SEAN INSTITUTE
Sharing Knowledge
http://infor.seaninstitute.org/index.php/infokum/index
JURNAL INFOKUM, Volume 11, No.2, 2023 ISSN : 2302-9706

LEGAL PROTECTION FOR CREDITORS WITH FIDUCIARY COLLATERAL

Romli Arsad
Institut Pemerintahan Dalam Negeri, Indonesia
Email: arsadromli@gmail.com

Article Info
Received : 29/03/23
Revised : 10/04/23
Accepted: 22/04/23

ABSTRACT

The purpose of this research is to see the legal protection for creditors at PT. People's Credit Bank "Karyajatnika Sadaya" which has received fiduciary guarantees, as well as what legal remedies the creditor has if the debtor defaults. Empirical legal studies fall into this category. This study uses primary and secondary data as data sources. The method used in this study is the juridical-sociological method. Information collected through literature study was then examined qualitatively. The results in this study are legal protection for creditors with fiduciary guarantees at PT. BPR Karyajatnika Sadaya if the debtor defaults and is given special rights over his receivables based on the Fiduciary Guarantee Law. Then in accordance with the provisions of Article 21 paragraph (4) of the Fiduciary Law, the results of the transfer and/or claims that arise become a substitute fiduciary object from the fiduciary object transferred by law. The fiduciary receiving party, in this case the creditor, can file a lawsuit against the fiduciary giving party to fulfill its obligations if the goods or objects used as the object of the fiduciary guarantee are not available or are not available according to what is stated in the attachment. As well as the legal actions of creditors for default debtors handled by the company as part of the dispute resolution process. If the debtor still does not want to fulfill it, the creditor can take additional actions, including through non-litigation and litigation channels, after first issuing a warning in the form of a warning and a warning letter.

Keywords: Legal protection, Guarantee, Fiduciary

1. INTRODUCTION

Since the enactment of Law Number 42 of 1999 Concerning Fiduciary Guarantees (UUJF), fiduciary guarantee institutions have been formally and legally recognized. In the Fiduciary Guarantee Law it is stated in Article 1 Number 1 that "Fiduciary is the transfer of ownership of an object on the basis of trust provided that the object whose ownership is transferred remains in the control of the owner of the object. A fiduciary guarantee is a guarantee right that is owned over movable property, both tangible and intangible, both movable and immovable, registered or unregistered, provided that the item is not encumbered with a mortgage as referred to in Law Number 4 of 1996 concerning Mortgage Rights. or Mortgage. as referred to in Article 314 paragraph (3) of the Commercial Code or Article 1162 of the Civil Code (Sofyan, 1995). In actual social practice, the emergence of a fiduciary guarantee agreement usually begins with a debt agreement between the creditor and the debtor, where the fiduciary guarantee agreement is intended as a preventive measure for the creditor if the debtor is unable to fulfill his obligations. its obligation to pay off its debts as stated and agreed in the debt agreement. The existence of an obligation to transfer a movable property right to a third party determines the material nature of the fiduciary guarantee contractual agreement (zakelijk).

In accordance with Law Number 4 of 1996 concerning Mortgages which implements Article 51 of Law Number 5 of 1960 concerning the Basic Agrarian Law, the lending and borrowing activities mentioned above have used mortgages or mortgages as a substitute for mortgages on land and creditverhand. In addition, mortgages, non-land mortgages, and fiduciary guarantees are additional

INFOKUM is licensed under a Creative Commons Attribution-Non Commercial 4.0 International License (CC BY-NC 4.0)

collateral rights that are often used in modern times. The Fiduciary Guarantee Institution allows the Fiduciary Giver to exercise control over the collateralized goods and carry out commercial operations supported by loans with Fiduciary Guarantees. Initially, only physical movable property in the form of equipment can be considered as fiduciary goods. But as it develops, various movable, intangible and immovable objects-as well as wealth-become fiduciary objects.

"Submission of property rights in trust (fides)" or better known as Fiduciare Eigendom Overdracht is a fiduciary guarantee. The trust factor in the transfer of property rights by means of "trust" is intended to show the trust given reciprocally by one party to another, that what "outwardly appears as a transfer of property" is actually (internally) only "collateral" for a debt. , the debtor's belief in the creditor that his assets will be returned after his debts are paid off (Subekti, 1996)..

The fiduciary agreement is made in writing so that the creditor who holds the fiduciary acts in his best interest to sue and prove that the guarantee has been handed over to the debtor. Another important element in making a fiduciary agreement in writing is preparing for unforeseen events that are beyond human control, including the death of the debtor before the creditor receives his rights. It will be difficult for creditors to establish their claims to the debtor's heirs without a valid fiduciary deed (Satrio, 1991). The next step is to make a Fiduciary Guarantee Deed after completing the process of granting credit with a fiduciary guarantee at PT. BPR Karyajatnika Sadaya. The notary makes the Fiduciary Guarantee Deed. Before submitting files to a notary to make a fiduciary deed, PT. BPR Karyajatnika Sadaya must include the following information in the file: identity of the fiduciary guarantee provider; identity of the recipient of the fiduciary guarantee; and identification of collateral objects. The notary can then make the Fiduciary Guarantee Deed after that.

Based on this, the purpose of this study is to find out about legal protection for creditors with fiduciary guarantees at PT. BPR Karyajatnika Sadaya, as well as legal efforts owned by creditors after default debtors.

2. LITERATURE REVIEW

Legal protection

Philipus M. Hadjon (1987) divides the form of legal protection into 2 (two), namely:

a. Preventive legal protection. This legal protection provides an opportunity for the people to submit objections (inspraak) to their opinions before a government decision gets a definitive form. Thus, this legal protection aims to prevent disputes from occurring and is of great significance for government actions based on freedom of action. And the existence of this preventive legal protection encourages the government to be careful in making decisions related to the freies ermessen principle, and the people can raise objections or be asked for their opinion regarding the planned decision.

b. Repressive legal protection, this legal protection functions to resolve disputes in the event of a dispute. Indonesia currently has various bodies that partially handle legal protection for the people, which are grouped into 3 (three) bodies, namely:

   a. The courts within the scope of the General Courts, nowadays in practice the way has been taken to submit a certain case to the General Courts as an act against the law by the authorities.
   b. Government agency which is an administrative appeals body Handling legal protection for the people through government agencies which is an administrative appeals institution is a request for an appeal against a government action by a party who feels aggrieved by the government's action. Government agencies authorized to change can even cancel the government's action.
   c. Special agencies, Representing bodies that are related and authorized to resolve a dispute. These special agencies include the Housing Affairs Office, the Personnel Court, the Film Censorship Board, the Committee for State Receivable Affairs, and the State Administrative Court.

Fiduciary Guarantee

Fiduciary as a guarantee institution has long been known in Roman society, which at first grew and lived according to customary law. Based on historical regulations, fiduciary institutions were subsequently regulated in jurisprudence and have now received recognition in law (Kamello, 2004).

INFOKUM is licensed under a Creative Commons Attribution-Non Commercial 4.0 International License (CC BY-NC 4.0)

Fiduciary is an institution originating from the western civil law system whose existence and development is always associated with the civil law system (Subekti, 1981). The term civil law comes from the Latin word jus civile, which applied to Roman society. Apart from jus civile, there are also those which regulate Roman citizens and foreigners known as jus getium (Dainow, 1967). The bank in the context of extending credit, will require a guarantee or collateral to obtain the credit facility from the prospective debtor who submits it. These provisions can be found in the elucidation of Article 8 of Law Number 10 of 1998 concerning amendments to Law Number 7 of 1992 concerning Banking. This is done to anticipate defaults from debtors, so that credit guarantees can function as a source of funds to pay off principal loans and interest arrears.

The definition of a credit guarantee is a form of responsibility for the implementation of an achievement in the form of a credit return based on a credit agreement. Therefore, the guarantee binding agreement is accessoir in nature, namely an agreement whose existence is linked to a principal agreement, namely a credit agreement made between the debtor and the creditor concerned. According to the origin of the word, fiduciary comes from the word fides which means "trust". The legal relationship between the debtor giving the fiduciary and the creditor receiving the fiduciary is a legal relationship based on trust. The fiduciary giver believes that the fiduciary recipient creditors want to return the property rights that have been handed over to him, after the debtor has paid off his debt. The creditor receiving the fiduciary also believes that the debtor giving the fiduciary will not abuse the collateral that is in his power and wants to maintain the item as a good father (Untung, 2011).

According to James Kessles and Fiona Hunte (2007) the term fiduciary comes from the Dutch language, namely fiducie, while in English it is called "fiduciary transfer of ownership, which means trust. Fiduciary has the meaning that is a fiduciary means a trustee or other person subject to fiduciary duties under the settlement" (fiduciary means trust or someone who is given the obligation to settle fiduciaries).

Material rights related to fiduciary guarantees

BW only recognizes two types of property rights, namely liens and mortgages.

1) Liens, in general people say that liens are collateral rights for movable objects (O.K. Brahn, 2001). The definition of pawning in general is regulated in Article 1150 of the Civil Code, namely:
Pledge is a right that is obtained by a creditor over a movable object that grows or does not grow which is given to him by the debtor or another person on his behalf to guarantee a debt, and which will give authority to the creditor to get repayment of the item before the creditor other creditors except the costs for auctioning the item and the costs incurred to maintain the object, which costs must take precedence. The definition of pawning contains several main elements, namely (Purwahid Patrik and Kashadi, 2003):

a) Pawn is born because of an agreement to hand over power over the pawned goods to the creditor holding the pawn;
b) The delivery can be made by the debtor or another person on behalf of the debtor;
c) Goods that are objects of pawn are only movable objects, both bodied and non-bodied; The creditor holding the pawnshop has the right to collect the payment of the mortgaged goods before other creditors.

2) Mortgage, Mortgage is the right of collateral for immovable objects (O.K. Brahn, 2001). Mortgage comes from the word hypotheek from Roman law, namely hypotheca, which is a guarantee of debt where the collateral is not transferred into the hands of the person who owes it, but the item can always be requested/claimed even though the item is already in the hands of another person if the person who owes does not fulfill his obligations (Subekti , 1984) in Dutch the translation is onderzetting in Indonesian is imposition. But the hypotheca as referred to above is not exactly the same as the mortgage that is known today because the mortgage is only for immovable objects, while the hypotheca includes guarantees for movable objects as well as immovable objects. However, the

INFOKUM is licensed under a Creative Commons Attribution-Non Commercial 4.0 International License (CC BY-NC 4.0)

similarities in both the legal language in Indonesia and in the Netherlands, the term mortgage has been taken over to indicate a form of guarantee of land rights.

Material rights in Fiduciary Guarantees. The reason why fiduciary as a substitute for pawning movable objects, namely to escape from the coercive rule of law (which states that in pawning, the object being pawned must be outside the power of the pawn giver), cannot separated from the matter of how fiduciary. If for the fiduciary of movable objects it is always required that the object to be surrendered must be clearly released from the factual power of the transferor to the recipient, then the surrender of property as collateral does not show a greater advantage than pawning the movable object. So, we need to see first of all how the surrender of the movable property takes place or, in other words, where lies the form of surrender in the surrender (transfer) of the movable object.

At this time the delivery (leveraging), at least as a rule, is the creation of bezit over a movable object (Article 667 BW, Article 3.4.2.5, paragraph (1) NBW. The basic form of obtaining bezit over a movable object is the factual delivery of the object , and this form of creation of bezit (in which the giver in this way in respect of the thing surrenders it for the benefit of the recipient), is indeed a rule but there are many exceptions to this rule. there is a change in the factual power relationship that existed prior to the transfer of the bezit to the object to be handed over. This includes what is called the traditio brevi manu (Article 667 paragraph (2) BW, Article 3.5.9 sub b NBW, traditio lungo manu or the surrender of possession of an object moving on a third party through notification of the surrender to be made to a third party (which Hoge Raad received in arrest 1029, NJ 1929, p. 1745 in Proehl & Gutmann versus Huberich and in NBW can be found in Article 3.5.9 sub c), submission of possessions through letters of material rights such as bills of lading (Article 517a WvK, Article 8.5.2.36 NBW) and ceel and finally, with the consitutum possesorium. Here people understand that the bezitter of a movable object agrees with the potential recipient of the object to exercise factual power over that object, but then acts as a holder for the benefit of the recipient. Through this, bezit (and if the transfer conditions stipulated in Article 639 BW are met, it is also owned) the object is transferred without any change in the power relationship, bearing in mind that the object is still in the hands of the same person, namely the transferor.

In connection with what is mentioned above, it should be noted that the Hoge Raad in at least four new Decisions (Piuvier in 1970,-Van Gend & Loos in 1975, Tax Collector-Mr. Schriks qq. in 1980 and LDM-Brock in 1985) has three times put forward the same view regarding the transfer of ownership of tangible movable objects, which is intended to create security and without the factual assignment of objects'. Therefore, this view must at this point be seen as a 'fixed jurisprudence'. In the 1987 arrest of Berg & Sons-De Bary Hoge Raad repeated this view, but argued further that, after the transfer of collateral was notified to the third-party-holders and this third party agreed with the transfer of the property, it was not (anymore) related- related to the problem of creating guarantees without factual submission in the sense previously referred to. The summary of the above description is: In order to avoid the obligation for the pawnbroker to relinquish factual power over the mortgaged object for the sake of a legal lien being imposed, people are trying to find new legal institutions whose legal consequences are as similar as possible to liens and finally arrived at the idea of surrendering property to creditors as collateral, which was carried out without factual delivery of the goods concerned and mostly carried out constitutum possesorium.

3. METHODS

The form of this study is empirical juridical, or a way or approach used to solve problems by first looking at existing secondary data then continuing with research on primary data in the field (Soerjono Soekanto, 1984) regarding "Legal Protection for Creditors with Fiduciary Guarantees " This study uses primary and secondary data as data sources. Legal sources from library research are examples of secondary data (Soerjono Soekanto and Sri Mammudji, 1990). Among these legal materials are:

a. Primary legal materials, consisting of: the 1945 Constitution; Law No. 8 of 1981 concerning Criminal Procedure Code; Law Number 42 of 1999 concerning Fiduciary.

INFOKUM is licensed under a Creative Commons Attribution-Non Commercial 4.0 International License (CC BY-NC 4.0)

b. Secondary legal materials, namely various literary materials such as books, research results, papers in seminars, symposiums, workshops which closely provide an explanation of primary legal materials.
c. Tertiary legal materials, namely materials that provide instructions or explanations regarding certain terms, including: Legal dictionaries; Indonesian dictionary; English dictionary; Dutch Dictionary.

In this library research, data collection was carried out by means of document/library/literature studies, while the tools used in this research were written materials (court decisions, agreements, etc.) (Maria S.W. Sumardjono, 1997). This study uses a sociological juridical approach. According to Ronny Hanitijo Soemitro (1990), it is called research because legal laws and regulations which are the basis of this research topic are not conceptualized as an independent normative symptom, but as a social institution related to other social institutions. The data that has been collected from library research is then analyzed qualitatively. Qualitative according to (Abdulkadir Muhammad, 2004) is a data analysis method by grouping and selecting data obtained from research according to its quality and truth, then connected with theories from literature studies so that answers to problems in this research are obtained.

4. RESULTS AND DISCUSSION

Legal protection for creditors with fiduciary guarantees at PT. BPR Karyajatnika Sadaya

In order for PT. BPR Karyajatnika Sadaya to more easily determine whether or not prospective debtors receive credit from PT. BPR Karyajatnika Sadaya or not, the prospective debtor must meet the conditions set by PT. BPR Karyajatnika Sadaya when applying for credit, especially when applying for credit with a fiduciary guarantee object. After the prospective debtor completes all credit application requirements, PT. BPR Karyajatnika Sadaya will register a credit application for processing.

PT. BPR Karyajatnika Sadaya applies the precautionary principle in credit assessment. In accordance with PKPB SOP Guidelines for the Implementation of BPR Credit Policy Supporting Functions, the following matters are included in the principle of credit prudence:

a) Sound credit granting procedures and authority.
b) Credit approval procedures.
c) Documentation procedures of credit administration
d) Credit monitoring procedures.

Apart from these problems, PT. BPR Karyajatnika Sadaya adheres to the general 5C loan guidelines when checking credit. The five C's are as follows: Character; Capacity; Capital; Collateral; Condition.

After conducting a preliminary analysis using the 5C principle, PT. BPR Karyajatnika Sadaya will determine whether the credit application submitted by the prospective customer or debtor is appropriate or not. If possible, PT. BPR Karyajatnika Sadaya will visit the debtor's location to assess business information, debtor's ability to pay, and collateral. The Credit File will then be updated with a credit analysis report. The Credit Committee is authorized to receive the Credit File after being processed by the Credit Administration Staff. Credit analysis is carried out at the underwriting stage by comparing credit guarantees with fiduciary guarantees from prospective debtors. Account Officer PT. BPR Karyajatnika Sadaya verifies the validity of the collateral. Account Officer PT. BPR Karyajatnika Sadaya then conducts a local inspection to ensure the physical condition of the goods to be pledged as collateral with a fiduciary guarantee and determines whether the goods comply with the information contained in the document files. There will be a review followed by an evaluation. Preparing a formal report on collateral valuation and preparing it for submission to the appointed Credit Committee is the final step in this process.

The Deed of the Fiduciary Agreement is very important because if the fiduciary agreement is made in an authentic deed, then the deed provides perfect evidence and can provide legal certainty. The judge must accept a valid deed if it is shown in court and cannot submit other evidence; however, if someone claims that their signature was forged on the deed, they must provide proof of that claim.

INFOKUM is licensed under a Creative Commons Attribution-Non Commercial 4.0 International License (CC BY-NC 4.0)

The implementation of granting credit with fiduciary guarantees at BPR Karyajatnika Sadaya is classified into two categories based on research findings, namely:
1) Provided as main collateral for loans up to five million new rupiah, using a fiduciary guarantee registered with the Ministry of Law and Human Rights, and up to five million new rupiah, using an individual deed or notarial deed.

Given to loans in relatively large amounts where the main collateral is land or buildings burdened with Mortgage as additional collateral. Vehicles and/or machines with a maximum age of 5 years are examples of bonded goods.

In the case of a default debtor, the fiduciary implementation of the two forms mentioned above will be carried out differently in terms of time:

a. The bank immediately executes the goods bound by the fiduciary to pay off the credit if the debtor fails to make it the main collateral.
b. As an additional guarantee, if the debtor defaults on goods, land and buildings with mortgage rights, they will be executed first. Goods bound by a fiduciary will only be implemented if the debtor's obligations cannot be fulfilled by selling the main collateral.

Before the birth of the Fiduciary Guarantee Act (UUJF), PT. The People's Credit Bank "Karyajatnika Sadaya" carries out the issuance of credit with a fiduciary guarantee through an unrecorded private deed. As a result of losing the position of preference for fiduciary-bound products, PT. The interests of the Karyajatnika Sadaya People's Credit Bank were legally harmed by this activity. After the creation of the UUJF, only loans with a fiduciary guarantee of up to a value of five million were applied at PT. Karyajatnika Sadaya People's Credit Bank; all loans exceeding five million must be registered with a government agency, such as the Ministry of Law and Human Rights of the Republic of Indonesia, the West Java Regional Office, the Fiduciary Guarantee Registration Office, or an appropriate guarantee position. The final step is to register the Fiduciary Guarantee at the Fiduciary Registration Office when making the Fiduciary Guarantee Deed. The Fiduciary Guarantee Deed is intended to be recorded in order to guarantee creditor priority status and legal clarity. Creditors who prioritize debt settlement with other creditors are the first to register it at the Fiduciary Registration Office.

Legal remedies owned by the creditor after the default debtor

Every agreement has legal consequences, including those made by creditors with debtors. This agreement is binding on both parties and cannot be withdrawn without the consent of both parties and based on good faith. When one party violates the terms of the agreement and harms the other party, the legal consequences of the agreement become clear. In most cases, the aggrieved party seeks compensation from the party who committed the default. Claims for compensation from creditors include payment of costs, losses and interest. Settlement of disputes in cases of default on debtors at PT. BPR Karyajatnika Sadaya which results in losses to the creditor is first carried out by issuing a warning in the form of a warning, followed by issuing a warning letter to the debtor, but if the debtor still does not comply, the creditor can take further action. namely through non-litigation and litigation methods.

Non-litigation dispute resolution includes solving problems that arise between creditors and debtors through negotiation, mediation, and arbitration, while litigation refers to the creditor's intention to file a lawsuit against the debtor to court in the context of the general justice system.

1. Settlement of disputes by means of non-litigation

Settlement of disputes by means of non-litigation is a settlement of disputes 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 is guaranteed confidentiality of the parties' disputes, avoids delays caused by procedural and administrative matters, resolves problems comprehensively in togetherness and while maintaining good relations. The advantage of this non-litigation process lies in

INFOKUM is licensed under a Creative Commons Attribution-Non Commercial 4.0 International License (CC BY-NC 4.0)

its confidential nature, because the trial process and even the results of the decision are not published (I Wayan Wiryawan & I Ketut Artadi, 2010).

The legal basis for resolving disputes by means of non-litigation (Bambang Sutiyoso, 2008), namely:

1) Article 1338 of the Civil Code which 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 agreements only apply between the parties who make them.
2) Settlement of disputes by means of non-litigation makes this provision important in terms of reminding the parties to the dispute that they are given the freedom by law to choose a path in resolving their problems that can be set forth in the agreement, as long as the agreement is made legally, fulfills the legal requirements of the agreement as specified in Article 1320 of the Civil Code.
3) Based on this explanation, the agreement entered into by PT. BPR Karyajatnika Sadaya as a creditor with 3 default debtors 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 has been committed by the debtor, both parties can choose the dispute resolution that will be used.
4) Article 1266 of the Civil Code states that void conditions are deemed to always be included in a 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 creditors and debtors who make an agreement to resolve the problem, that the agreement must be implemented consistently by both parties.
5) Article 1851 to Article 1864 of the Civil Code concerning Peace, which states that peace is an agreement, therefore a peace agreement is valid if it is made to fulfill the terms of the validity of the agreement and is made in writing. Settlement can be made in the Court or outside the Court. Settlement of disputes by means of non-litigation, 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 that peace has the power to be carried out by both parties to the dispute in this case PT. BPR Karyajatnika Sadaya as creditor with default debtor.
6) Dispute settlement by arbitration, namely the method of settling civil disputes outside the general court based on an arbitration agreement made in writing before or after the dispute by appointing one or more arbitrators to give a decision on the dispute, and then what is meant by alternative dispute resolution is settlement disputes or differences of opinion through procedures agreed upon by the parties, namely out-of-court settlements by way of consultation, negotiation, mediation, conciliation or expert judgment.

Alternative Dispute Resolution (APS), sometimes known as non-litigation, is a technique that parties can use to settle disputes out of court. By using alternative dispute resolution (ADR), it is possible to resolve bank disputes with bad loans without going to court. Since the promulgation of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, dispute resolution has a strong legal basis.

This out-of-court dispute resolution leads to an agreement that is win-win solution or mutually beneficial to each other, guarantees the confidentiality of the parties' disputes, avoids delays caused by procedural and administrative issues, resolves problems simultaneously, and upholds good relations. The judicial system in Indonesia is considered inefficient and ineffective, so that dispute resolution outside the court is preferred. PT. BPR Karyajatnika Sadaya as a creditor can take steps to resolve disputes through litigation or through the courts by filing a lawsuit against the debtor through a court that is within the general court environment for actions that constitute a default experienced by PT. BPR Karyajatnika Sadaya. If the dispute resolution method in the default case experienced by PT. BPR Karyajatnika Sadaya is carried out by means of non-litigation or dispute resolution outside the court, either through unsuccessful negotiations, mediation or arbitration.

INFOKUM is licensed under a Creative Commons Attribution-Non Commercial 4.0 International License (CC BY-NC 4.0)

2. Use of litigation to resolve disputes

The judicial system of problem solving through litigation. Judges will examine and decide disputes that arise through the legal system. With this system, it is impossible to achieve a win-win solution or a solution that considers the interests of both parties because the judge must give a decision in which one party will be the winner and the other party will be the loser. If a dispute settlement agreement cannot be reached between PT. BPR Karyajatnika Sadaya as a creditor and debtor who is in default in non-litigation or outside the court, the dispute resolution process through this litigation channel can be carried out by filing a lawsuit against the debtor through a court within the general court environment.

5. CONCLUSIONS

Legal protection for creditors with fiduciary guarantees at PT. BPR Karyajatnika Sadaya if the debtor defaults and is given special rights over his receivables based on the Fiduciary Guarantee Law. Then in accordance with the provisions of Article 21 paragraph (4) of the Fiduciary Law, the results of the transfer and/or claims that arise become a substitute fiduciary object from the fiduciary object transferred by law. The fiduciary receiving party, in this case the creditor, can file a lawsuit against the fiduciary giving party to fulfill its obligations if the goods or objects used as the object of the fiduciary guarantee are not available or are not available according to what is stated in the attachment. specifically, the dollar amount of the guaranteed value as specified in Article 6 of the Fiduciary Guarantee Law.

Creditors' legal actions against default debtors are handled by PT. BPR Karyajatnika Sadaya as part of the dispute resolution process. If the debtor still does not want to fulfill it, the creditor can take additional actions, including through non-litigation and litigation channels, after first issuing a warning in the form of a warning and a warning letter.

REFERENCES

[1] Abdulkadir Muhammad, (2004), Hukum dan Penelitian Hukum, Bandung: Citra Aditya Bakti, hlm. 51.
[2] Budi Untung, Kredit Perbankan di Indonesia, (2011), Yogyakarta: Andi Offset, hlm. 98.
[3] Bambang Sutiyoso, (2008), Hukum Arbitrase dan Alternatif Penyelesaian Sengketa, (Yogyakarta: Gama Media, hlm. 11.
[4] I Wayan Wiryawan dan I Ketut Artadi, (2010), Penyelesaian Sengketa di Luar Pengadilan, Bali: Udayana University Press, hlm. 7.
[5] James Kessles dan Fiona Hunter, (2007), Drafting Trust and Will Trust In Canada, Canada: Lexis Nexis, hlm. 73.
[6] Satrio, (1991), Hukum Jaminan Hak-Hak Jaminan Kebendaan, Bandung: Citra Aditya Bakti, hlm. 170.
[7] Joseph Dainow, (1967), The Civil Law and The Common Law: Some Points of Comparison, The American Journal of Comparative Law, Vol. 15, 1967, hlm. 420.
[8] Maria S.W. Sumardjono, (1997), Pedoman Pembuatan Usulan Penelitian, Jakarta : PT. Gramedia Pustaka Utama, hlm. 32.
[9] Sri Soedewi Masjoen Sofyan, (1995), Hukum dan Jaminan Perorangan, Yogyakarta: Liberty, hlm. 40.
[10] Subekti, (1996), Jaminan-Jaminan Untuk Pemberian Kredit (Termasuk Hak Tanggungan) Menurut Hukum Indonesia, Bandung: Citra Aditya Bakti, hlm. 73.
[11] O.K. Brahn, Fiduciaire Overdracht, Stille Verpanding En Eigendomsvoorbehoud Naar Huidig En Komend Recht, (2001), diterjemahkan oleh Linus Doludjawa, Fidusia Penggadaian Diam-Diam dan Retensi Milik Menurut Hukum Sekarang dan Yang Akan Datang, Jakarta: PT.Tata Nuasa, hlm. 10-15.
[12] Philipus M. Hadjon. (1987), Perlindungan Hukum bagi Rakyat Indonesia; Sebuah Studi tentang prinsip-prinsipnya, Penanganannya oleh Pengadilan dalam Lingkungan Peradilan Umum. Surabaya: PT Bina Ilmu, hlm. 19-20.

INFOKUM is licensed under a Creative Commons Attribution-Non Commercial 4.0 International License (CC BY-NC 4.0)

[13] R. Subekti, (1981), Suatu Tinjauan Tentang Sistem Hukum Jaminan Nasional, Bandung: Bina Cipta, hlm. 29.
[14] Ronny Hanitijo Soemitro, (1990), Metode Penelitian Ilmu Hukum, Jakarta: Ghalia Indonesia, hlm. 35.
[15] Subekti, (1984), Pokok-Pokok Hukum Perdata, Jakarta: Intermasa, hlm. 78.
[16] Soerjono Soekanto, (1984), Pengantar Penelitian Hukum, Cetakan Ketiga, Jakarta: UI Press, hlm. 52.
[17] Soerjono Soekanto dan Sri Mammudji, (1990), Penelitian Hukum Normatif, Pengantar Singkat, Jakarta: Rajawali Press, hlm. 14.
[18] Tan Kamello, (2004), Hukum Jaminan Fidusia Suatu Kebutuhan Yang Didambakan, Bandung: Alumni, hlm. 28.
[19] Purwahid Patrik dan Kashadi, (2003), Hukum Jaminan, Semarang: Fakultas Hukum Undip, hlm. 13

INFOKUM is licensed under a Creative Commons Attribution-Non Commercial 4.0 International License (CC BY-NC 4.0)