Perspective Analysis of Business Competition Supervisory Commission Regarding OJK Circular Letter

Angelin Michelle Liady, S. H.[1] , Dr. Abdul Salam, S. H., M. H.[2]

[1] Students of the Notary Masters Study Program at the University of Indonesia, email: angelinmichelle.am@gmail.com
[2] Lecturer of Masters of Notary at the University of Indonesia.

Article Info
Received: 2022-03-25
Revised: 2022-12-31
Accepted: 2022-12-31

Keywords:
Application of the droit de suite principle, Fiduciary guarantee dispute resolution.

Abstract
This study contains a description of the application of the droit de suite principle in the settlement of disputes over the provision of fiduciary guarantees. The problem studied in this study is how the judge's considerations regarding the application of the droit de suite principle in dispute resolution of the fiduciary guarantee agreement where the object of the guarantee is on an individual third party due to the auction of the execution of the booty and the government as a result of being used to commit a crime. The method used in this research is sociological normative legal research, by taking a statute approach to the collected legal materials. The result of this research is that the judges' considerations in some of the court's decisions in favor of individual third parties or the government are wrong. This is because the fiduciary guarantee agreement made between the fiduciary recipient (PT/creditor) and the fiduciary giver (debtor) is legally and binding based on Article 14 paragraph (3) in conjunction with Article 15 paragraph (2) and (3). Therefore, the fiduciary recipient has the authority to carry out executions based on the droi de suite principle as regulated in Article 20 of the Fiduciary Guarantee Law. In addition, based on the prioritization principle, the fiduciary recipient's actions are correct to take and execute the fiduciary guarantee object. The output to be achieved from this research is to produce scientific works in the form of research journals that can be used as reference material for other writers in the future.

I. Introduction

Developments in the economic sector are part of the national development of an Indonesian state in order to achieve a just and prosperous society based on Pancasila and the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution of the Republic of Indonesia) which are the basis of the state and the goals of the Indonesian state. All forms of development and development in any field are carried out based on and aimed at achieving the values in the Pancasila and the 1945 Constitution of the Republic of Indonesia. The national development consists of a series of sustainable development efforts covering aspects of community activities as the government's duty to implement national development goals.

The daily needs of the community in the development of economic development are increasing so that people are encouraged to be more consumptive. The consumptive lifestyle is not balanced with everyone's income, so the idea arises of how to meet the needs of people's lives every day with little income but can meet the needs of life.

The needs of the community cannot be met in cash, with the minimum income of the community, while the desires of the community which are quite large require large amounts of funds. So the solution to this imbalance is that the community can obtain the funds or money needed to meet the needs of the community by borrowing or crediting through financial institutions or banking institutions.

Movable property as collateral for debt in the Indonesian legal system and the legal system in Continental European countries, the collateral is bound in the form of a pledge. The object of the pledge must be submitted to the recipient of the pledge (creditor). Meanwhile, in the case of the object of the debt guarantee in the form of immovable property, the collateral is in the form of a mortgage or mortgage, in which the object of the guarantee is not submitted to the creditor but is under the authority of the debtor.[1]

Broadly speaking, there are two types of guarantees, namely personal guarantees and material guarantees. During its development, one type of material security known in positive law was fiduciary guarantee. As collateral for movable objects, fiduciary guarantees are widely used in the business community.

[1] Munir Fuady, 2003. *Jaminan Fidusia*, Bandung, PT. Citra Aditya Bakti, hlmn 1.

The emergence of fiduciary guarantees is mostly due to the existence of land rights or certain goods that cannot be guaranteed by mortgages or mortgages. Fiduciary as one of the guarantees is a security element in bank financing or credit, which is born starting with a bank credit agreement. Thus, it is seen that the fiduciary guarantee agreement is an assessor agreement.[2]

The element of security or providing a sense of security for the fiduciary guarantee agreement for creditors is that because it is related to objects, the principles of absolute material law apply. Because material law is absolute, the rights that arise or are related to material things are absolute.

A fiduciary guarantee which is generally known by the public is a guarantee institution where the object that is used as the object of the guarantee is still in the hands of the debtor as the recipient of the credit. In essence, the existence of a fiduciary guarantee institution is to help debtor customers that the object of the guarantee that is not submitted to the creditor is so that it can be used to carry out business activities, so that the results of the business are used to pay off their debts to the creditor. It is very different from a pawn guarantee, where the object of the pledge guarantee is handed over to the pawn guarantor or the lender's creditor.

There are several principles that exist in the law of guarantees as part of the law of objects, such as the principle of preference, the principle of droit de siute, and the principle of publicity. The existence of this material law principle in the collateral law is so that the creditor gets legal protection, if the guarantee agreement on a guarantee object based on the loan agreement is in default. The creditor can execute the object of the guarantee because this principle gives rise to rights that are guaranteed for the creditor as the fiduciary giver of the object of the guarantee.

The droit de suite principle in fiduciary guarantees is regulated in Article 20 of Law Number 42 of 1999 concerning Fiduciary Guarantees, State Gazette of the Republic of Indonesia of 1999 Number 168, Supplement to the State Gazette of the Republic of Indonesia Number 3889 (hereinafter referred to as the Fiduciary Guarantee Law), which reads: Fiduciary guarantees continue to follow objects that are objects of fiduciary guarantees in the hands of whoever these objects are, except for the transfer of inventory objects that are objects of fiduciary guarantees. Elucidation of Article 20 of the Fiduciary Guarantee Law, states "This

[2] Gunawan Widjaja dan Ahmad Yani, 2000. *Jaminan Fidusia*, Jakarta, RajaGrafindo Persada. hlmn 125.

provision includes the principle of "droit de suite" which has become part of Indonesian legislation in relation to absolute rights to property (in rem)." The absolute principle of droit de suite provides a strong legal position for the creditor to still be able to carry out the execution of the collateral object if the debtor defaults wherever and in the hands of whoever the collateral is located.

This principle applies and is applied if the fiduciary guarantee is valid and binding through the registration process as regulated in Article 14 paragraph (3) of the Fiduciary Guarantee Law, which reads: "The fiduciary guarantee is born on the same date as the date the fiduciary guarantee is recorded in the fiduciary register book." in conjunction with Article 15 paragraphs (2) and (3) of the Fiduciary Guarantee Law, which reads:

> (2) The fiduciary guarantee certificate as referred to in paragraph (1) has the same executive power as a court decision that has obtained permanent legal force.
>
> (3) If the debtor is in breach of contract, the fiduciary recipient has the right to sell the object that is the object of the fiduciary guarantee on his own power.

However, there are several cases of court decisions regarding the plaintiff (hereinafter referred to as the fiduciary provider/creditor/financing company) and the defendant (hereinafter referred to as the fiduciary recipient/debtor) entering into a credit agreement for 1 (one) car unit where the car is fiduciary guaranteed. The debtor has defaulted, the creditor will execute to get the debt repaid but the car is already in the hands of a third party, namely an individual, or the government due to the fiduciary object being used by the debtor to commit a crime, where the judge wins the third party who bought the fiduciary object. from the results of the auction of the execution of the confiscated goods, and the government confiscates the goods which are the object of the fiduciary guarantee as a result of being used to commit a criminal act.

The existence of a judge's decision in favor of an individual third party who had purchased a fiduciary guarantee car from the results of the execution auction, and the government confiscated the goods which were the object of the fiduciary guarantee, indicating that the judge was wrong because he did not apply the droit de suite principle contained in Article 20 Fiduciary Guarantee Law, so it is interesting to analyze the judge's considerations in making his decision.

Based on the description above, the authors are interested in studying further in a study entitled "Application of the Droit De Suite Principle in Settlement of

Fiduciary Guarantee Agreement Disputes (Object of Fiduciary Guarantee Is With Third Party Individuals Due to the Auction of Execution of looted Goods and the Government As a result of being used to carry out Criminal act)".

PROBLEMS

How is the judge's consideration regarding the application of the droit de suite principle in resolving disputes over the provision of fiduciary guarantees where the object of the guarantee is in the hands of an individual third party due to the auction of the execution of the booty and the government as a result of being used to commit a criminal act?

2. Research Method

A. This Type of Research

Research is an objective and systematic way or method to find solutions to problems by means of systematic data collection, recording, interpretation, and critical analysis of facts or data as well as making reports and information on symptoms studied from various aspects to find conclusions.

In general, the types of legal research are divided into 3 (three), namely:

1. Normative legal research;
2. Empirical legal research;
3. Sociological normative legal research. Normative legal research is "legal research that examines written law from various aspects, namely aspects of theory, history, philosophy, comparison, structure and composition, scope and material, consistency, general explanation, and article by article."[3]

According to Soerjono Soekanto and Sri Mamudji, normative legal research methods or library law research methods are "methods or methods used in legal research carried out by examining existing library materials."[4]

Empirical legal research is often also known as field research, namely the collection of research material or materials that must be sought or searched for by themselves because they are not yet available. According to Mukti Fajar and Yulianto Achmad, "empirical legal research methods include research on legal identification and research on legal effectiveness."[5]

[3] Abdulkadir Muhammad, 2004. *Hukum dan Penelitian Hukum*, Bandung, Citra Aditya, hlmn. 102.
[4] Soerjono Soekanto dan Sri Mamudji, 2009. *Penelitian Hukum Normatif Suatu Tinjauan Singkat,* PT. Raja Grafindo Persada, hlmn. 13-14.
[5] Mukti Fajar dan Yulianto Achmad. 2010. *Dualisme Penelitian Hukum Normatif dan Empiris,* Yogyakarta, Pustaka Pelajar, hlmn. 153.

Then sociological normative legal research is a combination of normative legal research with empirical legal research. In sociological normative research there are 3 (three) categories, namely:[6]

a. Non-judicial case study

This approach is a non-conflict law case study approach so there is no interference with the courts.

b. Judicial case study

This approach is a case study approach to law due to conflict so that it will involve interference with the court to provide a settlement decision (jurisprudence).

c. Live case study

This approach is an approach to a legal event whose process is still ongoing or has not ended.

The type of research that the author uses in this paper is normative legal research in the category of judicial case study.

B. Data Type

Data is divided into 2 (two) types, namely primary data and secondary data. Primary data is "data directly collected by researchers (or their officers) from the first source."[7] Secondary data is "data obtained from the results of a literature review or a review of various literatures or library materials related to the problem or research material."[8]

In this study, the authors use secondary data, which consists of 3 (three) legal materials, including:

1. Primary Legal Material

Primary legal materials are binding legal materials.[9] The primary legal materials used in the research are as follows:

a. Code of Civil law.

b. Law Number 42 of 1999 concerning Fiduciary Guarantees.

2. Secondary Legal Material

[6] Bambang Sunggono, 2001. *Metodologi Penelitian Hukum,* Jakarta, PT. Raja Grafindo Persada, hlmn. 39.

[7] Sumadi Suryabrata, 1987. *Metode Penelitian,* Jakarta, Rajawali, hlmn. 93.

[8] Bambang Sunggono, *op cit*, hlmn. 156.

[9] Soerjono Soekanto, 2007. *Pengantar Penelitian Hukum*, Jakarta, Universitas Indonesia Press, hlmn. 52

Secondary legal materials, namely legal materials that provide an explanation of primary legal materials. Secondary legal material can be in the form of publications on law that are not official documents. Publications on law include textbooks, legal dictionaries, and legal journals.[10]

Secondary legal materials in this study consist of the South Jakarta District Court Decision Number 578/Pdt.G/2015/PN.Jkt.Sel, Supreme Court Decision Number 1047 K/Pdt/2017, Pontianak High Court Decision Number 44/PDT/2021/ PT.PTK, books, legal journals and legal scientific works.

3. Tertiary Legal Materials

Tertiary legal materials, namely materials that provide instructions and explanations of primary legal materials and secondary legal materials, which are better known as legal reference materials, such as the Big Indonesian Dictionary and Encyclopedia as a guide in the preparation of scientific papers.[11]

The tertiary legal materials in this study consist of the Big Indonesian Dictionary and the Encyclopedia.

C. Techniques of Data Collection and Data Processing

According to Sugiyono, "data collection techniques are the most strategic step in research, because the main purpose of research is to obtain data."[12]

According to Djaman Satori and Aan Komariah, "data collection in scientific research is a systematic procedure for obtaining the necessary data."[13]

The author uses data collection techniques as follows:

Document studies, namely on legal documents in the form of decisions, namely South Jakarta District Court Decision Number 578/Pdt.G/2015/PN.Jkt.Sel., Supreme Court Decision Number 1047 K/Pdt/2017, and Pontianak High Court Decision Number 44 /PDT/2021/PT.PTK. The author also conducted a document study of the Civil Code, Law Number 42 of 1999 concerning Fiduciary Guarantees, and legal literature related to the droit de suite principle in fiduciary guarantees.

The data that the author has collected is then arranged systematically and logically in order to get a broad and clear picture of the application of the droit de suite principle in disputes over fiduciary rights.

---

[10] Peter M Marzuki, 2005. *Penelitian Hukum,* Jakarta, Kencana Prenada Media Group, hlmn. 181.

[11] Amiruddin dan Zainal Asikin, 2010. *Pengantar Hukum Metode Penelitian,* Jakarta, PT. Raja Grafindo Persada, hlmn. 133.

[12] Sugiyono, 2011. *Metode Penelitian Kuantitatif dan R&D,* Bandung, Afabeta, hlmn.103.

[13] Djaman Satori dan Aan Komairah, 2011. *Metode Penelitian Kualitatif,* Bandung, Afabeta, hlmn. 103.

D. Data Analysis Techniques

The data that has been obtained is then analyzed and described in a qualitative descriptive manner with the following steps:

1. Presentation of legal materials, containing descriptions of:
   a. South Jakarta District Court Decision Number 578/Pdt.G/2015/PN.Jkt.Sel.
   b. Supreme Court Decision Number 1047 K/Pdt/2017.
   c. Pontianak High Court Decision Number 44/PDT/2021/PT.PTK.
2. To criticize the judge's considerations regarding the application of the droit de suite principle in the South Jakarta District Court Decision Number 578/Pdt.G/2015/PN.Jkt. Sel., Supreme Court Decision Number 1047 K/Pdt/2017, and Pontianak High Court Decision Number 44/PDT/2021/PT.PTK, in 2 (two) perspectives, as follows:
   a. Describe the birth and binding of fiduciary security based on Article 14 paragraph (3) in conjunction with Article 15 paragraph (2) and (3) of the Fiduciary Guarantee Law.
   b. Analyzing the application of the droit de suite principle contained in Article 20 of the Fiduciary Guarantee Law.

This analysis was carried out based on data obtained through research, analyzed qualitatively and then the results were presented with a descriptive explanation, namely by explaining, describing, and describing according to problems that were closely related to this research, with the aim of obtaining a comprehensive picture of the application of the Droit principle. de suite in a dispute over a fiduciary guarantee agreement under the Fiduciary Guarantee Act.

3. Results and Discussion

3. 1. Presentation of Legal Materials

3. 1.1 South Jakarta District Court Decision Number 578/Pdt.G/2015/PN.Jkt.Sel.

A. Position Case Summary

The existence of a financing agreement with a fiduciary legally and based on law number 01.100.163.00.036807.7 dated March 22, 2014 between the plaintiffs of the convention (PT/Fiduciary Recipients/Creditors) and the defendants of the convention (Debtors/Fiducia givers), with the conditions stated in the grant agreement fiduciary guarantee that has been described in the decision. The object

of fiduciary security is a motor vehicle in the form of 1 (one) unit of Toyota New Dyna WU 34 ET BOX ALM 6 B Light Truck, year 2014, white silver, frame number MHFC1JU41E5103065, engine number W04DTPJ48784, police number B 9931 VCA, on behalf of Anggraini Arletti.

Then, until the payment of the 5th (fifth) installment, the defendant of the convention did not fulfill his obligations. Thus, it is clear that the defendant of the convention has defaulted/breached the contract, with the total amount of principal debt and interest stated in the decision. The plaintiff of the convention as a creditor wants to withdraw the object because he wants to execute the object of collateral based on his rights arising from the negligence of the defendant of the convention, this is stated in the agreement to provide the fiduciary guarantee.

However, when the plaintiff of the convention wanted to withdraw the collateral object, it turned out that the object was no longer under the control of the defendant of the convention but under the control of the defendant of the convention (Individual Third Party). In this case, the co-defendant of the convention is not entitled to retain control of the collateral object because the object belongs to the plaintiff of the convention as a creditor, which is borrowed or used by the defendant of the convention and where the defendant of the convention is not entitled to transfer his rights as a debtor to another party in this case, the defendant is also the defendant. convention, based on the article in the agreement to provide fiduciary guarantee between the plaintiff of the convention and the defendant of the convention.

A. Evidence Tool

The plaintiffs of the convention submit documentary evidence in the form of photocopies which have sufficient stamps and have been adjusted to the originals, specifically:

a. Fiduciary guarantee financing agreement with agreement number 01.100.163.00.036807.7, subscription number 100.0204133.4, dated March 22, 2014 (Evidence P – 1);
b. Fiduciary guarantee deed number 679/ agreement number 01.100.163.00.036807.7, dated 27 March 2014 (Evidence P – 2);
c. Fiduciary guarantee certificate number W12.00166985.AH.05.01 year 2014, dated April 3, 2014 (Evidence P – 3);
d. Payment schedule budget number 01100163000368077 on behalf of Gunawan, March 28, 2016 (Evidence P – 4);

e. Statement letter and power of attorney agreement number 01.100.163.00.036807.7, subscription number 100.2040133.4, dated March 5, 2014 (Evidence P – 5);
f. Proof of Ownership of Motorized Vehicles (BPKB) number K-10664081 (Evidence P – 6);
g. Joint statement dated March 5, 2014, agreement number 01.100.163.00.036807, subscription number 100.02040133.4 (Evidence P – 7).

The defendants also submitted documentary evidence in the form of photocopies which had sufficient stamps and had also been adjusted to the originals, specifically:

a. Excerpt from the minutes of auction from the Ministry of Finance of the Republic of Indonesia Directorate General of State Assets Regional Office DJKN Banten KPKNL Serpong number 255/2015 dated 03 July 2015 (Evidence TT.D.K/P.D.R 1);
b. A copy/quote/gross of the minutes of auction number RL-255/2015, dated June 16, 2015 from the Serpong State Property and Auction Service Office (Evidence TT.D.K/P.D.R. 2);
c. Receipt number Kw-73/255/2015, dated June 17, 2015 from the Ministry of Finance of the Republic of Indonesia Directorate General of State Assets Regional Office DJKN Banten Office of State Assets and Auction Services Serpong (Evidence TT.D .K/P.D .R 3);
d. Letter from the Tigaraksa District Attorney to Br. Siswanto Bin Tuwiran et al number B-2519/0.6.15/CU.2/06/2015 dated June 10, 2015 regarding Notification of the Auction of Loot Goods (Evidence TT.D.K/P.D.R. 4);
e. A press clip from the newspaper Warta Banten regarding the Announcement of the Auction dated June 10, 2015 (Evidence TT.D.K/P.D.R 5);
f. Excerpt of Decision Number 1713/PID.B/2014/PN.TNG on behalf of SISWANTO BIN TUWIRAN, et al (Evidence TT.D.K/P.D.R.6);
g. Motorized Vehicle Owner's Book (BPKB) number M-00801766, on behalf of HANDOYO (Evidence TT.D.K/P.D.R.7);
h. Certificate of Motorized Vehicle Number, police number B– 9066- EC, on behalf of the owner: HANDOYO (Evidence TT.D.K/P.D.R.8);
i. Fiduciary guarantee certificate on the website of the Directorate General of General Legal Administration of the Ministry of Law and Human Rights (Evidence TT.D.K/P.D.R.9).

B. Judges' Considerations

Considering that as a form of protection for a third party (Handoyo) in order to avoid a loss he will experience, then based on the principle of justice, the panel of judges stated that the third party (Handoyo) is the legal owner of 1 (one) unit of Toyota Dyna car. 110 ET, 2014, the contents of a 4009 CC cylinder, silver white color, frame number MHFC1JU41E5103065, engine number W04DTPJ48784, Diesel fuel, number of 2 axles and 6 wheels (six); and

Considering, that the legal concept in a financing agreement with a fiduciary guarantee that adheres to the droit de suite principle, but by upholding the principle of justice, then as a form of legal protection to the fiduciary recipient (PT. Astra Sedaya Finance) for the losses suffered, the panel of judges in the lawsuit section, the convention has granted the plaintiff's claim by punishing the fiduciary giver (Gunawan) to pay the losses suffered by the fiduciary recipient (PT. Astra Sedaya Finance) from the cause of the financing agreement with the fiduciary.

3.1.2 Supreme Court Decision Number 1047 K/Pdt/2017.

A. Position Case Summary

The existence of a financing agreement with a fiduciary legally and based on law number 0833313200167 dated August 10, 2013 between the applicant for cassation (PT/Fiduciary Recipient/Creditor) and the respondent for cassation I (Debtor/Fiduciary Provider), with the conditions stated in the agreement to provide fiduciary guarantees described in the decision. The object of fiduciary guarantee is a motor vehicle in the form of 1 (one) unit of Hino Dutro 130 HD car, 2013, green color, frame number MJEC1JG43D5081537, engine number W04DTRJ80884, police number KB 9825 GJ, on behalf of Hartono Herkulanus.

Then, until the payment of the 20th (twentieth) installment of a total of 48 payments until it was paid off, the respondent for cassation I did not fulfill his obligations. Thus, it is clear that the defendant in cassation I has defaulted/breached the contract, with the total amount of principal debt and interest stated in the decision. The applicant for cassation as a creditor wants to withdraw the object because he wants to execute the object as collateral based on his rights arising from the negligence of the respondent in cassation I, this is stated in the agreement to grant the fiduciary guarantee.

However, when the cassation applicant wants to withdraw the collateral object, without his knowledge it turns out that the object is no longer under the control of the cassation respondent I but under the control of the cassation applicant/government (Third Party) who confiscates the goods which are the

object of the fiduciary guarantee due to being used by the cassation respondent. I to commit the crime of theft. In this case, the respondent of cassation/government is not entitled to retain control of the object of collateral because the object belongs to the applicant of cassation as a creditor, which is borrowed or used by the respondent of cassation I to immediately on the basis of trust the object is used to earn income, based on the article in the agreement. the provision of fiduciary guarantees between the applicant for cassation and the respondent for cassation I.

B. Judges' Considerations

Whereas even though the Pelawan was not partly responsible for the criminal acts committed by Yohanes Fiter (Co-Opponent II) who used a means of transportation which was a fiduciary object, the fiduciary agreement could not exclude the public interest, because the Pelawan's claim rights to the debtor even though the object was fiduciary deprived by the state, remains protected;

Whereas therefore the resistance to the seizure of evidence based on a criminal decision which has permanent legal force is without legal grounds;

Considering, whereas based on the above considerations, it turns out that the decision of the Judex Facti / Pontianak High Court in this case does not conflict with the law and/or legislation, the cassation petition filed by the Cassation Petitioner PT. ADIRA DINAMIKA MULTI FINACE, Tbk must be rejected.

3.1.3 Pontianak High Court Decision Number 44/PDT/2021/PT.PTK.

A. Position Case Summary

There is a consumer financing agreement with a fiduciary legally and based on law number 09518240100057 dated July 12, 2018 between the opponent/appellant and the debtor (M. Samsi) who is a suspect in a narcotics crime, with the conditions stated in the fiduciary guarantee agreement which has been described in decision. The object of the fiduciary guarantee is a motor vehicle in the form of 1 (one) unit of Toyota Inova, 2005, frame number MHFXW42GX52032727, engine number 1TR6090996, license plate number KH 1502 F, in the name of M. Samsi.

Then, until the payment of the 24th (twenty-fourth) installment of a total of 36 payments until it was paid off, the debtor (M. Samsi) did not fulfill his obligations. Thus, it is clear that the debtor (M. Samsi) has defaulted/breached the contract, with the total amount of principal debt and interest stated in the decision. The opponent/appeal as a creditor wants to withdraw the object because he wants to execute the collateral object based on his rights arising from

the negligence of the debtor (M. Samsi), this is stated in the agreement to provide the fiduciary guarantee.

However, when the opponent/appellate wanted to withdraw the object of collateral, it turned out that the object was no longer under the control of the debtor (M. Samsi) but under the control of the opponent/comparator/government who confiscated the goods which became the object of the fiduciary guarantee due to being used by the debtor (M. . Samsi) to commit a narcotics crime. In this case, the opponent/comparator/government is not entitled to retain control of the collateral object because the object belongs to the opponent/appellant as a creditor, which is borrowed or used by the debtor (M. Samsi) to immediately on the basis of trust the object is used to earn income. , based on the article in the agreement to provide fiduciary guarantees between the contestant/appellant and the debtor (M. Samsi).

B. Judge's Considerations

Considering whereas thus the car of evidence has been used as evidence of a criminal case on behalf of the Defendant since May 29, 2020, and this should and should be known by the Opponent/Appellate, because if the Opponent if it is true he has good intentions, he will definitely make a collection if it is really there is a debt and he should know the address of Defendant M.Samsi and his car;

Considering that for that reason the Pelawan has explained that so far they have never known the existence of these items. The opponent is not involved and is not given the opportunity to be a witness, so that in the criminal case the opponent cannot prove his rights; and the reason for the existence of the vehicle is not known but is still in the status of a Fiduciary Guarantee object whose physical control is on the debtor (M. Samsi) cannot be traced by the Pelawan, and in the end is in the control of the Opponent based on the decision of the Sanggau District Court, while the Pelawan does not know of the act. the debtor who uses the vehicle as a narcotics crime tool which has been justified and taken into consideration by the Panel of Judges of the First Level Court must be rejected.

3.2. Analysis of Legal Materials: Judges' Considerations Regarding the Application of the Droit De Suite Principle in the Settlement of Disputes on the Provision of Fiduciary Guarantees

In some of these court decisions there are decisions with dictums, including:

a. South Jakarta District Court Decision Number 578/Pdt.G/2015/PN.Jkt.Sel.:

> Stated the act of the counter-convention defendant forcibly withdrawing/taking the counter-convention plaintiff's vehicle/co-

conventional defendant in the form of 1 (one) unit of Toyota Dyna 110 ET, in 2014, the contents of the 4,009 CC cylinder, white silver color, frame number MHFC1JU41E5103065, engine number W04DTPJ48784, diesel fuel, the number of axles 2 and wheels 6 (six) is an act against the law (Onrechtmatige daad); and

Sentencing the counter-convention defendant/convention plaintiff to return 1 (one) unit of Toyota Dyna 110 ET, 2014, the contents of a 4,009 CC cylinder, silver white color, frame number MHFC1JU41E5103065, engine number W04DTPJ48784, diesel fuel, number of 2 axles and 6 wheels (six) to the plaintiff of the convention/ co-defendant of the convention.

b. Supreme Court Decision Number 1047 K/Pdt/2017.:

Rejecting the cassation request from the Cassation Petitioner PT. ADIRA DINAMIKA MULTI FINACE (Fiducia Recipient/Credit), Tbk; and

Sentencing the Cassation Petitioner/Opponent/Appellate to pay court fees at all levels of the judiciary and at this level of cassation in the amount of Rp. 500,000.00 (five hundred thousand rupiahs).

c. Pontianak High Court Decision Number 44/PDT/2021/PT.PTK.:

Receive an appeal from the original Comparator against (Third Party Government); and

Canceling the Sanggau District Court Decision Number 45/Pdt.Plw/2020/PN Sag. May 4, 2021.

The above-mentioned dictum resulted from many judges' considerations, but one of the considerations directly related is as follows:

a. South Jakarta District Court Decision Number 578/Pdt.G/2015/PN.Jkt.Sel:

Considering that as a form of protection for a third party (Handoyo) in order to avoid a loss he will experience, then based on the principle of justice, the panel of judges stated that the third party (Handoyo) is the legal owner of 1 (one) unit of Toyota Dyna car. 110 ET, 2014, the contents of a 4009 CC cylinder, silver white color, frame number MHFC1JU41E5103065, engine number W04DTPJ48784, Diesel fuel, number of 2 axles and 6 wheels (six); and

Considering, that the legal concept in a financing agreement with a fiduciary guarantee that adheres to the droit de suite principle, but by upholding the principle of justice, then as a form of legal protection to

the fiduciary recipient (PT. Astra Sedaya Finance) for the losses suffered, the panel of judges in the lawsuit section, the convention has granted the plaintiff's claim by punishing the fiduciary giver (Gunawan) to pay the losses suffered by the fiduciary recipient (PT. Astra Sedaya Finance) from the cause of the financing agreement with the fiduciary.

b. Supreme Court Decision Number 1047 K/Pdt/2017.:

Whereas even though the Pelawan was not partly responsible for the criminal acts committed by Yohanes Fiter (Co-Opponent II) who used a means of transportation which was a fiduciary object, the fiduciary agreement could not exclude the public interest, because the Pelawan's claim rights to the debtor even though the object was fiduciary deprived by the state, remains protected;

Whereas therefore the resistance to the seizure of evidence based on a criminal decision which has permanent legal force is without legal grounds; and

Considering, whereas based on the above considerations, it turns out that the decision of the Judex Facti / Pontianak High Court in this case does not conflict with the law and/or legislation, the cassation petition filed by the Cassation Petitioner PT. ADIRA DINAMIKA MULTI FINACE, Tbk must be rejected.

c. Pontianak High Court Decision Number 44/PDT/2021/PT.PTK.:

Considering whereas thus the car of evidence has been used as evidence of a criminal case on behalf of the Defendant since May 29, 2020, and this should and should be known by the Opponent/Appellate, because if the Opponent if it is true he has good intentions, he will definitely make a collection if it is really there is a debt and he should know the address of Defendant M.Samsi and his car; and

Considering that for that reason the Pelawan has explained that so far they have never known the existence of these items. The opponent is not involved and is not given the opportunity to be a witness, so that in the criminal case the opponent cannot prove his rights; and the reason for the existence of the vehicle is not known but is still in the status of a Fiduciary Guarantee object whose physical control is on the debtor (M. Samsi) cannot be traced by the Pelawan, and in the end is in the control of the Opponent based on the decision of the Sanggau District Court, while the Pelawan does not know of the act. the debtor who uses the

vehicle as a narcotics crime tool which has been justified and taken into consideration by the Panel of Judges of the First Level Court must be rejected.

The judge's considerations and the above-mentioned dictum were analyzed using 2 (two) perspectives, as follows:

1. Describe the birth and binding of fiduciary guarantees based on Article 14 paragraph (3) in conjunction with Article 15 paragraph (2) and (3) of the Fiduciary Guarantee Law.
2. Analyzing the application of the droit de suite principle contained in Article 20 of the Fiduciary Guarantee Law.

3.2.1 The Birth and Binding of Fiduciary Guarantees Based on Article 14 Paragraph (3) Juncto Article 15 Paragraphs (2) and (3) of the Fiduciary Guarantee Law

For the birth and binding of a fiduciary guarantee, it must be carried out in accordance with the procedure for imposing a fiduciary guarantee as regulated in the Fiduciary Guarantee Law. The procedure for imposing a fiduciary guarantee is divided into 2 (two) parts, namely the procedure for providing a fiduciary guarantee and the procedure for registering a fiduciary guarantee.

a. The stage of providing fiduciary guarantees,

- Article 4 of the Fiduciary Guarantee Law, which reads: "A fiduciary guarantee is a follow-up agreement to a main agreement that creates an obligation for the parties to fulfill an achievement."
- Article 5 paragraph (1) of the Fiduciary Guarantee Law, reads: "The encumbrance of objects with fiduciary guarantees is made with a notarial deed in Indonesian and is a fiduciary guarantee deed."
- - Article 6 of the Fiduciary Guarantee Law, reads: "The fiduciary guarantee deed as referred to in Article 5 at least contains:
  a. the identity of the fiduciary giver and recipient;
  b. fiduciary guaranteed principal agreement data;
  c. a description of the object that is the object of a fiduciary guarantee;
  d. guarantee value; and
  e. the value of the object that is the object of the fiduciary guarantee."

Based on the information above, the imposition of a fiduciary guarantee is preceded by the making of a principal agreement in the form of a loan agreement, which is then followed by the making of a fiduciary guarantee deed. This description is made to fulfill the principle of speciality.

b. Fiduciary guarantee registration stage,

- Article 11 paragraph (1) of the Fiduciary Guarantee Law, reads: "Objects that are burdened with fiduciary guarantees must be registered."
- Article 12 paragraph (1) of the Fiduciary Guarantee Law, reads: "Registration of a fiduciary guarantee as referred to in Article 11 paragraph (1) is carried out at the Fiduciary Registration Office."
- Article 13 paragraph (1) of the Fiduciary Guarantee Law, which reads: "Application for fiduciary guarantee registration is carried out by the fiduciary guarantee recipient, his proxy or representative by attaching a fiduciary guarantee registration statement.", and paragraph (2): "Registration statement as referred to in paragraph (1) loading:
  a. the identity of the fiduciary giver and recipient;
  b. date, fiduciary guarantee deed number, name, and domicile of the notary who made the fiduciary guarantee deed;
  c. fiduciary guaranteed principal agreement data;
  d. a description of the object that is the object of a fiduciary guarantee;
  e. guarantee value; and
  f. the value of the object that is the object of the fiduciary guarantee.
- Article 14 paragraph (1), and (3) of the Fiduciary Guarantee Law, reads:

  (1) The Fiduciary Registration Office issues and submits to the fiduciary recipient a fiduciary guarantee certificate on the same date as the date of receipt of the registration application.

  (3) The fiduciary guarantee is born on the same date as the date the fiduciary guarantee is recorded in the fiduciary register.
- Article 15 paragraphs (1), (2) and (3) of the Fiduciary Guarantee Law, which reads:

  (1) In the fiduciary guarantee certificate as referred to in Article 14 paragraph (1), the words “For the sake of Justice Based on the One Godhead are included”.

  (2) The fiduciary guarantee certificate as referred to in paragraph (1) has the same executive power as a court decision that has permanent legal force.

  (3) If the debtor is in breach of contract, the fiduciary recipient has the right to sell the object that is the object of the fiduciary guarantee on his own power.

Based on the information above, after making a fiduciary guarantee deed in the form of a notarial deed, it must be followed up with a fiduciary guarantee registration which is then issued a fiduciary guarantee certificate. Registration determines the birth and binding of fiduciary guarantees as a manifestation of the principle of publicity.

There are several legal consequences with the birth and binding of a fiduciary guarantee, specifically:

1. Fiduciary guarantees have binding power not only for the parties to the agreement but also for third parties or parties outside the agreement. Where the parties to the agreement and third parties are subject to the fiduciary guarantee that has been born.
2. The fiduciary recipient has executive authority based on the decisions contained in the fiduciary guarantee certificate. It is stated in Article 15 paragraphs (1), (2) and (3) of the Fiduciary Guarantee Law, which reads:

   (1) In the fiduciary guarantee certificate as referred to in Article 14 paragraph (1), the words "For the sake of Justice Based on the One Godhead are included".

   (2) The fiduciary guarantee certificate as referred to in paragraph (1) has the same executive power as a court decision that has permanent legal force.

   (3) If the debtor is in breach of contract, the fiduciary recipient has the right to sell the object that is the object of the fiduciary guarantee on his own power.
3. The fiduciary guarantee applies the droit de suite principle. The principle of droit de suite which is one of the characteristics of material rights, namely a right that continues to follow the owner of the object, or a right that follows the object in the hands of anyone (het recht volgt de eigendom van de zaak). It is stated in Article 20 of the Fiduciary Guarantee Law, which reads: "Fiduciary guarantees continue to follow objects that are objects of fiduciary guarantees in the hands of whoever these objects are, except for the transfer of inventory objects that are objects of fiduciary guarantees." So even though the object is not under the control of the fiduciary giver/debtor, the fiduciary guarantee still follows the collateral object under the control of whatever party the collateral object is in, as long as the entire fiduciary guarantee procedure is valid, the fiduciary/creditor recipient can execute the collateral object if the fiduciary giver/debtor is default.

4. The position of the fiduciary recipient or creditor being the preferred creditor.

Preferred creditors are creditors who have special rights, namely a right that is granted by law to a person who has a debt so that the level is higher than that of another person who has a debt, simply because of the nature of the receivable, gets paid off first.[14]

Based on the description above, it is related to the case in the South Jakarta District Court Decision Number 578/Pdt.G/2015/PN.Jkt.Sel. (hereinafter referred to as case I), then PT. Astra Sedaya Finance as the fiduciary recipient and Gunawan as the fiduciary giver have entered into a fiduciary guarantee agreement based on the main agreement as stated in Article 4 of the Fiduciary Guarantee Law, evidenced by evidence P-1. Then based on Article 5 paragraph (1) in conjunction with Article 6 of the Fiduciary Guarantee Law, the fiduciary giver and recipient have made a fiduciary guarantee deed in the form of a notarial deed made by Notary Wikrama Iryans Abidin, SH, MH, domiciled in Banten, evidenced by evidence of P- 2.

The fiduciary giver and recipient who have made a fiduciary guarantee deed in the form of a notary deed as evidenced by the P-2 evidence, then the fiduciary recipient registers based on Article 11 paragraph (1), Article 12 paragraph (1), Article 13 paragraph (1) and (2), Article 14 paragraph (1) of the Fiduciary Guarantee Law, which is proven by the existence of P-3 evidence, namely a fiduciary guarantee certificate.

This evidence was also found to be the same in the case in the Supreme Court Decision Number 1047 K/Pdt/2017 (hereinafter referred to as case II), and the Pontianak High Court Decision Number 44/PDT/2021/PT.PTK (hereinafter referred to as case III). Thus the fiduciary guarantee has fulfilled the stages of giving and registering the fiduciary guarantee so that the fiduciary guarantee has been born and is binding, then the legal consequences of the fiduciary guarantee apply. The fiduciary guarantee was born on the date when the fiduciary guarantee was registered/recorded in the fiduciary register, namely April 03, 2014 which is also in accordance with the date of issuance of the fiduciary guarantee certificate in case I, January 29, 2015 in case II, and July 20, 2018 in case III.

[14] Pasal 1132 juncto Pasal 1134 ayat (1) KUH Perdata.

2.2 Application of the Droit De Suite Principle Contained in Article 20 of the Fiduciary Guarantee Law

Fiduciary is the transfer of ownership rights to an object on the basis of trust with the condition that the object whose ownership rights are transferred remains in the control of the owner of the object.[15] Which means, the ownership rights to the fiduciary object do not transfer from the fiduciary giver/debtor to the fiduciary recipient/creditor, but the object that is the object of the fiduciary guarantee is only charged with the material security rights and control over the object of the guarantee remains with the fiduciary giver/debtor. Control and ownership of objects that are objects of fiduciary guarantees rests with the fiduciary giver/debtor, so to protect the interests of the fiduciary recipient/creditor, the fiduciary guarantee is given a material nature, namely the droit de suite principle.

The nature of the droit de suite in material rights is stated in Article 20 of the Fiduciary Guarantee Law, which reads: "Fiduciary guarantees continue to follow objects that are objects of fiduciary security in the hands of whoever the objects are, except for the transfer of inventory objects that are objects of fiduciary guarantees." Elucidation of Article 20 of the Fiduciary Guarantee Law, states "This provision includes the principle of "droit de suite" which has become part of Indonesian legislation in relation to absolute rights to property (in rem)."

This droit de suite principle also shows that fiduciary security is a material right (zakelijkrecht) and not an individual right (personrecht), thus fiduciary security rights can be defended against anyone and have the right to sue anyone who interferes with these rights.[16] The granting of the nature of this material right intends to give a strong position to the holder of material rights, and with the droit de suite principle, the rights of the fiduciary recipient / creditor continue to follow the object that is the object of the fiduciary guarantee to whoever the object is transferred, including to third parties.

The droit de suite principle can apply if the object that is the object of the fiduciary guarantee has been registered with the Fiduciary Registration Office, as evidenced by the issuance of a fiduciary guarantee certificate. If there is no registration of the object that is the object of the fiduciary guarantee, then the droit de suite principle becomes invalid and other parties outside the agreement

[15] Pasal 1 angka 1 UU Jaminan Fidusia.
[16] Tan Kamello, 2006. Hukum Jaminan Fidusia Suatu Kebutuhan Yang Didambakan. Bandung, Alumni. Hlmn. 161.

consider that the object of the guarantee belongs to whoever the object is located.[17] As a result, a fiduciary guarantee agreement is only an obligatory agreement, which means an agreement that only creates obligations for the parties to the agreement. Fiduciary guarantees that are not registered also do not contain the principle of publicity which will bind third parties to find out objects that have been charged with fiduciary guarantees.

There is an exception to the application of the droit de suite principle in Article 20 of the Fiduciary Guarantee Law, where the droit de suite principle does not apply to inventory objects that are the object of fiduciary guarantees. Inventory objects are objects that are traded.[18]

In conclusion, the droit de suite principle can apply absolutely because it includes material rights if it has complied with the fiduciary guarantee registration procedure to the Fiduciary Registration Office, namely the recording of the fiduciary guarantee deed in the fiduciary register book, which is proven by the existence of a fiduciary guarantee certificate and the object that is the object of the guarantee is not a fiduciary certificate. inventory items. The legal consequence of the application of the droit de suite principle which is also the purpose of the droit de suite principle is that the fiduciary guarantee continues to follow the collateral object under the control of whatever party the collateral object is located, as long as the entire fiduciary guarantee procedure is valid, the fiduciary recipient/creditor can execute the collateral object if the giver fiduciary/debtor breach of contract.

In the case of a case, a fiduciary guarantee has been born and is binding as evidenced by evidence, namely a fiduciary guarantee deed made by the fiduciary giver and recipient based on the main agreement between them and made with a notary deed, and a fiduciary guarantee certificate. The fiduciary recipient has carried out the fiduciary guarantee procedure legally and also the object that is the object of the fiduciary guarantee is not an inventory item, then the fiduciary guarantee has been born and binds the fiduciary recipient (PT/creditor) and the fiduciary giver (debtor) as well as third parties or parties outside the agreement. (Third Parties, Individuals or Governments), and the droit de suite principle can apply which follows the object that is the object of collateral so that based on Article 15 of the Fiduciary Guarantee Law, the fiduciary recipient can execute the object of the guarantee because the debtor has defaulted.

[17] Pasal 1977 ayat (1) KUH Perdata.
[18] Pasal 21 ayat (1) UU Jaminan Fidusia.

Then according to the view of material law, the fiduciary recipient has legal protection of material rights in the form of the application of the droit de suite principle, while the third party, namely the individual winning the auction and the government, has legal protection of material rights based on the principle of good faith and evidence of criminal acts. Because, an individual third party obtains an object that turns out to be the object of a fiduciary guarantee through the auction proceeds, he buys it without knowing the legal events that occurred previously on the object, so it can be legally protected. The government's third party who did not know only confiscated evidence of a crime. But even in material law, there is a prioritization principle, namely the rights that occur first are won with rights that occur later.[19]

According to this prioritization principle, all material rights give authority similar to the powers of the eigendom, although the extent of it varies. Therefore, it is necessary to arrange the order, the iura in realiena is attached as a burden on the eigendom. This characteristic brings with it that the contribution in realiena takes precedence (see Articles 674, 711, 720, 756, 1150 of the Civil Code). Now the question arises, between one iura in realiena and another, which one should take precedence? In this case, the order is according to which one is held first. For example, on a house is encumbered with a mortgage and then encumbered with the right to rent; then the person who has the right to rent the house must succumb to the mortgage holder, because the mortgage must be held before the right to lease arises. This prioritization principle is not stated explicitly, but is the result of the nemoplus principle, namely that a person can only give rights that do not exceed what he has. There are times when this principle is breached. As a result, the order of property rights is disrupted.[20]

Based on this prioritization principle, it is necessary to look at the date of emergence of material rights between the parties. The first right that exists is the droit de suite principle which is born and binds when the fiduciary guarantee deed is recorded in the fiduciary register book with the issuance of a fiduciary guarantee certificate on April 3, 2014, which occurs between the fiduciary recipient (PT. Astra Sedaya Finance) and the fiduciary giver. (Gunawan). Then the right that arises is the principle of good faith that occurs when a third party (Handoyo) buys a car from the auction, which is proven by a copy of the minutes

[19] Titik Triwulan Tutik. 2008. Hukum Perdata Dalam Sistem Hukum Nasional. Ed. Pertama, Prenadamedia Group, Jakarta. Hlmn.161.
[20] Titik Triwulan Tutik, ibid. Hlmn. 161-162.

of the auction dated June 16, 2015. This legal action was also found to be the same in case II and case III, where Fiduciary guarantees have been born and the debtor's breach of contract occurs before the object of the guarantee is used to commit a crime which eventually becomes evidence of a crime and is confiscated by a third party government. Thus the description above regarding the prioritization principle can be a consideration that the judge should still apply the droit de suite principle in making his decision.

Based on the description above, it becomes clear that the judge's considerations and the quoted decision dictum contain errors for the following reasons:

a. Based on Article 15 paragraphs (1), (2) and (3) of the Fiduciary Guarantee Law, the contracts listed in the fiduciary guarantee certificate, namely "For the sake of Justice Based on the One Godhead" have executive powers such as court decisions that already have the power fixed law. The executorial power contained in the fiduciary guarantee certificate authorizes the fiduciary recipient to execute the fiduciary guarantee object if the fiduciary giver/debtor is in breach of promise/default because the fiduciary guarantee made between the fiduciary recipient and the fiduciary giver has been legally and binding.

b. The validity of the fiduciary guarantee by the fiduciary recipients has resulted in the application of the droit de suite principle in Article 20 of the Fiduciary Guarantee Law, where the fiduciary guarantee remains attached to the object that is the object of the fiduciary guarantee wherever and under the control of whoever the object is. So, the fiduciary recipient can still execute the fiduciary guarantee anywhere and under the control of whoever the object is.

c. Based on the prioritization principle that applies in material law, where the order of material rights that occurs first is won with material rights that occur later, the fiduciary guarantee that occurs first on April 3, 2014 than the auction results process on June 16, 2015 which won Handoyo as third party in this case, the judge should have won PT. Astra Sedaya Finance as a fiduciary recipient to exercise its rights, namely to execute collateral objects. In case II the fiduciary guarantee occurred first on January 29 2015 then the crime occurred on April 28 2915. In case III the fiduciary guarantee occurred first on July 20 2018 then the crime occurred on December 7, 2020.

4. CONCLUSION

Based on the results of the analysis of legal materials, it can be concluded that the judge's considerations and the dictum of the decisions contained in some of these court decisions contain errors for the following reasons:

1. From the perspective of the birth and binding of fiduciary guarantees based on Article 14 paragraph (3) in conjunction with Article 15 paragraphs (2) and (3) of the Fiduciary Guarantee Law, the fiduciary guarantee agreement made between PT. Astra Sedaya Finance and Gunawan are legally and binding based on Article 14 paragraph (3) in conjunction with Article 15 paragraph (2) and (3) of the Fiduciary Guarantee Law. The fiduciary guarantee was born on the date when the fiduciary guarantee was registered/recorded in the fiduciary register, namely April 03, 2014 which is also in accordance with the date of issuance of the fiduciary guarantee certificate in case I, January 29, 2015 in case II, and July 20, 2018 in case III. Thus applies the legal consequences of the fiduciary guarantee, one of which is the fiduciary guarantee that binds not only the parties to the agreement but also parties outside the agreement or third parties, the fiduciary recipient has executorial authority over the object of the fiduciary guarantee in accordance with Article 15 of the Fiduciary Guarantee, the droit principle can apply. de suite contained in Article 20 of the Fiduciary Guarantee Law, and the fiduciary recipient becomes the preferred creditor.
2. From the perspective of implementing the droit de suite principle contained in Article 20 of the Fiduciary Guarantee Law, fiduciary recipients have the authority to carry out executions based on the droit de suite principle because the fiduciary guarantee has been born and is legally binding. In addition, based on the prioritization principle in material law, the recipient's action is correct to take and execute the fiduciary guarantee object.

5. SUGGESTION

1. For judges, in their consideration, it is necessary to pay attention to legal protection for fiduciary recipients based on the droit de suite principle in Article 20 of the Fiduciary Guarantee Law which is valid because it has followed legal fiduciary guarantee procedures and there is a priority principle in material law that can apply because it is included in the scope the law that covers the case.
2. Individual third parties as auction winners can claim compensation for guarantee recipients and auction implementers.

3. For a third party, the government as the confiscation of evidence of a crime, there is no loss if the confiscated object is returned to the fiduciary recipient with valid evidence to prevent suspicion of cooperation between the defendant and the fiduciary recipient. On the other hand, because the government itself as a law maker tries to protect the parties both in public law and private law.

REFERENCES

1. BOOK

Abdulkadir Muhammad. 2004. *Hukum dan Penelitian Hukum*, Bandung, Citra Aditya.

Amiruddin dan Zainal Asikin. 2010. *Pengantar Hukum Metode Penelitian,* Jakarta, PT. Raja Grafindo Persada.

Bambang Sunggono. 2001. *Metodologi Penelitian Hukum,* Jakarta, PT. Raja Grafindo Persada.

Djaman Satori dan Aan Komairah. 2011. *Metode Penelitian Kualitatif,* Bandung, Afabeta.

Frieda Husni Hasbullah. 2005. *Hukum Kebendaan Perdata (Hak-Hak yang Memberi Kenikmatan).* Jakarta: Ind-Hil-Co.

Gunawan Widjaja dan Ahmad Yani. 2000. *Jaminan Fidusia*, Jakarta, Raja Grafindo Persada.

Mukti Fajar dan Yulianto Achmad. 2010. *Dualisme Penelitian Hukum Normatif dan Empiris,* Yogyakarta, Pustaka Pelajar.

Peter M. Marzuki. 2005. *Penelitian Hukum,* Jakarta, Kencana Prenada Media Group.

Soerjono Soekanto. 2007. *Pengantar Penelitian Hukum*, Jakarta, Universitas Indonesia Press.

Soerjono Soekanto dan Sri Mamudji. 2009. *Penelitian Hukum Normatif Suatu Tinjauan Singkat,* PT. Raja Grafindo Persada.

Sugiyono. 2011. *Metode Penelitian Kuantitatif dan R&D,* Bandung, Afabeta.

Sumadi Suryabrata. 1987. *Metode Penelitian,* Jakarta, Rajawali.

Tan Kamello, 2006. *Hukum Jaminan Fidusia Suatu Kebutuhan Yang Didambakan.* Bandung, Alumni.

Titik Triwulan Tutik. 2008. *Hukum Perdata Dalam Sistem Hukum Nasional*. Ed. Pertama, Prenadamedia Group, Jakarta.

2. LEGISLATION

Kitab Undang-Undang Hukum Perdata.
Undang-Undang Nomor 42 Tahun 1999 tentang Jaminan Fidusia.