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Position of The Fiduciary Collateral Holder for Creditors if The Debtor is in Default

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Abstract. *Fiduciary Guarantee Holder If the Debtor Defaults with fiduciary guarantees against creditors, and How is the Position and Legal Protection of Creditors with Fiduciary Guarantees. Article 4 of Law of the Republic of Indonesia Number 42 of 1999 states that fiduciary guarantees are accessory agreements of a principal agreement that create obligations for the parties to fulfill a performance. In an effort to determine the position of creditors as holders of fiduciary guarantees if the debtor defaults and legal protection for creditors. This study is to determine the implementation of fiduciary certificates for recipients and providers in the process of debt/credit agreements in banks along with the functions to the rights and authorities for creditors against defaulting debtors. The method used in this study uses empirical legal research methods and qualitative analysis, namely non-mathematical analysis. The results of the study indicate that the implementation of legal protection against BRI Bank as a creditor with fiduciary guarantees has a legal position and force against the debtor because it holds or has a fiduciary certificate as a fiduciary recipient from the debtor. As regulated in the Fiduciary Guarantee Law. Fiduciary provides a priority position for creditors to obtain repayment first. In the implementation of the execution of the object that is the object of the guarantee. The holder of the Fiduciary Guarantee certificate grants the position and authority to Bank BRI to parate execution to take or sell the collateral object under its own authority because the customer is in default, the fiduciary guarantee certificate has the same executorial power as the results of a court decision, in this case PT. Bank Rakyat Indonesia (Persero) Tbk Cepiring Kendal Unit Office carries out the execution process by means of warning warnings for three times which within a period of 5 months, but there is no installment payment action then the creditor (BRI Cepiring Bank) carries out the execution of the collateralized goods, a 2021 Toyota Fortuner car. As attached to the fiduciary agreement which is in a debt obligation worth 200 million with a flat installment system for 60 months.*

Keywords: *Creditor; Fiduciary Certificate; Debtor; Default.*

1. Introduction

The issue of guarantee law, both concerning material guarantees and personal guarantees, has long received attention in our country from the past until now. What needs to be emphasized is the legal awareness of society and the economic needs of modern society, both from a national perspective and international standards, so it is expected to be reflected in the guarantee law from the past, present and future with the name of the guarantee institution. The term Guarantee Law is a translation of the term "security of law", "zekerheidsstelling" or "zekekerheidsrechen". In the decision of the guarantee law seminar held by the National Legal Development Agency of the Ministry of Justice on October 11, 1978 in Yogyakarta, it was concluded that the term "guarantee law" includes the meaning of both material and personal guarantees. The definition of guarantee law given is based on the division of types of guarantee rights institutions, meaning it does not provide information about the scope of the term guarantee law, which includes material guarantees and personal guarantees. Guarantee Law is a legal provision that regulates the legal relationship between the guarantor (debtor) and the recipient of the guarantee (creditor) as a result of the imposition of a certain debt (credit) with a guarantee (a certain object or person)[1].

Article 4 of Law of the Republic of Indonesia Number 42 of 1999 states that fiduciary guarantee is an accessory agreement of a principal agreement that creates an obligation for the parties to fulfill a performance, so the fiduciary guarantee agreement has a dependent nature on the principal agreement, its validity is solely determined by the validity of the principal agreement as a conditional agreement, which can only be implemented if the provisions stipulated in the principal agreement have or have not been fulfilled. The burden process is considered simple, easy and fast, both from the fiduciary giver or from the fiduciary recipient. This form of guarantee is widely used in lending transactions, but does not guarantee legal certainty. Based on this consideration, the Fiduciary Law regulates the obligation to register fiduciary guarantees in order to provide certainty to interested parties. so that it can provide legal protection for the fiduciary guarantee parties.

The obligation to register fiduciary in Article 11 Paragraph 1 of the Fiduciary Law states: "Registration of objects burdened with fiduciary guarantees is carried out at the domicile of the fiduciary provider and the registration includes objects, both those located within and outside the territory of the Republic of Indonesia to fulfill the principle of publicity, as well as a guarantee of certainty for other creditors regarding objects that have been burdened with fiduciary guarantees". Related to the existence of guarantees with credit transactions between creditors and debtors, a guarantee is needed. One of the guarantee institutions

[1]Abdurrahman Wahidin, 2005, Some Notes on Guarantee Law, Citra Aditya Bakti, Bandung, p.3.

used is the fiduciary guarantee institution. Fiduciary guarantees have been used in Indonesia since the Dutch colonial era, a form of guarantee that was born from jurisprudence. This form of guarantee is widely used in lending transactions because the burden process is considered to be less certain of legal certainty. In its journey, fiduciary has experienced quite good development, for example concerning the position of the parties. Fiduciary itself is an old term that is already known in Indonesian. According to Law Number 42 of 1999 concerning Fiduciary Guarantees, this is also known as the term transfer of ownership rights through trust, from the debtor to the creditor.[2]

The transfer of ownership rights through trust in fiduciary is also commonly called the transfer of constitutum possessorium, a transfer with continued control. "Fiduciary construction is the transfer of ownership rights to the goods that remain with the debtor (contitutum possessorium) on the condition that when the debtor pays off his debt, the creditor must return the ownership rights to the goods pledged to the debtor.[3]In relation to this guarantee, what should the fiduciary recipient (creditor) do? If the fiduciary giver (debtor) neglects his obligations or breach of promise in the form of his failure. The fiduciary giver (debtor), fulfills his obligations when the debt repayment is ripe to be collected, then in such an event the fiduciary recipient (creditor) can carry out his execution on the fiduciary collateral object. This provision is based on Article 29 paragraph 1 (a) of Law Number 42 of 1999 concerning fiduciary guarantees which are based on the One God, this position is what provides the executorial title that aligns the deed with a court decision.

One form of providing legal certainty for creditor rights is by establishing a fiduciary registration institution and its purpose is to guarantee the interests of the party receiving the fiduciary (creditor). In banking practice, problems will arise if the debtor defaults and the collateral object is in the debtor's possession, because the object of the fiduciary guarantee is generally a movable object so that conditions like this are very potential for the debtor to embezzle or to transfer the object of the fiduciary guarantee. One of the problems that arises in executing a fiduciary guarantee is when the creditor has difficulty executing the debtor's goods or assets as collateral that is guaranteed. In such conditions, the implementation of the execution of the fiduciary guarantee by parate execution will be difficult. carried out if it does not have a fiduciary guarantee position. In addition, for agreements or debts and credit in banking, if the collateral is not registered as a fiduciary guarantee, when the debtor defaults, it will be difficult to carry out the execution.

Based on the background description that has been explained above, the author conducted a study related to fiduciary guarantees at Bank BRI unit cepiring but

[2]H. Martin Roestamy, 2009, Fiduciary Guarantee Law, Penebar Swadaya Printing, Jakarta, p.48.
[3]Munir Fuady, , 2003, Second Revised Fiduciary Guarantee, Citra Aditya Bakti, Jakarta, p.10.

rather empirical legal research, which in other words is a type of sociological legal research and can also be called qualitative to find the development of legal science, especially fiduciary guarantee law or civil and notary law and about creditors / debtors against the agreement that has been set at Bank BRI kendal then in such an event the fiduciary recipient (creditor) can carry out its execution on the fiduciary guarantee object. This provision is based on Article 29 paragraph 1 (a) of Law Number 42 of 1999 concerning fiduciary guarantees based on the One God, this position is what gives the executorial title that aligns the deed with the court decision. all procedures regarding agreements against creditors and debtors that I wrote with the title: "The position of the holder of the Fiduciary guarantee for Creditors if the debtor defaults"

2. Research Methods

The type of research used in this study is empirical legal research, which in other words is a type of sociological legal research and can also be called qualitative. The sociological legal approach is an approach that is carried out by looking at the reality that exists in practice in the field.[4]This means that research is carried out on actual conditions or real conditions that have occurred in society with the aim of knowing and finding the facts and data needed.[5]

2. Results and Discussion

3.1. Creditor's Position as Fiduciary Collateral Holder If the Debtor Defaults

The fiduciary guarantee law aims to provide a more comprehensive regulation than the existing one, and in line with that, it aims to provide better protection for the interested parties. In the explanation of the fiduciary guarantee law, in addition to accommodating the existing needs, it also aims to provide legal certainty to the interested parties. In line with the principle of providing legal certainty, the fiduciary guarantee law adopts the principle of fiduciary guarantee registration. The registration is expected to provide legal certainty to the giver and recipient of the fiduciary as well as to third parties.

Some of the principles adopted in the fiduciary guarantee law are:[6]

1. The principle of legal certainty
2. Principle of publicity
3. The principle of balanced protection

[4]Agung Nugroho and Sukarmi, 2020, Notary Authority in Installing Mortgage as Effort to Settie Bad Credit (Second Way Out), Sultan Agung Notary Law Review, Vol.2, No 2, . p. 93
[5]Waluyo, Bambang, 2002, Legal Research in Sinar Grafika Practice, Jakarta, p.15.
[6]53 J. Satrio, 2002, Law on Guarantee of Property Guarantee Rights, Bandung: PT. Citra Aditya, , p..118.

4. The principle of accommodating practical needs

5. Authentic written principles

6. The principle of giving a strong position to creditors

Considering the important role of registration in providing protection for the creditor receiving the fiduciary guarantee, the fiduciary guarantee law regulates the obligation to register each fiduciary guarantee with the authorized official, in this case the fiduciary registration office.

The obligation to register fiduciary guarantees is regulated in Article 11 of the Fiduciary Guarantee Law:

1. Objects that are burdened with Fiduciary Guarantees must be registered.

2. In the event that the object burdened with Fiduciary Guarantee is outside the territory of the Republic of Indonesia, the obligations as referred to in paragraph (1) remain in effect.

Regarding the obligation to register, it is also reaffirmed in the explanation of Article 11 of the Fiduciary Guarantee Law, registration of objects burdened with fiduciary guarantees is carried out at the domicile of the fiduciary giver and the registration includes objects, both those located inside and outside the territory of the Republic of Indonesia to fulfill the principle of publicity, as well as a guarantee of legal certainty for other creditors regarding objects that have been burdened with fiduciary guarantees, because in fiduciary guarantees, the fiduciary giver has the right to continue to control the objects that are the objects of fiduciary guarantees based on trust, so it is hoped that the registration system regulated in this law can provide guarantees to the recipient of the fiduciary or other creditors and parties who have an interest in the object. From the explanation above, it can be seen that the main purpose of registration in fiduciary guarantees is to fulfill the principle of publicity as well as by fulfilling the principle of publicity, it will provide protection for the interests of the recipient of the fiduciary (creditor).

This is because as stated above, fiduciary is a guarantee based on the trust of the fiduciary recipient where the fiduciary goods remain in the possession of the fiduciary giver, or in other words, fiduciary guarantee is a guarantee that gives the fiduciary giver the right to continue to control the object that is the object of the fiduciary guarantee based on trust, so that protection is needed so that the goods that are the object of the fiduciary guarantee are not misused, such as goods that are the object of the fiduciary guarantee being fiduciated twice (re-fiduciary) without the knowledge of the creditor receiving the fiduciary or the fiduciary giver transferring the goods that are the fiduciary guarantee that are in

his control with the nature of a fiduciary guarantee, without the knowledge of the creditor.

Thus, the purpose of registration is to protect the interests and rights of individuals who carry out legal actions against third parties in violation of their rights, and to protect the interests of third parties.[7]or in other words to protect the interests of creditors in the return of their receivables from the debtor. While publicity is intended to protect the interests of third parties, in this case including buyers or other creditors. In addition, in fiduciary guarantees, registration is mandatory. Because fiduciary guarantees only exist/are born from the date of registration of the object guaranteed with fiduciary in the fiduciary register book by the fiduciary registration office, as stipulated in Article 14 Paragraph 3 of the fiduciary law. So fiduciary guarantees are not born from the date of making or signing the fiduciary guarantee deed by the parties, but are born after being registered.

That to support the author in obtaining data on the position of the fiduciary guarantee holder towards the creditor in the fiduciary guarantee agreement. Especially in this case there is a default against the debtor (customer) but the creditor has difficulty in executing and is less firm and understands the fiduciary agreement as its functional value such as a court decision, the author conducted research at PT. Bank BRI Cepiring Kendal.

Based on my research as a writer, I obtained information that the objects of fiduciary guarantees that are often guaranteed or collateralized in BRI cepiring kendal are BPKB cars and motorbikes and SHM certificates. Because they are movable objects that are very potential to be transferred. In the data, most of the collateralized goods have a fiduciary guarantee deed for the creditor as the recipient and the debtor as the giver. To have strong legal force in the agreement. However, some of them do not use fiduciary guarantees. Based on the data, after I conducted field observations, as a researcher, I found cases of debtors at BRI Bank, it turned out that there were still many debtors who pledged their rights to ownership of motorbikes/cars who did not use/register fiduciary guarantees. Especially those with a nominal value of debts below Rp. 50,000,000 on the grounds that the BRI bank employees were given relief and did not have difficulty in managing the requirements for their debts, therefore they did not register fiduciary guarantee certificates and save costs but with a guarantee program from the BRI office itself. In the Fiduciary Guarantee Law in Article 11 Paragraph 1 of the Fiduciary Law states: "Registration of objects burdened with fiduciary guarantees is carried out at the domicile of the fiduciary provider and the registration includes objects, both those located within and outside the territory of the Republic of Indonesia to fulfill the principle of

[7]54 Gunawan Widjaja & Ahmad Yani, 2001 Fiduciary Guarantee, Jakarta: PT. Raja Grafindo Persada, p.62.

publicity, as well as being a guarantee of certainty to other creditors regarding objects that have been burdened with fiduciary guarantees". Related to the existence of guarantees with credit transactions between creditors and debtors, a guarantee is required.

Based on the research results, the implementation of providing credit with fiduciary guarantees at BRI Bank Cepiring Unit is divided into two, namely

1) As a principal guarantee, it is given for credit in small amounts or under twenty million, using a private or notarial agreement and above twenty million rupiah, a fiduciary guarantee is used which is registered with the Department of Law and Human Rights.

2) As additional collateral, given for credit in a relatively large amount, where the principal collateral is land or buildings burdened with Mortgage Rights. The goods bound are vehicles and/or machines with a maximum age of 10 years. If the debtor defaults, the implementation of fiduciary execution from the two forms above has a difference regarding the time of execution:

1) As the principal guarantee, if the debtor defaults on the goods bound by fiduciary, they will be immediately executed by the bank to pay off the credit.

2) As additional collateral, if the debtor defaults, the goods executed first are land and buildings with Mortgage Rights. If the sale of the principal collateral is not sufficient to cover the debtor's obligations, then the goods bound by fiduciary will be executed.

Before the birth of the Fiduciary Guarantee Law (UUJF), the implementation of providing credit with fiduciary guarantees at Bank BRI Cepiring Kendal was made with a private deed and was not registered. Legally, such practices are detrimental to the interests of Bank BRI because Bank BRI loses its preferential position over the goods bound by the fiduciary. The implementation of providing credit with fiduciary guarantees at Bank BRI Unit Cepiring after the birth of UUJF is that those with credit of 50 million and below still use private agreements and those above 50 million must be registered with the institution, namely the Ministry of Law and Human Rights of the Republic of Indonesia, Central Java Regional Office, Fiduciary Guarantee Registration Office or according to the position of the guarantee that has been determined or entrusted to the Notary of Bank BRI Cepiring

After the Fiduciary Guarantee Deed is completed, the last thing to do is to register the Fiduciary Guarantee at the Fiduciary Registration Office. The Fiduciary Registration Office for the Central Java region is in Semarang.

The purpose of registering the Fiduciary Guarantee Deed is not only to provide legal certainty but also to provide a priority position to creditors. The creditor

who first registers it at the Fiduciary Registration Office is the creditor whose debt is prioritized over other creditors.

Application for Registration of Fiduciary Guarantee must be accompanied by: A copy of the notarial deed regarding the release of Fiduciary Guarantee;

1) Power of Attorney or letter of delegation of authority to register Fiduciary Guarantee;

2) Proof of payment of Fiduciary Guarantee registration fee. Fiduciary registration requirements are:

The application for registration of Fiduciary Guarantee is submitted to the Ministry of Law and Human Rights through the Fiduciary Registration Office in writing by the fiduciary recipient, it can also be submitted by the power of attorney or representative of the fiduciary recipient, here is Bank BRI Cepiring by attaching a Fiduciary Guarantee registration statement. The Fiduciary Registration Office issues and submits the Fiduciary Guarantee certificate to Bank BRI on the same date as the date of receipt of the registration application. However, all the implementation processes for making and registering the certificate are all carried out by a notary.

3.2. Legal Protection for Creditors as Holders of Fiduciary Guarantees

In this study, the author conducted research at Bank Bri unit Cepiring Kendal with the object of research between creditors and debtors who have loans at Bank Bri with a loan worth IDR 200,000,000 (Two Hundred Million Rupiah) with collateral Toyota Fortuner 2021 with an estimated price of 460 million rupiah in this debt agreement between the creditor (Bank Bri) and the debtor (customer) using a fiduciary agreement. with a loan program worth 200 million using a flat 60-month system or in other words monthly installments for 5 years. For the debt between the creditor (Bank Bri) and the customer named Farid Darmawan who lives in Weleri Kendal, it has been running and is bound by a fiduciary agreement that was carried out at that time with his wife in the fiduciary agreement, but after running for 3 years, it was constrained by a delay of 6 months because the customer's condition was affected by Covid, his business went bankrupt a little. Therefore, the creditor (BRI Bank) enforces the law that has been made in the agreement that has been executed and carries out actions/actions that lead to legal protection for the creditor, one of which is giving an appeal or warning when there is a 3-month delay, but the debtor does not take the action that was warned, then in 4 months he is given a second warning and in 5 months he is given a third warning, but there is also no good faith towards...

Debtors who are indeed unable to pay installments and arrears. In this case, the creditor (Bank BRI) has the right to execute the collateral and must act firmly

against the debtor and do not be afraid of conflicting with confiscation, coercion or robbery. In addition, collateral often passes to third parties, but as bank officers, they still have the rights and authorities in accordance with what is stated in the articles and laws on fiduciary guarantees and the steps before executing have been carried out with good and correct procedures. regarding the first warning to the third warning leading to mediation in handling the arrears.

In this case, it can be executed because the fiduciary guarantee holder has rights and obligations that are binding and the results are like the results of a court decision.[8]Legal protection according to Soekanto is basically protection given to legal subjects in the form of legal instruments. Furthermore, Soekanto explained that in addition to the role of law enforcement, there are five others that influence the process of law enforcement and its protection as follows.

1. Legal factors, namely written regulations that apply generally and are made by legitimate authorities.

2. Law enforcement factors, namely parties involved in law enforcement, both directly and indirectly.

3. Factors of facilities or infrastructure that support law enforcement, such as skilled human resources or adequate tools.

4. Community factors, namely the environment in which the law applies and is implemented. Acceptance in society of the applicable law is believed to be the key to peace.

5. Cultural factors, namely as a result of work, creativity and feeling which are based on human will in social interaction.

Setiono, legal protection is an action or effort to protect society from arbitrary actions by the authorities that are not in accordance with the rule of law. Furthermore, the function of legal protection according to Setiono is to realize order and peace so that humans can enjoy their dignity as humans.

Based on the provisions of Article 29 of Law Number 42 of 1999 concerning Fiduciary Guarantees, if the debtor or fiduciary giver defaults, execution of the object that is the object of the fiduciary guarantee can be carried out by means of the Implementation of its executorial title Article 15 paragraph (2) by the fiduciary recipient. Sale of objects that are the object of fiduciary guarantees through auction with the authority of the fiduciary recipient through a public auction and taking payment of its receivables from the proceeds of the sale. underhand which is carried out based on an agreement between the fiduciary giver and recipient if in this way the highest price is obtained which is beneficial

[8]Interview with Slamet Riyadi, PT. Bank Rakyat Indonesia, Kendal, December 5 2022

to the parties. The implementation of the sale as referred to in paragraph (1) letter c is carried out after 1 (one) month has passed since being notified in writing.

1. Non-litigation settlement

is a dispute resolution outside the court. Dispute resolution through an out-of-court process results in an agreement that is a win-win solution or mutually beneficial to each other which guarantees the confidentiality of the parties' disputes, avoids delays caused by procedural and administrative matters, resolves problems comprehensively together and maintains good relations. The advantage of this non-litigation process lies in its confidentiality, because the trial process and even the results of the decision are not published.[9]The legal basis for resolving disputes through non-litigation means is:[10]

a. Article 1338 of the Civil Code states that all agreements made legally apply as laws for those who make them. This provision contains the principle of an open agreement, meaning that in resolving a problem, everyone is free to formulate it in the form of an agreement with any content to be implemented in order to resolve the problem, furthermore as stipulated in Article 1340 of the Civil Code that an agreement only applies between the parties who make it. Dispute resolution by non-litigation makes this provision important in terms of reminding the disputing parties that they are given the freedom by law to choose a path to resolve their problems that can be stated in an agreement, as long as the agreement is made legally, meets the requirements for a valid agreement as stipulated in Article 1320 of the Civil Code.

Based on the explanation, the agreement made by Bank BRI as a creditor with a defaulting debtor as mentioned above, has fulfilled the requirements referred to in Article 1320 and Article 1338 of the Civil Code, so that after an act of default is committed by the debtor, both parties can choose the dispute resolution that will be used and in accordance with the agreement and agreement at the beginning of the contract.

b. Article 1266 of the Civil Code states that the condition of cancellation is considered to always be included in the reciprocal agreement, if one party does not fulfill its obligations. The provisions of this article are very important to remind the parties in this case the creditor and debtor who make the agreement in resolving their problems that the agreement must be implemented consistently by both parties.

[9]I Wayan Wiryawan and I Ketut Artadi, 2010, Dispute Resolution Outside the Court,: Udayana University Press, Bali, p.7.
[10]Gama Media, 2008, Yogyakarta, p.11.

c. Article 1851 to Article 1864 of the Civil Code on Peace, which states that peace is an agreement, therefore a peace agreement is valid if it is made in accordance with the requirements for a valid agreement and is made in writing. Peace can be made in court or outside the court. Dispute resolution by non-litigation means, peace is made outside the court which is more emphasized, namely how legal disputes can be resolved by means of peace outside the court and the peace has the power to be implemented by both parties to the dispute in this case Bank BRI unit cepiring kedal as a creditor with a defaulting debtor.

d. Settlement of disputes by arbitration is a method of resolving civil disputes outside of the general courts based on an arbitration agreement made in writing before or after the dispute by appointing one or more arbitrators to make a decision on the dispute, and furthermore what is meant by alternative dispute resolution is the resolution of disputes or differences of opinion through procedures agreed upon by the parties, namely settlement outside the courts by means of consultation, negotiation, mediation, conciliation or expert assessment.

Disputes that occur between Bank BRI as a creditor and the debtor as a result of default by the debtor, then the settlement of the dispute can be carried out in several ways of non-litigation dispute resolution, namely:

a. Negotiation is an effort to resolve disputes without going through the court process with the aim of reaching a mutual agreement on the basis of more harmonious and creative cooperation. Here the parties face each other directly in discussing the problems they face in a cooperative and open manner.[11]

In other words, negotiation is a way to resolve problems through discussion or deliberation directly between the disputing parties in this case PT. BPR Arta Agung as a creditor with a debtor whose results are accepted by both parties. Negotiations are carried out for 2 reasons, namely:

1. Looking for something new that cannot be done alone, for example in the case where the creditor and debtor need each other to make an agreement, in this case there is no dispute;

2. Resolve disputes or disagreements that arise between the two parties.

b. Mediation is an effort to resolve disputes between parties by mutual agreement through a neutral mediator, and does not make decisions or conclusions for the parties but supports the facilitator to carry out dialogue

[11]Iswi Hariyani, R. Serfianto DP, 2010 Free from the Trap of Debt, Pustaka Yustisia, Yogyakarta, p.158.

between the parties in an atmosphere of openness, honesty, and exchange of opinions to reach consensus.[12]The elements of mediation consist of;

1. Voluntary dispute resolution,
2. Intervention or assistance,
3. impartial third party,
4. Decision making by the parties by consensus,
5. Active participation.

Dispute resolution through Mediation has no element of coercion between the parties and the mediator, because the parties voluntarily ask the mediator to help resolve the conflict they are facing. Therefore, the mediator is positioned as an assistant, although there is an element of intervention towards the conflicting parties. In such conditions, the mediator must be neutral until a decision is obtained that is only determined by the parties, only in the process of resolving the conflict the mediator actively participates in helping the parties find various differences in perception or views.

3. Conclusion

Based on the research results and discussion in the previous chapter, the following conclusions can be drawn. 1. The position of the creditor as the holder of the fiduciary guarantee if the debtor defaults. The creditor as the recipient of the fiduciary guarantee has strong legal force, the law attached to the agreement, namely the Fiduciary Guarantee Law, aims to provide a more complete regulation and in line with that, it is intended to provide good protection for the interested parties. In the study, all financial institutions, whether banks, leasing, cooperatives or others, if bound by a debt agreement in the form of movable collateral that can be called a motorbike/car, it is good and safe to use a fiduciary guarantee certificate in the agreement between the creditor and the debtor, because the fiduciary guarantee has rights and authorities whose value is like the results of a court decision. The Fiduciary Guarantee Law, in addition to accommodating the needs that have existed so far, also aims to provide legal certainty to the interested parties and has six Principles, namely the Principle of Legal Certainty, the Principle of Publicity, the Principle of Balanced Protection, the Principle of Accommodating Practical Needs, the Principle of Authentic Written Words, the Principle of Giving a Strong Position to Creditors. PT. Bank Rakyat Indonesia (Persero) Tbk Kendal branch office as the holder of the fiduciary guarantee certificate as regulated in the Fiduciary Guarantee Law. In addition, the creditor before the realm of default

[12]Ibid, p. 159.

against the debtor, the creditor must also apply caution in providing credit to prospective customers, one of which is the account officer of Bank Bri must apply the 5C value which reads character, capacity, capital, collateral and condition of the debtor. If constrained by credit default (Bank BRI) has a legal standing and power over the debtor because it has a Fiduciary Guarantee Certificate issued with a written agreement or agreement between the creditor and the debtor as the giver and the creditor as the recipient with a written agreement in the authentic deed. The Fiduciary Guarantee Certificate provides a position and authority to Bank BRI to parate execution to take or sell collateral objects under its own authority if the customer is in default, the fiduciary guarantee certificate has the same executorial power as the results of a court decision that has legal force based on the executorial title, the creditor can directly execute through a public auction of the fiduciary guarantee object without going through the court, because the fiduciary certificate is equivalent to the results of a court decision. 2. Legal Protection for Creditors with Fiduciary Guarantee is With the existence of a fiduciary guarantee certificate, Bank BRI Cepiring Kendal Unit exercises the creditor's right to obtain legal protection in Law Number 42 of 1999 concerning Fiduciary Guarantees when a customer is in default / default in this case the creditor PT. Bank Rakyat Indonesia (Persero) Tbk Kendal Branch Office as the holder of the fiduciary guarantee exercises its rights as a creditor in completing the credit agreement with fiduciary guarantees against customers who are in default. This is based on the fact that default is considered a failure to carry out a promise that has been agreed upon, the debtor does not carry out obligations without a reason that is acceptable by law, therefore PT. Bank Rakyat Indonesia (Persero) Tbk Cepiring Kendal Unit Office carries out the execution process by means of a warning warning 3 times then takes the collateralized goods, a 2021 Toyota Fortuner car. Then sold or auctioned with the knowledge of the debtor to fulfill the individual agreement that has been made.

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Kitab-Kitab Hukum Pidana

Kitab-Kitab Hukum Perdata