Horizontal Building Separation Based on Government Regulation Number 16 of 2021 concerning Fiduciary Guarantees in Medan City

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Abstract

This study examines the implementation of the horizontal separation principle in the regulation of buildings as objects of fiduciary collateral based on Government Regulation No. 16 of 2021, with a study focus on the City of Medan. This principle allows buildings to be used as fiduciary collateral without having to pledge the land on which the building stands, thus opening up new access to credit facilities. However, the implementation of this principle still faces various obstacles, including low understanding from business actors and financing institutions, as well as limitations in the administrative system and socialization of regulations. The results of the study show that although the Building Ownership Certificate (SBKBG) has been regulated as the legal basis for fiduciary imposition on buildings, its implementation is still not optimal due to limited supporting infrastructure and technical regulations for implementation. This study emphasizes the importance of strengthening socialization, harmonization of regulations, and the readiness of related institutions to ensure legal certainty and the effectiveness of the implementation of the horizontal separation principle in supporting the development of the fiduciary guarantee system. These findings are expected to contribute to the formulation of more inclusive and responsive policies in supporting the property financing sector in Indonesia.

I. Introduction

Regulations regarding buildings as objects of fiduciary collateral in Indonesia have undergone significant developments following the issuance of Government Regulation (PP) No. 16 of 2021 concerning the Implementing Regulations of Law No. 28 of 2002 concerning Buildings. This PP introduces the concept of the horizontal separation principle, which separates ownership between land and the buildings above it, allowing buildings to become objects of fiduciary collateral without having to pledge ownership of the land itself (L. Ginting, 2021). The implementation of this horizontal separation principle is expected to provide convenience and legal certainty in fiduciary guarantee transactions, especially for buildings.

However, in practice, the implementation of the horizontal separation principle still faces various obstacles, particularly in Medan, one of Indonesia's major cities with a rapidly growing property sector. These obstacles stem from various factors, including a lack of understanding and awareness among financial institutions and the public, as well as technical and administrative aspects that are not yet fully supportive. This relatively new regulation requires socialization to ensure comprehensive adjustment and understanding from various relevant parties, including local governments, notaries, banks, non-bank financial institutions, and property developers.

The impact of the implementation of the horizontal separation principle on the clarity of the legal status of buildings as objects of fiduciary collateral in Medan is also an important aspect that requires study. This clarity of legal status is crucial to provide legal certainty and protection for parties involved in fiduciary-secured loans, such as creditors and debtors. If the horizontal separation principle is implemented effectively, it will make it easier for the public to obtain credit facilities using their buildings as collateral.

This study aims to identify the main obstacles faced in implementing the horizontal separation principle in accordance with the provisions of Government Regulation No. This study analyzes the impact of the implementation of the horizontal separation principle on the clarity of the legal status of buildings as objects of fiduciary collateral in Medan City. It then provides recommendations to overcome the obstacles encountered and increase the effectiveness of the application of the horizontal separation principle in Medan City.

This research is highly urgent given the importance of legal certainty in bank credit transactions with fiduciary collateral. By identifying the obstacles encountered in implementing the horizontal separation principle, appropriate solutions can be provided to overcome these obstacles. This will have a positive impact on improving the investment climate and property sector development in Medan City.

Furthermore, this research also contributes to the development of legal science,

particularly in the study of fiduciary collateral and property law. The results of this study are expected to serve as a reference for local governments, business actors, and other relevant parties in formulating and implementing more effective and efficient policies in implementing the horizontal separation principle.

Overall, this research is expected to provide a comprehensive understanding of the implementation of the horizontal separation principle under Government Regulation No. 16 of 2021 and its impact on buildings as objects of fiduciary collateral in Medan City, so that legal certainty and protection can be created for all parties involved in fiduciary transactions.

2. Research Method

This research is an empirical legal study. The data used include primary data, data obtained directly in the field from respondents and informants, and secondary data. This research was conducted by collecting data, both during initial observations to search for phenomena and during the research process. Data analysis was carried out qualitatively, namely by constructing reality and understanding its meaning, thus paying more attention to processes, events, and their authenticity. Qualitative research is essentially aimed at understanding social phenomena from the perspective of participants, and what is studied is the condition of the natural object (T. Erwinsyahbana and Ramlan, 2017).

3. Results and Discussion

The principle of horizontal separation (horizontale scheiding beginsel) is a principle of customary law governing land objects used in Law no. 5 of 1965 concerning Basic Regulations on Agrarian Principles (UUPA) (R. Ramadhani, 2019). This principle separates land from other objects attached to it. Therefore, land and objects attached to it, whether above or below the surface, such as buildings, do not automatically become one entity. Each object has its own legal standing (L. Ginting and M. Meher, 2024). Based on the principle of horizontal separation, a building can be used as a collateral object without having to also pledge the land on which the building stands, namely through a fiduciary guarantee institution (L. Ginting, 2020).

Fiduciary guarantees in Indonesia were initially regulated in jurisprudence and then received recognition in Law No. 16 of 1985 concerning Apartments (UURS 1985). The objects of fiduciary guarantees according to UURS 1985 also include immovable objects. Article 12 paragraph (1) of UURS 1985 states that apartments and the land on which the building stands, as well as other objects that are part of or part of the land, can be used as collateral for debt, with:

1. Burdened with a mortgage, if the land is freehold land or building use rights;
2. Burdened with fiduciary duties, if the land is land with a right of use over state land (L. Ginting, 2022).

The fiduciary institution provisions in the 1985 UURS are still vague, but provide sufficient legal certainty, particularly regarding the definition and object of fiduciary guarantees. Based on the formulation of the 1985 UURS, it can be understood that the objects of fiduciary guarantees are apartments and ownership rights to apartment units built on land with use rights over state-owned land. The fiduciary provisions in the 1985 UURS represent a revolutionary development in guarantee law, among other things, to anticipate development needs so that fiduciary obligations, which were initially only applicable to movable objects, now also cover immovable objects. (Asmaniar and F. J. Sitorus, 2022).

Furthermore, the regulation of immovable property guarantees as objects of fiduciary guarantees can be seen in Law No. 4 of 1992 concerning Housing and Settlements (Housing and Settlements Law 1992). The recognition of fiduciary is stated in the provisions of Article 15 paragraph (1) of the Housing and Settlements Law 1992 which states that home ownership can be used as collateral for debt. Furthermore, paragraph (2) letter (a) confirms that, the fiduciary burden on the house is carried out with an authentic deed made by a notary in accordance with applicable laws and regulations. In the explanation of this article, it is emphasized that home ownership by a person who is not the owner of the land rights with the written consent of the owner of the land rights, can be used as collateral for debt with a fiduciary burden (T. Kamello, 2006).

The 1992 Housing and Settlement Law clearly states that fiduciary security is a security right granted to non-land objects. Therefore, the object of fiduciary security is the house, not the land rights. This demonstrates that the 1992 Housing and Settlement Law adheres to the principle of horizontal separation, which opens the door to the encumbrance of a building, such as a house, without the accompanying land rights (J. Hartanto, 2018).

The presence of Law No. 42 of 1999 concerning Fiduciary Guarantees (UUJF) further emphasizes that immovable objects in the form of buildings can be used as objects of fiduciary guarantees. As seen in Article 1 paragraph (4) of UUJF, what is meant by objects is everything that can be owned and transferred, both tangible and intangible, registered and unregistered, movable and immovable that cannot be burdened with mortgages or mortgages. So the objects of fiduciary guarantees based on UUJF are movable and immovable objects, especially buildings that cannot be burdened with mortgages.

Basically, the encumbrance of a guarantee on an object is the same as the temporary transfer of a right to the object, therefore the provisions of the principle

of transfer of objects apply. Based on the principle of transfer of objects, a person must have the authority to do so, this is the implementation of the principle of "nemo plus iuris in alium transferre poest quam ipse habet" or "a person cannot transfer a right, beyond what is his right". Usually the person authorized to control an object is the owner (A. Fitrian, 2022). Based on the principle of delivery of property, it can be seen that only the owner of the property is authorized to provide collateral. Because buildings are classified as immovable property, written evidence in the form of a certificate of ownership is required as proof of ownership.

This proof of ownership is also required in the process of binding the building as an object of fiduciary guarantee. Based on Article 13 of the UUJF and Article 3 paragraph (2) of the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia No. 10 of 2013 concerning Procedures for Electronic Fiduciary Guarantee, that: "Applications for registration of fiduciary guarantees are made by the fiduciary recipient, his attorney or representative by completing the specified requirements." One of the requirements is a notarial deed regarding the burden of fiduciary guarantees. This is because in Indonesia notarial deeds are included in authentic deeds that have strong evidentiary power (Ajwah, 2023).

Furthermore, based on Article 5 paragraph (1) in conjunction with Article 6 of the UUJF, it states that:

"Notarial deeds regarding the imposition of fiduciary guarantees must be made in Indonesian and must contain at least:

1. Identity of the party granting and receiving the fiduciary obligation;
2. Data on the principal agreement guaranteed by the fiduciary obligation;
3. Description of the object being the object of the fiduciary obligation;
4. Value of the obligation;
5. Value of the object being the object of the fiduciary obligation.

In the explanation of Article 6 letter c of the Fiduciary Guarantee Law, it states that: "The description of the object that is the object of the fiduciary guarantee is sufficient by identifying the object and explaining the proof of ownership." Completeness regarding the description of the object that is the object of the guarantee is a requirement that should indeed exist and be fulfilled, because the purpose of the Fiduciary Guarantee Law is to provide legal certainty for interested parties.

Following the issuance of Indonesian Government Regulation No. 16 of 2021 concerning the Implementing Regulations of Law No. 28 of 2002 concerning Buildings (the Building Law), the Building Ownership Certificate (SBKBG) was introduced as proof of ownership for building/house owners without land rights. However, the implementation of this regulation has not been seen, particularly in the city of Medan.

According to Indonesian Government Regulation No. 16 of 2021, which implements the Building Construction Law and complements Law No. 11 of 2020 concerning Job Creation (Omnibus Law), the Ministry of Public Works and Public Housing (SBKBG) is the Ministry of Public Works and Public Housing. The ministry can delegate its authority to local governments. This regulation also states that buildings without land can be used as collateral by fiduciary security institutions.

a. The Principle of Horizontal Separation (horizontale scheiding beginsel) in Guarantee Law in Indonesia

Land law recognizes 2 (two) principles which are in conflict with each other, namely the principle of vertical attachment (verticale accessie beginsel) which is based on Land Law based on the Civil Code and the principle of horizontal separation (horizontale scheiding beginsel) which is based on Customary Law (S. H. Dwiyatmi, 2020). The principle of horizontal separation is a principle in Indonesian law that separates land ownership rights from ownership rights to objects above or below the surface of the land, for example buildings, plants, petroleum, etc (N. Desi and Herinawati, 2021). Based on this principle, the definition of land only includes the surface of the land so that what is attached to or standing on it and what is contained underneath it are not a single unit but rather separate parts.

The principle of horizontal separation provides a separation between land ownership and what is attached beneath and above the land, so that only what is directly related to the use of the land can be utilized. This limits the authority of land rights owners to utilize the land they own, because the use of what is contained in the land and what is attached to it must be proven to be indeed and only related to the use of the land.

Land and the buildings on it are each registered separately, so that the legal status of the land as a registered fixed asset and the objects attached to it have separate legal status from each other. Therefore, these two objects can be made the object of separate legal acts. In the sense that guaranteeing land does not automatically bind the objects on it. Since land and buildings are separate entities, they are also separate objects of registration. Thus, a distinction can be made between land ownership certificates and building ownership certificates (H. I. W. Utomo, 2019).

b. Legal Certainty of Fiduciary Guarantees with Building Objects

Fiduciary guarantee is a type of material guarantee regulated by Law No. 42 of 1999 concerning Fiduciary Guarantee (UUJF) (K. Mulyadi and G. Widjaya, 2015). Based on Article 1 paragraph (1) UUJF, it is formulated that fiduciary is the transfer of ownership rights of an object based on trust with the provision that the object whose ownership rights are transferred remains in the possession of the owner of the

object. The definition of fiduciary guarantee itself according to UUJF is movable objects, both tangible and intangible, and immovable objects, especially buildings, which cannot be burdened with mortgage rights as referred to in Law Number 4 of 1996 concerning Mortgage Rights, which remain in the possession of the fiduciary provider, as collateral for the repayment of certain debts, which gives the fiduciary recipient a priority position over other creditors. Fiduciary over the building can occur because land law in Indonesia adheres to the principle of horizontal separation (horizontale scheiding). The existence of this principle allows for the separation of ownership between the land owner and the building owner (C. T. S. K, 2017).

Development of regulations governing Fiduciary Guarantees as collateral for property with immovable objects:

1. Law Number 16 of 1985 concerning Apartments (UURS) Article 12 paragraph 1 (b) UUR stipulates that apartments, including the land on which the building stands and other objects that are part of or integral to the land, can be used as collateral for debt by being burdened with fiduciary, if the land is land with a right of use over state land. Furthermore, related to ownership rights over apartment units, these are ownership rights over individual and separate units which also include rights to common parts, common objects, and common land, all of which are an inseparable unit with the unit concerned. Article 13 explains that fiduciary can be burdened if the land is land with a right of use over state land. This legislation has been amended to Law No. 20 of 2011 concerning Apartments.
2. Law Number 4 of 1992 concerning Housing and Settlements clearly states that fiduciary security is a security right granted to non-land objects. Therefore, the object of fiduciary security is the house, not the land rights. This law does not explain the status of land rights. This demonstrates that the Housing and Settlements Law adheres to the horizontal principle, which opens up exceptions to the encumbrance of houses.
3. Law Number 42 of 1999 concerning Fiduciary Guarantees. This law is intended to accommodate the public's need for the regulation of Fiduciary Guarantees as a means to assist business activities and to provide legal certainty to interested parties. The scope of fiduciary guarantees according to the Fiduciary Guarantee Law is broader than before this law was enacted. Now, in addition to movable objects, fiduciary guarantees also apply to buildings that cannot be secured through mortgages (P. Pujiono, 2025). Because pawns, mortgages and sureties cannot accommodate the need for collateral, fiduciary rights can be a solution.
4. Law Number 20 of 2011 concerning Apartments stipulates in Article 48 that the Building Ownership Certificate (SKBG) for an apartment unit is issued by the district/city technical agency responsible for building construction. The SKBG for an apartment unit can be used as collateral for debt with a fiduciary obligation in accordance with statutory provisions. The SKBG for an apartment unit serves as proof of ownership of an apartment unit on state/regional property in the form of land or waqf land through lease.

5. Government Regulation Number 16 of 2021 concerning Implementing Regulations for Law Number 28 of 2002 concerning Buildings. The Building Ownership Certificate, hereinafter abbreviated as SBKBG, is a document proving ownership of the building. The use of the SBKBG as collateral for debt with a fiduciary obligation in accordance with statutory provisions. Further provisions regarding SBKBG are regulated in Regulation of the Minister of Public Works and Public Housing Number 12 of 2024 concerning Building Ownership Certificates.
6. Regulation of the Minister of Public Works and Public Housing Number 12 of 2024 concerning Building Ownership Certificates. Part three, Article 19 of this regulation regulates the Encumbrance of SBKBG Rights, as described in this article:
    a. The encumbrance of SBKBG rights can be realized by utilizing the SBKBG as collateral for debt with a fiduciary guarantee in accordance with statutory provisions.
    b. The use of SBKBG as collateral for debt with a fiduciary guarantee is exempt from BGN (state buildings).
    c. SBKBG used as collateral for debt must be registered with the ministry that administers government affairs in the legal sector.
    d. SBKBG must be registered and recorded in the Building Management Information System (SIMBG) by attaching the registration application documents.
    e. The registration application documents include: a. Applicant's identity; and b. Fiduciary guarantee certificate.
    f. If the application data and documents are declared complete and appropriate, the Technical Service will validate and issue the SBKBG after the registration of the encumbrance.
    g. The Technical Service will submit the SBKBG to the Licensing Service through SIMBG.
    h. The Licensing Office will print and submit the SBKBG, which has been recorded as an encumbrance, to the applicant.
    i. Registration will be carried out no later than 4 (four) working days after the applicant submits the SBKBG to the Licensing Office.

Regulation of the Minister of Public Works and Public Housing Number 12 of 2024 (PUPR Regulation 12/2024) concerning Building Ownership Certificates (SBKBG) is a crucial step in providing legal certainty for buildings that do not own their own land. This legal basis provides a strong foundation for implementing the horizontal separation principle in Government Regulation 16/2021, particularly in the context of fiduciary guarantees for buildings.

c. Implementation of the Horizontal Separation Principle for Buildings in Medan City

The application of the horizontal separation principle in the context of buildings in Medan City still faces various challenges. Research has found that although Government Regulation No. 16 of 2021 and Minister of Public Works and

Public Housing Regulation No. 12 of 2024 regulate the SBKBG, their implementation in the field is not optimal.

Interviews with officials from the Medan City Technical and Licensing Offices indicate that no SBKBGs have been issued to date. This is due to several factors, including:

1. The dissemination of Government Regulation No. 16 of 2021 and Regulation of the Minister of Public Works and Public Housing No. 12 of 2024 has not yet reached all levels of society and legal practitioners.
2. Lack of public understanding of the concept of the horizontal separation principle and its benefits in the context of building guarantees.
3. The suboptimal administration system for the Building Management Information System (SBKBG), including the Building Management Information System (SIMBG).
4. Minimal coordination between relevant agencies, such as the Technical Service, the Licensing Service, and the Ministry of Law and Human Rights.

d. Main Obstacles in Implementing the Horizontal Separation Principle for Buildings in Medan City

Based on the research results, there are several main obstacles in implementing the horizontal separation principle for buildings in Medan City:

1. Obstacles to Legal Understanding
   Interviews with notaries and legal practitioners in Medan City revealed limited understanding of the horizontal separation principle and its implementation in building guarantee practices. Most practitioners still adhere to the vertical attachment principle, which considers buildings to be attached to the land. This has led to a reluctance to recognize building ownership separately from land ownership.
2. Administrative Constraints
   The SBKBG administration system, including the Building Management Information System (SIMBG), is not yet operating optimally. Difficulties exist in the registration and issuance of SBKBGs, as well as in recording encumbrances on SBKBGs. This is due to the lack of integration of information systems between relevant agencies.
3. Institutional Constraints
   Coordination between relevant agencies, such as the Technical Service, the Licensing Service, and the Ministry of Law and Human Rights, has not been optimal. Each agency still operates separately without effective coordination, complicating the implementation of the principle of horizontal separation in practice.
4. Socialization Obstacles
   The dissemination of Government Regulation No. 16 of 2021 and Regulation of the Minister of Public Works and Public Housing No. 12 of 2024 has not yet reached all levels of society and legal practitioners. Many building owners and legal practitioners are still unaware of the existence of the SBKBG and its benefits as a guarantee

instrument.

e. Impact of the Implementation of the Horizontal Separation Principle on the Legal Status of Buildings as Fiduciary Guarantee Objects

The implementation of the horizontal separation principle has had a significant impact on the legal status of buildings as fiduciary collateral in Medan City. Some of the identified impacts are:

1. Clarity of the Legal Status of Buildings
   The enactment of Government Regulation No. 16 of 2021 and Regulation of the Minister of Public Works and Public Housing No. 12 of 2024 should clarify the legal status of buildings as separate objects from land. With the SBKBG, building ownership is clear and can be used as a fiduciary security object. However, due to minimal implementation in the field, clarity regarding the legal status of buildings as fiduciary security objects has not been optimally achieved.
2. Access to Capital for Building Owners
   The implementation of the horizontal separation principle through the SBKBG should open access to capital for building owners who do not own land rights. They can use their buildings as fiduciary collateral to obtain credit. However, due to suboptimal implementation, access to capital for building owners has not been widely available.
3. Legal Certainty for Creditors
   For creditors, clarity on the legal status of buildings as objects of fiduciary collateral is crucial to providing legal certainty. With the SBKBG (Credit Loan Guarantee), creditors have clear collateral for the buildings used as fiduciary collateral. However, due to suboptimal implementation, legal certainty for creditors is not yet fully assured.
4. Complexity of the Guarantee Execution Process
   The application of the horizontal separation principle also impacts the complexity of the fiduciary guarantee enforcement process for buildings. Because the building is separate from the land, the guarantee enforcement process becomes more complex and requires coordination between the building owner, landowner, and creditor.

4. Conclusion

The implementation of the horizontal separation principle, based on Government Regulation No. 16 of 2021, regarding buildings as objects of fiduciary collateral in Medan City still faces significant obstacles. Although a strong legal basis exists through Government Regulation No. 16/2021 and Minister of Public Works and

Public Housing Regulation No. 12/2024, which introduces the Building Ownership Certificate (SBKBG), its implementation has not been optimal in the field.

The main obstacles include a lack of understanding of the horizontal separation principle among stakeholders, limited regulatory dissemination, a suboptimal administrative system for SBKBG and SIMBG, and weak coordination between relevant agencies. Resistance from financial institutions is also a barrier due to concerns about legal risks and the complexity of collateral enforcement. The impact of the suboptimal implementation of the horizontal separation principle is the lack of clarity on the legal status of buildings as objects of fiduciary collateral, limited access to credit for building owners without land rights, and a lack of legal certainty for creditors. Overcoming these obstacles requires increased outreach and education, development of infrastructure and administrative systems, and strengthening collaboration among stakeholders in Medan City.

Despite facing challenges, the implementation of the horizontal separation principle has the potential to provide significant benefits in increasing access to credit and providing legal certainty in fiduciary guarantee transactions, so that coordinated and comprehensive efforts are needed to optimize its implementation in Medan City.

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