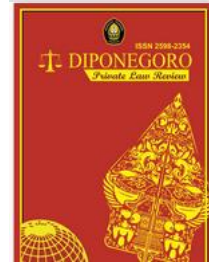


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## The Process of Execution of Fiduciary Guarantees Seized as Evidence because the Debtor Committed a Criminal Act (Case Analysis of Decision Number 188/Pdt.Bth/2019/PN.Dpk)

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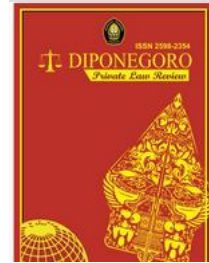
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### ABSTRACT

Provision of credit from banks and financial institutions will definitely be risky if the debtor defaults, to overcome this the borrower in providing credit must be accompanied by providing guarantees for the debtor. The purpose of the guarantee is to guarantee security and legal certainty for investors in granting credit. In a credit agreement, creditors often expect guarantees that provide a sense of security and trust. Even though a fiduciary guarantee has a guarantee, it is not certain that a problem will not occur. Problems with basic agreements such as credit with a fiduciary guarantee can generally arise because the fiduciary recipient or creditor only forms a credit agreement, can also occur because the party only forms a notary deed by not registering it with the office that administers the fiduciary guarantee. There are still many problems that arise as the author will analyze, namely problems with the execution of objects that are used as guarantees for fiduciary accessory agreements, where the objects are confiscated by the state because of criminal acts committed by the fiduciary giver or debtor. In this case, through a lawsuit at the Depok District Court, the fiduciary recipient can execute objects pledged as objects of fiduciary guarantees previously in the possession of the Depok District Attorney as evidence of a crime.

**Keywords:** Fiduciary, Collateral, Credit



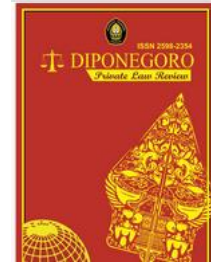
## INTRODUCTION

Every human being who lives in society in his activities to meet the needs of some lives will need something beyond his ability. Needs with income earned are often unequal. As a result, in order to get something or goods needed, someone needs a credit loan to get these goods. Meeting the parties, there needs to be intermediary between creditors and debtors which eventually causes credit (Murtadho, 2022). Then in accordance with Presidential Regulation No. 9 of 2009, namely that activities to finance the procurement of goods needed by consumers with payment transactions can be carried out in installments are the definition of consumer financing. An example of that is when someone who needs consumer goods such as a car, even though the person's income is insufficient to buy in full, then consumer financing by way of credit can be an alternative choice.

Providing credit from banks and financial institutions will certainly be risky if the debtor is unable to pay off the debt owned or default, to overcome this the borrower at the time of providing credit must be accompanied by providing guarantees to the debtor. The purpose of the guarantee is to ensure security and legal certainty for capital contributors in terms of providing credit. At the time of a credit agreement, creditors often want to get collateral that provides security and trust. Because of this, people use fiduciary guarantees or use material guarantee institutions such as fiduciaries (Delvina, 2019).

Of several forms of guarantees, one of them is the fiduciary guarantee used in the agreement and its provisions regulated in Law No. 42 of 1999 concerning Fiduciary Guarantee (hereinafter we will call UUJF). As previously explained, this fiduciary guarantee is based on a trust in the form of the agreement *Accessoir* From the principal agreement, in that case the object to be used as collateral can remain in the control of the fiduciary or debtor, but related to the ownership rights of the object will be on the creditor's side. Meanwhile, if the creditor finds a default or default on the part of the debtor, the execution of the fiduciary guarantee by the creditor can be carried out as stipulated in the rules of Article 29 of the UUJF

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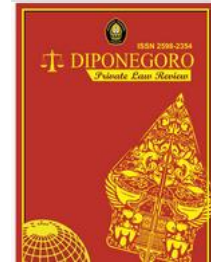
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(Pradipta & Yuniarlin, 2022). In fiduciary guarantees, the provision of such guarantees always takes the form of providing components of the debtor's or fiduciary's assets to fulfill their obligations. In this sense, the debtor temporarily waives ownership rights by law. In this case, giving an object for assurance means giving up some of the power associated with that object. Therefore, in fiduciary guarantees the debtor acts as the beneficial owner, while the creditor acts as the legal owner.

In the aspect of national and state life, there must be legal rules and their functions. This is if the entire community, including its law officers, obeys the rule of law, it will contribute maximally to development. However, in reality not all communities are ready to submit or obey the existing rules and regulations. (Murtadho, 2022). Such is the case of some people who do not obey the rules that cause problems or obstacles. Some problems that arise are usually due to the creditor which is only limited to the formation of credit agreements, there are also problems that are only limited to the formation of notarial deeds or are not registered with the fiduciary office. These problems often arise losses for creditors. The focus of writing this study is related to the confiscation of fiduciary guarantee objects controlled by the state due to confiscation due to criminal acts committed by fiduciaries.

The following are various previous studies that are subject to study in our research, such as Ismail Koto and Faisal's (2021) Research entitled "Application of Fiduciary Guarantee Execution on Movable Objects to Default Debtors". In the writings by Ismail Koto and Faisal, the analysis of legal materials is carried out by applying the content analysis method (*content analysis method*). Furthermore, in the paper the analysis is also carried out by describing the material of legal events in detail to facilitate interpretation in the analysis. The analysis in this study was carried out in a qualitative way. The author's research with previous research has something in common, namely that both discuss fiduciary guarantees. While the difference between these two studies is at the heart of the problem, previous research specifically focused on the application of fiduciary execution to movable objects related to default by debtors, while the research conducted by the author was more centered on creditors'

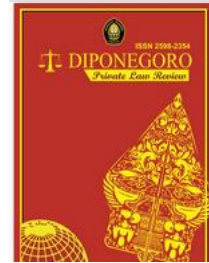
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efforts to withdraw the object of fiduciary guarantees as their rights confiscated by the prosecutor's office due to debtors proven to have committed criminal acts (Koto & Faisal, 2021).

Furthermore, we use Ficky Khasanati's (2022) research entitled "Juridical Analysis of Confiscation of Dependent Rights Objects Against Land Objects Based on Fiduciary Guarantee Agreements (Case Study of Supreme Court Review Decision Number 642 PK/Pdt/2015)". Ficky's previous research has similarities with the author's research, namely that both utilize primary and secondary data sources. The difference between these two studies is in the cases raised, Ficky's previous research presents an analysis of the case of land liability as a case in an agreement that is guaranteed with a fiduciary must be declared null and void if a lawsuit is made to the court, while our research raises the case of execution of fiduciary collateral objects in the form of four-wheeled vehicles through court processes. In addition, the discussion in Ficky's writing is related to the rights of dependents and fiduciary guarantees, while in the research conducted by us only centered on the execution of objects of fiduciary guarantee objects (Ficky, 2022).

Research by Utami Yustihassana Untoro et al (2021) entitled "Juridical Analysis of the Legal Effects of Default on Financing Agreements with Fiduciary Guarantees (Case Study of Decision Number: 13/Ptd.G.S/2021/PN. BDG)". Previous research with the author's research has similarities in the subject or in this case debtors who both default or in other words default to creditors. The difference between these two studies lies in the legal consequences arising from defaults committed by debtors, where in this writing by Untoro and Maulana, debtors or defendants must pay compensation costs of Rp. 156,027,753 and by the panel of judges, and creditors are given permission to secure and carry out executions and auctions of registered fiduciary guarantee objects and are bound by financing agreements. Meanwhile, in our writing, the debtor committed a criminal act so that the car that was the object of fiduciary guarantee was confiscated by the District Attorney's Office, which was then sued so that the car could return to the creditor (Untoro & Maulana, 2021).

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With the explanation of the background of the problem as above, the main problem that we will explain next in this writing is about how the process of execution of fiduciary collateral seized as evidence because the debtor committed a criminal act (Analysis of Decision No. 188/Pdt.Bth/2019/PN.Dpk).

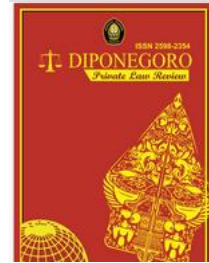
### **METHOD**

With the formulation of the problem above, we will use normative juridical methods as our research method, where we will analyze with literature sources and analysis with case approaches and laws and regulations such as rules, concepts, to legal norms that are related to the case we raise. With this method we analyze in order to get results that are as objective as possible (Zulfikar, 2022).

### **RESULTS AND DISCUSSIONS**

In order to meet needs, various problems often occur. For this reason, humans then create a system or way to overcome the problem, for example, the emergence of a choice of mutual agreement, the fiduciary guarantee is a guarantee agreement that follows the main or principal agreement in the form of a debt receivable agreement (Purnama, 2015). Disputes or problems that arise in a debt receivable agreement guaranteed by a fiduciary are no longer foreign to the public because this is not uncommon. With that, we as authors take one example of case No. 188/Pdt.Bth/2019/PN.Dpk. for our analysis related to the execution of objects pledged as fiduciaries, which were confiscated by the prosecutor's office because of criminal acts committed by fiduciaries (debtors). In this case, there is a party, namely PT. U finance Indonesia as a contrarian who sued the Government of the Republic of Indonesia cq. Attorney General's Office of the Republic of Indonesia cq. West Java High Prosecutor's Office cq. Depok State Prosecutor's Office cq. Public Prosecutor who handled criminal case No. 426/Pid.Sus/2017/PN. DPK which is then said to be the opposing party.

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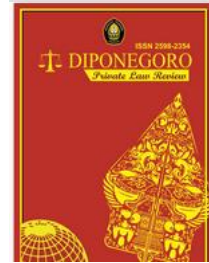
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As a prelude to this case, we will first describe the essence of the case in terms of the lawsuit or petition of the Contrarian and the petition of the Contrarian. PT. U Finance Indonesia (hereinafter referred to as Pelawan) is a company or legal institution that is a field of financing car ownership or vehicle loans and is not directly or indirectly involved in the criminal acts of the defendants from the criminal case with Number 426 / Pid.Sus / 2017 / PN. DPK (we will further call criminal cases). Pelawan in running its business finances a white Honda CRV prestige 2.4 A/T car, with frame numbers, namely: MHRRM3870GJ701446, Engine No.: K24Z99912026, and Police No.: B-196-RRR, on behalf of Debtor REZA FAUZAN, with Contract Number C1-SJK-16-0001319, dated June 22, 2016, which is entered as an object pledged as a fiduciary in accordance with the Deed of Fiduciary Guarantee issued by Notary GAMAL ABDUL NASIR, SH, M.Kn, No. 987 dated July 2, 2016, and has been completed with a Certificate of Fiduciary Guarantee No. W10.00309953.AH.05.01 YEAR 2016, dated July 12, 2016. Thus, with the issuance of the Fiduciary Guarantee Certificate as mentioned above, the *Droit de Suite* principle as contained in Article 20 of the UUJF applies, which in that article essentially states that the fiduciary guarantee will participate in the object that is the object of the guarantee stated in the fiduciary certificate. In addition, it should also be highlighted about Article 24 of the UUJF, in essence, the creditor (fiduciary recipient) is not responsible for any act or act or omission of the debtor (fiduciary) that arises during a contractual bond or from unlawful acts related to the object of fiduciary guarantee.

Furthermore, since February 22, 2017, the agreement has matured and the fiduciary or Reza Fauzan has no longer carried out his obligation to pay credit installments for the vehicle that is the object of the guarantee. The object currently still has a principal debt calculated at Rp. 276,994,970,- (Two hundred seventy-six million nine hundred ninety-four thousand nine hundred and seventy rupiah) against the Pelawan. Meanwhile, according to Article 29 paragraph (1) of the UUJF, the creditor, in this case Pelawan, has the right in the event of withdrawing or executing the car of the fiduciary guarantee object because Reza Fauzan's party is considered to have fulfilled the form of default or is said to be a default. Pelawan further

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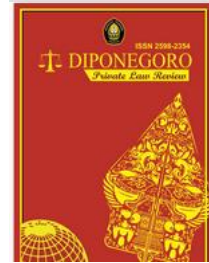
said that proof of ownership of one unit of the Honda CRV car was still on Pelawan's side. In connection with the default committed by Reza Fauzan, Pelawan as the creditor or fiduciary party has made good faith by giving warnings both verbally and in writing repeatedly, but has never been responded to by Reza Fauzan. So that the object in the case still has the status of an object of fiduciary guarantee which is still attached to the properties given by the UUJF, namely Droit de Preference or the right of precedence and also the Droit de Suite or the right to follow the property.

Regarding the existence of the fiduciary guarantee object car, Pelawan just learned that the car was in the possession of the Depok State Prosecutor's Office as evidence for a criminal case. Pelawan said that during the investigation process, the prosecution and the trial process of the criminal case were not notified, so they only learned of the existence of the car unit into evidence after tracking and knowing from reports in the mass media.

The Opposing Party after obtaining information about the existence of the vehicle unit that is the object in the case a quo is in the control of the Opposing Party, then in order to prepare legal remedies to defend its legal rights and interests, immediately submit a letter requesting a copy of the decision to the Depok District Court. Thus, according to the belief of the Opponent, the action taken by the Opponent related to seizing the vehicle unit that is the object in a quo case for the state, is considered an arbitrary act because it has ignored the rights of private property as stated in the provisions of the applicable legislation, so that the Opponent hereby considers the right for him to obtain legal protection as stated in Article 28 H Paragraph (4) of the 1945 Constitution and Article 574 Code Civil. The Contrarian based on Article 25 Paragraph (1) of the UUJF states that confiscation of the Fiduciary Guarantee Object due to a criminal award made by the debtor/fiduciary or other parties is not included in the cause of the removal of Fiduciary Rights.

Furthermore, Pelawan in his petition asked for a verdict in essence to declare that Pelawan was the legal owner of a Honda CRV car unit with the number above along with his vehicle registration and ignition key in the criminal case Number listed above, then asked for the cancellation of the

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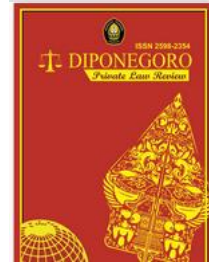
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decision of the Depok District Court in related criminal cases, especially against evidence that had been confiscated, namely a unit of Honda CRV car with the number listed above. Pelawan also asked the Depok District Court to order the Defendant to immediately return one unit of the Honda CRV car mentioned above to Pelawan. And considering that the related criminal case has been decided on December 11, 2017 by the Depok District Court and until now the car unit is still in the possession of the Defendant, Pelawan asked the Depok District Court to order that the Defendant not carry out the auction or execution of one unit of Honda CRV Prestige car above related to the evidence of the criminal case above. In addition, in its province, Pelawan proposed that the Depok District Court give a provisional decision, among others, to punish and order the Defendant to postpone the execution time for the auction of evidence of one car unit in the criminal case above, and for the Defendant to immediately hand over a related car unit along with STNK and ignition keys to Pelawan.

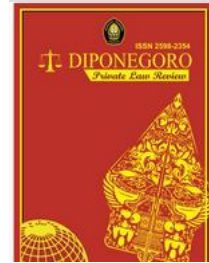
Furthermore, the Opponent filed an exception, namely the exception of *error in persona related to the Contrarian* incorrectly withdrawing the party drawn as the Opponent, related to the Contrarian being considered to have no position as a Contrarian, and related to the party being withdrawn as an Incomplete Opponent. In addition, an exception was also filed *for error in objecto because it* was known that a unit of Honda CRV prestige car mentioned by Pelawan in its resistance was not in the name of Reza Fauzan but it turned out that Pelawan had been wrong and erroneous because in the decision of the case a quo the vehicle was in the name of Dyah Rismaningtyas. The Defendant also filed an exception that the resistance filed by the Opponent was considered obscure libel because the Defendant considered the object of the dispute in the resistance unclear, the petitem of resistance unclear, and because in the decision Number: 426/Pid.Sus/2017/PN. DPK there is no vehicle in the name of Reza Fauzan which is used as evidence, but what is there is a vehicle in the name of Dyah Rismaningtyas. Then it was also filed that the exception of resistance could not be prosecuted, in this case the Opponent considered that the resistance could not be prosecuted because it was filed after case Number: 426 / Pid.Sus / 2017 / PN. DPK has a fixed legal force.



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Furthermore, the Defendant revealed the legal facts from the testimony of sdr. Reza Fauzan in the subject matter of the related criminal case, which at this time has permanent legal force, namely that the defendant Reza Fauzan who is currently convicted has obtained a vehicle, among others, in the form of a Honda CRV car unit through credit made with an advance obtained from the profit money from the crime he has committed together with other defendants on behalf of the Pandawa Group. As of March 27, 2017, it was found that Reza Fauzan was a suspect at the investigation stage at the Metro Jaya Regional Police who had committed fraud or embezzlement crimes and/or banking crimes and money laundering as the Diamon Pandawa group. Investigators have obtained approval to confiscate a unit of Honda CRV prestige 2.4 A/T, white color, Body No.: MHRRM3870GJ701446, Engine No.: K24Z99912026 Police No.: B-196-RRR, in the name of Dyah Rismaningtyas which is suspected to be the object of a quo criminal case. Then according to the available evidence, it has been found that in related criminal cases, sdr. Reza Fauzan was found guilty of committing a criminal act as regulated and threatened with articles on banking, and has stated that the object of the case a quo is the result or profit that has been obtained from the crime so that based on the perspective of the Criminal Procedure Code it should be confiscated and then auctioned and the proceeds put into the state treasury. Furthermore, the Defendant considered that the fiduciary guarantee certificate which was the beginning of the issuance of the fiduciary guarantee certificate was of doubtful validity because it was doubtful that the correctness of making the deed was carried out before a notary. The Defendant also considered that Pelawan as a business entity in the field of financing did not carry out a consumer assessment process with the precautionary principle which resulted in Pelawan not knowing that its consumers were involved with criminal acts (in this case sdr. Reza Fauzan).

Thus, after the filing of resistance by the Opponent and the exception by the Opponent, the Depok District Court then adjudicated by rejecting the Opponent's exclusion in its entirety, rejecting the Opponent's claim entirely, and in the subject matter it was decided to realize part of the Opponent's resistance. In this case, it was later found that Pelawan was the

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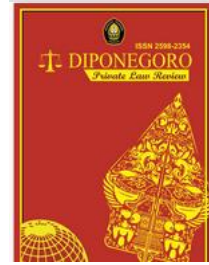
legal owner of a Honda CRV prestige 2.4 A/T, white color, Body No.: MHRRM3870GJ701446, Engine No.: K24Z99912026 Police No.: B-196-RRR, in the name of Dyah Rismaningtyas and the key. Then declare the decision of the Depok District Court related to the number 5 (five) strips (-) one (1) can be corrected, where Pelawan in this case PT U Finance Indonesia which is the 3rd (third) party has power and rights in the object of its guarantee, namely withdrawing and carrying out execution which intends good faith in protecting the rights owned against debt payments. Furthermore, issue an order to the opposing party to immediately give a unit of car as mentioned in the second point, punish the Defendant to pay the costs of the case, and reject the Opponent's claim in addition to the rest.

Initially, a fiduciary guarantee is an agreement that is participatory, so it does not guarantee that all goods can be the object of fiduciary guarantee. In guaranteeing the object of fiduciary guarantee, of course, it has certain conditions. The general provisions of the fiduciary guarantee object include that it must be tangible movable objects or intangible movable objects, as well as immovable objects such as buildings that cannot be charged with liability. The subject of a fiduciary guarantee is two persons who bind themselves to a fiduciary guarantee agreement, which of course there is a debtor who is a fiduciary and a creditor or financing entity who is a fiduciary beneficiary (Patrik & Kashadi, 2009).

Fiduciary guarantee is a follow-up or derivative agreement that was originally from the main agreement that can give birth to obligations for the bound party for the purpose of completing the performance. Goods guaranteed in fiduciary guarantee will later be notarially deed using Indonesian and become a fiduciary guarantee deed. Of course, when making the deed of fiduciary guarantee, a fee will be taken. (Abdullah, 2016) The fiduciary guarantee deed must more or less contain:

- 1) The identity of the giving party as well as the beneficiary of the fiduciary object.
- 2) Guaranteed object tree agreement data.
- 3) An explanation of the object used as the object of fiduciary guarantee.
- 4) Guarantee value.
- 5) The value of the object that is the object of fiduciary guarantee.

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When applying for registration of fiduciary guarantee, it will be carried out and handled by the creditor, his power of attorney or representative by submitting a statement of registration of fiduciary guarantee. Regarding how to register fiduciary guarantees, it has been stated in Government Regulation Number 21 of 2015 regarding how to register fiduciary guarantees along with the cost of making a Fiduciary Guarantee Deed (Sadiqah et al., 2017). The registration statement must contain:

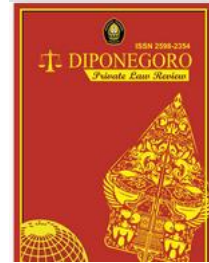
- a) Personal data from mutually bound parties, namely, the debtor as the fiduciary and the creditor as the fiduciary recipient.
- b) The date, number stated in the deed of Fiduciary Guarantee, name listed, and the place of residence of the notary who made the deed of Guarantee.
- c) Related information Initial or principal agreement data guaranteed by a fiduciary.
- d) Explanation of the object contained in the fiduciary guarantee.
- e) The amount of value used as collateral.
- f) the amount of value that is objectified in fiduciary guarantees.

In applying for registration of fiduciary guarantee, it is submitted within a maximum period of 30 (thirty days) starting to be calculated on the date of the start of the fiduciary guarantee deed (Head & Sapiro, 2019). In the preliminary application, fiduciary guarantees that are sufficient terms and conditions will get proof of registration. Such proof of registration must at least contain (Kusumaningtyas, 2016):

1. Registration number.
2. The date the application was filled.
3. The name of the fiduciary as the applicant.
4. Name of Fiduciary Registration Office.
5. Group or type of application
6. The amount of costs incurred in registering a fiduciary guarantee.

Some of the above can be used as evidence for creditors that they are fiduciary guarantee holders who can show proof of ownership of a fiduciary guarantee certificate that has previously been issued by the authority, namely the office where registration. By registering an object

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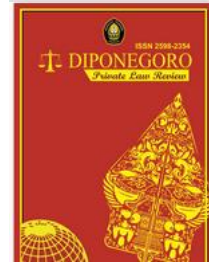
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using fiduciary guarantees with the office where the fiduciary is registered, the fiduciary beneficiary or creditor will have an absolute strong position, the creditor has the right to property rights that can be defended against everyone (FATMA DISPLAY, 2014).

Based on some of the explanations above, if you meet the applicable terms and conditions, it can make the original and properly made fiduciary guarantee certificate strong and property rights can be owned by anyone. Included in the above decision with the fiduciary guarantee deed as proof of full car ownership, the Honda CRV Prestige car can return to the hands of the creditor or Fiduciary beneficiary who is none other than PT U Finance. Previously, the car above, a fiduciary guarantee certificate was made as stated in, Fiduciary Guarantee Certificate No. W10.00309953.AH.05.01 OF 2016, dated July 12, 2016, issued by Notary GAMAL ABDUL NASIR, SH, M.Kn, No. 987 dated July 2, 2016, thereby in line with Article 5 paragraph (1) of the UUJF concerning Fiduciary Guarantee.

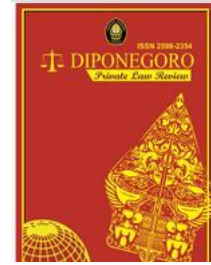
The parties bound by this guarantee are none other than PT U Finance as creditor and fiduciary recipient and Reza Fauzan as debtor and fiduciary. The principal agreement between the debtor and creditor is a financing agreement between the financing institution and its consumers. The object of the agreement between the debtor and creditor is a unit of white metallic Honda CRV, Year 2016, Order No.: MHRRM3870GJ701446, Engine No.: K24Z99912026 Police No.: B-196-RRR, a.n Debtor Reza Fauzan, which was later confirmed STNK a.n Dyah Rismaningtyas. With a guarantee value for a Honda CRV car unit of Rp 436,873,579.00 (four hundred thirty-six million eight hundred seventy-three thousand five hundred seventy-nine rupiah). As well as the amount of principal debt of Rp 374,998,780.00 (three hundred seventy-four million nine hundred ninety-eight thousand seven hundred and eighty rupiah). Although the debtor who in the decision is the opposing party is wrong in stating the name listed on the STNK, the order number of the machine number and police number is still correct and the name of the debtor who submits to the opposing party is a person who has been convicted in the relevant court.

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And evidenced by the Motor Vehicle Owner's Book (BPKB) that the seized object is in the hands of the opposing party.

According to article 24 of the UUJF regarding fiduciary guarantees which explains that creditors are not responsible for the consequences of actions or omissions from debtors arising from unlawful acts called contractual relationships related to the use and transfer of objects used as objects in fiduciary guarantees. Therefore, the panel of judges in decision Number 188 / Pdt.Bth / 2019 / PN.Dpk argued that although the fiduciary party in the case a quo has been found guilty of committing a criminal act so that the evidence that is the object of the case is in the possession of the fiduciary to be executed, so that this does not eliminate the rights of the fiduciary beneficiary in accordance with the UUJF. Evidenced by the attached evidence that if Reza Fauzan or the fiduciary party does not fulfill his obligation to pay his installments and is due, the contrarian as a creditor has the right to withdraw the object of security and carry out execution of the object with the aim of paying off his receivables. And also in the rules of article 46 paragraph 1 jo article 194 of the Code of Criminal Procedure, it is natural that the object of the case a quo is returned to the opponent. Thus, with some considerations, the panel of judges believes that the opponent has succeeded in proving the arguments of his resistance regarding the right to fight against the object of dispute in this case.

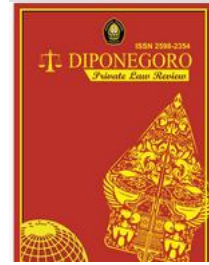
Furthermore, from the previous case information, it is known that the lawsuit was won by the Contrarian party who was then able to get back a Honda CRV car unit which was the object of fiduciary guarantee between Pelawan as the fiduciary beneficiary and sdr. Reza Fauzan as fiduciary. From this case, it is also known that the object of the fiduciary guarantee is confiscated because it is evidence in a criminal act (in this case it is a car), can be withdrawn or reclaimed by the fiduciary due to the occurrence of bad debts or it is said that there is a default. As for the judge's consideration in decision Number 188/Pdt.Bth/2019/PN.Dpk, we consider that there are important points that make the lawsuit won by Pelawan. The first point is related to the subject or Opponent being sued, namely related to Pelawan has correctly withdrawn the Depok State Attorney as Opponent because the object of the problem is related to a unit of Honda CRV car above. The

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second point is related to the object of the dispute to be litigated, in this case the object submitted by Pelawan is in accordance with the object under the control of the Depok State Prosecutor's Office related to criminal case Number 426 / Pid.Sus / 2017 / PN. DPK. The suitability of the object submitted by Pelawan with the object in criminal case Number 426/Pid.Sus/2017/PN. DPK is proven by Pelawan with evidence in the form of photocopies of consumer financing agreements between Pelawan (PT. U Finance Indonesia) and sdr. Reza Fauzan with contract number C1-SJK-16-0001319, photocopy of fiduciary guarantee deed by notary, photocopy of original print out of contract payment schedule number C1-SJK-16-0001319, and photocopy of BPKB on behalf of Dyah Rismaningtyas.

In addition to the two points above, there is a third point that we think makes Pelawan able to win the lawsuit, namely that Pelawan in its lawsuit has filed a clear resistance because Pelawan describes clearly and clearly related to the events on which the facts are based and clearly also related to the legal basis it uses. This can be seen in Pelawan's resistance to using Article 15 Paragraph (2) of the UUJF as the basis for the executory power of the fiduciary guarantee certificate. The article means that a fiduciary agreement has the same binding and executory nature as the force of a court decision that has permanent legal force, after the agreement is registered and a certificate of fiduciary guarantee is issued (Jadidah, 2022). In this case, the fiduciary certificate holder has a position like a party who already holds a court decision that has permanent legal force, but please also note that the executory nature will be lost or cannot be done if there is no default by the debtor. In addition, the executory nature will also be lost if the debtor voluntarily surrenders the object of fiduciary guarantee (Jadidah, 2022). Then regarding Article 29 paragraph (1) of the UUJF, Pelawan is used as a legal basis for the execution of the collateral object because the fiduciary defaults and the procedure for executing the fiduciary guarantee object (Head & Sacipto, 2019). As for the case we take, Article 29 paragraph (1) letter (a) of Law Number 42 UUJF is used as the basis for the executory title as stated in Article 15 paragraph (2) of the UUJF.

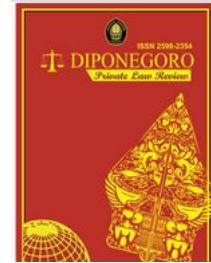
The next legal basis used by Pelawan is Article 25 Paragraph (1) of the UUJF regarding the abolition of fiduciary guarantees. Regarding Article 25

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paragraph (1) of the UUJF, fiduciary guarantees expire or terminate if things occur, first is the elimination of debts pledged by fiduciaries, second is the release of fiduciary guarantee rights by creditors who are fiduciary recipients, then third is the destruction of objects used as objects of fiduciary guarantees. The first is the legal consequence that by writing off the debt which is the principal agreement it also eliminates the fiduciary guarantee which becomes a follow-up agreement that follows the principal agreement (Khairina & Bustamam, 2019). Then the second thing, if the creditor voluntarily waives the fiduciary guarantee right then the agreement with the fiduciary guarantee can be terminated. Then the third thing, if the object used as the object of fiduciary guarantee is destroyed then the fiduciary agreement can be destroyed, and if the destruction of the object is due to the debtor's negligence, the debtor is obliged to replace the destroyed object even though the creditor does not ask for it (Khairina & Bustamam, 2019). With three reasons for the removal of the fiduciary guarantee, it can be seen that the confiscation of the object of the fiduciary guarantee is not included in the cause of the removal of the fiduciary so that the Contrarian in this case makes this article the basis for suing the Defendant so that the fiduciary object in the form of a car unit can be immediately returned to the Opponent. As for strengthening Article 25 paragraph (1) of the UUJF, Pelawan also mentioned Article 24 of the UUJF which essentially states that the creditor is not responsible for the consequences of actions committed by the debtor born from contractual relationships or from unlawful acts or in other words the creditor is free from the responsible if there is an error due to the debtor's intention (Lestari et al., 2020). Apart from the aforementioned articles, Pelawan also mentioned Article 28 H paragraph (4) of the 1945 NRI Constitution and Article 574 of the Civil Code as the basis for his statement that the Defendant committed arbitrary acts and ignored laws and regulations regarding private property rights.

## CONCLUSION

From what we have described in the discussion chapter, here we convey the conclusions we get. Regarding the sitting of the case in the case

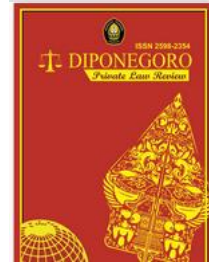
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we took, it is the application of PT. U Finance Indonesia as a contrarian which is a legal entity in the field of car ownership financing that is not directly or indirectly involved in the criminal acts of the defendant from the criminal case decision No. 426 / Pid.Sus / 2017 / PN. DPK. In the criminal case, the object of fiduciary guarantee in the form of a car unit was confiscated as evidence of the criminal act of sdr. Reza, et al. in which the contrarian requested that the car be recalled by the contrarian or fiduciary beneficiary due to default. Based on the judges' considerations that we read in decision Number 188/Pdt.Bth/2019/PN.Dpk, we concluded that there were several points that made the lawsuit won by Pelawan and the object of fiduciary guarantee in the form of a car unit could return to Pelawan. The first point concerns the subject or opponent being sued, especially related to the truth that Pelawan sued the Depok District Attorney as an opponent. The second point concerns the object of the dispute to be lit, in this case the object submitted by the contrarian is in accordance with the object on the side of the Depok State Prosecutor's Office in criminal case No. 426/Pid.Sus/2017/PN. DPK. furthermore, the suitability of the object submitted by Pelawan with the object in criminal case Number 426/Pid.Sus/2017/PN. DPK as evidenced by several evidences in the form of photocopies of consumer financing agreements between Pelawan (PT. U Finance Indonesia) with sdr. Reza Fauzan along with contract number C1-SJK-16-0001319, photocopy of fiduciary guarantee deed by notary, photocopy of original print out of contract payment schedule number C1-SJK-16-0001319, and photocopy of BPKB on behalf of Dyah Rismaningtyas. The third point is that the Contrarian party in its case filed a challenge clearly and unequivocally explaining the facts on which the facts are based and also clearly related to the legal basis on which the resistance is based. This can be seen in the resistance of contrarian who use the UUJF as the basis for their resistance, for example Article 15 Paragraph (2) of the UUJF as the basis for the executory power of the fiduciary guarantee certificate.

The suggestions in this article are: (1) It is very important for parties who want to enter into a principal agreement with a fiduciary guarantee to understand in advance about the legal conditions of the agreement and fulfill these conditions correctly based on Law No. 42 of 1999 concerning Fiduciary Guarantee. This is important to prevent the possibility of problems in the future. (2) It is recommended to business institutions engaged in consumer financing such as PT. U Finance Indonesia to be more selective and careful in terms of choosing consumers to avoid problems in the future. Business entities such as PT. U Finance should tighten



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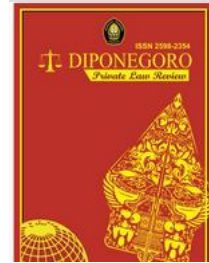
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requirements, such as requesting attachments of debtors' expenses with the aim of supporting documents to know for sure whether the debtor can be considered worthy and able to pay. (3) We recommend that business entities such as PT. U Finance Indonesia implements a maximum consumer supervision system by regularly checking and monitoring the lending process to detect problems from the start. (4) The debtor should be in a state of being able to pay off the debt if he makes loans by way of credit, either with or without fiduciary guarantees so that there is no default that causes the object of the guarantee to be withdrawn by the creditor.

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