

The Legality of Diplomas as Debt Guarantee in Civil Law (Case Study of RY Pawning His Friend's Two Diplomas)

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Abstract

A diploma is a graduation document of a student or student who has completed his or her study program. In this case, a diploma is a service because its value does not lie in its physical form, but in the meaning and function it has, namely proof that a person has successfully completed a certain educational program. However, in several guarantee institutions spread across Indonesia, there are still many who allow diplomas as an object of guarantee. In fact, the guarantee law is a closed law to protect the parties involved and is also a general guideline so that it cannot be arbitrarily modified. The closure of the guarantee law for the parties involved raises the question of whether the diploma as a guarantee means modifying the guarantee law that has been set by the state. Therefore, the author wants to examine the legality of a diploma as collateral for debt in civil law in order to find out whether the diploma already has a basis in civil law as a guarantee and how to process how to settle in case of default by the debtor who gives the diploma to be detained.

Keywords: Law; Civil; Guarantee; Diploma; Debt.

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INTRODUCTION

The development of the times requires social beings not only to meet basic needs, but also secondary needs (Chiappero-Martinetti, 2024). This increase in increasingly complex living needs has caused a compulsion to borrow funds to finance all living needs for the community (Liu et al., 2024). For people who have various valuables, they can sell their valuables if they face financial difficulties so that these urgent needs can be met (Rabbani et al., 2021). However, the risk of goods that have been sold is certainly no longer his, unless a sale is carried out against the new owner. In this case, the state establishes an institution to overcome these difficulties where the urgent needs can be met without losing valuables (Kayode-Ajala, 2023). This institution is a guarantee institution where people can guarantee their valuables to get funds to meet urgent needs.

Guarantee institutions are a need for a community of economic actors and business actors (Gai et al., 2016). The guarantee law divides two (2) types of guarantee institutions, namely material guarantees and individual guarantees. Material security is a guarantee of something that has specialized in an object, meaning that it enters into material security. Material guarantees are divided into two, namely immovable and movable objects. An immovable object (*onroerende zaken*) is an item that is essentially immovable or immovable. Immovable objects can be secured through the right of dependency. In this case, various immovable objects have been regulated in the Civil Code, namely in article 506. Article 506 of the Civil Code states that "Immovable objects are (1) yards and what is erected on them, (2) mills, except for

what will be discussed in article 510, (3) trees and field crops, whose roots are embedded in the ground: the fruits of trees that have not yet been picked, as well as mining goods such as coal, coal waste and so on, as long as the object has not been separated and dug out of the ground, (4) timber cut from forests and timber from tall trees, as long as the timber has not been cut and (5) pipes and sewers intended for distributing water from the house or yard; and in general everything that is stuck in the yard or glued to the building of the house". Article 509 of the Civil Code states that "A movable object is an object that, by its nature, can be moved or moved". Moving objects are objects that we usually encounter or use every day, such as motor vehicles, jewelry, securities and many more. For movable objects, the process of guaranteeing objects through pawns and fiduciaries can be carried out. Furthermore, individual guarantee (*borgtocht or personal guarantee*) is a guarantee that does not specify what object is used as collateral so that all objects belonging to the debtor who owe can be executed. These two guarantee institutions both guarantee valuables even though the systems are different.

The valuable objects in question are movable and immovable objects that have economic value that can be liquidated to pay off debts. A diploma which is a service is often used as an object of guarantee. For example, the case of the RY perpetrator who pawned the diplomas of his two friends with a total of Rp 9,000,000 (Nine Million Rupiah) at a savings and loan cooperative because he needed money to treat his parents in the village. The perpetrator of RY was finally charged with theft. In this case, civil law is not used as a basis for punishing RY perpetrators because a diploma is a service and not an object that has economic value so that it can be exchanged for money. Therefore, a diploma is not an object of guarantee. But like the case raised in this journal, in fact there are still many people who pawn a diploma to go into debt. Through the closure of the guarantee law, can a service be a guarantee even though modification of the agreement in the guarantee alone is not allowed. Therefore, the author examines how the legal view of diplomas as debt security and how the settlement process in the event of default by the debtor who gives the diploma to be detained.

METHOD

The research in this journal uses normative or doctrinal legal research methods. Doctrinal legal research is also called literature research or document study because this research is carried out or aimed only at written regulations or other legal materials. The regulations and legal materials used in this study are the Civil Code.

RESULTS AND DISCUSSION

Civil Law Views on Diplomas as Debt Guarantees.

Arrangements related to the Guarantee Law as a device are contained in Book II of the Civil Code. The guarantee law divides two (2) types of guarantee institutions, namely material guarantees and individual guarantees. Guaranteeing something that has specialized in an object means entering into material security. In the case of RY who pawned his friend's diploma, it needs to be reviewed based on material collateral. Material guarantees are divided into two, namely immovable and movable objects. An immovable object (*onroerende zaken*) is an item that is essentially immovable or immovable. Immovable objects can be secured through the right of dependency. In this case, various immovable objects have been regulated in the Civil Code, namely in article 506. Article 506 of the Civil Code states that "Immovable things are (1) yards and what is erected on them, (2) mills, except for what will be discussed in article 510, (3) trees and field crops, whose roots are embedded in the ground: the fruits of trees that have not yet been picked, as well as mining goods such as coal, coal waste and so on, as long as the object has not been separated and dug out of the ground, (4) timber cut from forests and timber from tall trees, as long as the timber has not been cut and (5) pipes and sewers intended for distributing water from the house or yard; and in general everything that is stuck in the yard

or glued to the building of the house". Article 509 of the Civil Code states that "A movable object is an object that, by its nature, can be moved or moved". Moving objects are objects that we usually encounter or use every day, such as motor vehicles, jewelry, securities and many more. For movable objects, the process of guaranteeing objects through pawns and fiduciaries can be carried out.

Based on the explanation above, of course, many people think that diplomas are collateral objects in the form of movable objects because of the many pawns that give diplomas as pawn objects. In reality, diplomas do not include objects (objects) that can be used as collateral for debts to any institution. This is because, the object that can be pledged is an object that has a value (price) so that the value (price) can meet all debts of the debtor (borrower). This process is called liquidity which can be carried out through auction or sale to ensure that the value of the collateral can be realized in the form of cash so that it can pay off the debtor's debt. In this case, a diploma is a service and a service cannot be used as an object of debt guarantee. Therefore, a diploma that has no value (price) cannot be used as an object of guarantee. But like the case raised in this journal, in fact there are still many people who pawn a diploma to go into debt.

The view of civil law related to the case of pawning a diploma by RY will not discuss what punishment he should receive, but the legality of the diploma which is a service as a guarantee. In the case of the closure of the guarantee law, a diploma which is a service still cannot be used as an object of guarantee so that the pawned diploma actually contains the right of guarantee by the creditor in it and does not mean that the diploma is the object of guarantee. The right of guarantee by the creditor contained in the diploma is the right of retention owned by the creditor (lender). The legality of the right of retention is contained in Article 1812 of the Civil Code which states that "The power of attorney is the right to withhold everything that belongs to the power of attorney who is in his hands for a long time, until he has been paid in full everything that he can demand as a result of the granting of power". This means that the right of retention is the right of the creditor to withhold everything belonging to the debtor in the hands of the creditor with the aim that the debtor fulfills its obligations or pays its debts or carries out its obligations to the creditor who is given the right of retention.

The existence of this retention right contains the nature of the guarantee in the diploma because of course the owner of the diploma prioritizes the payment of debts to creditors (holders of retention rights) so that the diploma is no longer withheld and can be returned to the holder of the diploma. In this case, the nature of the guarantee in the diploma contains an emphasis on the owner of the diploma to pay the debt before maturity. Because of this, the right of retention gives priority to debt payments to creditors. In the case of the mortgage of his friend's diploma carried out by RY, the only way for the diploma to be returned is to pay the debt to the creditor because in the event of default, the diploma will be in the power of the creditor as long as the debtor's obligations have not been fulfilled in full. Therefore, a new regulation is needed in the form of submitting an Identity Card (KTP) to check the validity and ownership of a diploma at a guarantee institution that uses the right of retention in the form of withholding a diploma as an emphasis for debtors to pay debts. This is done so that debtors cannot arbitrarily give diplomas to guarantee institutions that use this retention right.

Therefore, a diploma is not an object (movable object) that can be used as collateral for debt because it does not have an economic value that can be liquidated to pay off debts. The perspective of civil law related to the practice of pawning diplomas that occur in society is that the guarantee institution (creditor) uses the right of retention, namely the creditor's right to withhold everything belonging to the debtor in the hands of the creditor with the aim of making the debtor fulfill his obligations with a diploma as a matter of pressuring the debtor to carry out his obligations, namely paying off his debt to the creditor. The existence of the right of retention

in this diploma contains the nature of the guarantee in the diploma because of course the owner of the diploma prioritizes the payment of debts to creditors (holders of retention rights) so that the diploma is no longer held and can be returned to the owner of the diploma. Thus, article 1812 of the Civil Code which explains the existence of the right of retention is what provides legality to the nature of the guarantee contained in a diploma.

Settlement Process In Case of Default by the Debtor Who Provides the Diploma to be Detained.

The closure of the Guarantee Law makes it impermissible to modify a guarantee agreement between the parties. This closed guarantee law is to protect the parties and to be a general guideline for the parties who carry out the debt and receivables process using guarantees. General guidelines certainly should not be arbitrarily modified for the parties implementing the agreement so that they can only be opened (modified) by the state. In this case, if there is a debtor who has defaulted, then it is in accordance with the guarantee law that the object of the guarantee can be executed through 3 (three) things. First *Parate Execution* regulated in Article 1155 Civil Code which states that "If the parties who promise do not agree otherwise". Moreover *Parate Execution* is also regulated in Article 1178 Civil Code. *Parate Execution* It is an execution that can be carried out by creditors without asking for court assistance or the process of placing collateral. The right of execution that is always ready according to its name "*paraat*" which means that the right is ready in the hands of creditors to be exercised. Second *Executive Title* which confirms the existence of executory power on the certificate of dependent rights and the fiduciary guarantee certificate which makes the object of the guarantee ready to be executed if the debtor defaults, just like a court decision that has permanent force. The chief judge will give an order to the debtor to fulfill his obligations and if the debtor ignores the order, then the chief judge will give an execution fiat and order the confiscation of the object of the security to be auctioned in order to obtain repayment for the creditor's receivables. Third, the sale under hand for the pledge collateral whose execution of the pawn is carried out in public if they make an agreement.

For retention rights in the form of objects that have economic value, such as tables, refrigerators, cabinets and so on that are often withheld by boarding house owners (creditors) against boarding house tenants (debtors) who do not pay, then these objects can be resold if indeed the debtor does not pay off the debt at all. However, in terms of using the nature of guarantee in a diploma, it should be noted that the nature of the guarantee can occur if the owner of the diploma enters into a debt and receivables agreement by giving the diploma to be detained (Right of Retention). Creditors in this case can emphasize the owner of the diploma who is the debtor to pay off the debt. If there is a default, then the diploma can be executed according to the wishes of the creditor. In this case, the creditor who executes the diploma can damage the reputation of the diploma owner by revealing the debt problem to the mass media so that it makes the reputation of the diploma owner fall and can hinder his career or education opportunities. Therefore, in the case of pawning diplomas carried out by RY who pawned the diplomas of his two friends with a total of Rp 9,000,000 (Nine Million Rupiah) in this savings and loan cooperative, the ones who were afraid were certainly the two people whose diplomas were pawned. For the perpetrator of RY, he does not have the fear of pressure from creditors regarding the diploma he pawned because the two diplomas do not belong to him. Therefore, his two friends whose diplomas were mortgaged were then the ones who had to pay the debt of RY that he had borrowed from the savings and loan cooperative so that the two diplomas were returned to the owner.

Based on the above statement, according to the author, it is unfair if the person who pays the debt is the party whose diploma has been stolen and then pawned. But unfortunately, there are no rules related to the settlement process in the event of a default on the guarantee with the right of retention in the form of diplomas or securities, so it is quite confusing for the guarantee

institution that provides the right of retention in the form of the detention of the diploma. Therefore, a form of settlement is needed for the default settlement process for debtors who pledge a diploma and rules are needed to prevent cases of pawning other people's diplomas in the future.

1. Proposed Default Settlement Process for Debtors Who Give Diplomas to Hold.

The absence of rules related to the process of resolving defaults on guarantees with retention rights in the form of diplomas or securities is quite confusing for guarantee institutions that provide retention rights in the form of diploma retention. Although a diploma is not an object of guarantee, the existence of this retention right gives rise to the nature of the guarantee on the diploma so that it is also necessary to have rules for the execution of guarantee in this matter if the debtor defaults. There are three (3) given in this article. The first proposal is to resolve it by conducting consensus deliberations between the parties (creditors and debtors who give their diplomas) after a default. In this case, the guarantee institution and the debtor can directly communicate and find a mutually beneficial solution for the parties, such as if a late penalty is required if the due date is required. This can also benefit both parties because the late fines agreed upon by consensus can motivate the debtor to fulfill his obligations on time, while the guarantee institution still gets compensation for the delay. Therefore, a balance can be created between the interests of the guarantee institution and the debtor to comply with the debt agreement properly. The second proposal is through mediation which is a process in which a neutral third party, namely the mediator. In this case, the mediator can help the parties to reach an agreement after a default. The last proposal can be made if consensus deliberation and mediation do not result in an agreement so that the settlement of default can be carried out through arbitration. In this case, arbitration is an out-of-court method of resolving defaults where the parties agree to appoint an arbitrator who decides how to settle the default.

2. Proposed Rules Related to the Prevention of Cases of Pawning of Other People's Diplomas.

In terms of preventing the case of pawning the diploma carried out by RY who pawned the diploma of his two friends with a total of Rp 9,000,000 (Nine Million Rupiah) at the savings and loan cooperative so that it does not happen again in the future, stricter rules are needed for guarantee institutions that provide retention rights in the form of diploma detention. There are three (3) proposals that can be applied to guarantee institutions that provide retention rights in the form of diploma detention so that no party feels disadvantaged. The first proposal is to verify the identity of the diploma holder. In this case, the guarantee institution should carry out stricter identity verification related to diploma ownership. This is by comparing the data on the Identity Card (KTP) and the data on the diploma. This is useful to ensure that the diploma used as collateral really belongs to the debtor concerned. The second proposal is to use digital technology in comparing data on Identity Cards (KTP) and data on diplomas so that there is no need to rely on manual checks that are prone to errors. The last proposal is to implement a compensation scheme contained in civil law for debtors who pawn other people's diplomas. As is known, the compensation scheme in civil law is very large. In this case, it is hoped that with the implementation of the compensation scheme in the case of pawning someone else's diploma, it can provide a deterrent effect for debtors who try to pawn someone else's diploma so that the legitimate diploma owner can be protected and ensure that the guarantee process runs smoothly.

Thus, these proposals are expected to provide a default settlement process for debtors who give their diplomas to be detained and prevent cases of pawning other people's diplomas in the future. In this case, it is hoped that the guarantee process can run smoothly so that no party feels disadvantaged or involved in problems that they do not cause.

CONCLUSION

A diploma is not an object (movable object) that can be used as collateral for debt because it does not have an economic value that can be liquidated to pay off debts. The perspective of civil law related to the practice of pawning diplomas that occur in society is that the guarantee institution (creditor) uses the right of retention contained in Article 1812 of the Civil Code, namely the creditor's right to withhold everything belonging to the debtor in the hands of the creditor with the aim that the debtor fulfills his obligations with a diploma as a matter of pressuring the debtor to carry out his obligations, namely paying off their debts to creditors. The existence of the right of retention in this diploma contains the nature of the guarantee in the diploma because of course the owner of the diploma prioritizes the payment of debts to creditors (holders of retention rights) so that the diploma is no longer held and can be returned to the owner of the diploma. Thus, article 1812 of the Civil Code which explains the existence of the right of retention is what provides legality to the nature of the guarantee contained in a diploma. Unfortunately, there are no rules related to the settlement process in the event of a default on the guarantee with the right of retention in the form of diplomas or securities, so it is quite confusing for the guarantee institution that provides the right of retention in the form of withholding the diploma. Therefore, the author provides proposals related to the form of settlement for the default settlement process for debtors who guarantee a diploma and rules are needed to prevent cases of pawning other people's diplomas in the future. The author's suggestion regarding the absence of rules related to the settlement process in the event of a default on the guarantee with the right of retention in the form of diplomas or securities is to carry out consensus deliberation, mediation and arbitration. Furthermore, regarding the rules to prevent cases of pawning other people's diplomas in the future, it is necessary to identify diploma ownership, use technology in terms of identifying diploma ownership and implement a civil law compensation scheme for debtors who pawn other people's diplomas.

BIBLIOGRAPHY

- Chiappero-Martinetti, E. (2024). Basic needs. In *Encyclopedia of quality of life and well-being research* (pp. 379–384). Springer.
- Gai, L., Ielasi, F., & Rossolini, M. (2016). SMEs, public credit guarantees and mutual guarantee institutions. *Journal of Small Business and Enterprise Development*, 23(4), 1208–1228.
- Kayode-Ajala, O. (2023). Establishing cyber resilience in developing countries: an exploratory investigation into institutional, legal, financial, and social challenges. *International Journal of Sustainable Infrastructure for Cities and Societies*, 8(9), 1–10.
- Liu, Y., Li, H., & Fang, X. (2024). Who should the elderly borrow money from under formal financial exclusion? Evidence from China. *Economic Analysis and Policy*, 81, 964–982.
- Rabbani, M. R., Ali, M. A. M., Rahiman, H. U., Atif, M., Zulfikar, Z., & Naseem, Y. (2021). The response of Islamic financial service to the COVID-19 pandemic: The open social innovation of the financial system. *Journal of Open Innovation: Technology, Market, and Complexity*, 7(1), 85.
- Dwi Tatak Subagiyo, *Guarantee Law in the Perspective of the Fiduciary Guarantee Law* (Surabaya: UWKS PRESS, 2018).
- Dewi Atriani and Ade Yusuf Yulianto "The Legal Power of Informed Consent in the Practice of Euthanasia in Indonesia", *Legal Treatises*, 20.2 (2023).
- Dina Amanda and Hanafi Tanawijaya, "MOVABLE PROPERTY LAW AS AN OBJECT OF GUARANTEE AND PAWN (MATERIAL RIGHTS) FOR THE REPAYMENT OF DEBTORS DEBTS", *NUSANTARA: Journal of Social Sciences*, 10.1 (2023).

- Ferdiansyah Putra and Muhamad Dicky Putra Irsyam, "Juridical Review of Diploma Detention as Guarantee in Employment Relations", *Justice Pro: Journal of Legal Sciences*, 4.2 (2020).
- Isadora Nathania Edgar and Siti Mahmudah, "Movable Objects of Common Property Assets Without the Consent of One of the Parties", *Notaire*, 6.2 (2023).
- Riau Islands Pedia, "Stealing and Pawning the Diploma of a Boarding Housemate, This Woman in Batam Was Arrested - Kepripedia.com News," 2022 <https://keprimedia.com/curi-dan-gadaikan-ijazah-teman-satu-kos-wanita-di-batam-ini-ditangkap/#google_vignette> [accessed June 3, 2024].
- M. Isnaeni, *Introduction to the Law of Material Guarantees*, (Surabaya: Revka Petra Media, 2016).
- Suparji, *Material Guarantees in Financing*, (Jakarta: UAI Press, 2020).
- Trisadini Prasastinah Usanti and Leonora Bakarbesy, *The Law of Guarantees*, (Surabaya: Revka Petra Media, 2014).
- Zaharullah, "REVIEW OF SHARIA ECONOMIC LAW ON THE MECHANISM OF IMPLEMENTING RAHN AT PT PEGADAIAN SYARIAH MEUREUDU PIDIE JAYA", *HEI EMA JOURNAL*, 3.3 (2024).