that house ownership by non-owners of land rights, with the written consent of the owner of the land rights, can be used as

collateral for debts with fiduciary security. Ownership of a house by the owner of land rights, the house can be used as collateral for debt with fiduciary security. House ownership by the owner of land rights, the house and the land can be used as collateral for debt with hypothec.

Based on the elucidation of this article, it can be seen that house can be used as collateral if the land is not included. In other word, only the house that be used as collateral while the land not and the institution that can be used for this purpose is a fiduciary security.

In Indonesia, fiduciary development has reached its peak with the issuance of Law Number 42 of 1999 concerning Fiduciary Guarantee (Fiduciary Law) which was promulgated on September 30, 1999, State Gazette of the Republic of Indonesia Number 168 and Supplement to the State Gazette of the Republic of Indonesia Number 3889. The issuance of Fiduciary Law is an official acknowledgment from lawmakers to fiduciary guarantee institutions, which so far has only received recognition through jurisprudence. Moving forward, fiduciary guarantee institutionsshould be recognized as a form of independent guarantee institution and therefore different from pledges (Satrio, 2007).

Article 1 point 1 of Fiduciary Law states that Fiduciary is the transfer of ownership rights of an object based on trust provided that the object whose ownership right is transferred remains under the control of the original owner. The transfer of ownership rights in the form of a fiduciary is carried out employing a *constitutumpossessorium*(the transfer of ownership without physical interaction), namely the transfer of ownership rights of an object while maintaining physical possession. This means that the fiduciary providerpossesses said object for the benefit of the fiduciary recipient. (Harahap, 2017).In fiduciary, the purpose of transferring ownership rights is solely as a guarantee for debt repayment, not permanently owned by the fiduciary recipient.

Article 1 number (2) of Fiduciary Law, states that:

“FiduciaGuarantee means a guarantee right over movable goods, either tangible or intangible and over immovable goods especially buildings that cannot be encumbered with HakTanggungan (mortgage) as referred to in Law Number 4 of 1996 concerningHakTanggungan (UUHT), which is still under the control of the Fiducia Grantor, as a collateral for the full repayment of a certain debt that gives priority to Fiducia Recipient over any other creditors.”

The definition of goods used as fiduciary objectsis everything that can be owned and transferred, whether tangible or intangible, registered or unregistered, movable or immovable that cannot be encumbered with HakTanggungan (mortgage)and hypothec.”

Article 3 of Fiduciary Law explains the object of fiduciary guaranteeconcerning the scope of effect of Fiduciary Law, which states that this Law does not apply to:

a. HakTanggungan (mortgage) relating to land and buildings as long as the prevailing laws and regulations determine that these objects must be registered to be recognized as collateral;
b. Hypothec for registered vessels with gross contents of 20 (twenty) M^3 or more;
c. Hypothec on airplanes; and pledges.

Furthermore, the elucidation of Article 3 letter (a) states that objects classified as immovable that can become fiduciary collateral are buildings on land owned by other people that cannot be mortgaged based on Law Number 4 of 1996 concerning HakTanggungan (UUHT). If we relate the above explanation to the provisions of UUHT, buildings on lands of other parties that cannot be mortgaged are:

a. Buildings that are bound without their land rights are also being bound. In principle, the object of mortgage rights is land rights;
b. Buildings are erected on land in which its ownership cannot be transferred.

Fiduciaguarantee is an institution of material collateral (*zakelijkzekerheid*) that gives the recipient of Fiduciary priority or precedes the recipient of Fiduciary against other creditors. As material rights (which provide guarantees), the characteristics of material rights are also attached to the Fiduciary guarantee. The Fiduciary Agreement creates zakelijk rights which means that the rights obtained by the Fiduciary recipient (Creditor) constitute a (limited) material right so that it can be defended against anyone. The Fiduciary Agreement does not create full rights for the creditor, because he does not control the object, is not authorized to enjoy the object,only has authority over the object following with the agreed purpose, namely as a guarantee (Kusumaningtyas, 2016).

One of the objectives of the enactment of Law Number 42 of 1999 concerning Fiduciary Guarantee (Fiduciary Law) is to provide legal certainty for relevant parties. This comes in the form of the fiduciary guarantee registration obligation because fiduciary guarantees give fiduciary providers the right to maintain possession of fiduciary collateral based on trust. It is hoped that the registration system regulated in Fiduciary Law can assure certainty to the fiduciary recipient as a creditor who has the right to be prioritized (preferred) and has an interest in the collateral.

Initially, registration for fiduciary guarantee was done manually at the Fiduciary Registration Office which is part of the Ministry of Justice. As legal needs develop in society, the fiduciary service system has evolved from an analog to a digital electronic system.

Government Regulation Number 21 of 2015 concerning Fiduciary Guarantee Registration Procedures and Fiduciary Guarantee Deed Making Fees is the legal basis for the implementation or service of the electronic fiduciary registration (online system). Based on Government Regulation Number 21 of 2015, it is determined that the application for Fiduciary Guarantee Registration is carried out by the Fiduciary Recipient, his proxy or

representative to the Minister through the electronic Fiduciary Registration System, containing:

a. identity of the partiesproviding and receiving Fiduciary;
b. date, Fiduciary Guarantee deed number, name, and domicile of the notary;
c. principal agreement data guaranteed by fiduciary;
d. a description of the Fiduciary collateral;
e. guarantee value; and
f. value of the Fiduciary collateral.

Beforea fiduciary guarantee registration, a fiduciary deed must be made in Bahasa Indonesia by a notary beforehand. This is because the nature of the notary deed isa perfect power of proof.

The affirmation of the fiduciary guarantee agreement with a notary deed by the creators of Fiduciary Law must be interpreted as a compelling legal norm (imperative, not facultative), meaning that if a fiduciary guarantee agreement is made other than in the form of a notary deed, juridically the fiduciary guarantee agreement never exists. This is made clearer when linked to the process of fiduciary guarantee, specifically while registration is carried out at the fiduciary registration office.

Applications for a fiduciary guarantee registration must be accompanied by a copy of the notary deed concerning the imposition of a fiduciary guarantee. The next juridical consequence is a series that is crucial and determines the creation of a fiduciary guarantee.

Provisions regarding the notarial deed regarding the imposition of a Fiduciary Guarantee can be seen in Article 5 paragraph (1) in conjunction with Article 6 (Fiduciary Law), which states that the notary deed concerning the imposition of a fiduciary guarantee must be made in Bahasa Indonesia which contains at least:
a. The identity of the fiduciary provider and recipient;
b. Principal agreement data guaranteed by fiduciary;
c. A description of the fiduciary collateral;
d. Guarantee value;
e. The value of the fiduciary collateral (Kamelo, 2006).

Furthermore, in the elucidation of Article 6 letter (c), it is stated that in describing the fiduciary collateral, it is sufficient to identify the object and detail the proof of ownership.

To date,building ownership certificates have not been issued. Therefore, to make a fiduciary deed for a building/house attention must be paid to the following matters:

a. There is an agreement and/or collective agreement between the land and the building owner which states that the ownership of the building is indeed in the hands of the fiduciary provider as the legal building owner.

b. A Building Construction Permit/IzinMendirikanBangunan (IMB) in the name of the fiduciary provider whose ownership is separate from the land must be attached.
c. There must be an agreement from the owner or land rights holder where the building is built which states that:

1) The fiduciary guarantee for the building in question is approved by the owner or land rights holder;
2) In the event of the execution of thebuilding, the landowner will not intervene.

d. For buildings erected on land with a certificate of management rights,it is emphasized in the Circular Letter of the Directorate General of General Law Administration of the Ministry of Law and Human Rights Number C. HT. 01.10-22 of 2005 that the building could only be subject to fiduciary guarantee on the condition that:

1) There is proof of ownership in the form of a building sale and purchase certificate
2) There is a permit from the party holding the Management Rights
3) There is a statement from the creditor as the fiduciary recipient stating that if the status of the land is upgraded from Management Rights to Ownership, Building Use Rights, or Business Use Rights, the fiduciary recipient must submit an Application for the Abolition of the Fiduciary Guarantee Certificate. (Faridi, 2017)
e. Besides, to avoid risks in the execution of the collateral, it is recommended to accompany the binding of a building/house without land rights with a statement letter from the landowner, stating that the person concerned shall not bind the land on which the collateral is erected to creditors other than the fiduciary recipient(Devita, 2013)
Applications for Fiduciary Guarantee registration are submitted within 30 (thirty) days from the date of the fiduciary guarantee deed creation through the electronic Fiduciary Guarantee Registration System with the web address being: http://ahu.go.id or http: //fidusia.ahu.go.id.

After the applicant pays the registration fees through a perception bank based on the proof of registration, then the fiduciary guarantee registration is recorded electronically. The fiduciary guarantee is created on the same date and a fiduciary guarantee certificate is issued as proof.

The presence of fiduciary guarantee as a material guarantee institution for immovable objects that cannot be bound with mortgage rights is expected to accommodate the needs of building/house owners, especially those established on the land of other parties, to bind their buildings/houses without having to involve the land rights holder.

However, collateral binding for buildings/houses without land rights will always involve the holders of land rights. In other words, whether or not a building/house can be used as fiduciary collateral depends on the land rights

owner. This situation can certainlybe detrimental for the building/house owner because they cannot use their property rights for their interests, in this case, to obtain credit facilities with fiduciary guarantees.

CONCLUSION

According to Fiduciary Law, buildings without accompanied by land rights can be used as collateral, namely through fiduciary guarantee. In practice, there are many obstacles caused by the absence of the building ownership certificate (SKBG) which in the end causes building owners, have to involve the land rights holder for binding the building as fiduciary collateral.As a recommendation, it needs to be immediately formed a Presidential Regulation governing building ownership certificate/SKBG as mandated by Article 12 of Government Regulation No. 36 of 2005 concerning Regulation of Law Implementation Number 28 of 2002.

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