

EXECUTION OF FIDUCIARY COLLATERAL ON THE PRODUCTS OF PEGADAIAN KREASI IN PEGADAIAN LIMITED COMPANY IN SEMARANG CITY

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ABSTRACT

Pegadaian Limited Liability Company is one of the credit institutions established by the government and organized on the basis of a pawning law. Pegadaian Limited Liability Company is an institution that helps improve the economy by providing loans based on pawning laws to small communities, especially Micro, Small and Medium Enterprises. Pegadaian Kreasi is a fiduciary loan installment. The problems in this study: 1) is the products of Pegadaian Kreasi in the Pegadaian Limited Company in Semarang City registered? 2) How is the execution of fiduciary collateral on the products of Pegadaian Kreasi in Pegadaian Limited Liability Company in Semarang City? 3) What obstacles arise in the implementation of the execution of fiduciary collateral on the products of Pegadaian Kreasi at the Pegadaian Limited Company in Semarang City? The method of approach used in this research was the empirical juridical approach, and the specification of this research was analytical descriptive. The sources of data were primary and secondary data, and the method of data collection was by interview and literature study. The data analysis used was qualitative analysis. The results of the study: 1) The obligation to register fiduciary collateral on the object of a Pegadaian Limited Company is carried out electronically based on Government Regulation number 21 of 2015 concerning Procedures for Registration of Fiduciary Collateral and the Cost of Making a Fiduciary Collateral Deed. 2) Increasing the number of debtors of PT Pegadaian Kreasi makes it possible for the payment to have a jam. This congestion makes the Pegadaian make efforts in accordance with the provisions of the legislation that is taking collateral. 3) Obstacles that occur in the implementation of fiduciary collateral until the execution of fiduciary collateral in Pegadaian Limited Company in Semarang are still related to defaults from creditors and the involvement of third parties regarding the object of fiduciary collateral.

Keywords: Power of Proof,, Certified Land, Land Notification Letter (SKT)

A. INTRODUCTION

Pegadaian Limited Liability Company is an institution that helps improve the economy by providing loans based on liens to small communities, in order to avoid the practice of borrowing money with unnatural interest.¹ Pegadaian Limited Liability Company provides loans based on pawn and fiduciary law in the form of surrender of movable collateral as collateral for credit to Pegadaian Limited Liability Company, whose value is higher than the amount of loans granted by Pegadaian Limited Liability Company to its customers.

The role of Pegadaian Limited Liability Company is one of the alternatives chosen by the people who need working capital for business, because in Pegadaian Limited Liability Company people can easily get funds and in a relatively short time in a simple, straightforward way by pawning goods that are they have as collateral for credit. Along with the demands of meeting the needs and desires of the people related to the form of credit services, the Pegadaian Limited Company has diversified its products.²

In accordance with what is stated in Article 7 and Article 8 of Government Regulation Number 103 of 2000 which allows Pegadaian Limited Liability Companies to conduct business services in other financial fields besides pawning. One of the products of the Pegadaian Limited Company is the KREASI PEGADAIAN, namely loans (credit) within a certain period of time using the construction of a Fiduciary Guarantee loan guarantee, which is given by Pegadaian to micro entrepreneurs and small entrepreneurs who need working capital for their business development needs.³

The efforts of Pegadaian Limited Liability Company to launch Pegadaian Kreasi products can be said to be successful because the demand is growing more and more. This can be seen by the number of small entrepreneurs applying for Pegadaian Kreasi credit applications, because if using a pawn facility will be constrained by requirements *inbezitstelling* regulated in Article 1152 of the Civil Code which means that the collateral must leave the power that gives the pawn, or the collateral must be handed over to the pawning holder while on the part of the pledged pawner the instrument is a production process. This condition is a serious obstacle for the pawn on tangible movable objects, because the pawn giver cannot use these objects for his purposes.

Pegadaian Kreasi Limited Company provides flexibility for collateral items that are still carried by the debtor during the credit agreement process. In granting fiduciary system installments in this Pegadaian Limited Liability Company, it is still subject to Law Number 42 of 1999 concerning Fiduciary Guarantees. The fiduciary recipient's creditor

¹ Aprilianti, *Lembaga Pegadaian dalam Perspektif Hukum*, (Universitas Lampung: Bandar Lampung, 2007), hlm. 8.

² "Buku Saku Pengenalan Produk Perseroan Terbatas pegadaian" oleh Divisi Litbang Pemasaran Kantor Pusat Perseroan Terbatas Pegadaian, Jakarta, 2009, hlm. 10

³ "Pedoman Operasional Kredit Kreasi" oleh Divisi Usaha Syariah Perseroan Terbatas Pegadaian, Jakarta 2005.

position is the holder of the guarantee while the authority as the owner he has is the authority that is still related to the guarantee itself, therefore it is also said that his authority as the owner is limited.

As long as the debtor is not negligent in fulfilling his obligations the creditor is a recipient of collateral, only because the collateral is in the form of movable property, the creditor can take some actions that are owned like an owner, in supervising the collateral used by the debtor, the term borrow and use is used in the loan agreement. made between the creditor and debtor. Thus the creditor as an interested party in the collateral indirectly has authority over the collateral used by the debtor, so it is fitting for a Pegadaian Limited Company to have the right to supervise the collateral.

Law Number 42 of 1999 concerning Fiduciary Guarantees Article 1 number 2 states that fiduciary guarantees are collateral rights for both tangible and intangible movable objects and immovable objects, especially buildings which cannot be encumbered by mortgage rights as referred to in the Law 4 of 1996 concerning Mortgage Rights which remain in the possession of Fiduciary givers as collateral for paying off certain debts, which gives a preferred position of Fiduciary Recipients to other creditors.

In the course of time, not all debtors can always fulfill their obligations (default). There are many reasons that become an obstacle for debtors unable to pay installments in the fiduciary credit system or broken promises, for example because the business is sluggish, deliberately does not want to pay, or really can't afford to pay, the debtor dies, disappears. If installment disruptions are caused by damage / loss of collateral, the debtor is asked to replace with a new collateral with a minimum value of the same as the collateral and is reminded to settle the loan until it has been repaid.

Unpayment due to debtors being sick or even dying, then even then the situation does not abort the obligation concerned to keep repaying debts. Husband / wife or heirs are still required to complete the debt. As for debtors who do not want to pay in installments or are no longer able to pay in installments, the credit settlement process is through the execution of collateral items. Law Number 42 of 1999 concerning Fiduciary Guarantees, Article 29 also regulates the procedure for executing fiduciary guarantees. Pegadaian Limited Liability Company in terms of execution may have its own ways but do not deviate far from existing regulations.

Based on the description, there are several main issues to be discussed, namely:

1. Does the guarantee in fiduciary product Kreasi in the Pegadaian Limited Company in the City of Semarang must be registered?
2. How is the execution of fiduciary guarantees on Kreasi products at Pegadaian Limited Liability Companies in Semarang City?
3. What are the obstacles that arise in the implementation of fiduciary guarantees on the Kreasi products in the Pegadaian Limited Liability Company in the City of Semarang?

B. DISCUSSION

1. Mandatory Registration of Fiduciary Guarantees in Kreasi Products in Pegadaian Limited Companies in the City of Semarang

a. Fiduciary Guarantee Registration

Fiduciary guarantees must be registered, as provided for in Article 11 of the Fiduciary Law. With this registration, the Fiduciary Law fulfills the principle of publicity which is one of the main principles of material law. These provisions are made with the aim that the object which is used as a fiduciary collateral object really belongs to the debtor so that if there are other parties who want to claim the object, then he can find out through the announcement.

Registration of a Fiduciary Guarantee is carried out by the recipient of a fiduciary guarantee right (creditor) at the Ministry of Law and Human Rights (Ministry). Registration of this type must be carried out no later than 30 days from the date the Fiduciary Guarantee certificate is issued. Fiduciary guarantee registration requirements are: the

- 1) identity of the Fiduciary Giver and Recipient;
- 2) date, number of the Fiduciary Guarantee deed, name, and place of domicile of the notary who made the Fiduciary Guarantee deed;
- 3) data on principal agreement guaranteed by Fiduciary; \
- 4) description of objects which are the object of Fiduciary Guarantee;
- 5) guarantee value; and
- 6) the value of objects which are subject to Fiduciary Security.

Law Number 42 of 1999 concerning Fiduciary explains that the registration of a Fiduciary Guarantee is carried out by recording the Fiduciary Guarantee in the Fiduciary Register. PP No. 21 of 2015 about Procedures for Fiduciary Guarantee Registration and Costs for Making a Fiduciary Guarantee Act outline that the application for registration of fiduciary guarantees is submitted within a maximum period of 30 days from the date of making the fiduciary guarantee deed. Proof of registration will be obtained after making the request. The proof of registration includes the registration number, the date the application was filled in, the name of the applicant, the name of the fiduciary registration office, the type of application and the registration fee for a fiduciary guarantee.

Payment of the fiduciary guarantee registration fee can be done through the perception bank. Fiduciary guarantee registration is recorded electronically after the applicant has paid the registration fee and fiduciary guarantee can be issued. The fiduciary guarantee certificate is signed electronically by a fiduciary registration office official and can be printed on the same date the certificate is recorded.

If there is an error filling out the data in the application for registration, the applicant can submit an improvement in the fiduciary guarantee certificate. The request for improvement shall include the number and date of the fiduciary guarantee certificate to be repaired, the repair data and the description of the repair.

The request for improvement shall attach a copy of the fiduciary guarantee certificate to be repaired, a photocopy of proof of registration payment and a copy of the fiduciary guarantee deed. This request for

improvement must be submitted within 30 days from the issuance of the fiduciary guarantee certificate. PP No. 21/2015 also explains the procedures for changing fiduciary certificates.

PP Number 21 Year 2015 regulates fiduciary guarantees that are deleted. Fiduciary collateral is removed because of the abolition of fiduciary guaranteed debt, waiver of the right to fiduciary collateral by the fiduciary recipient and the destruction of the object which is the object of fiduciary collateral. The fiduciary recipient is obliged to notify the fiduciary guarantee that was abolished to the minister no later than 14 days from the date of removal of the fiduciary guarantee.

Based on Article 16 of PP No. 21 of 2015, a Fiduciary Guarantee is written off under the following conditions:

- 1) Elimination of debt guaranteed by fiduciary.
- 2) waiver of the right to Fiduciary Guarantee by Fiduciary Recipients; or the
- 3) destruction of objects which are the object of the Fiduciary Guarantee.

The conditions that must be met when notification of the removal of the fiduciary guarantee are as follows:

- 1) information or reason for the removal of the Fiduciary Guarantee;
- 2) details of the Fiduciary Guarantee certificate (date, number, name and place of domicile of the notary); and the
- 3) date of the removal of the Fiduciary Guarantee.

This notification must include information or reasons for the removal of the fiduciary guarantee, the number and date of the fiduciary guarantee certificate, the name and place of notary and the date of removal of the fiduciary guarantee. If the fiduciary recipient, his representative or proxy does not notify the abolition of the fiduciary guarantee, then the fiduciary guarantee cannot be re-registered.

The cost of making a fiduciary deed is calculated based on the value of the object pledged. If the guarantee value is up to Rp100 million, then the cost of making the deed is at most 2.5 percent. If the guarantee value is above Rp100 million to Rp1 billion, then the cost of making the deed is no more than 1.5 percent. Meanwhile, if the guarantee value is above Rp1 billion, the cost of making the deed is based on an agreement between the notary and the parties. However, the value of the amount of the fee cannot be more than one percent of the guarantee value of the object for which the act is made.

This PP takes effect on April 6, 2015. If a fiduciary guarantee has been registered before this PP is issued, the notice of its removal is based on the provisions of this PP. The validity of this PP, PP No. 86 of 2000 concerning Procedures for Registration of Fiduciary Guarantees and Costs for Making a Fiduciary Guarantee Certificate was revoked and declared no longer valid.

1) Credit term and Capital Lease

The credit period is set to a minimum of 12 (twelve) months, a maximum of 36 (thirty six) months, with the repayment of loans made in installments (monthly). The capital lease is paid every month together with the principal loan installments which are calculated flat, for KREASI Pegadaian capital lease rates are 1% (one percent) per month which is calculated flatly depending on the term of the loan given to the debtor.

Customers who intend to pay off before the credit period ends, the debtor must pay the remaining principal of the loan plus the remaining unpaid capital lease at a rate according to effective interest calculation (according to the accelerated repayment table / before maturity).

Credit installments are paid in full and the customer wants to take more credit, so the process is like when the initial submission by completing the necessary requirements and through a review of the location and place of business and checking collateral. For working capital credit, the maximum period of time is 12 (twelve) months, while investment credit can have more than 12 (twelve) months and a maximum period of 36 (thirty six) months.

2) Administration fees and fees for guarantee services

Administration costs for the KREASI Pegadaian in the process of giving credit are the burden of the customer and are deducted directly from the credit given to the customer, these administrative costs are used to replace the direct costs for the credit process and to pay insurance (guarantee service fees) and to the customer the fee for the guarantee service does not need to be conveyed because this can affect the customer's compliance in repaying the loan, but to the customer the fee for the guarantee fee is combined with administrative costs in terms of administrative fees the rates are as follows:

Table 3. Pegadaian Kreasi Fee

No.	Period Credit	Fees Administration	Fees Fees Guarantees	Amount of administrative fees
1	12 Months	1%	1.52% / mo.	2.52% / mo.
2	18 Months	1%	1.78% / mo.	2.78% / mo.
3	24 Months	1%	2.15% / mo.	3.15% / mo.
4	36 Months	1%	2.69% / mo.	3.69% / mo.

Source: Pegadaian Branch of Banyumanik Semarang in 2017

The fee for this guarantee service is actually a bailout (Subrogation Debt) for the Limited Liability Pegadaian from insurance company, so that if there is a bad debtor and the Limited Pegadaian Company

is successful in executing the collateral after the process and through the process and succeeded in selling, the Pegadaian Limited Company must return the amount of the funds as a replacement fund provided by the insurance party as agreed.

3) Determination of Pegadaian Kreasi

Loans have a higher risk compared to fast and safe credit (KCA) therefore in determining the size of the loan must take note of the following matters:

- a) The main basis for granting credit must be from a business feasibility analysis meaning that it is only given to debtors who has passed the business feasibility analysis test namely the debtor whose character meets the specified requirements, and there is no doubt the will and ability to repay all obligations he has received. Therefore, in the process of granting credit, it is absolutely necessary to conduct a business(survey) and conduct a thorough credit analysis based on predetermined rules.
- b) From the business feasibility analysis, the results of the calculation of the amount of loans that can be given to the debtor will be obtained, the amount of the loan is calculated from the projected profit of cash inflows every month, the amount is 1/3 (one third) of the profit of 1 (one) month multiplied by the period of the credit extended and adjusted with the collateral estimated value guaranteed.
- c) From the business feasibility analysis, the ability to repay loans from the debtor can be obtained, so if the results are greater than the credit analysis, the loan value is determined based on the value of the collateral provided, otherwise the loan value is determined from the results of the credit analysis.

4) Power of Credit Terminator at Pegadaian Kreasi

- a) Branch Manager acts as the Company's attorney in granting credit and at the same time as Credit Terminator (KPK).
- b) The Branch Manager on behalf of the Company to enter into a Credit agreement with the prospective debtor up to a certain amount, if it exceeds the specified ceiling, then must obtain permission from the Regional leader.

5) Other costs of the Pegadaian Kreasi Credit

Other costs that must be borne by the prospective debtor are the notary fee, the amount of which is determined by the notary public in an agreement made by the notary public known by the Regional Head of the Pegadaian Limited Company and the rate depends on the amount of credit received by the prospective debtor, for example:

- a) For Pegadaian Kreasi credit up to Rp. 10,000,000.00 subject to a fee *Waarmarking*
- b) For Pegadaian Kreasi credit up to Rp. 25,000,000.00 subject to the cost of making a Fiduciary Deed
- c) For Pegadaian Kreasi Credit above Rp. 25,000,000.00 subject to the cost of making a Fiduciary Certificate.

b. Loan Qualifications and Late Finesloan

Based on the debtor's compliance in repaying the Pegadaian Kreasi, they are grouped into several categories:

- 1) CURRENT category given the L code, ie the customer who repays the loan does not exceed the due date, the debtor is only subject to UP + SM installments.
- 2) Installment category UNDER SPECIAL OVERSIGHT is given a DPK code, namely a debtor who has arrears in credit installments up to 1 (one) month from the due date of the installments, to this debtor subject to fines according to the specified rate.
- 3) The CURRENT CURRENT installment category is given a TOS code, which is a debtor who has arrears in credit installments of more than 1 (one) to 2 (two) months since the due date, to this debtor subject to fines according to the rate determined.
- 4) The category of DOUBTED installments is given a DR code, which is a debtor who has arrears in credit installments of more than 2 (two) to 3 (three) months since the due date, to this debtor subject to fines according to the specified rate.
- 5) The Unpaid installment category is coded M, that is, debtors with credit installments in arrears for more than 3 (three) months, in addition to being charged a fine in accordance with the stipulated rate, also the first Somasi will be given and then if after sending a letter of summation up to three times concerned still does not pay in arrears in credit, the Branch Manager will carry out the confiscation of collateral.
- 6) Late payment fines in monthly installments, every 1 (one) late to (seven) days late are subject to 2 (two) percent of the total monthly installments and a maximum amount of 10 (ten) percent delay in installments of monthly installments.

c. Credit Extension for Pegadaian Kreasi debtors

If the Debtor wants a Pegadaian Kreasi credit extension, the process is the same as the new credit request procedure accompanied by a note:

- 1) Debtors are categorized as CURRENT, ie smooth installments are never in arrears, business development is good.
- 2) To the debtor concerned, new credit can be given by first checking the condition of collateral and business conditions at the time of filing and the requirements needed to apply for new credit.
- 3) The amount of new credit can be higher or the same or lower than the credit he has ever received, depending on the condition of the collateral and the development of the business.
- 4) If the second credit period is CURRENT, the Debtor can be granted a Pegadaian Kreasi credit facility for the third time by going through the same process as the second credit application process.

2. Execution of Fiduciary Collateral in Semarang City Pegadaian Limited Company

- a. Execution of Fiduciary Collateral If the Default Debtor in the Karangturi Branch Pegadaian Limited Liability Company is derived from the original Dutch word "*wanprestatie*", meaning that it does not fulfill the obligations set out in the agreement.⁴ In this case the debtor or debtor does not do what has been promised or do something that should not be done.

Overdue is the delay in the implementation of payment obligations at the time specified in the loan agreement. Therefore, if the debtor does not fulfill the obligation to pay installments, then the person concerned can be classified as an *overdue* debtor and the debtor is said to have defaulted because he did not fulfill his obligations.

In the loan payables agreement made by the Karangturi Branch Pegadaian Limited Liability Company with the customer creates an obligation for the parties to carry out the contents of the agreement. One of the obligations that arise for the customer is to pay credit installments every month in the amount of installments that have been determined in the agreement until the loan agreement ends. The agreement also regulates late sanctions.

The amount of the fine set by the Karangturi Branch Pegadaian Limited Company for delays in paying customers is as follows⁵ :

- 1) Any late installment payment up to 7 days from the date of the installment is subject to a fine of 2% of the amount of the installment.
- 2) Any late payment of installments 8 to 14 days from the date installments, subject to a fine of 4% of the installment amount
- 3) Any delay in installment payments 15 to 21 days from the date of the installment, a fine of 6% of the amount of the installment
- 4) Each delay of installment payments 22 to 28 days from the installment date, is subject to a fine of 8% of the installment installment amount
- 5) Every late payment installment 29 to 35 days from the date of installment, subject to a fine of 10% of the amount of the installment.

However, sometimes the customer cannot fulfill his obligations due to a certain reason. The reason is usually due to economic conditions, where money is usually supposed to be used to pay installments used by customers for something that is more urgent in their interests.³

Efforts that can be done by the Pegadaian Limited Company for delays in making customers pay credit installments is to make notice or subpoena upon the delay.

The warning letter (summons) was given by the Branch Manager of the Karangturi Pegadaian Limited Company 3 (three) times before the foreclosure, namely⁶ :

- 1) Foreclosure Letter I, which is 7 (seven) days after the due date of the last installment or after 3 (three) consecutive times - according to the customer does not make installments.
- 2) Foreclosure Letter II, which is 7 (seven) days after the warning letter I • Foreclosure Letter III, which is 7 (seven) days after the confiscation letter II The contents of the warning letter in addition to containing the amount to be paid by the customer, also contains a notification about the efforts to be made confiscation and article of execution of collateral.

The procedure for withdrawing / confiscating collateral items for customers with defaults is as follows⁷: The

- 1) Credit Functional Officer sends Commemorative Letters I, II, and III to customers who default
- 2) with Branch Managers coming to the customer's domicile to collect collateral. If:
 - a) The collateral is in place and the customer wants to hand it over, then: The
 - (1) Credit Functional Officer physically matches the collateral
 - (2) To collect collateral, then bring the collateral to the Branch Office and store it in the warehouse for auction.
 - b) The customer does not want to hand over the collateral, the Karangturi Branch of Pegadaian Limited Company will ask the authorities for help.
 - c) Prepare for the implementation of the auction of collateral items in accordance with applicable procedures.

Collateral items that have been successfully withdrawn from customers must be sold or auctioned no later than 7 (seven) days after the date of withdrawal.

The sale can be done by:

- 1) Through the auction procedure in force at the Pegadaian Limited Company together with other collateral items.
- 2) Sales are underhanded, based on an agreement, if this is more beneficial for both parties. How to sell like this can be done at any time do not have to wait for auction time.

⁴ Abdul Kadir Muhammad, Hukum Perikatan, (Bandung : Alumni, 1982), p. 20

⁵ Zenuri Ismawan, Petugas tim Mikro Kredit Perseroan Terbatas Pegadaian Cabang Karangturi, Interview, 4 July 2017.

⁶ Dul Trisno, Kepala Cabang Perseroan Umum Pegadaian Cabang Karangturi, Interview, 8 July 2017

⁷ *Ibid*

According to Zenuri Ismawan, if the customer is defaulted, the execution effort by the Karangturi Branch Pegadaian Limited Company for fiduciary collateral is by auctioning fiduciary collateral items at the Pegadaian Limited Liability Company Branch Office.⁸ This is based on Article 17 paragraph (1) of the Staatsblad 1928 No. 81 Pandhuis Reglement (Basic Pegadaian Rules) stating that "all unredeemed pawned goods must be sold at auction which will be determined by Hoofd Pandhuisdienst, ie at a Pegadaian Limited Company or elsewhere. which is good for all".

Based on the Pegadaian Basic Rules above, the Pegadaian Limited Company has special authority to conduct its own auction, namely in the Pegadaian Limited Company, not by the Auction Hall. According to Zenuri Ismawan, this was done because the Karangturi Branch Pegadaian Limited Liability Company was considered to be more aware of the condition and price of the collateral.⁹

The entire proceeds of the sale / auction are used to fulfill all the obligations of the customer to the Pegadaian Limited Company, including fines and fees charged, namely:

- 1) Costs arising from the sale / auction of collateral items
- 2) Administrative costs, if through the help of third parties
- 3) The rest is as excess money become the customer's right with a maximum term of 1 (one) year. Over 1 (one) year the excess money becomes the right of the Karangturi Branch Pegadaian Limited Liability Company.

If the money obtained from the sale / auction of collateral does not cover the debtor's debt, the debtor must repay the remaining debt.

Parate execution (direct execution) on fiduciary guarantees can be directly carried out without first filing a lawsuit in court. This is based on Article 15 and Article 29 of the Fiduciary Law.

Related to the execution of fiduciary guarantees at the State Receivables and Auction Service Office (KP2LN), according to Article 1 of the Decree of the Minister of Finance of the Republic of Indonesia Number 304 / KMK.01 / 2002 concerning the Bidding Implementation Guidelines state that "auction is the sale of goods open to the public both directly or through electronic media by means of verbal and / or written price quotations which are preceded by efforts to collect interested parties."

In dealing with bad debts, the first step taken is to collect directly from the debtor or make an effort to sell the goods used as collateral by the creditor himself. If this effort is unsuccessful, the final action taken is through a legal procedure, namely by submitting the bad debt to an authorized institution such as the Office of Receivables and State Auction Services (KP2LN).

COUNTRY RECEIVABLES SERVICE

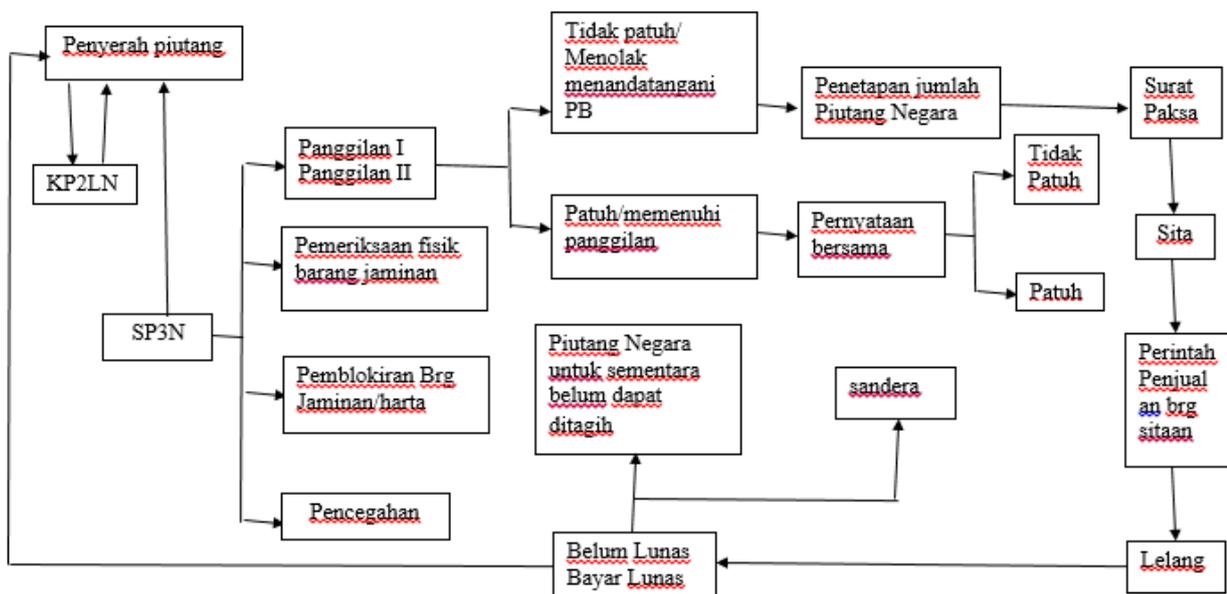


Image Caption:

- a. Receivables receivable (PP) submits bad debt to DJPLN in this case KP2LN
- b. KP2LN examines the presence / amount of State receivables from the documents required to issue a Receipt of State Receivables (SP3N)
- c. KP2LN conducts calls to debtors for request statement (interview)
- d. interview with the cooperative debtor the results are set forth in a joint statement (PB), while the non-cooperative is issued Determination of the Amount of Receivables The
- e. debtor or the owner of the collateral can withdraw the collateral with the permission of KP2LN

⁸ Zenuri Ismawan, Petugas Tim Mikro Perseroan Terbatas Pegadaian Cabang Karangturi, Interview, 4 Juli 2017.

⁹ *Ibid*

- f. coercion to repay the debt carried out with forced letters against debtors that are not meet the PB or PJPJN
- g. confiscated carried out if the contents of the forced letter is not heeded the
- h. execution of the auction of collateral carried out as a last resort for the management of the State Receivables
- i. resulting from the management of the State Receivables paid to the surrender of receivables and the State treasury for the
- j. investigation of assets or other assets dilated Do if the collateral has been sold out, but the debt has not been paid off. If no other goods are found, then the debt is stated as Non-Collectible Temporary Receivables (PSBDT)
- k. against the debtor who is capable, but does not have the good faith to settle his obligations, be prevented from going abroad or taking hostage.

There are two ways to execute fiduciary security objects, namely¹⁰ :

- 1) Non-execution, namely underhand sales with the approval of the debtor
- 2) Execution, divided by 2, namely:
 - a) Through the Fiat District Court
 - b) Through KP2LN (Article 15 paragraph (3) of the Fiduciary Law)

Sales of collateral objects fiduciary based on the executorial title of the Fiduciary Guarantee Certificate which contains the principle "FOR JUSTICE UNDER THE ALMIGHTY GOD" which has the same power as the decision of a judge who has legal force which remains basically carried out by auction and requires fiat execution from the court. Based on the Circular of the Ministry of Finance of the Republic of Indonesia Number SE - 16 / PL / 2004 concerning Guidelines for the Implementation of Fiduciary Auctions, the auction must pay attention to the following matters:

- 1) Acting as the tender applicant is a District Court
- 2) Conducting auctions through the KP2LN Auction Officer
- 3) The auction announcement follows the procedure for announcing auction execution
- 4) Debtor approval is not required for the auction
- 5) The limit value is determined by the Chair of the District Court based on the results of the assessment of the independent Appraiser
- 6) The goods to be auctioned must be at the auction site on auction day
- 7) Bid requirements documents must at least consist of:
 - a) Bid application
 - b) A copy / photocopy of the main agreement
 - c) Photocopy / copy of Fiduciary Guarantee Certificate and Fiduciary Guarantee Deed
 - d) Copy / photocopy of ownership proof of fiduciary object
 - e) List of items to be auctioned
 - f) A copy / photocopy of the determination of anmaning or reprimand
 - g) A copy / photocopy of the seizure of court confiscation
 - h) A copy of the confiscated official report
 - i) Copy / copy of determination of court auction
 - j) A copy / photocopy of the details of the debt or the amount that must be met
 - k) Copy / copy of the tender notification letter by the court to the requested execution.
- 8) the implementation of this auction can involve the Auction Center to provide pre-auction service assistance.

Pursuant to article 15 paragraph (3) gives the fiduciary recipient the right to first register with the Fiduciary Registration Office to sell objects that become objects of fiduciary security under his own authority if the debtor giving the fiduciary breach of contract (default). The sale of the fiduciary object is basically done by auction and does not require fiat execution from the court. Based on the Circular of the Ministry of Finance of the Republic of Indonesia Number SE - 16 / PL / 2004 concerning Guidelines for the Implementation of Fiduciary Auctions, the auction must pay attention to the following matters:

- 1) The Fiduciary Deed of Guarantee must contain the promise referred to in Article 15 paragraph (3) UUF, ie if the debtor fails to promise the fiduciary recipient who has first registered with the Fiduciary Registration Office has the right to sell the object which is the object of fiduciary guarantee on his own authority through auction general and take the payment of the receivables from the sale.
- 2) Acting as an auction applicant is a fiduciary creditor who has first registered with the Fiduciary Registration Office.
- 3) Conducting auctions through the KP2LN Auction Officer
- 4) The auction announcement follows the procedure for announcing auction execution
- 5) Debtor approval is not required for the auction
- 6) The limit value is determined by the fiduciary creditor based on the results of the assessment of the independent Appraiser
- 7) Bid requirements documents must at least consist of:
 - a) Bid application
 - b) A copy / photocopy of the main agreement

¹⁰ Doni Indarto, Kepala Seksi Dokumentasi dan Potensi Lelang, Interview, 19 July 2017

- c) Photocopy / copy of Fiduciary Guarantee Certificate and Fiduciary Guarantee Deed
 - d) Copy / photocopy of ownership proof of fiduciary object
 - e) List of items to be auctioned
 - f) A copy / photocopy of the details of the debt or the amount to be paid
 - g) A copy / photocopy of the tender notification from the fiduciary creditor who first registered with the Fiduciary Registration Office to the request of execution
 - h) Declaration letter from the fiduciary creditor who first registered with the Fiduciary Registration Office, stating that the debtor has broken the promise.
- 8) Implementation of this auction may involve the Auction Center to provide pre-auction service assistance.

According to Doni Indarto, the execution of the auction for fiduciary guarantees was carried out through KP2LN, this was based on Article 15 paragraph (3) of the Fiduciary Law. Then based on the article. Pegadaian Limited Liability Companies must comply with Law Number 42 of 1999 concerning fiduciary.¹¹

a. Implementation of Collateral execution objects held by Pegadaian Limited Liability Company Kalibanteng

The practice of fiduciary execution objects carried Pegadaian Limited Liability Kalibanteng Branch is as follows:

1) The execution of objects fiduciary unlisted

process of the backdrop objects assurance that such is the agreement under the hand against the fiduciary Collateral agreement so that it is not followed up with the registration of the Fiduciary Security object or the making of the Fiduciary Security agreement with a notarial deed but is not followed up with registration at the Fiduciary Registration Office.

This is done with the consideration that the value of the loan provided is not large so that it will spend administrative costs if done registration, in addition to the time period that will be passed is also not long.

For objects with such fiduciary Collaterals, the execution is carried out by the Pegadaian itself, either by taking a personal approach so that the fiduciary provider repays his debt or the debt installment is followed up by taking the object of fiduciary Collateral with the approval of the fiduciary giver because the fiduciary provider is no longer able to continue paying installments. For such actions, the Pegadaian Limited Company is based on an agreement, one of which is a power of attorney for the fiduciary collateral that has been given by the fiduciary provider to the Pegadaian Limited Company.

According to the head of the Fiduciary Registration Office's response¹² to such actions, it is legitimate to be carried out by a Pegadaian Limited Company, but if there is an objection from the owner of the collateral, and according to the police it is possible to be followed up as a case of appropriation, then the Pegadaian could be threatened with criminal action. However, if it can be proven that the power of attorney and credit agreement as the principal of the fiduciary Collateral agreement are properly signed by the relevant party and fulfill the legal requirements of an agreement, the law is based on the fact that the fiduciary agreement is not registered by the Pegadaian so that the fiduciary Collateral is not legally recognized, but the judge raised a new fact that it was true that there had been an act of borrowing some money on collateral for movable property.

If the Fiduciary Collateral item is not registered at the Fiduciary Registration Office, the creditor's position as a concurrent creditor, where the debtor does not have a preferential right (preferential) to other creditors, where the payment of the receivables is balanced with other creditors' receivables, or according to the general principle of equal rights. creditors for the assets of the debtor. What is meant by preference rights is the right of certain creditors holding Collaterals to be given their rights (compared to other creditors) for the repayment of the debt taken from the sale of said collateral items.¹³ In connection with the preferential rights of the recipient of the Fiduciary Collateral, Article 27 paragraph (2) of Law Number 42 Year 1992 concerning the Fiduciary Collateral explains that:

"Preference rights are the right of fiduciary recipients to repay their debts for the execution of objects that are objects. Fiduciary Collateral".

In addition, the obligation to register a Fiduciary Collateral with the Fiduciary Registration Office is a manifestation of the principle of publicity which is very important because the more publicized debt Collaterals will be better so that creditors / public can find out / have access to find out important information around debt Collaterals. the.

Whereas the purpose of compulsory objects burdened with Fiduciary Collaterals to be registered according to article 11 of the fiduciary Collateral law is to give birth to fiduciary Collaterals for fiduciary recipients, provide certainty to other creditors regarding objects that have been burdened with fiduciary Collaterals and give precedence to creditors and for meet the principle of publicity because the fiduciary registration office is open to the public.

However, in some cases such incidents have never been resolved in court, meaning that the parties are pursuing legal settlement in a family way.¹⁴ (For example, the table below shows many cases that should be more than 3 (three) times in arrears must be processed, but by the Pegadaian not to take strict action and end in execution but rather to a personal approach that is familial. With the consideration of legal settlement

¹¹ Doni Indarto, Kepala Seksi Dokumentasi dan Potensi Lelang, Interview, 19 Juli 2017

¹² Head of the Fiduciary Registration Office, represented by Ms. Setyawati, SH., M.Hum. Interview, 8 July 2017

¹³ Munir Fuady, *Fiduciary Guarantee*, (Bandung: PT.Citra Aditya Bakti, 2003), p. 76.

¹⁴ Mr. muh. Ilhamshah, Head of the Kalibanteng Branch Pawnshop Semarang Limited Company, Interview, July 9, 2017.

through the court will take a lot of time, energy and money, and the most important thing is that the Pegadaian always prioritizes being able to be a friend of the people, with patience and perseverance they will approach customers and provide options for solutions that should be done in connection with the arrears of the customer's installments. One of the solutions offered is the sale of goods to cover the installment shortage.¹⁵

2) of collateral items registered. In

collateral objects burdened with Fiduciary Collateral and registered by the Pegadaian to the Fiduciary Registration Office it means fulfilling Article 5 and Article 11 of the Fiduciary Security Law against such fiduciary security objects as possible by parate execution.

It's just that in some cases the fact that the Pegadaian does not auction for a variety of reasons, among others, because the object being sold is of little value and will cost a lot so that the chosen method is underhand sales made under the agreement of Fiduciary Givers and Recipients if in this way can the highest price is obtained which benefits the parties.

Ideally, based on the provisions in Article 11 of the Fiduciary Collateral law for Fiduciary Security objects that are not registered, the execution of the Fiduciary Security object cannot be carried out.

However, based on the reality in the field, many Pegadaians are not affected by this regulation. Whereas this according to the author is caused because the Pegadaian has binded the debtor with a debt agreement with the power to sell. So that the agreement has given the authority to the Pegadaian to sell the collateral if the customer does not keep the promise to pay its obligations as stated in the debt payable agreement.

In addition, legally, by not registering fiduciary collateral at the Fiduciary Registration Office, the creditor's position is only as a concurrent creditor. It has no executive power, does not apply the principle of *droit de suite* (always follows the object Collateral in the hands of whoever the object is) because according to the fiduciary law the fiduciary Collateral is valid if it has been registered at the Fiduciary Registration Office.

In the case of execution, any Pegadaian Limited Company seeks to avoid execution on the basis of an executory point or public auction, and in the credit agreement clauses are given, namely agreements to sell collateral objects under the hand in the event of bad debts as outlined in the loan agreement with the power to sell. The consideration is because the Pegadaian wants to always continue to establish cooperation and good relationships with customers. Because of this, the Pegadaian always strives for settlement efforts in the event of bad loans being settled in a family way.

3) Implementation of Collateral Goods Auction

The items that have been successfully withdrawn from customers must be sold or auctioned no later than 7 (seven) days after the date of withdrawal. Sales can be done by:

- 1) Through the auction process in force at the Company together with collateral.
- 2) Underhanded sales, based on agreement, if this is more beneficial to both parties. How to sell like this can be done at any time do not have to wait for auction time.

The entire proceeds of the sale / auction are used to fulfill all customer obligations to the Pegadaian Limited Company, including fines and other costs, namely:

- 1) Costs incurred on the sale / auction of collateral.
- 2) The cost of withdrawing collateral, if through the help of a third party.

The rest is the excess money that becomes the customer's right with a maximum withdrawal period of 1 (one) year. After 1 (one) year the excess money becomes the company's right.¹⁶

1. **Obstacles in Doing Fiduciary Execution Object**

a. obstacles in the execution object of fiduciary Branch Karangturi

weakness fiduciary to hand over property rights on the basis of trust alone leads to constraints in its implementation, namely:

- 1) Constraints on enrollment
 - a) existence of fiduciary
 - b) re-existence of the certificate is missing
 - c) Existence certificate is damaged
 - d) There is a writing error in the fiduciary registration statement
- 2) Obstacles at the time of execution
 - a) Collateral items are loaned to someone else and are out of town
 - b) Collateral damaged goods
 - c) Sales through execution cannot cover debts

Ways to overcome the obstacles mentioned above are:

- 1) At the time of registration
 - a) If there is fiduciary repeated, then the last fiduciary registered is canceled, which is recognized and gets the right of preference is the creditor who registered the first fiduciary.
 - b) If the certificate is lost, the fiduciary recipient can submit an application to issue the certificate attached with the loss letter. This applies if the agreement is still ongoing and has not yet ended.

¹⁵ *Ibid*

¹⁶ Loc.Cit Interview with Mr. Yudi Sartoyo

- c) If the certificate is damaged, the fiduciary recipient submits a request for replacement of the damaged certificate by attaching the damaged certificate.
 - d) If there is a writing error as long as no more than 60 days from the date of issuance of the certificate, repairs can be made to the Fiduciary Collateral Certificate.
- 2) At the time of execution
- a) If the collateral is borrowed by someone else and is out of town, the debtor is asked to hand over and return the collateral to the Karangturi Branch Pegadaian Limited Company. This is done with confidence in good faith from the debtor to return the vehicle
 - b) If the collateral is damaged, the creditor can ask for compensation from the insurance company concerned, in this case ASKRINDO
 - c) If the sale of the collateral through execution cannot cover the debt, usually by the Limited Company Pegadaian Karangturi Branch left to the debtor how to pay off the debt that is lacking. This is done with confidence in the good faith of the debtor to pay off the debt repayment.

b. Obstacles in carrying out the execution of collateral in the Kalibanteng Branch

1) The object of fiduciary collateral cannot be placed confiscation of execution

Article 29 of Law Number 42 Year 1999 concerning Fiduciary Collaterals really provides a breath of fresh air for fiduciary holders. Executorial power as intended in Article 15 paragraph (2) of Law no. 42 of 1999 can be directly implemented without going through a District Court and is final and binding on the parties to implement the decision. The execution of court decisions that have obtained legal force must still refer to the provisions of Article 195 HIR and furthermore, it means that the execution of court decisions that have obtained permanent legal force and must necessarily be carried out under the leadership of the Head of the District Court. Because Article 15 paragraph (2) of Law no. 42 of 1999 states that a fiduciary Collateral certificate containing the decree "*For the Sake of Justice Based on the Almighty God*" on the *Almighty God*" has the same legal force as the court's decision that has obtained permanent legal force, then the execution of the fiduciary Collateral certificate entitled "*For the Sake of Justice Based Almighty*" must also be under the leadership of the Chief District Court of competent authority.

As is known, the process of executing a decision that has obtained permanent legal force or which is necessarily including the process of executing a fiduciary Collateral certificate entitled "*For the Sake of Justice Based on the Almighty God*" has 3 (three) stages, namely¹⁷ :

- a) Stage reprimand, at this stage the debtor with the promise of failure is warned to fulfill the obligation to pay his debt within 8 (eight) days after being given a reprimand.
- b) The confiscation stage of execution, in the case of the debtor within the 8 (eight) days mentioned above, does not fulfill its obligation to pay debts to the creditor, the creditor requesting the execution (plaintiff wins the case or creditor of the mortgage right holder / creditor of the fiduciary Collateral holder) requests the Chief Justice authorized to confiscate executions. In the petitioner for execution, the holder of a fiduciary Collateral certificate or the mortgage right holder who is requested for confiscation is the object of fiduciary security, the object of the mortgage. At the request of the confiscation of execution, the Chief Justice of the Court of Justice will issue the confiscation of the execution and then the seizure will confiscate the execution.
- c) The auction stage, in the event that seizure of mortgages or fiduciary objects (collateral) is carried out, the debtor still does not pay his debt, then at the request of the applicant for execution (creditors holding mortgage rights certificates or fiduciary certificates)

the competent court will issue a general auction / sale determination , then the State Auction Office will auction the object of mortgage or fiduciary security.¹⁸ Of course, after all the necessary requirements are met and the results of the auction sale after being fulfilled and the proceeds of the auction sale after deducting auction costs and other costs are submitted to the creditor's requesting execution. In the event that the remainder of the proceeds of the auction sale must be returned to the debtor.

2) Fiduciary objects have been purchased by third parties in good faith.

Although Article 23 paragraph (2) of Law Number 42 Year 1999 concerning fiduciary Collaterals, stipulates that fiduciary providers are prohibited from transferring, mortgaging or renting fiduciary security objects except with prior written approval from the fiduciary recipient .

From the sound of the article, a problem still arises, in the event that the fiduciary Collateral holder seizes the execution of the fiduciary object, it turns out that the fiduciary security object has been purchased by a third party in good faith, is not the third party based on Article 1977 Civil Code may believe that the movable property of the person master (*tweet*) the item is the owner (*bezit geldt als volkomen title*).

Seeing the description above, then we can see Article 20 of the Fiduciary Collateral Act which determines "*fiduciary Collaterals continue to follow objects that become objects of fiduciary security in the hands of whoever the objects are except the transfer of inventory objects which become objects, fiduciary Collaterals*, problems arise as follows:

- a) If fiduciary security objects can be found but have become the property of third parties in good faith. Whether the object of the fiduciary Collateral will still be executed by the Chair of the Court, because according to Article 29 the Fiduciary Security Act has inherent properties such as Mortgage and mortgages. The problem is, in the case of a land buyer who has a good intention before buying a land

¹⁷ Soebekti, 1986. *Guarantees for Provision of Credit Under Indonesian Law*, Third Matter, Alumni, Bandung.

¹⁸ Jhon Salihendro, *Credit Guarantee System in the era of Legal Development*, (Jakarta: Sinar Grafika, 1994)

object, it is obligatory under the law to look at the Land Registry and Land Rights Certificate Office, whether the land rights bear the burden of mortgage or mortgages. This is intended to avoid legal problems in the future (disputes arise). If the buyer knows that the land is borne by the Underwriting Right or Mortgage but is still bought by the buyer, it becomes the responsibility of the buyer to bear all risks arising from the legal action if the land bought is executed, in the case of the debtor of the owner of the land. breach of contract.

- b) The same obstacle will be experienced by the fiduciary creditor in the event that he chooses to sell the object of fiduciary collateral through selling at his own power by asking the auction office or the Auction Hall to sell the fiduciary collateral object in accordance with the article Article 15 paragraph (3) of the Fiduciary Collateral Act However, goods which are the object of fiduciary collateral are not found, or are controlled by other people. Of course, the Auction Office / Auction Hall cannot sell the fiduciary object auction.

- 3) The object of collateral is lost or controlled by others

To overcome these problems or constraints, the legislators have provided anticipation as regulated in Chapter VI Criminal Provisions Article 36 which states:

"Fiduciary gives who transfer, pawn, or lease objects that become objects of collateral fiduciary as referred to in Article 23 paragraph (2) carried out without prior written approval from Fiduciary Recipients, shall be sentenced to a maximum imprisonment of 2 (two) years and a maximum fine of Rp. 50,000,000 (fifty million rupiah) ".

Provisions provided by Article 36 of the Fiduciary Collateral Law are to avoid or prevent debtors providing fiduciary rights since transferring or eliminating the fiduciary object.

However, in this case the debtor is still being carried out, the problem is the difficulty for creditors holding fiduciary rights to exercise the right of execution.

- 4) Repeated fiduciary

Fiduciary Collateral Law prohibits re-fiduciary or second and third fiduciary, this is to protect the interests of creditors from the actions of debtors who take advantage of acts of utilizing fiduciaries that are contrary to the law. For fiduciary Collaterals, we can refer to the provisions in Article 1159 of the Civil Code which determine as follows:

As long as the holder does not misuse the goods given in the pledge, the debtor has no power to demand repayment, before he has fully paid both the principal debt and interest and fees the debt, which is to Collateral that the pawned goods have been given, along with all costs that have been spent to save the pawned goods. If between the debtor and the debtor there is also a second debt, which is made after the time of pawning, and can be collected before the first debt payment or on the day of payment itself, then the debtor is not required to release his pawned goods before he is fully repaid. , even though it has not been agreed to result in its mortgages for the payment of both debts.

From the sound of the aforementioned article, the creditor in this case is given or entitled to receive his account receivable from the sale of the pawned object auction until all creditors' debts are paid by the debtor, even the law provides confirmation for the receivables given later, but has fallen the time before the pledged collateral is due or before the payment of the first receivable is also Collateral by the pledge (in which the pledger cannot claim again before all debts have been repaid).¹⁹

C. CONCLUSION

Registration obligations in fiduciary Collaterals on Pegadaian Limited Company products are based on Government Regulation No. 21 of 2015 concerning Procedures for Registration of Fiduciary Collaterals and Costs for Making Fiduciary Deed of Collateral that fiduciary Collateral registration can be carried out electronically and the registration results are valid after completing the conditions conditions specified.

Pegadaian Kreasi users in Pegadaian Limited Liability Companies are increasing a lot, this is usually seen from the increasing number of customers who apply for Kreasi loans and the amount of loan money disbursed every year is always increasing. In the event of bad credit, the Pegadaian Limited Liability Company uses an effort that does not violate the law. The execution process is carried out if for three consecutive months. Debtors in arrears later installments by the Branch Manager have been given a Warning Letter I to Warning Letter III but there was no response from the Debtor, the Pegadaian Limited Liability Company has the right to take Debtor collateral items.

The obstacles that occur in the implementation of fiduciary Collaterals to the execution of fiduciary Collaterals in the Semarang City Pegadaian Limited Company are due to limited human resources located in almost every Branch Office of the Pegadaian Limited Company. Besides the obstacles experienced by the Pegadaian Credit KREASI in the Limited Company Pegadaian also involves the insurance, if there is bad debt that has not been collected, the insurance company will provide bailout funds of 80% of the uncollected credit so that it can help the Pegadaian Limited Company in channeling credit to customers the other.

¹⁹ Sutan Remy Sjahdeni, 1999. *Underwriting Rights: Principles, Principle Provisions and Problems Facing the Banking, A Study of the Rights Act Dependents*, Alumni, Bandung, p. 92

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