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Barriers to Execution of Fiduciary Guarantees by PT Bank Rakyat Indonesia (Persero) Semarang Pandanaran Branch Office

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Abstract

The rules regarding Fiduciary Guarantees stipulate that "if the debtor fails to promise, the fiduciary recipient has the right to sell the object which is the object of fiduciary security on his own authority". Execution of fiduciary guarantees as an effort to recover (loan) when a bad loan is an attempt made by the bank in repaying loans. However, in practice, there are many obstacles faced by banks in executing fiduciary collateral. This study aims to explain the executive power of fiduciary guarantee certificates, the bank's efforts to repay non-performing loans, and the obstacles faced by BRI Semarang Pandanaran Branch in repaying loans. The research method was carried out using empirical juridical research; the main data used were primary data obtained through field research and secondary data through library studies. The results of this study indicate that the Implementation of the execution in the settlement of problem loans is done by selling underhanded. Constraints at the time of execution, among others, fiduciary collateral objects have been transferred to another party, the condition of the collateral is damaged, the collateral is gone.

INTRODUCTION

The development of economic Law is always dynamic; this is due to various factors that influence it, the main factor is human needs which are also dynamic¹. Economic development in Indonesia, which also influences the development of economic Law in Indonesia, is characterized by "increasing people's participation in the control of capital or factors of production in the country"². The existence of lending practices, allows the community to master the factors of production in Indonesia because credit is a bank facility

¹ Kornelius Benuf, Siti Mahmudah, dan Ery Agus Priyono, "Perlindungan Hukum Terhadap Keamanan Data Konsumen Financial Technology Di Indonesia", *Refleksi Hukum: Jurnal Ilmu Hukum* 3, no.2 (2019), 145 <<https://doi.org/10.24246/jrh.2019.v3.i2.p145-160>>.

² Misnal Munir Widhyartono, Arqom Kuswanjono, "Pemikiran Kedaulatan Ekonomi Sukarno dan Aspek Hukum dalam Ekonomi Pancasila", *Melayunesia Law Journal*, 3.no. 1 (2019): 110.

that "allows a person or business entity to borrow money to buy a product and repay it within a predetermined and agreed period". If someone uses credit services, he will be charged interest. Loans provided by banks require borrowers to provide collateral rights to tangible and intangible movable property; this collateral right is known as the "Fiduciary Guarantee."

The emergence of fiduciary guarantees is motivated by the need of the community to obtain financing with guarantees of movable property without releasing the physically pledged item³. Until now, the practice of fiduciary guarantees was used en masse in lending and borrowing transactions because the loading process was considered informal, easy, and fast, although in some cases, it was deemed to be insecure about guaranteeing legal certainty. "Collateral in credit has significant meaning because collateral is the last way if the debtor defaults or fails to settle his obligations to the bank"⁴. Article 4 of Law 42 of 1999 concerning Fiduciary Guarantees stipulates that "Fiduciary Collateral is a follow-up agreement of a principal agreement that raises the obligation for the parties to fulfill an achievement." The principal agreement referred to in a quo provision is a debit and credit agreement between the creditor and the debtor⁵.

Fiduciary Security Objects consist of "objects" approved in Article 1 number 4 of Law Number 42 the Year 1999, the Article provides an understanding of "objects," namely "everything that can be obtained and transferred, any tangible objects that are tangible, which Also, those who are not transferred, those who are immovable, cannot be encumbered with mortgages or mortgages. Related to a collateral object consists of "objects that can be owned and transferred ownership rights, both tangible and intangible, registered or unregistered, immovable and immovable, which cannot be encumbered with mortgages or mortgages"⁶. Creditors who provide credit with fiduciary guarantees reduce the risk of the agreement, but it cannot avoid other risks.

"In connection with this guarantee, what must be done by the fiduciary recipient (the creditor) if the fiduciary giver (the debtor) is neglecting his obligations or breach of promise.

³ Nova Faisal, "Tinjauan Yuridis Atas Jaminan Fidusia Berkaitan Dengan Ketentuan Angka 2 Surat Edaran Departemen Hukum dan Hak Asasi Manusia Republik Indonesia, Direktorat Jenderal Administrasi Hukum Umum Nomor: C.Ht.01.L0-22 Tanggal 15 Maret 2005 Tentang Standarisasi ", *Jurnal Hukum & Pembangunan*, 32.no 2 (2017): 421.

⁴ J.Satrio, *Hukum Jaminan – Hak Jaminan Kebendaan Fidusia*. (Bandung: Citra Aditya Bakti, 2005), 10.

⁵ ahead Sanusi, "Pendaftaran Jaminan Fidusia dan Akibat Hukumnya (Suatu Tinjauan Normatif)", *Jurnal Ilmiah Kebijakan Hukum* 7, no. 1, (2013): 74.

⁶ Siti Malikhatun Badriyah, "Perlindungan Hukum Bagi Kreditor Dalam Penggunaan Base Transceiver Station (BTS) Sebagai Objek Jaminan Fidusia Dalam Perjanjian Kredit", *Jurnal Media Hukum* 22, no. 2 (2015): 211.<<https://doi.org/10.18196/jmh.2015.0056.205-217>>.

The fiduciary giver (the debtor) is obliged to pay off his debts, which are due. Still, if the fiduciary giver (the debtor) is negligent, then the fiduciary recipient (the creditor) can carry out his execution of fiduciary collateral objects ". This provision is based on "Article 29 paragraph 1 (a) of Law No. 42 of 1999 concerning Fiduciary Guarantees that are based on the Almighty God. These are the things that give the executive right to align the power of the deed with the court's decision.⁷

Article 15 paragraph 2 of Law No. 42 of 1999 concerning Fiduciary Assurance provides an executorial power for the execution of collateral objects. Still, in practice, it is not as easy as stipulated in the Law, ie fiduciary guarantees have many obstacles to execute collateral as a long process and mechanism others that are detrimental to the creditor. This research was conducted at the BRI Semarang Pandanaran branch office is one of the large BRI work units in the city of Semarang with the achievement data (performance) of the BRI Pandanaran Semarang branch office as follows:

Table 1
BRI Semarang Pandanaran Loans
(in million rupiah)

Number of Account Officers (AO)	SEGMENT A	2016			2017		
		Account Amount	Loan ceiling (credit granted)	<i>Out Standing (OS) / remaining loan</i>	Account Amount	Loan Ceiling (given credit)	<i>Out standing (OS) / remaining loan</i>
13 people	Intermediate / Retail	240	589.024	460.285	261	659.459	468.867

Source: BRI Pangkalan Semarang Branch Performance Figure, 2017

Explanation of the table above is the total loans at BRI Semarang Pandanaran position in December 2016 with 240 accounts, and with the remaining loan of Rp. 460,285 million. In 2017 with an account number of 261, with the remaining loan amounting to Rp. 468,867 million. The number of marketing officers (Account Officers) is 13 people, so the average marketer manages an account of 261 divided by 13 in total, about twenty units each. Non-performing loans are totaling ten debtors with a remaining loan of 1.687 million rupiahs. This problematic loan is the object of research, because according to the results of interviews with the bank, it is known that although it has been arranged regarding the execution of collateral objects by the bank, but in its Implementation the bank experienced many obstacles.

⁷ Munir Fuady, *Jaminan Fidusia*, (Bandung: Citra Aditya Bakti, 2003), 23.

Previous research that raised the same topic was conducted by "Nur Adi Kumaladewi, with the title Research on Execution of Motor Vehicles as Fiduciary Assurances on Third Parties, this research focuses on the discussion of the misuse of fiduciary collateral objects by fiduciary guarantors"⁸. This research is different from previous studies. This study will discuss the problem of executing fiduciary security issues concretely and how the efforts made by BRI Semarang Pandanaran Branch for Recovery of Troubled Loans with Fiduciary Guarantees, and will discuss and explain the obstacles faced by BRI Semarang Pandanaran Branch in carrying out executions fiduciary collateral objects. The purpose of this research is to find out how the Implementation of the provisions regarding fiduciary guarantees, at the level of Implementation in the field, especially regarding the execution of fiduciary collateral objects.

This study uses empirical juridical research methods, namely research that examines the workings of law in society⁹. The Law, in this case, is the regulation regarding Fiduciary Guarantee, namely Law No. 42 of 1999. The data used are primary data obtained through interviews with BRI Semarang Pandanaran Branch Offices, and secondary data in the form of primary legal materials, namely the laws and regulations regarding Fiduciary guarantees and related regulations, and secondary standard materials in the way of books and journals. Scientifically related fiduciary contracts. Research data were analyzed qualitatively so as to produce descriptive-analytical data, "That is, what was stated by respondents verbally researched and studied as something intact with a view to getting facts related to the subject matter to be examined "¹⁰.

EXECUTORIAL STRENGTH CERTIFICATE OF FIDUCIARY GUARANTEE WHEN CREDIT IS PROBLEMATIC

"Article 15 paragraph 2, Law No. 42 of 1999 concerning Fiduciary Guarantees", the part of the explanation provides the definition of "executive power which can be directly carried out without passing the court and is final and binding on the parties to implement the decision". The existence of words or words "For the sake of justice based on the Almighty

⁸ Nur Adi Kumaladewi, "Eksekusi Kendaraan Bermotor sebagai Jaminan Fidusia yang Berada Pada Pihak Ketiga", *Jurnal Repertorium* 2, no. 2 (2015), 60.

⁹ Kornelius Benuf dan Muhamad Azhar, "Metodologi Penelitian Hukum Sebagai Instrumen Mengurai Permasalahan Hukum Kontemporer", *Gema Keadilan* 7, no.1 (2020), 24.

¹⁰ Amiruddin dan Zainal Asikin, *Pengantar Metode Penelitian Hukum Edisi Revisi*, (Jakarta: Raja Grafindo Persada, 2016), 176.

God" makes the fiduciary guarantee can be executed immediately without a court ruling.¹¹ Fiduciary collateral in general after an agreement on credit or debt agreement between debtor and creditor, so that the agreement must be made in writing with a notarial deed. The agreement was later named the "fiduciary guarantee deed"¹².

"Article 5 paragraph 3 of Law No. 42 of 1999 concerning Fiduciary Security ", regulates that; "If the debtor fails to promise, the fiduciary recipient has the right to sell the object which is the object of fiduciary security on his own authority". This means that if the debtor fails to promise in this case that is a bank customer, then the fiduciary recipient, that is, the bank, has the right to sell the object which is the object of fiduciary collateral at his own authority. However, because basically the object which is the object of fiduciary collateral is controlled by the fiduciary giver, this is what sometimes hinders the execution process of fiduciary collateral¹³, In case of breach of contract by the debtor. Furthermore, "Article 27 of Law No. 42 of 1999 concerning Fiduciary Guarantees "explains several points relating to the rights of fiduciary holders as follows:

1. Fiduciary recipients have a priority over other creditors.
2. Priority right is the right of the fiduciary recipient to take the payment of the receivables from the execution of the object, which is the object of fiduciary security.
3. Priority rights from fiduciary recipients are not nullified due to bankruptcy and liquidation of fiduciary givers.

Based on "Article 27 paragraphs 1 to paragraph 3" a quo, it is known that the bank as the fiduciary recipient has a prioritized right over other creditors. Priority rights are calculated from the date of registration of fiduciary collateral at the Fiduciary Registration Office. Priority rights owned by a bank mean that the bank, as the fiduciary recipient takes precedence overpayment of the receivables for the execution of the fiduciary collateral object. Priority rights held by banks are not lost due to bankruptcy experienced by debtors. Priority rights held by banks as fiduciary recipients indicate that in implementing fiduciary guarantees, the principle of Law is known as "the principle that fiduciary creditors (in this

¹¹ Jatmiko Winarno, "Perlindungan Hukum Bagi Kreditor Pada Perjanjian Jaminan Fidusia", *Jurnal Independent Fakultas Hukum* 3, no. 2, (2013), 45. <<https://doi.org/10.30736/ji.v1i1.5>>.

¹² Salim, H. S, *Pengantar Hukum Perdata Tertulis (BW) Cetakan Ketujuh*, (Jakarta: Sinar Grafika, 2011), 128.

¹³ Reni Budi Setianingrum, "Mekanisme Penentuan Nilai Ekonomis dan Pengikatan Hak Cipta Sebagai Objek Jaminan Fidusia," *Jurnal Media Hukum* 23, no. 2, (2016), 232.

case banks) have the position of creditors who take precedence over other creditors"¹⁴

Related to the executorial Implementation of fiduciary guarantees in "Article 29 of Law No. 42 of 1999 concerning Fiduciary Collateral, stipulates that if the debtor or fiduciary collateral object breaches a contract, the execution of objects that become fiduciary collateral objects can be carried out based on the executorial title by the fiduciary recipient for the sake of justice based on the Almighty God, " become an object of fiduciary security over the power of the recipient of his own fiduciary through public auctions and take the payment off of the receivables from the proceeds of the sale. Sales can be made under the hand based on the agreement of the fiduciary giver and receiver if, in this way, the highest price can be obtained that benefits the parties ".¹⁵ These methods are determined in the regulations regarding the execution of fiduciary guarantees.

As for the Implementation of the sale of collateral objects, "carried out after 1 (one) month has passed since written notification by the fiduciary giver and or recipient to the parties concerned and announced at least in 2 (two) newspapers circulating in the area concerned.¹⁶ Bank customers, as fiduciary givers, are obliged to surrender objects that become fiduciary collateral objects in the context of carrying out fiduciary guarantees. This means that if there is a breach of promise by a bank customer and the bank confiscates the collateral object, and the customer may not refuse to provide the collateral item, because this has been regulated in the Act.

However, it should be noted that the execution of the object, which is the object of fiduciary security in a way that is contrary to the provisions of the legislation, especially the Law on fiduciary guarantees, the agreement regarding the fiduciary contract is null and void. Consequently, the agreement is considered to be non-existent since the beginning. If, after the execution of the collateral and the sales value exceeds the value of the debtor's loan, the fiduciary recipient must return the excess to the fiduciary giver. However, if the proceeds from the sale of collateral are less than the value of the debt owed by the fiduciary giver or inadequate for repayment of the debtor's debt, the bank customer must still be responsible for

¹⁴ Henry Donald, "Problematika Implementasi Pembiayaan dengan Perjanjian Jaminan Fidusia (The Problems of Financing with Agreement of Fiduciary Transfer of Security)", *Jurnal Penelitian Hukum De Jure* 18, no. 2, (2018), 193.

¹⁵ Budi Setia, "Permohonan Eksekusi Kepada Pengadilan Negeri Berkaitan dengan Perjanjian Fidusia terhadap Jaminan yang Digelapkan", *Jurnal Cendekia Hukum*, 3, no. 1 (2017), 100.

¹⁶ Siti Malikhatus Badriyah, R. Suharto, dan H. Kashadi, "Implikasi Hukum Penggunaan Surat Kuasa Membebaskan Hak Tanggungan Sebagai Jaminan dalam Perjanjian Kredit Pemilikan Rumah", *Law, Development & Justice Review* 2, no. 1 (2019), 59.

his outstanding debt.

According to "Law No. 42 of 1999 concerning Fiduciary Guarantees, Article 15 paragraph 3 "provides that" if the debtor is in default, the fiduciary recipient has the right to sell objects that are objects of fiduciary security on his authority. " It means "if the debtor defaults or breaches the promise, the creditor can execute the fiduciary guarantee directly. Because the fiduciary guarantee certificate has the same executorial power as the court's decision ". Where every collateral object guaranteed by the fiduciary warranty must be registered to have permanent legal force. Because every guarantee that is written, especially fiduciary contracts that have been reported, will have an executorial power or an executorial title in the guarantee deed. There is also the purpose of the registration of fiduciary guarantees is "to provide legal certainty to the parties concerned. And give preferential rights to fiduciary recipients of other creditors ".

Based on the description above and supplemented with the results of interviews conducted with the Lecturer of BRI Corporate University Campus Yogyakarta ¹⁷, A conclusion can be drawn that "the fiduciary guarantee deed does indeed have an executive power so that without going through a court decision because the executive power of a fiduciary guarantee certificate has the same legal force as a court decision that is permanent legal force."

But in practice, the application of rules regarding fiduciary guarantees has not been carried out to the fullest,¹⁸ There are several obstacles and legal problems that occur due to the execution of collateral objects. Legal issues can occur due to party mistakes debtor; it could also be due to the fault of the creditor. Problems regarding the execution of fiduciary collateral in Indonesia often occur, especially regarding unilateral withdrawals by leasing companies, to motor vehicles. This is considered by the Constitutional Court to be unfavorable and contrary to the 1945 Constitution of the Republic of Indonesia. So that in 2019, through the decision of the Constitutional Court Number 18 / PUU-XVII / 2019, which basically states that "along with the phrase" strength executorial "and the phrase" the same as a court decision with permanent legal force "contrary to the 1945 Constitution of the Republic of Indonesia and has no binding legal force so long as it is not interpreted" against fiduciary

¹⁷ Widodo Winarso (Lecturer BRI Corporate University Campus Yogyakarta), Interview with Lecturer BRI Corporate University Campus Yogyakarta, 12 Januari 2020.

¹⁸ Diah Ratna Sediati Sulistyani, "Implikasi UU N0.42 Tahun 1999 Tentang Jaminan Fidusia Terhadap Perlindungan Hukum Bank Sebagai Kreditur", *Masalah-Masalah Hukum* 39.no. 1 (2010), 79.

guarantees that there is no agreement on breach of contract (default) and the debtor object to voluntarily surrendering the object which becomes a fiduciary guarantee, then all legal mechanisms and procedures in the execution of the Fiduciary Guarantee Certificate must be carried out and apply the same as the execution of a court decision that has permanent legal force. "The decision of the Constitutional Court affirmed that the executive power of fiduciary security objects could not be done unilaterally unless agreed upon in the agreement clause concerning breach of contract (breach of contract).

EFFORTS MADE BY BRI SEMARANG PANDANARAN BRANCH FOR RECOVERY OF TROUBLED LOANS WITH FIDUCIARY COLLATERAL

Based on an interview with Mrs. Dwi Floresvita, operational manager of the Bank Rakyat Indonesia Semarang Pandanaran branch office, she mentioned several causes of bad credit, if broadly calcified, bad credit was caused by; by customer factors, external and internal banks, these three factors make bad credit.¹⁹

What is meant by customer factors include financial factors (eg, debt increases sharply, net income decreases, costs increase, uncollectible receivables and others), management factors (eg, changes in company ownership, illness, or death of important people in the company, planning failure, etc). Operational aspects (eg, loss of one or more key customers, low human resource development, etc.). The customer factor means that what causes terrible credit is the customer's fault or negligence.²⁰

External factors as causes of problem loans include changes in government policy, rising prices for production factors due to rising fuel prices, transportation costs, rising interest rates on loans, natural disasters, and so on. Factors that can be identified as causes of non-performing loans from the bank side include data manipulation, over-collateral collateral, credit tompengan, appearance or fictitious credit, weaknesses of analysis by credit officials since the beginning of the credit granting process, weaknesses in coaching and monitoring and so on. External factors, in general, the thing that causes bad credit is not the fault of the

¹⁹ Dwi Floresvita (Manajer Operasional Kantor Cabang Bank Rakyat Indonesia Semarang Pandanaran), Interview with Manajer Operasional Kantor Cabang Bank Rakyat Indonesia Semarang Pandanaran, pada 14 Januari 2020.

²⁰ Djoko Hadi Santoso and Agung Sujatmiko, "Royalti Hak Cipta Sebagai Obyek Jaminan Fidusia", *Masalah-Masalah Hukum* 46, no. 3 (2017), 199.

party making the credit agreement²¹.

The efforts made by the bank in this case BRI Semarang Pandanaran branch to repay (recovery) the loan with Fiduciary collateral when bad credit or a broken promise. By the Fiduciary Security Act, which is in "Article 15 paragraph 3 which states that if the debtor fails to promise, then the fiduciary recipient has the right to sell the object, which is the object of fiduciary guarantee on his authority. The bank can take the collateral at any time. Recovery by selling collateral through legal channels or underhanded or through a family approach is an effective way to settle loans granted by banks to their customers who have broken promises or defaulted loans ".²²

Recovery of non-performing loans with fiduciary collateral has different steps between one debtor and the other in an effort to settle a loan conducted by Bank Rakyat Indonesia, because one debtor has different cases and deals with it in different ways. Also, The most crucial step in returning non-performing loans is that there is a need for goodwill, good faith, and cooperation from the debtor, and the debtor is willing to follow the terms and conditions that have been determined and determined by the bank.

"Efforts to resolve non-performing loans, namely negotiations and solutions to the Implementation of the process of recovery of non-performing loans at Bank Rakyat Indonesia, Semarang Pandanaran branch, are carried out in stages with negotiations with the debtor to determine the scheme for credit recovery, then carry out analysis and evaluation, recovery decisions, documentation and supervision, the repayment of problem loans begins with calling the debtor and submitting warnings and billing 3 (three) times. After approaching the debtor for an analysis that the debtor's financial condition has declined, in this case, the bank offers and decides to save credit"²³.

Bank Rakyat Indonesia, especially the Semarang Pandanaran Branch Office. "If performing a problem loan settlement between one debtor and another debtor is different according to the case of each different debtor. Efforts made by Bank Rakyat Indonesia in returning non-performing loans carry out credit restructuring. The steps for resolving non-performing loans with fiduciary collateral carried out by Bank Rakyat Indonesia Semarang

²¹Fransisca Claudya Mewoh, Harry J Sumampouw, dan Lucky F Tamengkel, "Analisis Kredit Macet", *Jurnal Administrasi Bisnis* 4, no. 1 (2016), 23. <<https://doi.org/https://doi.org/10.35797/jab.4.1.2016.11322.%25p>>.

²²Dwi Floresvita (Manajer Operasional Kantor Cabang Bank Rakyat Indonesia Semarang Pandanaran), interview with Manajer Operasional Kantor Cabang Bank Rakyat Indonesia Semarang Pandanaran, pada 14 Januari 2020.

²³Rony Setyohartono (Account Officer), interview with Account Officer (AO), 13 Januari 2020

Pandanaran Branch Office are as follows "²⁴.

- a. Monitoring and guiding debtors with problem loans, based on the results of monitoring and coaching if the customer has good faith and the business prospects are still there, restructuring of the debtor's loan can be restructured in the form of changes in interest rates, reduced interest arrears, fines and or penalty, an extension of credit term/rescheduling of credit, sale of collateral and others.
- b. If the customer does not have a good faith, and his business no longer exists, what BRI is doing is selling collateral, selling collateral can be done under the hand or through an auction.
- c. A significant effort that is often done by banks in solving problem loans, especially with fiduciary guarantees, is a family approach through parents, relatives, and even through local community leaders. In carrying out the execution, it is not easy because, in practice in the field, there are a lot of obstacles encountered when the bank will execute goods that are loan guarantees, including:
 - 1) Debtors are very difficult to find
 - 2) The condition of the goods has been damaged.
 - 3) Collateral is outside the city.
 - 4) Items guaranteed have changed hands.

For these conditions, the bank must incur additional costs to seek or request the assistance of a third party to withdraw it, sometimes the costs incurred are not proportional to the results of the sale of the guaranteed item, if the condition of the goods is damaged, the economic value of the goods if sold far from the market price so that it is not sufficient to repay the debtor's loan.

EXECUTION OBSTACLES FACED BY BRI SEMARANG PANDANARAN BRANCH WITH FIDUCIARY COLLATERAL IN PROBLEM CREDIT RECOVERY EFFORTS

Lending is one of the activities of banks in carrying out intermediary functions, where until now, lending is still the main activity of banks, so it must be done carefully. In accordance with the contents of "Article 8 of Law No. 10 of 1998 concerning changes to Law

²⁴ Rony Setyohartono (Account Officer), interview with Account Officer (AO), 13 Januari 2020

No. 7 of 1992 concerning Banking ". The bank has implemented the principle of prudence in granting credit, but not all debtors have good faith in paying off their credit loans on time²⁵.

Banks also cannot easily execute objects that are the collateral object; there are several obstacles faced by banks in implementing these fiduciary collateral objects, including:

- 1) Debtor object to the execution of fiduciary collateral,
- 2) The debtor does not want to hand over fiduciary collateral,
- 3) The object of fiduciary guarantee has changed hands to a third party,
- 4) The debtor has changed or lost the form of the collateral object so that it is no longer perfect or its form has changed and / or the fiduciary collateral object has been destroyed²⁶.

"Problems that occur in debtors who default in the loan agreement with fiduciary guarantees need to be resolved by the debtor must pay off or pay off all debts or losses suffered by creditors. If the debtor continues to neglect his responsibilities, the creditor will make efforts to resolve disputes through legal means by creating a civil suit in the District Court. Settlement out of court or non-litigation, the creditor, will invite the debtor to deliberate issues to find the best way for the creditor and the debtor. The settlement that can be carried out such as negotiation or mediation with mutual openness from the parties will be found to be an amicable effort in settlement of the credit agreement so that the civil case is not brought to justice in the District Court first"²⁷.

CONCLUSION

The executive power of the Fiduciary Guarantee certificate, if the debtor is in default, the fiduciary recipient, in this case, the bank, has the right to sell the object, which is the object of fiduciary security on his authority. This is because a fiduciary guarantee certificate has the same executorial power as a court decision.

Efforts to recover (repay) problem loans with Fiduciary collateral are carried out in various ways, namely "Implementation of the executorial title referred to in article 15 paragraph 2 by the fiduciary recipient; i.e., the sale of objects that become fiduciary guarantees through auctions on the power of fiduciary recipients through public auctions and

²⁵ Sulistyani. Diah Ratna Sediati, "Implikasi UU N0.42 Tahun 1999 Tentang Jaminan Fidusia Terhadap Perlindungan Hukum Bank Sebagai Kreditor", *Masalah-Masalah Hukum*, 39, no. 1 (2010), 83.

²⁶ Rony Setyohartono (Account Officer), interview with Account Officer (AO), 13 Januari 2020

²⁷ Rony Setyohartono (Account Officer), interview with Account Officer (AO), 13 Januari 2020

take the settlement of receivables from proceeds, deals under the hand that is carried out based on the agreement of fiduciary givers and recipients if in this way the highest price is obtained which benefits the parties, and a family approach through parents, or family of the debtor or even through community leaders who are around the debtor's residence will be more effective for resolving non-performing loans with fiduciary collateral ". However, with the decision of the Constitutional Court Number 18 / PUU-XVII / 2019 the executive power of fiduciary security objects cannot be done unilaterally, unless agreed upon in the agreement clause concerning breach of contract (default), credit agreement.

The obstacles faced by Bank Rakyat Indonesia Semarang Pandanaran Branch Office in carrying out executions of fiduciary collateral objects are the first debtor objected to the execution of fiduciary collateral, second the debtor does not want to surrender the fiduciary collateral object, the third fiduciary collateral object has changed hands to a third party. Fourthly the debtor has changed or lost the form of the collateral item so that it is no longer perfect or its shape has altered and has been destroyed or has been damaged. This obstacle is faced by the Bank Rakyat Indonesia Semarang Pandanaran Branch Office in carrying out executions of fiduciary collateral objects.

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