



Implementation of Legal Protection for Creditors for Defaulting Customers with Motorized Vehicle Ownership Book Guarantees

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Abstract

A customer who defaults on a credit agreement basically harms the creditor. The purpose of this research is to explore the implementation of legal protection for creditors for customers who default on credit agreements by guaranteeing Motor Vehicle Ownership Books. The type of research used is empirical juridical with field studies at PT. BPR Bank Pasar Bhakti Sidoarjo. The results of the study show that the implementation of legal protection includes preventive legal protection and repressive legal protection. Guaranteed motorbike taxis will be burdened with fiduciary guarantees which are used as a form of legal certainty and can protect creditors when bad credit occurs. Repressive legal protection taken in resolving bad credit disputes is by credit restructuring first. If it is not successful, the creditor executes the collateral object which will later be sold privately to pay off the debtor's debt to the creditor.

Keywords: Credit, Default, Motorized Vehicle Ownership Book, Legal Protection.

A. Introduction

Bank is one of the financial institutions that have an important role for the economic life of a country. The bank is intended as an intermediary for parties who have more funds (surplus of fund) with parties who lack and need funds (lack of funds).¹ The role of the bank is to collect funds such as savings and also channel funds to the public in the form of credit effectively and efficiently towards increasing the standard of living of a more affluent and prosperous society.²

This credit is only given to someone who has good intentions to be able to return the credit. This is because the debtor is obliged to pay off debt and interest within a predetermined time. In order for the credit granted by the bank as a creditor to work properly, legal protection is needed for the lender.³

This credit agreement usually must be followed by a credit guarantee agreement from the debtor to the creditor. This credit agreement is the main agreement, while the guarantee is an additional agreement or accessory, meaning that the guarantee is an additional agreement that depends on the main agreement. This credit guarantee is made to guarantee that the debt

¹ Agnes Maria Janni, “Peranan Perbankan sebagai Lembaga Penyalur Kredit bagi Masyarakat”, Serat Acitya – Jurnal Ilmiah Untag Semarang, Vol. 7, No. 3, 2018, p. 128.

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can be repaid by the debtor in accordance with the agreement contained in the agreement. Collateral provided by the debtor can be in the form of movable or immovable objects.⁴

PT. BPR Bank Pasar Bhakti Sidoarjo is a bank financial institution recognized by the government and also supervised by the Financial Services Authority (OJK) to carry out activities in the field of services based on customer needs consisting of savings, deposits and loans. PT. BPR Bank Pasar Bhakti Sidoarjo itself focuses on helping the community's economic growth, such as in the field of Micro, Small and Medium Enterprises (MSMEs), private employees, and other professions. This Rural Credit Bank (BPR) only accepts deposits in the form of time deposits, savings and channeling funds as a Rural Credit Bank (BPR) business. The main function of the Rural Credit Bank (BPR) is to act as a financial intermediary or in this case the Rural Bank (BPR) collects funds from the public and then redistributes them to the public through loans or credit.

The credit contained in PT. BPR Bank Pasar Bhakti Sidoarjo includes working capital loans, consumer loans, investment loans, retirement loans and SMS credits (Swadaya Mass Certificates). PT. BPR Bank Pasar Bhakti Sidoarjo in providing credit loans to its customers is based on agreements and loan agreements based on the principle of kinship. One of the conditions for applying for credit at PT. BPR Bank Pasar Bhakti Sidoarjo is a guarantee. PT. BPR Bank Pasar Bhakti Sidoarjo accepts credit applications, one of which is guaranteed by the Vehicle Owner's Book (BPKB).⁵

Guarantee of Motorized Vehicle Ownership Book (BPKB) in this credit agreement is categorized as a fiduciary guarantee, because there is a transfer of ownership rights but the motorized vehicle remains in the possession of the owner.⁶ This is in accordance with Article 1 point 1 of Law Number 42 of 1999 concerning Fiduciary Guarantees. Book of Motorized Vehicle Owners (BPKB) which is the object of this credit guarantee if the main agreement has been completed, then the guarantee agreement has also been completed and will be returned. However, if the debtor cannot pay off his debt according to the specified time, the

⁴ Samuel Wesley Pasaribu, Erikson Parlindungan Sidabutar, Raja Kenasihen Ginting, "Penerapan Hukum terhadap Wanprestasi atas Perjanjian Hutang Piutang", *Jurnal Rectum*, Vol. 4, No. 1, 2022, Januari 2022, p. 269.

⁵ The results of the interview with Mrs. Dra. Hj. Rr. Suci Hartati as the Main Director of PT. BPR Bank Pasar Bhakti Sidoarjo, on Monday 17 October 2022 at 13.47 WIB.

⁶ Dhevi Nayasari Sastradinata, "Tinjauan Yuridis Kredit dengan Jaminan Buku Pemilik Kendaraan Bermotor (BPKB) Studi di Koperasi Simpan Pinjam "Amanah" Desa Sugihwaras Kecamatan Deket Lamongan", *Jurnal Independent*, Vol. 4, No. 2, 2016, p. 20.



creditor has the right to sell the collateral to pay off the debt and interest from the debtor.⁷ This is in accordance with Article 1131 and Article 1132 of the Civil Code which explains, that if the debtor does not fulfill his achievements in accordance with the agreement agreed upon to pay off his debt to the creditor, the creditor has the right to take and sell the collateral. .

Implementation of the credit agreement at PT. BPR Bank Pasar Bhakti also often experiences defaults by the debtor, namely by not paying their obligations in the form of installments that have been determined every month or not having good intentions to pay off the credit. Based on data obtained by the Author in the last 2 (two) years, namely in 2020 there were 1350 (one thousand three hundred and fifty) people who applied for loans with BPKB guarantees. Debtors who are paying smoothly are 1295 (one thousand two hundred and ninetyfive) people. The default debtors in that year were found to be 55 (fiftyfive) people. In 2021, it was found that the number of people applying for credit had increased, namely 1922 (one thousand nine hundred and twentytwo). Debtors who are paying smoothly are 1868 (one thousand eight hundred and sixtyeight). There were 54 (fiftyfour) debtors who defaulted in 2020.⁸

In connection with the large number of debtors who default on the guarantee of the Motorized Vehicle Ownership Book (BPKB) at PT. BPR Bank Pasar Bhakti Sidoarjo, the urgency of this research is as a preventive action and repressive action for PT. BPR Bank Pasar Bhakti Sidoarjo in dealing with acts of default. This is because when there is an act of default committed by the debtor it can cause losses to the bank as the creditor because the debtor does not carry out his achievements in accordance with the previously agreed agreement. Therefore, it is necessary to have legal protection for creditors in a credit agreement with the guarantee of the Motor Vehicle Owner's Book (BPKB) so that the rights of these creditors can be fulfilled.⁹ Based on this, this research is an urgency to explore the implementation of legal protection for creditors against customers who default in credit agreements with BPKB guarantees at PT. BPR Bank Pasar Bhakti Sidoarjo.

⁷ Putri Alam Prabancani, Desak Gde Dwi A., I Gusti Ketut S. A., "Penyelesaian Wanprestasi dalam Perjanjian Pinjam Meminjam Uang", *Jurnal Analogi Hukum*, Vol. 1, No. 1, 2019, p. 69.

⁸ The results of the interview with Mrs. Dra. Hj. Rr. Suci Hartati as the Main Director of PT. BPR Bank Pasar Bhakti Sidoarjo, on Monday 17 October 2022 at 13.47 WIB.

⁹ I Dewa Agung A. M. P. dan A. A. Gede Agung Dharmakusuma, "Wanprestasi yang Dilakukan oleh Pihak Debitur dalam Pelaksanaan Perjanjian Kredit pada Koperasi Serba Usaha Putra Dalem Batubulan Kabupaten Gianyar", *Kertha Semaya*, Vol. 1, No. 11, Mei 2018, p. 4.



B. Research Method

The type of research used is empirical juridical, which examines the applicable legal provisions in relation to what happens in reality in society.¹⁰ This research uses a qualitative approach. Qualitative approach intended to obtain a good, clear picture, and can provide data as accurately as possible about the object under study.¹¹ The legal sociology approach is used in this study, in order to examine how reactions and interactions occur when the norm system works in society.¹² The source of data in this study is primary data, which is obtained directly from primary sources, namely original sources that contain information or data that is relevant to the research. In addition, it is also sourced from secondary data which includes primary legal materials in the form of laws and regulations, secondary legal materials in the form of literature, and tertiary legal materials such as dictionaries or internet sites.

The method of collecting legal materials used in this research is interview and literature study. The interview technique was carried out in a structured manner, which was based on interview guidelines and the questions asked had been prepared prior to the interview, so that the list of questions asked to informants would not deviate from the research topic. Interviews for this research were conducted with related parties, namely the Main Director of PT. Pasar Bhakti Sidoarjo Bank. Literature study is a data collection technique that originates from literary literacy. The materials used in the literature study are laws and regulations, literature books including theses, theses, official documents and other library materials related to the object of research.¹³ The data analysis method used is analytical descriptive using a qualitative approach to primary data and secondary data. This analytical method serves to describe or provide an overview of an object under study through data or samples that have been collected as they are without conducting an analysis to make general conclusions.¹⁴

C. Results and Discussion

¹⁰ Nurul Qamar & Farah Syah Rezah, *Metode Penelitian Hukum: Doktrinal dan Non Doktrinal*, Makassar: Social Politic Genius (SIGn), 2020, p. 51.

¹¹ Ajat Rukajat, *Pendekatan Penelitian Kualitatif (Qualitative Research Approach)*, Yogyakarta: Deepublish, 2018, p. 4.

¹² Serlika Aprita, *Sosiologi Hukum*, Jakarta: Kencana, 2021, p. 14.

¹³ Muhammad Syahrums, *Pengantar Metode Penelitian Hukum: Kajian Penelitian Normatif, Empiris, Penulisan Proposal, Laporan Skripsi, dan Tesis*, Riau: Dotplus Publisher, 2022, p. 33.

¹⁴ Ani Purwati, *Metode Penelitian Hukum: Teori dan Praktek*, Surabaya: Jakad Media Publishing, 2020, hlm. 21



Banks as creditors when providing credit to customers will always face a risk, namely the non-return of money borrowed by customers. Considering that the risks faced by this bank are very large, namely the non-return of the money and also the possibility that the collateral object provided by the debtor is one of them in the form of a motorized vehicle that has been transferred to a third party. Therefore, each of these credit agreements must be accompanied by sufficient collateral and also bound by the applicable law, namely the Law of the Republic of Indonesia Number 42 of 1999 concerning Fiduciary Guarantees. Related to the existence of this law, the bank as the creditor feels increasingly protected regarding guarantees. Therefore, with the enactment of this law, creditors have legal certainty and can provide legal protection to creditors so that the rights owned by these creditors are fulfilled when the debtor does not carry out its obligations.

Legal protection for creditors in credit agreements using the guarantee of this Motor Vehicle Owner's Book is very necessary. This is because the object that is the object of collateral, namely in the form of a motorized vehicle, is still on the debtor's side. Therefore, if the debtor defaults on the credit agreement using the guarantee of this Motorized Vehicle Ownership Book, then the interests of the creditor can be guaranteed with legal protection.

Implementation of granting credit at PT. BPR Bank Pasar Bhakti Sidoarjo has gone through several stages, including the following:¹⁵

1. Stages of Submitting a Credit Application

Submission of credit applications made by customers to PT. BPR Bank Pasar Bhakti Sidoarjo is carried out in writing in the form of a credit application form. This credit application form contains:

- . Identity of the credit applicant consisting of full name, National Identity Card (KTP) number, residential address, zip code, date of birth, occupation, marital status, last education and telephone number.
- . Number of credit applications
- . Use of credit
- . Loan term
- . Type of guarantee provided
- . Family identity

¹⁵ The results of the interview with Mrs. Dra. Hj. Rr. Suci Hartati as the Main Director of PT. BPR Bank Pasar Bhakti Sidoarjo, on Wednesday, at 16 November 2022, 11.00 WIB.



. Attachments in the form of photocopies of family cards, photocopies of husband/wife KTPs, marriage certificates, salary slips, passport photos and also Motorized Vehicle Ownership Books.

If the prospective debtor has completely filled out the credit application form, then the prospective debtor will conduct an interview which is expected so that PT. BPR Bank Pasar Bhakti Sidoarjo can find out a description of the prospective debtor and also know the credit needs of the prospective debtor.

0. Stages of Credit Application Analysis

PT. BPR Bank Pasar Bhakti Sidoarjo before approving a loan application from this customer will conduct an information search through the Financial Information Service System (SLIK) first. The data regarding this prospective debtor will be checked first which contains information related to the history of the debtor making credit at a bank or other financial institution, in this case especially information regarding whether the debtor is current or not when making credit payments. If the status of the prospective debtor is clean or does not have loans elsewhere, then PT. BPR Bank Pasar Bhakti Sidoarjo will analyze prospective borrowers using the 5C principles, namely:

a. *Character*

PT. When BPR Bank Pasar Bhakti Sidoarjo is going to provide credit to its customers, it must first look at the character or temperament of the prospective debtor. The character or personality of the prospective debtor must be considered. This is because PT. BPR Bank Pasar Bhakti Sidoarjo knows whether the prospective debtor can carry out his obligations to pay his credit properly when the credit agreement is held. The personality or character of the prospective debtor can be seen from the truth of the credit application form, namely when a field inspection is carried out relating to the data that has been presented. Thus, this field inspection will be considered by PT. BPR Bank Pasar Bhakti Sidoarjo when it will provide credit to prospective debtors.

b. *Capacity*

Analyzing this ability is used to determine the ability of prospective debtors to pay credit installments. PT. BPR Bank Pasar Bhakti Sidoarjo must know the ability of the prospective debtor to manage his business so that he can pay off his credit in accordance with a predetermined time period.

c. *Capital*



PT. BPR Bank Pasar Bhakti Sidoarjo will analyze the capital of prospective debtors when applying for credit. This prospective debtor must have his own capital, this is because it is directly related to the ability of the prospective debtor to pay off his debts.

d. *Condition of Economy*

When the prospective debtor will apply for credit, PT. BPR Bank Pasar Bhakti Sidoarjo will analyze the economic condition of the prospective debtor, so that they can determine the ability of the prospective debtor to pay off his credit.

e. *Collateral (Guarantee)*

When a prospective debtor applies for credit at PT. BPR Bank Pasar Bhakti Sidoarjo must be accompanied by a guarantee. The collateral submitted must be equivalent to the credit applied for. The guarantee will also be carried out by physical checking of the guarantee as well as checking in the field. This guarantee is used by PT. BPR Bank Pasar Bhakti Sidoarjo in order to get legal protection and also get certainty that the credit that has been given can be returned or paid according to a predetermined time period. However, if the debtor is unable to pay off or return the credit, PT. BPR Bank Pasar Bhakti Sidoarjo to pay off debtor loans.

0. Credit Decision Level

PT. BPR Bank Pasar Bhakti Sidoarjo in making this decision to grant credit will conduct a committee meeting together with a team consisting of the Main Director and *Staff Account Officer* (AO). The meeting will discuss whether the credit is approved or rejected. If the credit is approved, then how much loan will be given. After the meeting has resulted in a decision in the form of approval and the amount of the loan granted, then the prospective debtor will be given a letter of approval for the credit application by PT. BPR Bank Pasar Bhakti Sidoarjo which will be submitted in writing to the debtor.

0. Credit Agreement Making Level

When the credit application has been approved, the Staff Account Officer (AO) will then collect the debtor's personal data related to legality issues so that a credit bond can be held in the form of a credit agreement. This credit agreement letter serves as written evidence regarding the limitations of rights and obligations between the creditor and the debtor.

0. Fiduciary Guarantee Imposition Stage



Banks when giving credit to debtors should oblige the debtor to provide guarantees in order to protect creditors from the risk of losses committed by the debtor, whether intentional or unintentional. PT. BPR Bank Pasar Bhakti Sidoarjo provides credit guarantees, one of which is a Motor Vehicle Owner's Book. The motorized vehicle owner's book guarantee that is used as collateral in this credit agreement is categorized as a fiduciary guarantee due to the transfer of ownership rights but the motorized vehicle remains in the possession of the object owner or debtor. The motorized vehicle owner's book guarantee, which is categorized as a fiduciary guarantee, provides legal protection for fiduciary recipients or creditors in accordance with Law Number 40 of 1999 concerning Fiduciary Guarantees. This fiduciary guarantee is an additional agreement that follows the main agreement and creates obligations for the parties to fulfill their achievements. The Motorized Vehicle Ownership Book Guarantee will be burdened with a fiduciary guarantee by drawing up a notarial deed and producing a fiduciary guarantee deed. This is in accordance with Article 5 of Law Number 42 of 1999 concerning Fiduciary Guarantees. Furthermore, after the fiduciary guarantee has been charged, the disbursement of credit funds can be done within 1 to 4 working days.

0. Fiduciary Guarantee Registration Stage

After the collateral object is encumbered by a fiduciary guarantee, this fiduciary guarantee must be registered at the Fiduciary Registration Office. This is because if this fiduciary guarantee is not registered, it will cause legal consequences that will harm the creditor in the event of default by the debtor. Registration of this fiduciary guarantee is contained in Article 11 of Law Number 42 of 1999 concerning Fiduciary Guarantees. The registration of this fiduciary guarantee aims to provide legal certainty for fiduciary recipients so that it can provide legal protection for creditors and creditors can execute the collateral object if the debtor defaults. When this fiduciary guarantee is registered, this creditor has the right to take precedence or become a preferred creditor in relation to the proceeds from the sale of fiduciary collateral objects which must take precedence over other creditors.¹⁶

Collateral objects that have been registered with the Fiduciary Registration Office will receive a fiduciary guarantee certificate that has legal force because the certificate contains “DEMI KEADILAN BERDASARKAN KETUHANAN YANG MAHA ESA”.

¹⁶ The results of the interview with Mrs. Dra. Hj. Rr. Suci Hartati as the Main Director of PT. BPR Bank Pasar Bhakti Sidoarjo, on 16 November 2022, at 11.00 WIB.

Thus, if the debtor defaults, the creditor has the executorial powers listed in Article 15 of Law Number 42 of 1999 concerning Fiduciary Guarantees. This is a form of legal protection owned by creditors.

This legal protection should indeed be given to the aggrieved party and in this case, the form of legal protection that must be taken is to compensate the creditor for losses. This is due to legal consequences if the debtor is declared in default, then compensation is made.¹⁷ According to Muchsin, this legal protection is divided into 2 (two) forms, namely preventive legal protection and repressive legal protection. These forms of legal protection can be used in providing legal protection for creditors who have been harmed by defaults committed by their customers in credit agreements.¹⁸ Legal protection for creditors against customers who default in a credit agreement with the guarantee of a Motorized Vehicle Ownership Book at PT. BPR Bank Pasar Bhakti Sidoarjo is carried out by:¹⁹

1. Preventive Legal Protection

This preventive legal protection aims to prevent disputes in an agreement. This is in order to protect the rights of PT. BPR Bank Pasar Bhakti Sidoarjo as the creditor and debtor who are bound in an agreed credit agreement activity. This form of preventive legal protection can be realized by the existence of rules contained in Article 5 and Article 11 of Law Number 42 of 1999 concerning Fiduciary Guarantees, namely by means of a guarantee object will be burdened with a fiduciary guarantee which is drawn up with a notary deed in Indonesian and is a guarantee deed fiduciary and then the fiduciary guarantee must be registered at the Fiduciary Registration Office and will get a fiduciary guarantee certificate which is used as a form of legal certainty and can protect creditors when bad credit occurs. In addition, the Civil Code is also a protector for creditors when there is a credit agreement that uses fiduciary guarantees. When the debtor violates the credit agreement with this fiduciary guarantee, the creditor's rights can be maintained with legal protection. Legal protection for creditors in the Civil Code is universally contained in Articles 1131 and 1132 of the Civil Code.

¹⁷ Andreas Andrie Djatmiko, Fury Setyaningrum, Rifana Zainudin, "Implementasi Bentuk Ganti Rugi Menurut *Burgelijk Wetboek* (Kitab Undang-Undang Hukum Perdata) Indonesia", *Nomos: Jurnal Penelitian Ilmu Hukum*, Vo. 1, No. 7, 2021, p. 252.

¹⁸ Cholidia Hanum, *Hukum dan Hak Asasi Manusia: Perkembangan dan Perdebatan Masa Kini*, Lembaga Penelitian dan Pengabdian Kepada Masyarakat (LP2M) IAIN Salatiga, Salatiga, 2018, p. 29.

¹⁹ Interview with Mrs. Pipit as part of PT. BPR Bank Pasar Bhakti Sidoarjo, on November 16 2022 at 13.00 WIB.



Article 1131 of the Civil Code explains that all movable and immovable property belonging to the debtor, both those that already exist and those that will later become collateral for all individual engagements. The article explains that when a person has bound himself to an agreement, since then all of his assets, both existing and new ones, will become collateral for all his agreements.

Article 1132 of the Civil Code states that these goods are joint guarantees for the creditors and the proceeds from the sale are divided according to the ratio of the debts of each creditor, but it is excluded if the creditors have valid reasons to take precedence. Therefore, the contents contained in Article 1131 and Article 1132 of the Civil Code make creditors in carrying out credit agreements with fiduciary guarantees protected by law.

0. Repressive Legal Protection

This repressive legal protection aims to resolve disputes that occur. The form of repressive legal protection is through the imposition of sanctions. The form of repressive legal protection adopted by PT. BPR Bank Pasar Bhakti Sidoarjo in resolving bad credit disputes, namely using non-litigation legal remedies instead of taking the litigation route because non-litigation legal remedies have faster procedures, save time and costs and have a voluntary nature in the process, resulting in mutually beneficial decisions profitable for both parties (*win-win solution*).

One form of effort from PT. BPR Bank Pasar Bhakti Sidoarjo when bad credit occurs, efforts to save credit will be carried out, namely credit restructuring first. This credit restructuring is an effort made by PT. BPR Bank Pasar Bhakti Sidoarjo in order to help customers who experience difficulties in order to be able to carry out or complete their obligations, namely through:²⁰

1. *Reschedulling*, namely an act of change made by extending the term of credit payments. In this case, PT. BPR Bank Pasar Bhakti Sidoarjo provides relief to its customers regarding the credit payment period, so that the debtor has a longer time to return the credit to PT. BPR Bank Pasar Bhakti Sidoarjo.
2. *Reconditioning*, namely an effort related to changes to some or all of the terms of the credit agreement, such as interest capitalization, delaying interest payments for a certain time, reducing interest rates and waiving interest.

²⁰ The results of the interview with Mrs. Dra. Hj. Rr. Suci Hartati as the Main Director of PT. BPR Bank Pasar Bhakti Sidoarjo, *Op. cit.*



3. *Restructuring*, namely an attempt made to change the terms of the credit agreement in the form of adding a credit facility, or converting a portion of the arrears of installments for the interest into a new credit principal which can be accompanied by rescheduling (*reschedullng*) or return requirements (*reconditioning*).

This credit rescue is an effort when credit problems occur by way of renegotiation carried out by PT. BPR Bank Pasar Bhakti Sidoarjo as the creditor with the debtor to ease the terms of returning credit, so that by easing the terms of returning credit, it is hoped that the debtor will have the ability to repay his credit and also aims to minimize the losses suffered by PT. BPR Bank Pasar Bhakti Sidoarjo. This credit rescue was taken as the first step taken by PT. BPR Bank Pasar Bhakti Sidoarjo to settle problem loans before executing collateral objects. However, when efforts to save credit carried out by PT. BPR Bank Pasar Bhakti Sidoarjo was unable to provide a solution so that the debtor could pay off his credit, so PT. BPR Bank Pasar Bhakti Sidoarjo will take steps through credit settlement.

Completion of this credit is an effort made by PT. BPR Bank Pasar Bhakti Sidoarjo when the debtor is unable to carry out his obligations to pay off credit, so that it has entered the bad credit category. This bad credit problem is included in the collectibility group 5, namely bad credit. Settlement of this credit will begin through intensive billing in writing or verbally, then mediation will be carried out to find a solution to the problems that are currently occurring which will later become a joint decision. This mediation is also used to maintain the reputation of the bank as an intermediary institution.²¹ Mediation conducted by PT. BPR Bank Pasar Bhakti Sidoarjo is an effort to resolve bad credit disputes which are included in non-litigation legal remedies. This mediation began with PT. BPR Bank Pasar Bhakti Sidoarjo will summon the debtor to explain the procedures for implementing credit dispute resolution through non-litigation channels. If the debtor agrees to continue resolving credit disputes using mediation, then the debtor is obliged to submit all important information related to the credit dispute. When in this mediation process the debtor has good faith to resolve the dispute that occurs, then this mediation process will end with an agreement that can benefit both parties.

The result of dispute resolution through mediation is that the customer voluntarily surrenders the collateral object. However, if the customer does not want to surrender the collateral object voluntarily, then with all applicable legal procedures and mechanisms as well

²¹ Wilhelmus Renyaan, *Peranan Lembaga Mediasi Perbankan dalam Penyelesaian Sengketa Non Litigasi*, CV. Azka Pustaka, Pasaman Barat, 2022, p. 29.



as those stated in the Fiduciary Guarantee Certificate that the implementation of the execution of this collateral object must be carried out and apply the same as a court decision that has permanent legal force.²² This fiduciary guarantee object execution system is regulated in Article 29 of Law Number 42 of 1999 concerning Fiduciary Guarantees which states, "If the debtor or fiduciary giver defaults, the execution of the object which is the object of fiduciary guarantees can be carried out by means of:

1. Implementation of executorial titles, which have the same power as court decisions that have obtained permanent legal force.
2. Sales of objects which are fiduciary guarantees for the fiduciary recipient's own power through a public auction and taking payment of the receivables from the sale proceeds.
3. Sales under the hands carried out based on the agreement of the fiduciary giver and recipient if in this way the highest price that benefits the parties can be obtained.

PT. BPR Bank Pasar Bhakti Sidoarjo usually sells the collateral object through private sales. However, if the debtor wants to sell the collateral object himself, then PT. This BPR Bank Pasar Bhakti Sidoarjo allows it, but the Motorized Vehicle Ownership Book is still kept by PT. BPR Bank Pasar Bhakti Sidoarjo. After the sale has taken place, then the debtor must bring the buyer to PT. BPR Bank Pasar Bhakti Sidoarjo to provide proof of receipt for the vehicle payment. However, if PT. BPR Bank Pasar Bhakti Sidoarjo, which sells the guarantee, PT. BPR Bank Pasar Bhakti Sidoarjo will notify the debtor and if there is excess money from the sale of the collateral object, the money will be returned to the debtor. The proceeds from the sale of the collateral object will be used as a form of repayment of the debtor's debt to the creditor, namely PT. BPR Bank Pasar Bhakti Sidoarjo.

Based on the description above, that the implementation of legal protection for creditors against customers who default in a credit agreement with the guarantee of the Motorized Vehicle Ownership Book at PT. BPR Bank Pasar Bhakti Sidoarjo is carried out through 2 (two) forms of legal protection, namely preventive legal protection and repressive legal protection. This preventive legal protection aims to prevent disputes in an agreement. This form of preventive legal protection can be realized by the existence of rules contained in Article 5 and Article 11 of Law Number 42 of 1999 concerning Fiduciary Guarantees, namely by means of a guarantee object will be burdened with a fiduciary guarantee which is drawn up with a notary deed in Indonesian and is a guarantee deed fiduciary and then the

²² The results of the interview with Mrs. Dra. Hj. Rr. Suci Hartati as the Main Director of PT. BPR Bank Pasar Bhakti Sidoarjo, Op. Cit.



fiduciary guarantee must be registered at the Fiduciary Registration Office and will get a fiduciary guarantee certificate which is used as a form of legal certainty and can protect creditors when bad credit occurs. Apart from that, Articles 1131 and 1132 of the Civil Code also serve as protectors for creditors in the event of a credit agreement using a fiduciary guarantee. Furthermore, this repressive legal protection aims to resolve disputes that occur through the imposition of sanctions. The form of repressive legal protection adopted by PT. BPR Bank Pasar Bhakti Sidoarjo in resolving bad credit disputes, namely using non-litigation legal remedies. One form of effort from PT. BPR Bank Pasar Bhakti Sidoarjo when bad credit occurs, efforts to save credit will be carried out, namely credit restructuring first. However, if the credit rescue is unable to provide a solution so that the debtor can pay off the credit, then the collateral object will be executed and later the object will be sold under the hand to pay off the debtor's debt to the creditor.

D. Conclusion

Implementation of legal protection for creditors against customers who default in a credit agreement with the guarantee of a Motorized Vehicle Ownership Book at PT. BPR Bank Pasar Bhakti Sidoarjo consists of preventive legal protection and repressive legal protection. This preventive legal protection is contained in Article 5 and Article 11 of Law Number 42 of 1999 concerning Fiduciary Guarantees, namely by means of a guarantee object that will be burdened with a fiduciary guarantee made with a notarial deed in Indonesian and is a fiduciary guarantee deed and then the fiduciary guarantee is mandatory registered with the Fiduciary Registration Office and will receive a fiduciary guarantee certificate which is used as a form of legal certainty and can protect creditors when bad credit occurs. Apart from that, Articles 1131 and 1132 of the Civil Code also serve as protectors for creditors in the event of a credit agreement using a fiduciary guarantee. Furthermore, the repressive legal protection adopted by PT. BPR Bank Pasar Bhakti Sidoarjo in resolving bad credit disputes, namely using non-litigation legal remedies first. One form of effort from PT. BPR Bank Pasar Bhakti Sidoarjo when bad credit occurs, efforts to save credit will be carried out, namely credit restructuring first. However, if the credit rescue is unable to provide a solution so that the debtor can pay off his credit, the creditor has the right to execute the collateral object. Based on this Fiduciary Guarantee Certificate, the creditor has the same executive power as a court decision that has permanent legal force. The collateral object that has been executed by the creditor will later be sold under the hand to pay off the debtor's debt to the creditor.



When the customer is going to apply for a loan from this bank, it is hoped that he will have more good faith in paying his credit installments before they are due as stated in the credit agreement that has been approved by the customer. Customers are also expected to have good faith in paying their credit installments, so that there will be no selling of collateral objects used to pay off unpaid loans. The legal protection that the creditor gets when a default is committed by the debtor takes quite a long time. This is an obstacle for creditors in carrying out their business activities. Therefore, PT. BPR Bank Pasar Bhakti Sidoarjo is expected to be more thorough in assessing and selecting prospective customers, namely by paying attention to the correctness of data from prospective customers who apply for loans guaranteed by the Motor Vehicle Owner's Book, starting from the character of the prospective customer, salary slip, track record prospective customers, ability to pay monthly installments and economic conditions of prospective customers must be paid close attention to by the bank's verification team when conducting the survey.

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