Violation of Human Right for Collateral Fraud in Sharia Financial Institution Based on Fiduciary Guaranty Law and Rahn Law

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Abstract: Fiduciary law in Indonesia and the Islamic concept prohibit the use of collateral that is not one’s own and without the authorization of the owner, but the reality that occurs at BMT BM is not the case. This research aims to analyze the practice of using objects on behalf of others as collateral for ijara multijasa financing in sharia financial institutions from the perspective of Fiduciary Guaranty Law and Rahn Law. This research is a field study with a legal approach. The empirical results show that although it has been regulated in the law, the use of objects that are not owned and without the permission of the owner as collateral still occurs. There is a way to circumvent the rules, particularly when it comes to the creditor’s obligation to register fiduciary objects but reluctance to do so. As a result, protecting third parties is not achieved. The findings indicate that, to ensure that the parties’ rights are still protected, the government must create a legislation on fiduciary that will take into account debtors with tiny nominal debts who feel burdened by the costs of registering fiduciary objects, as was the case in BMT BM.

Keywords: Collateral Fraud; Ijarah Multijasa; Fiduciary Agreement; Property Rights Violations; Rahn Tasjify

Introduction

he pledging of third party property at the Baitul Maal wa at-Tamwil (BMT) BM, Dukuh Branch, Muntilan District, Magelang Regency, is the legal topic under investigation in this study. In this instance, the debtor uses the ijara multijasa contract to apply for financing and provides a Motorcycle Ownership Book (BPKB) in their name but not their ownership as a guarantee. Furthermore, the owner of the motorcycle did not give the debtor permission to pledge it. Due to this, the motorcycle owner is responsible for making any leftover payments if the debtor defaults in order to prevent the BMT from seizing the vehicle.

The concept of fiduciary guarantee in credit is of utmost significance for debtors. Fiduciary guarantees provide an assurance that creditor’s rights will be secured in a debt and credit relationship (Heriawanto, 2019). The registration of fiduciary guarantees yields legal certainty for all parties involved, and additionally, confers preference to the fiduciary recipient over other creditors (Wijaya, 2020). Another vital aspect is that fiduciary guarantees are implemented through constitutum possessorium, whereby the debtor retains control over the object, and only the ownership right is transferred to the creditor (Rufaida & Sacipto, 2019). Consequently, it can be infered that fiduciary guarantees cater to the interests of both parties, that is, the debtor and the creditor. Additionally, if the borrower has a motivation to overstate the asset’s quality, the asset cannot be sold but can be used as collateral instead, making the collateralized loan the most advantageous option (Kang, 2021).

The act of providing financing by creditors to debtors is a fundamental agreement that can subsequently give rise to additional agreements (accessory) in the form of relinquishing objects belonging to the debtor as collateral. In fiqh, this submission of collateral is referred to as rahn. Based on the fatwa on rahn, it is stated that loans by pledging assets as collateral for debts in the form of rahn are permitted with
the provisions regarding *ijarah* contained in the fourth pillar, namely: The amount of maintenance and storage fees for marhun should not be determined based on the amount of the loan (Elimartati et al., 2021).

The financing that is commonly used to fulfill the consumptive needs of the community is *ijarah multijasa*, and its implementation must comply with the provisions of the *ijarah* fatwa (DSN-MUI, 2004; Hasanudin & Yaqin, 2019). With the existence of the fatwa, the *ijarah multijasa* contract is allowed for those who declare their submission to the Sharia Economic Law. Despite being based on Islamic Sharia, the *ijarah multijasa* contract is not immune to potential conflicts between the involved parties. This was demonstrated in a case handled by PA Purbalingga in decision No. 1721/Pdt.G/2013/PA.Pbg. Although the collateral in this case was a shophouse, in reality, the shophouse was not sold to pay off the *ijarah*, but instead, the Sharia bank confiscated the debtor’s fixed assets that had been mortgaged (Lazwardi, 2018).

The realization of fiduciary objects in the event of default often poses a challenge, particularly for unregistered fiduciaries, which consequently denies creditors preferential rights and the executorial title in accordance with the law (Lestari et al., 2020; Sanusi, 2017; Badriyah et al., 2019). This scenario often results in forced withdrawals of fiduciary objects by debt collectors, which may be deemed illegal under Article 1365 of the Civil Code, with the potential for litigation to seek damages (Liono, 2021) The Regulation of the Minister of Finance of the Republic of Indonesia Number 130/PMK.010/2012, Article 3, paragraph 1 clearly stipulates that financial institutions failing to register collateral objects at the fiduciary guarantee registration office will be subject to sanctions (Hadinata, 2021; Ida et al., 2020).

In addition to the issue of collateral execution, fiduciary transactions may encounter another problem, namely the debtor transferring the fiduciary object to a third party without obtaining prior consent from the creditor. Such an act violates the fiduciary agreement and may result in legal sanctions as stipulated in Article 36 of the Fiduciary Guarantee Law. The debtor may face a maximum imprisonment of two years and a fine of up to IDR 50,000,000 (fifty million rupiah) (Sahputra, 2020), or alternatively, the fiduciary may pay the debt in full to the creditor to avoid legal consequences (Sriono, 2019).

In certain instances, credit agreements may utilize third-party objects as collateral with fiduciary guarantees, wherein the object’s owner fulfills the agreement and allows the debtor to use the object as collateral. Thus, in the event of a default, the object can be auctioned and used to repay the debtor’s outstanding debts (Gunawan, 2009). The law of guarantee permits the pledging of objects belonging to third parties, meaning that it is not prohibited. In this regard, third parties are accorded legal protection, both preventive and repressive, when they participate in the process of creating the Deed of Granting Mortgage Rights (APHT) and Power of Attorney to Enforce Mortgage Rights (SKMHT), as well as filing a lawsuit or opposition (Agustina, 2022). Financing problems in Sharia financial institutions occur not only in the *ijarah multijasa* contract, but also in other contracts such as *Murabahah*, due to the customer’s lack of good faith in fulfilling his responsibilities (Tektona et al., 2020).

According to the aforementioned description, the issue at BMT BM is distinct from the issues that occur in the fiduciary agreements in the studies previously mentioned. For this reason, the researcher is curious to learn more about the fiduciary guarantees used for *ijarah multijasa* financing at BMT BM Magelang, which uses collateral objects on behalf of others. I analyze this practice from the standpoint of Islamic law, specifically the theory of *Rahn* law since this case involves Sharia-compliant financial institutions, and from the perspective of Law No. 42 of 1999 concerning Fiduciary (UUJF) since the guarantee provided by the debtor and creditor is fiduciary. As a result, our research can help prevent and address issues that frequently develop when fiduciary objects are transferred on behalf of others (rather than one’s own) in Sharia financial institutions, particularly BMT.

**Literature Review**

**Concept of *Ijarah Multijasa* Financing**

*Ijarah multijasa* Financing is the provision of funds or bills that can be equated with it in the form of *multijasa* transactions. It is based on an agreement between the parties (between the bank and the consumer) utilizing an *ijarah* contract. The customer is required to repay his debts and duties under this
financing in line with the terms of the agreement. **Multijasa Financing** is a type of financial service required by persons who want the advantages of a service in order for the transaction to be carried out in line with Sharia laws. Two traditional contracts, the *Ijarah* and the *Kafalah*, facilitate the implementation of multiservice finance procedurally (DSN-MUI, 2000a). A sharia financial institution (hereafter LKS) must abide by all the rules outlined in the *Ijarah* Fatwa when using an *ijarah* contract (DSN-MUI, 2000b), and it must abide by all the rules outlined in the *Kafalah* Fatwa when using a *kafalah* contract (DSN-MUI, 2000a).

The author will not talk about multiservice financing with a *kafalah* contract because the focus of this research is on multiservice financing with an *ijarah* contract. *Ijarah* is derived from the Arabic *ajara-ya’jiru*, which signifies wages paid for work. The *ijarah* contract is described by the Hanafi scholars as a transaction for a benefit that includes payment or recompense for benefits. The Sufi scholars contend that *ijarah* is a transaction for certain legal advantages. Maliki and Hambali scholars believe that *ijarah* is the possession of the advantages of something that is permitted for a set amount of time in exchange for a set reward. *Ijarah* is therefore seen to constitute the sale of benefits by the majority of fiqh scholars, making leasing of benefits legal (Soemitra, 2019). While the National Sharia Council-Indonesian Ulama Council (hereafter DSN-MUI) fatwa explains that an *ijarah* contract is a contract to transfer ownership of the advantages of a lawful object within a specific time period in exchange for rewards (*ujrah*), without transferring possession of the object itself (DSN-MUI, 2000b).

According to the concept of *Ijarah multijasa* in the DSN MUI fatwa No. 44 of 2004 concerning *Multijasa Financing*, sharia financial institutions provide funds or bills that are equivalent to *multijasa* transactions using an *ijarah* contract based on an agreement between the customer and the sharia financial institution, which requires the customer to pay off his obligations in accordance with the contract (Mubarak & Hasanudin, 2017). *Ijarah multijasa* can be considered a development of an *Ijarah* contract since it allows for the exploitation of consumer demands that Sharia financial institutions have hitherto avoided. At least three parties are engaged in this financing: the customer, who is the service applicant or owner, the financier or cost supplier (sharia financial institution), and the service provider.

Several requirements apply, including others, to fund distribution activities in the form of *multijasa* finance based on *ijarah* (Ifham, 2015):

a. *Ijarah* contracts are a type of multi-service agreement that banks can use for transactions including, among other things, education, health, employment, travel, marriage, and so on.

b. Banks may collect service fees (*ujrah*) or costs when financing consumers who use *Ijarah* contracts for multiservice transactions.

c. The amount of the *ujrah* or fee must be determined up front and expressed in nominal terms rather than percentages.

The following model illustrates the *Ijarah multijasa* finance plan in broad terms:
Collateral in Financing at Sharia Financial Institutions

Banks play a significant part in society’s financial affairs, one of which is granting credit or funding to those in need of money. In this situation, the bank does not freely grant credit or financing, but the debtor is still required to abide by the guarantee and collateral clauses as a way to realize the banking prudential principle in the event that the client ever defaults or does not pay. Following the primary agreement, namely the credit/financing agreement, this guarantee agreement is an ancillary agreement (accesoir) (Winarsih, 2020).

According to J. Satrio, guarantee law is a body of law that governs issues involving guarantees of a creditor’s receivables against debtors. Salim HS states that guarantee law encompasses all legal regulations pertaining to the legal connection between the donor and receiver of collateral and how it relates to the imposition of collateral in order to secure credit or financing facilities (Said, 2004). Collateral can be either moveable or immovable objects, according to Article 1311 of the Civil Code (Sjahdeini, 2000). As specified in the Decree of the Board of Directors of Bank Indonesia No. 23/69/KEP/DIR dated February 28, 1991, concerning Guarantees for Lending, the guarantee in this case can be seen as evidence of the debtor’s capacity and commitment to repay the credit or financing that has been placed in his care.

Collateral has two purposes in finance. First, when the debtor defaults, the guarantee serves as a payment of the loan by being sold or put up for auction. Second, the guarantee serves as a benchmark for calculating how much credit or financing will be extended to the debtor; in this instance, the amount of credit or financing cannot be greater than the item used as collateral. Subekti asserts that the guarantee institution’s responsibility is to expedite and secure the granting of credit. First, good guarantees make it easier for the party in need to obtain credit or financing. Second, good guarantees do not make the party in need of credit or financing less able to carry on with its business. Third, good guarantees give the creditor confidence as the collateral can be executed at any time and is simple to cash out to pay back credit or financing even if the debtor has a poor credit history (Subekti, 1978).

At least five key ideas underpin Indonesia’s application of security law. The first is the principle of publicitet, which emphasizes the need for all rights— including mortgage rights, fiduciary rights, and mortgages—to be registered. The second is the principle of specialitet, which holds that only properties or items that have been registered in a certain person’s name may be subject to mortgages, fiduciary rights, or other obligations. Third, the principle of indivisibility emphasizes that even though partial payments have been made, the division of debt cannot result in the division of mortgage rights, fiduciary rights, mortgages, and liens. Fourth, the inbezittstelling principle explains that collateral must be under the pledgee’s authority. The horizontal principle, which is the fifth, explains that land and structures are separate entities (Hermansyah, 2007).

Fiduciary is one form of collateral that is frequently utilized in financing or credit transactions. Fiduciary, according to Article 1 Paragraph 1 of the UUJF, is the transfer of ownership rights of an object based on trust with the requirement that the object whose ownership rights are transferred remains under the control of the object’s owner. When fiduciary assurances are imposed, not only tangible items but also Intellectual Property Rights (IPR) can be pledged as collateral. Similar to the US, patents are used as collateral to secure substantial amounts of debt financing, and this patent collateral helps finance innovation (Mann, 2018). However, IPRs are still not used as collateral in Indonesia due to the lack of standardized valuation or determination of the nominal value of IPRs, the risk of fluctuations in IPR value, the absence of a market (sellers and buyers) for IPRs, and the processes or mechanisms for using IPR collateral (Mashdurohatun, 2021).

Encumbrances of fiduciary guarantees must be made by notarial deeds and registered both inside and beyond the boundaries of the Republic of Indonesia. The goal of registering a fiduciary guarantee is to receive a Fiduciary Guarantee Certificate that will serve as the foundation for carrying out the fiduciary guarantee’s intended purpose. When a fiduciary security certificate is issued, the debtor, who is the fiduciary grantor, immediately has the right of direct execution (parate executie), or execution without a
court order that is permanently legally binding (hereafter BHT). This is because the fiduciary security certificate has the same legal force as an order from a court (Riansyah et al., 2020).

Every civil agreement generally contains two aspects: the obligatory aspect and the aspect of material delivery. The fiduciary deed of guarantee comprises a fiduciary guarantee agreement that, like other compulsory agreements, exclusively generates rights and obligations for the parties that agree to it. In the meantime, an act of leveraging (i.e., submission) is required to create property rights, which will result in the transfer of property rights from the debtor to the creditor. Due to the constitutum possessorium principle, the actual delivery of the goods does not transfer property rights in a fiduciary guarantee agreement. As a result, the registration of the fiduciary guarantee at the Fiduciary Guarantee Registration Office determines the material aspect of the fiduciary agreement (Rufaida & Sacipto, 2019).

Fiduciary security is referred to as Rahn Tashjil in the fiqh. Rahn Tashjil, also known as Rahn Ta’mini, Rahn Rasmi, or Rahn Hukmi, is used as security for debt with the understanding that the physical collateral, known as the marhun, remains under the control and use of the pledgee (rahin) while only the legal proof of ownership is submitted to the pledgee (murtahin) (DSN-MUI, 2008). Sayyid Sabiq defines Rahn as the act of using an object with property worth in the viewpoint of Shara as security for debt, allowing one to deduct all or part of the debt from the object (As-Sabiq, 1995).

According to Abdurrahman bin Nashir As-Sa’di, the Qur’an’s Surah al-Baqarah verse 283 explains that when we are traveling and make a debt and credit transaction yet are unable to find someone to write the transaction at the time, the transaction may be replaced by collateral that the debtor may hold (As-Sa’di, 2003). In the meanwhile, the hadith also explains: “That the Messenger of Allah bought food from a Jew and lent him his armor” (Hadith narrated by Bukhari and Muslim). The aforementioned hadith serves as proof that rahn existed throughout the time of the Prophet PBUH and was practiced even by him. According to Imam Ash-Shukani, the hadith serves as the foundation for the legality of transacting business with adherents of other religions as long as it is not in contradiction with Islamic law. (Ash-Shukani, 1999).

In this instance, the pillars of rahn are the contracting parties (rahin and murtahin), debt and pledged object (ma’qad ‘alaih), and consent and agreement (sighat) from the two parties to the transaction. If these criteria are met, a contract will be deemed valid (Al-Jazairi, 1993). After the pillars are met, the contract must meet all valid requirements in order to be considered valid. These conditions relate to the parties and require that they are reasonable, intelligent, and not insane and that they understand the contract being carried out. The collateral must truly exist, be real, have value, be halal, be able to be owned and traded, and be able to be used to partially or completely repay rahn’s loan. The collateral is also transferable throughout the transaction, has durability and is not readily damaged, and is legally owned with perfect ownership (Al-Zuhaili, 2005).

The sighat requirements must be specified in a way that both parties to the contract can understand. Hanafiyah scholars demand that the sighat of the pawn be independent of a condition and may occur in the future. Due to the fact that a pawn is comparable to a sale and purchase agreement (Al-Zuhaili, 2005). Scholars other than the Hanafiyah say that a debt must be a debt (marhun bihi) in order for it to be valid, that the obligation must be for money or things that can be repaid, and that the object itself must belong to the one who grants the debt (murtahin) (Syafe’i, 2004).

The rahn agreement may be terminated for a number of reasons, including: when the collateral is returned to the owner; when the debt is fully paid; when the debt is released by the creditor; when the creditor cancels the debt; when collateral is damaged or lost; when collateral is transferred to another party; and when the debtor dies (according to the Malikiyah opinion, rahn may be terminated if the debtor passes away prior to turning over the collateral to the creditor; bankruptcies) (Al-Zuhaili, 2005; Fedro et al., 2019).

Method

This study is field research based on legal research on the facts of human rights violations for collateral fraud in Sharia financial institutions. This research is explanatory (explaining the law),
hermeneutical (interpretation, argumentation), and evaluative (analyzing whether the rules of the Fiduciary Guarantee Law and Rahn’s Law protect the rights of people who are victims of collateral fraud in Sharia financial institutions, or whether they cannot get legal protection). To protect the confidentiality of the institution, the authors obscure the name of the BMT and the source. Research questions are analyzed utilizing Rahn’s legal principles, the Fiduciary Guarantee Law, and pertinent legal information, particularly from normative and reputable sources. Normative sources include legal texts, agreements, general principles of fiduciary guarantee law, and collateral protection. The approach used in this study is a socio-legal approach because this study is a legal study that looks at social reality. This socio-legal approach is used to discover and describe facts related to the problem of human rights violations for collateral fraud in Sharia financial institutions. Data analysis techniques are carried out in stages: data reduction, data presentation, and conclusion. The data validity technique used in this study is source triangulation.

Results and Discussion

BMT BM and the Customer’s Violation of the Rights of the Object’s Owner and the Resulting Legal Repercussions

According to the requirements of the parties to the contract, fiqh muamalah allows for rather flexible clause creation. This is in accordance with fiqh muamalah’s regulations, which state: “The original law in all forms of muamalah is permissible unless there is evidence that forbids it.”

In other words, as long as the legal action does not contradict Islamic Sharia, does not legalize the prohibited, and does not forbid the legalized, fiqh muamalah does not restrict the ability and willingness of the parties to agree on a legal action. The idea of freedom of contract underlies the submission of collateral for financing at Sharia financial institutions; as long as both parties are in agreement, the parties are free to create agreements and decide on issues pertaining to the conditions of those agreements (Nyström et al., 2016).

In an instance of Ijarah multijasa financing at BMT BM, the client was requested to include collateral in the financing application. With the understanding that when the client breaches the contract or defaults, the value of the collateral must be greater than the value of the suggested financing. The guarantee will cover commitments and protect BMT from financial losses (Capponi et al., 2022).

BMT BM is a sharia financial institution engaged in sharia finance which consists of two separate institutions, namely Baitul Mal and Baitul Tamwil. Baitul Mal is a part of BMT BM, which manages ZAISWAF (Zakat, Infaq, Sadaqah, and Waqf) and is active in the social sector. As a result, this institution does not adhere to a profit orientation (tabaruni). The second organization is Baitul Tamwil, a division of BMT BM, which manages community finances for productive purposes and seeks to strengthen and expand the people’s economy; in other words, this organization is profit-oriented (tijari) (Fq, 2022). One type of BMT BM business is to provide financing to the community, either by using the principle of sale and purchase (muroabahah, salam, istishna’), profit sharing (mu'dharabah and musyarakah), the principle of rent (ijarah) as well as providing services to facilitate financing such as wakalah, kafalah, hiwalah, qard, and rahn (Cahyani, 2018). A wide range of products offered by BMT represents a genuine effort to support and accelerate the real sector of the Indonesian economy (Mubarrak, 2018).

Ijarah multijasa is one of the financing options offered to members (clients). One of the initiatives to assist consumers who have difficulty affording rental services is this financing. Ijarah multijasa is a legal term for a contract that takes advantage of another person (party) by giving compensation in the form of a fee (uiroh) in accordance with a decision made by the contract’s parties.

The amount of funding for Ijarah multijasa contracts at BMT the BM Dukuh Branch begins with the consumer requesting financing from BMT. The Pre-contract Customer Service gives members a financing application form to complete, which they then turn in to the BMT head. The BMT checks the completeness of the incoming file requirements, and if there are any gaps, the member is required to fill them out. The file is then analyzed, followed by a location review and survey. After the BMT completes the survey, there are two outcomes: the file will either be rejected or accepted. The contract between the two parties will be
signed after the finance has been approved and agreed upon. The finance money is distributed and supplied to members after both parties reach an agreement and sign the ijab qobul. Every month, members are required to pay installments with a profit of about 2% of the entire payment value. This is known as monitoring finance, which entails a number of actions to track the progress of the business development process from the moment financing is provided until it is repaid. The first party, which is BMT, holds the members’ provided collateral during the financing period. The collateral may take the form of BPKB vehicles, deposits, land certificates, and other assets (Fq, 2022).

One of the most intriguing cases of Ijarah multijasa financing at BMT BM was carried out by the debtor (called Mrs. Ntl), who presented collateral for financing in the form of a BPKB (Motor Vehicle Owner Book) motorcycle on behalf of Mr. Hb (the debtor’s brother). The customer will repay the financing over the following 5 (five) months with an ujroh (wage/fee) of IDR 750,000.00. The loan value is IDR 5,000,000.00 (Akad Ijarah Multijasa No. 022102000099/IMJ/BMTBIMA, 2021). It was discovered that the debtor did not legally own the collateral presented on behalf of Mr. Hb (no ownership transfer from Mr. Hb to Mrs. Ntl was ever completed), and Mr. Hb, who was the rightful owner of the motorized vehicle used as collateral, was unaware of the financing. But once the debtor faltered and escaped, Mr. Hb, who was the motorcycle’s owner, was forced to pay back the financing on Mrs. Ntl’s behalf. Hb, ‘Personal Interview’ (Magelang, 2022).

In this instance, the author focuses on the debtor’s surrender of collateral, known in Islam as Rahn Tasiyil. A contract is said to be nafiz (a valid contract that can result in the imposition of legal consequences because it satisfies the requirements for the imposition of legal consequences) if it satisfies all four requirements: the requirements for the formation of the contract, the requirements for its validity, the requirements for the imposition of legal consequences, and the requirements for the binding nature of the contract (Anwar, 2007).

The aforementioned instance demonstrates that the prerequisites for the contract’s formation—more specifically, the rahn pillars—have been met. Both parties are tamyiz, there are several parties, there is an agreement, there is majlis unity, the purpose of rahn can also be given to BMT by Mrs. Ntl, and the contract’s specific goal—the BPKB motorcycle—is clear. Because it has monetary worth and a purpose that is not in conflict with the Sharia, the contract’s object can be transacted. The next prerequisite is the legality of the contract, which is a requirement to fulfill the conditions for the contract’s formation. It has the condition that the delivery of the object does not contain elements of gharar, does not result in losses, does not contain elements of fasid, and does not contain elements of usury. The rahn agreement between Mrs. Ntl and the BMT is legitimate at this point since it satisfies the pillars, conditions of formation, and conditions of validity.

A contract must meet the requirements for legal effect in order to be considered valid. A valid contract must meet two requirements, namely the existence of perfect control over the contract’s object and the existence of authority over the legal actions committed, in order to be able to carry out the legal repercussions. In this case, the requirement for authority over the legal actions taken has been satisfied because both parties are legally able (tamyiz and adults), but the requirement for perfect authority over this object has not been met because Mrs. Ntl’s handing over the rahn to BMT was not her own and she lacked the authority from the owner to transact. At this point, it can be said that Mrs. Ntl’s actions were valid but maukuf, which means that the legal repercussions of the action cannot be put into effect. Consequently, this contract does not achieve a binding contract because it is maukuf. In this case, when Mrs. Ntl is unable to carry out her obligations (pay back to BMT), the rahn object cannot be executed and the owner of the BKPB pledged by Mrs. Ntl is not obliged to bear the losses caused by the maukuf agreement/contract.

Actually, the BMT already has provisions relating to collateral. This is stated in the contract that was signed by both parties, and it states that the collateral is in the form of a certificate as proof of ownership of land rice fields along with buildings and plants attached to it and/or BPKB motorized vehicles as proof of ownership of the vehicle. This is in accordance with Bank Indonesia Determination No. 23/69/KEP/DIR dated February 28, 1991, regarding Credit Guarantees, which explains that collateral is something
provided by the debtor as proof of debtor’s ability to fulfill the financing that has become the responsibility of creditor (Akad Ijarah Multijasa No. 022102000099/IMJ/BMTBIMA, 2021).

Since the BMT recognizes that the collateral object does not need to have a certificate of ownership, what really occurs violates the applicable regulations (Fq, 2022). Yet, to be used as collateral, the vehicle owner should include a deed of sale or purchase or power of attorney from the owner of the vehicle to ensure that this does not harm other parties. In reality, it is perfectly reasonable if the owner of the vehicle does not have BPKB in his own name because sometimes they do not transfer the name.

According to a fiduciary standpoint, Mrs. Ntl’s submission of collateral to BMT is a result of financing, thus as the beneficiary of the financing facility, Mrs. Ntl must transfer the ownership rights to an item that she owns to guarantee that she will fulfill her payment obligations to BMT. The collateral item is actually just a way for BMT to prepare for Mrs. Ntl defaulting (Prasetya et al., 2019).

Article 1 paragraph (1) of Law No. 42/1999 on Fiduciary Guarantee (UUJF) explains that fiduciary is the transfer of ownership rights of an object on the basis of trust with the provision that the object whose ownership rights are transferred remains in the possession of the owner of the object. The article emphasizes that the object used as collateral must be the property of the fiduciary.

In Article 1 paragraph 5, which indicates that the fiduciary grantor is an individual or business that owns the object of the fiduciary guarantee, the ownership of the fiduciary grantor is also reaffirmed. As a result, since the item does not belong to the fiduciary grantor, the agreement is void because it does not satisfy its objective conditions. To protect the interests of the receiving party, items that are subject to fiduciary assurances should also be registered with the fiduciary registration office. Without the knowledge of the fiduciary recipient, the fiduciary grantor may assign the asset that has been saddled by fiduciary to another party.

Although Article 30 of the UUJF states that the fiduciary is required to give up the object of the fiduciary guarantee in the context of carrying out the fiduciary guarantee, the UUJF does not specifically address criminal sanctions related to objects encumbered by fiduciary guarantees that do not belong to the fiduciary. The motorcycle was therefore supposed to have been given to BMT when Mrs. Ntl, the debtor, defaulted, but because the motorcycle did not belong to the debtor, the transfer could not be completed.

Article 21 of the UUJF allows the debtor to submit a fiduciary object in the name of Mr. Hb that is equal in value to the motorcycle, but the debtor failed to do so and fled, leaving the object owner to face the loss. This occurrence is quite likely to happen since Sharia financial institutions do not register fiduciary objects as required by law. In the end, third parties—the owner of the pledged item—suffer losses at the hands of the two parties (creditor and debtor), who each have a stake. Aside from having to specify the fiduciary receiver and grantor, fiduciary registration is also costly, which might have an impact on the loan’s value. This rationale has been demonstrated in Singapore, where the judicial imposition of fiduciary obligations in an en bloc selling procedure leads in an increase in the price of this unit compared to a single unit that is not subject to an en bloc registration (Hu et al., 2022; Yahya et al., 2023).

In the author’s perspective, because the owner of the motorcycle is not involved (not consented) in the financing agreement, it is not possible to impose a default on the owner of the collateral object. Instead, BMT can file a lawsuit with the Religious Court to seize Mrs. Ntl’s other assets in order to fulfill its debts in accordance with article 1131 of the Civil Code, which states that “All movable and immovable property belonging to the debtor, both existing and future, become collateral for the debtor’s individual obligations.” Thus, in accordance with this clause, all of Mrs. Ntl’s assets automatically become collateral for the financing agreement that has been formed with BMT BM.

**Conclusion**

BMT BM’s practice of encumbering fiduciary collateral with the debtor is not a full right of ownership, although BMT BM’s contract document requires legal ownership of the collateral object, in practice the debtor uses third party BPKB collateral that does not know about the encumbering collateral. According to Islamic law, this is against the principle of *rahn tasjily*, which states that if an object is not
possessed, the owner must grant permission or authorization for it to be used as collateral. The requirement that the object burdened by a fiduciary be owned has also been stressed in Article 1 paragraphs (1) and (5) of the Fiduciary Guarantee Law. Thus, if the debtor pledges an object that does not belong to him, his status is null and void because the objective conditions of the agreement are not met. The findings of this study suggest that, in order to register fiduciary objects in a way that safeguards the interests of creditors and other parties, there is a need to depart from the Fiduciary Law and the Rahn Law. In this situation, the government must establish regulations that take into account debtors with modest sums who feel burdened by the costs of registering fiduciary objects, as was the case in BMT BM, in order to preserve the parties’ rights. The findings of this study call for further investigation into the motives and justifications behind financial institutions’ acceptance of fiduciary guarantees, even when they are not made in the debtor’s name, as doing so may harm third parties (owners of the assets the debtor has pledged).

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