

**THE EFFECTIVENESS OF THE IMPLEMENTATION OF GUARANTEE FOREIGNATION IN DEFAULT CASES OF DEBTS AND RECEIVABLES**

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**ABSTRACT:** the implementation of the agreement often does not run smoothly as promised. While the agreement has been made by the parties on the legal basis of the agreed agreement, where there are rights and obligations of the parties. Article 1313 of the Civil Code states: “a covenant is an act by which one or more persons bind themselves to one or more other persons”. The occurrence of a promise injury or default results in the other party being harmed. Before the judge who examines and adjudicates the case and gives the verdict, the parties involved can apply for a security seizure (*convesatoir beslaag*) against an object/property that is the object of the case. The type of research conducted in this study is normative descriptive research. With the study of literature sourced legislation, books, journals, papers related to the title under study.

**Keywords:** *Foreclosure, Default, Debt*

**INTRODUCTION;** in human life as a group in the community of an area called the community, there is an interaction that often occurs in the example of buying and selling, exchanging, renting, debts, loans and so forth. In these activities, there should be an agreement on the achievement that must be fulfilled by both parties to the agreement. Achievement is an obligation that must be fulfilled by the party who achieves what is agreed. Agreement / contract law has several general provisions covering default. Default can occur including in the case of debts, which the debtor (debtor) does not perform the performance or an obligation in the agreement, which arises due to deliberate factors or negligence of the debtor and the existence of compelling circumstances (*overmacht*). The case of default is not regulated settlement so that the problems that occur can be brought before the court which of course in the trial will be intended to get justice for the parties concerned. There is one effort as a guarantor of the interests of the plaintiff during the examination process that the plaintiff can apply for a security seizure as in Article 1131 of the Civil Code. The submission of bail covers all movable or immovable material of the debtor, both existing and future, being a liability for all individual engagements. With the confiscation of guarantees, the defendant will lose his authority to transfer his rights or wealth again, and the confiscation of guarantees is an action to ensure the implementation of civil case decisions that have fixed laws. However, in reality the problems in *sita jaminan* still many obstacles that cause the implementation or laying of *sita jaminan* can not run perfectly. One of the causes is that the execution of the seizure is not in accordance with applicable regulations and the seizure process cannot be declared valid and valuable. Based on the description above, the author is interested to discuss briefly and simply about the bail seizure with the title “**The Effectiveness Of The Implementation Of The Guarantee Seizure In The Case Of Default On Accounts Payable**”

**Problem**

1. Do you know the legal basis of bail and the purpose of guarantee foreignation ?
2. Know the procedure for implementing of guarantee foreignation ?

**Research Methods :** The method used in this study is normative descriptive research. With the study of literature sourced legislation, books, journals, papers related to the title under study. The type of design in this study is descriptive design that is to describe in full all the issues related to the problem under study. The results obtained were analyzed qualitatively to answer the problem formulation.

**Discussion**

**1. The legal basis of bail seizure and purpose of guarantee foreignation**

**A. Legal Basis Of guarantee foreignation**

During the reign of the Dutch East Indies, the legal provisions governing the guarantee law can be examined in Book II of the Civil Code and Stb. 1908 number 542 as telah converted into Stb. 1937 number 190 on Credietverband. The term guarantee law comes from the translation Zakerheidsstelling or Security of Law. The legal basis for the Beslag Conservatoir is contained in HIR Article 227 paragraph (1) jo RBG article 261 paragraph (1) which reads:

“If there is a reasonable supposition, that a debtor, while a decision has not been passed on him or a defeating decision has not been executed, seeking common sense will embezzle or take his goods whether permanent or not fixed with the intention of dropping the goods from debt collectors, then on the request of the person concerned the chairman of the court can give an order, so that the goods are confiscated to maintain the rights of the person who submitted the request, and the requester must be notified that he will face the First District Court trial afterwards to advance and strengthen his claim.”

**B. Purpose Of guarantee foreignation**

The purpose of the main guarantee is that the defendant does not transfer or charge his assets to third parties, one of the objectives of the guarantee is to maintain the integrity of the existence of the defendant's assets during the examination process of the case until the case is obtained with permanent legal force. An item can be executed as a repayment of the defendant's debt, sita conservatoir is a guarantee for the property of the debtor or defendant. Sita conservatoir is a preparatory action from the plaintiff in the form of an application to the court, which is in the form of guarantees for the implementation of civil decisions by freezing the defendant's property. The frozen goods can later be used to carry out court decisions. The seized movable property must be allowed to remain in the hands of the defendant for storage and preservation, or it can also be stored elsewhere, and the defendant is prohibited from transferring the item. With the confiscation of the conservatoir, the defendant as the” owner of the goods " lost his authority over his property. In addition to movable property, conservatoir confiscation can also be filed on immovable property of the defendant. The seizure of immovable property belonging to the defendant is carried out by announcing the seizure of the immovable goods by the local village chief at the place where they were seized. In this case, it can be done to the defendant's movable property in the hands of a third party if the defendant has receivables from third parties.

Measures taken to guarantee the right to the execution of the judgment the plaintiff may file a conservatoir seizure of the defendant's movable property in the hands of a third party.

There are other purposes of foreclosure :

1. Keeping the disputed goods, the goal is that the defendant's property is not transferred to another person through sale or donation. Intended to maintain the integrity and existence of the defendant's assets.

2. So that the defendant is not empty or illusory when the decision is implemented.

When the seizure application is submitted, the plaintiff must explain and show the identity of the goods to be seized, such as the location, type, size, and boundaries. On the application, the court through the bailiff examines and examines the correctness of the identity of the goods at the time when the seizure was carried out. This directly gives certainty over the object of execution if the verdict has permanent legal force.

## **2. Procedures for the implementation of guarantee foreignation**

Described in Article 227 paragraph 3 HIR. The procedure is subject to the provisions outlined in articles 197, 198 and 199 HIR. This affirmation is the same as that provided for in Article 226 paragraph 3 of the HIR which states that the procedures for sita revindication follow the methods and conditions outlined in Article 197 of the HIR. Starting from Article 226 paragraph 3 of the HIR, the procedures and conditions for the implementation of the security seizure with revindication, are subject to the provisions of Article 197 of the HIR as long as the object of the security seizure is movable goods. However, if the object is immovable goods, the provisions of Article 198 of the HIR must be complied with, namely registering and announcing the minutes of seizure at the registration office authorized for it. Therefore, since the procedures for confiscation of revindications are the same as the confiscation of guarantees, the procedures for confiscation described in the revindication sita, apply seluruhnya on the confiscation of guarantees consisting of:

a. Implemented based on the determination of the court. It is stated in the form of a determination letter issued by the chairman of the District Court or the relevant Assembly containing an order to the registrar or bailiff to carry out the seizure of guarantees against the defendant's assets.

b. Confiscation is carried out clerks or bailiffs.

c. Notify foreclosure to the defendant containing the Day, Date, Month, year, and hours and place of foreclosure for the defendant to attend foreclosure, but as has been explained, the presence of the defendant is not a condition for the validity of the seizure.

d. The bailiff was assisted by two witnesses. The name, occupation, and place of residence of the witness in the minutes of the sita the witness must be a resident of Indonesia at least 21 years of age who can be trusted.

e. The execution of the seizure is carried out at the place where the goods are located the bailiff and the witness come at the place where the goods are to be seized, and the invalidity of the seizure is not carried out at the place where the goods are located.

f. Making the minutes of confiscation, the main things that must be contained in the minutes of confiscation guarantee date and number of the letter of determination of the hour, date, day,

month, and year of seizure, name, occupation, and place of residence of witnesses, details one by one type of goods seized, explanation of making the minutes before the seized (if present), explanation of custody of confiscated goods submitted to the seized, and signed bailiff and witnesses.

**Conclusion :** The case of default is not regulated settlement so that the problems that occur can be brought before the court which of course in the trial will be intended to get justice for the parties concerned. There is one effort as a guarantor of the interests of the plaintiff during the examination process that the plaintiff can apply for a security seizure as in Article 1131 of the Civil Code. The purpose of the main guarantee is that the defendant does not transfer or charge his assets to third parties, one of the objectives of the guarantee is to maintain the integrity of the existence of the defendant's assets during the examination process of the case until the case is obtained with permanent legal force.

**Reference :**

- A. Mertokusumo, Sudikno, 1988, *Hukum Acara Perdata Indonesia*, Penerbit Liberty, Yogyakarta.
- B. Muhammad, Abdul Kadir, 1982, *Hukum Acara Perdata Indonesia*, Penerbit Alumni, Bandung.
- C. Purbacaraka, Purnadi dan SoerjonoSoekamto, 1976, *Perihal Kaidah Hukum*, Penerbit Alumni, Bandung.
- D. Prodjodikoro, Wiryono, 1982, *Hukum Acara Perdata Indonesia*, Penerbit Sumur, Bandung.
- E. Raharjo, satjipto, 1979, *Hukum dan Perubahan Sosial*, Penerbit Alumni, Bandung. , 1982, *Ilmu Hukum*, Penerbit Alumni, Bandung.
- F. Saleh, K. Wantjik, 1977, *Hukum Acara Perdata*, Penerbit Ghalia Indonesia, Jakarta.
- G. Soetantio, Retnowulan dan Iskandar Oeripkartawinata, 1986, *Hukum Acara dalam Teori dan Praktek*, Penerbit Alumni, Bandung
- H. Supramono, Gatot, 2013, *Perjanjian Utang Piutang*, Jakarta; Kencana Prenadamedia Group
- I. Harahap, M. Yahya. (1990). *Permasalahan dan Penerapan Sita Jaminan (Conservatoir Beslag)*. Bandung: Pustaka.
- J. Harahap, M. Yahya. (2008). *Hukum Acara Perdata*. Jakarata: Sinar Grafika.