

Legal Protection towards Fiduciary Recipients in Disputes of Fiduciary Object



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ABSTRACT: This thesis addressed the issue to examine the legal responsibility of the Collateral Manager as the object fiduciary administrator and how the legal protection effort to the fiduciary recipient is based on the principle of *lex specialist derogate lex generalist*. This writing is motivated by non-performance of contract settlement as well as acts against the law from the importer to the exporter in an international trade relationship based on credit facilities. The results of the research, the responsibility of the Collateral Manager in conduct of transferred objects should be referred to the mechanism for exercising power based on the principles of Good Corporate Governance through the Collateral Management Agreement. This is to depreciate the risk, in order to the objects cannot be transferred by another party as a Fiduciary. Legal fiduciary recipient has accounts receivable on an object can obtain executorial rights protected by the Law on Fiduciary which is equal as court decisions that has permanent legal force. This research is used normative juridical, through statutory approach and a case approach in the case of the Supreme Court Verdict Number 2239 K/Pdt/2014. Conclusion is based on the principle of *lex posterior derogate lex priori*, the Judicial Review Verdict Number 997/PK/Pdt/2018 provides permanent legal force and certainty of the executorial rights of the fiduciary recipient over the object of collateral which is still a dispute between the importer and the exporter.

KEYWORDS: Good Corporate Governance, Legal Protection, Fiduciary.

I. INTRODUCTION

The commodity trading sector in international market orientated is one of the backbones for an economic agrarian country's in order to become affluent while at the same time providing fundamental freedom to explore national economic activities. It is often found some factors inhibiting trading activities, such as the occurrence of conflicts of interest among the parties or own business limited capital factors, therefore a credit facility is needed for funds business activities. In this matter certainly very risky to the creditor rights and fiduciary over objects by the debtor up to the settlement of payment. Therefore, the role of Collateral Manager is needed which is given authorization to conduct and supervising the transferred fiduciary object up to the creditor's rights are fulfilled and the debtor's obligations are carried out properly.

This writing is motivated by the non-performance of contract of PT AAA as an importer as well as a debtor in an international trade relationship with QC SA as an exporter based on the ING Belgium Bank credit facility as a creditor. Based on the mutual agreement, the commodity object of soybean which is traded between the Importer and the Exporter must always be under the supervision and management of PT PMI who is appointed as Collateral Manager until the payment is settled from the Importer. However, before full payment received from the importer, the soybean object had been traded by the Importer to PT SMB as the legal buyer based on a domestic L/C or known as Domestic Letter of Credit (Surat Kredit Berdokumen Dalam Negeri/SKBDN) with loan from PT Bank Mandiri Tbk. as an issuing bank. Then PT SMB as the buyer and debtor has pledged the commodity object as a fiduciary to PT Bank Mandiri Tbk which has been legally registered with the Fiduciary Registration Office of the Ministry of Justice and Human Rights. After PT SMB settled the payment, some of the commodity objects had been transferred to the warehouse owned by PT SMB and some were still in the warehouse under the supervision of the Collateral Manager, PT AAA as the debtor did not pay off the debt on the ING Belgium Bank credit facility. Therefore QC SA, who was still the legal owner of the commodity object realized that the object fiduciary has been transferred to another party prior the settlement of payment of the object and then PT AAA has been reported to the police by Report No. LP/120/II/2011/Bareskrim.

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The unlawful act by PT AAA has caused losses to PT SMB, causing PT SMB unable to pay off its debts to PT Bank Mandiri Tbk. Therefore, due to PT SMB's default on credit facilities based on a fiduciary legal relationship, PT Bank Mandiri Tbk as the fiduciary recipient filed an executorial right to the object of fiduciary security through the Determination of Execution Seizures at the Tangerang District Court No. 13/PEN.EKS/APHT/2011/PN.TNG. Furthermore, PT PMI, which is responsible for commodity objects under its supervision, filed a lawsuit together with QC SA as an opponent of intervention, against the decision to confiscate the execution seizures of the Tangerang District Court with District Court Verdict Case No. 270/PDT.PLW/2011/PN.TNG in which the decision granted the petition of the opponents and the opponents of intervention. Opponents and opponents of intervention also won resistance at the appeal level in Banten High Court with No. 12/PDT/2014/PT.BTN and at the cassation level based on the Supreme Court Verdict No. 2239 K/PDT/2014, leaving PT Bank Mandiri Tbk. as the losing party.

Reviewed based on Law No. 42 of 1999 concerning Fiduciary, the position of PT Bank Mandiri Tbk. as a fiduciary guarantee recipient gets legal protection to obtain executorial rights regardless of any unlawful acts from the fiduciary giver, so that based on the Judicial Review Verdict No. 997/PK/Pdt/2018 PT Bank Mandiri Tbk. provides protection for the certainty of the executorial rights of PT Bank Mandiri Tbk on commodity objects. Therefore, this research will focus on the form of responsibility of the Collateral Manager against commodity objects as well as legal protection form for fiduciary recipients of collateral objects whose ownership status is still in dispute, with the title "Legal Protection Towards Fiduciary Recipients in Disputes of Objects Fiduciary".

II. FORMULATION OF THE PROBLEM

- a. What is the mandatory of the Collateral Manager in an effort to protect and conduct the transfer of ownership rights to the bulk soybean object based on the Collateral Management Agreement mechanism?
- b. How is the analysis of legal protection for fiduciary recipients in the Supreme Court Verdict Number 2239 K/Pdt/2014 and the Judicial Review Verdict Number 997/PK/Pdt/2018 based on Law Number 42 of 1999 concerning Fiduciary?

III. RESEARCH METHODS

The author in this study will use normative juridical, statute approach, case approach, and conceptual approach. This research is supported by library data (secondary data) with several legal materials may have authority (primary material),¹ namely the Fiduciary Law, the Supreme Court of the Republic of Indonesia Verdict No. 2239 K/Pdt/2014, Judicial Review Verdict No. 997/PK/Pdt/2018, the Civil Code (KUHPER), the Civil Procedure Code and other Legal Products. Other data are also obtained from legal publication materials in the form of unofficial documents,² such as thesis, journals, or other previous research, as well as supporting materials (tertiary materials) outside of primary and secondary materials which are then collected through library research and processed with qualitative data analysis techniques, which were conveyed through descriptive analysis to carry out research solutions.

IV. DISCUSSION

A. Collateral Managers Mandatory in Efforts to Protect Ownership Rights of Commodity Objects Based on Collateral Management Agreements

In the world of business economy in an agrarian country, agreements are considered as part of the fundamental freedom for business actors in commodity trading activities on the international stage. The agreement is made to accommodate differences in interests due to the different positive laws in each country. Often businessmen are hampered with limited business capital for the continuity of their business activities, so they need a credit facility to buy a commodity needed in their business. In order to protect the rights, ING Belgium Bank as creditor and QC SA as Exporter, a Collateral Management Agreement was formed as a form of cooperation agreement between three different parties (tri-party agreement) which aims to appoint and authorize the Independent Agent of CUN BV, namely PT PMI as Manager Collateral to manage and supervise the movement of commodity objects of soybeans that are traded through a credit facility from ING Belgium Bank, until payment is settled from PT AAA as a debtor as well as an importer. The matters that are authorized to the Collateral Manager based on the agreement stipulated in the Collateral Management Agreement include:

There is supervision over the movement of commodity objects from the arrival of the transport ship at the local port to storage facilities or warehouses that have been rented by the Exporter based on a mutual agreement with the Importer,

- Supervise and ensure that the quantity of the weighing process is in accordance with the quantity stated in the bill of lading document,
- Supervise the process of unloading commodity objects from trucks to storage areas

¹ Peter Mahmud Marzuki, *Penelitian Hukum*, Jakarta, Kencana Prenamedia Group, 2005, p. 181

² Zainuddin Ali, *Metode Penelitian Hukum*, Jakarta, Sinar Grafika, 2008, p. 54

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- Submission of Warehouse Receipt document to Creditors for commodity objects that have received funds stored in warehouses under the control of the Collateral Manager as a guarantee form for Creditors,
- Manage the number of commodity objects that can be issued after the instruction for the release of goods from the creditor through the release order document when the creditor has received proof of payment from the debtor as the importer.
- Supervise and control the process of loading commodity objects to be removed from storage, to ensure that the quantity issued is in accordance with the quantity instructed by the Creditor through the release order document.
- Conduct stock monitoring and reporting on a daily basis report on the quantity and quality of commodity objects as long as the commodity objects are still stored in the warehouse, as well as all events related to commodity objects that have the capacity as a threat to the interests of Creditors and Exporters
- Ensuring that the existence of the object of collateral is always under supervision and the collateral manager controlling until payment is settle from the Debtor as the Importer.

As related to the provisions for the exercise of power as stated in Article 1797 of the the Civil Code (KUHPER), the mandatory of the Collateral administrator is only limited which is the scope of his authority, it means that the Collateral Manager shall not do anything which is outside the scope of his authority or the authority given to him is represent the interests of creditors and exporters in an affair. His authority shall be exercised based on the principles of Good Corporate Governance in order to manage risk and ensure the interests and trust of stakeholders in a work ethic. The principles that shall be considered by an Independent Agent appointed as Collateral Manager in carrying out their duties and authorities are as follows:³

- a) Transparency, which requires the opened provision, timely, adequate, clear, accurate and comparable information regarding the state of operational performance management and is easily accessible to stakeholders.
- b) Accountability, being able to account for its performance in a transparent and fair manner.
- c) Responsibility, the existence of a responsible attitude towards a performance that must be in accordance with legal norms and social norms, so that business continuity can be maintained in the long term.
- d) Independence, independence on a performance is a must so that the organs of a company do not dominate each other and cannot be intervened by other parties.
- e) Fairness and Equality, principles that contain justice, where all treatment is equal which ensures that every decision and policy taken shall be in the interests of the parties concerned.

Based on the responsibility theory put forward by Hans Kelsen, responsibility is closely related to the obligations imposed on legal subjects for an act. It can be said that responsibility is a form of good faith from the implementation of an agreement. Where the legal subject who bears responsibility means that he is also responsible for the sanctions imposed on his actions or for a violation that arises as a result of actions that are contrary to his obligations..⁴ Therefore, in addition to the Collateral Manager being responsible for the implementation of the duties and authorities given to him, he is also responsible for bearing all costs, losses, and interest that may arise due to non-performance of his obligations, breach of contract, negligence or unlawful act, as long as he has not been released from responsibility for what has been authorized to him.⁵ The Collateral Manager is authorized to be responsible for the management of the collateral object in accordance with the provisions of the Collateral Management Agreement: "The Good will be realized to buyers by the Collateral Manager, only when payment in full has been received and verified in writing by the Bank (ING Belgium Bank) " which means the goods will only be released to the buyer by the Guarantee Manager, only if full payment has been received and confirmed in writing by ING Belgium Bank. The mechanism for releasing goods shall also be based on instructions from the Collateral Manager to the storage facility based on the release order document that has been confirmed by the Bank.

Based on article 1367 of the Civil Code, losses that arise due to negligence or due to negligence of people under his responsibility or supervision are also part of his responsibility. That means that PT PMI as the Collateral Manager who also delegate PT GS as a subcontractor, then he also bears all negligence arising from the actions of his subcontractor. Meanwhile, QC SA as exporter is also responsible for the actions of PT PMI as Collateral Manager as well as independent agent of CUN BV, as this is in accordance with the provisions of the Agency Law quoted as consideration by the Tangerang District Court panel of judges; ----Principals have substantial liability for action of their agents, therefore, dispute about weather an agency relationship exists are not they legal guiles but important issues with potentially profound financial consequences"----. And if for a crime, the Collateral Manager as an independent agent who

³ Hamdani, *Good Corporate Governance Tinjauan Dalam Praktek Bisnis*, Jakarta, Mitra Wacana Media, 2016, p. 72.

⁴ Vina Akfa Dyani, *Pertanggungjawaban Hukum dan Perlindungan Hukum bagi Notaris dalam Membuat Party Acte*, Jurnal Hukum No. 1 Vol.2, Magister Kenotariatan, Yogyakarta, Universitas Islam Indonesia, 2017, p. 166

⁵ Indonesia, *Kitab Undang-Undang Hukum Perdata*, Art. 1800.

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participated in committing a criminal act, shall be punished as a criminal act in accordance with the provisions of Article 55 paragraph (1) of the Criminal Code. However, if the loss arises or is hindered due to an overmatch and cannot be anticipated in advance, then any party shall immediately notify the other party, and after notification of a delay in performance implementation, the loss cannot be held accountable to him.⁶ For Instance, the Collateral Manager is not responsible for losses caused due to changes in the natural condition of the commodity object.

The Collateral Manager accountability in defending the rights of QC SA as the legal owner of the commodity object is closely related to its right to file a lawsuit against the confiscation of the execution where according to Article 195 paragraph (6) of the HIR, the existence of a third party who feels aggrieved by the execution is given the opportunity to file legal remedies against the execution that will be carried out. Therefore, Collateral Managers and Exporters as third parties whose interests are harmed can jointly file a third party resistance (*derden verzet*) and intervention through the Tangerang District Court Verdict No. 270/PDT.PLW/2011/PN.TNG on the Confiscation of Execution No. 13/PEN.EKS/APHT/2011/PN.TNG. Article 378 of the RV stipulates that a third party who submits a resistance does not only have sufficient interest, but there shall be a reason for his rights being harmed. Third party opposition shall be filed by a legal subject who has a legal relationship with the object of a lawsuit, in principle everyone who feels he has the right and wants to have or defend or defend it is authorized to act as a plaintiff nor as a defendant (*legitime personae standi in iudicio*).

From this collateral manager's countermeasures, the Penal of Judges who examined and tried the case stated that the opponent was a good and true opponent, granted the request for resistance from the Collateral Manager and Exporter to place a confiscation of collateral and conduct a public sale/auction first by the Tangerang District Court considering the nature of goods that cannot last long, where later the money from the auction will be deposited (on consignment) at the Tangerang District Court until has a verdict with permanent legal force from the Judge on the case. Declaring that this provisional verdict can be carried out first (*Uitvoerbaar bij voorraad*) even though there is a legal countermeasure (*Verzet*). As well as punish PT Bank Mandiri Tbk. as the opponent I and PT SMB as the opponent II jointly and severally to pay court fees.

B. Legal Protection Towards Fiduciary Recipients Supreme Court Verdict Number 2239 K/Pdt/2014 and Judicial Review Verdict Number 997/PK/Pdt/2018 based on Law Number 42 of 1999 Concerning Fiduciary

Starting from the Tangerang District Court Verdict No. 270/PDT.PLW/2011/PN.TNG which incriminates PT Bank Mandiri Tbk. as the opponent I as well as the recipient of a valid fiduciary guarantee based on the legal relationship of the fiduciary guarantee with PT SMB as the opponent II, then PT Bank Mandiri Tbk. represented by legal team filed an appeal through the case of Banten High Court Verdict No. 12/PDT/2014/PT.BTN. The verdict of the Penal of Judges who tried and examined the appeal, the Penal of Judges still stated that Verdict No. 12/PDT/2014/PT.BTN is a verdict that strengthens the court's verdict at the first instance and punishes PT Bank Mandiri Tbk. as the comparison or who was originally Defendant I/the confiscate for paying court fees at an appeal level of Rp. 150,000 (One Hundred and Fifty Thousand Rupiah).

Some of the judge's considerations in the appeal verdict are still considered not to provide legal certainty to PT Bank Mandiri Tbk, hence PT Bank Mandiri Tbk. has submitted an appeal to the Supreme Court through case no. 2239 K/PDT/2014 as a legal remedy for dissatisfaction with the verdict of the Tangerang District Court No. 270/PDT.PLW/2011/PN.TNG and Banten High Court Verdict No. 12/PDT/2014/PT.BTN. In the cassation verdict, the Supreme Court had opinion that the *Judex Facti* in this case not contradicting with the law and/or legislation, therefore the appeal filed by the Cassation Petitioner PT Bank Mandiri. Tbk shall be rejected; therefore, due to the cassation request from the Petitioner was rejected and the Cassation Petitioner was on the losing side, the Cassation Petitioner was sentenced to pay court fees at this level of cassation. The judges' considerations that incriminate PT Bank Mandiri Tbk in this cassation verdict are as follows:

- a. In accordance with the facts of the trial, it has been proven that the Contestants are the parties (agents) appointed by the Owners (Exporters) to supervise and manage the commodity object of dispute, while the Intervention Opponents are the Exporters (Original Owners) of the disputed objects to be marketed in Indonesia through PT Alam Agri Adiperkasa (PT AAA) (Importer) in accordance with the sales contract so that it is correct that the Opponents and Intervention Opponents are interested parties as referred to in the provisions of Article 279 RV: "Whoever has an interest in a case that is being examined in court, can participate in this case by accompanying (*voeging*) or mediating (*tussenkomst*)".
- b. Whereas in addition, according to the facts of the trial, the commodities of the object of dispute are the types of goods that are quickly damaged if stored for a long time, while the examination of cases in court proceedings takes a long time and the period of completion of the examination cannot be determined, so it is appropriate to avoid losses the application for the provision against Intervention in the *a quo* case can be granted, therefore the *Judex Facti* dverdict deserves to be strengthened.

⁶ *Ibid.*, Art. 1244 – 1245

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c. The judge's considerations above show that there is no consideration regarding the certainty of the protection of rights to PT Bank Mandiri Tbk. which is legally domiciled as a fiduciary recipient as well as a creditor in a legal relationship buying and selling Non-cash loans or commonly known as Domestic Letter of Credit (Surat Kredit Berdokumen Dalam Negeri/SKBDN) between PT SMB and PT AAA as the importer who is negligent in fulfilling its achievements to QC SA as the exporter. Therefore, due to the existence of *ibi jus incertum, ibi jus nullum*, where there is legal uncertainty, there is no law or there is no justice,⁷ while the purpose of registering a fiduciary relationship itself is to provide legal certainty to interested parties and also provide rights priority (right of preference) to fiduciary recipients over other creditors. This is because the fiduciary guarantee gives the fiduciary recipient the right to keep control of the object which is the object of the fiduciary based on trust. Therefore, PT Bank Mandiri. Tbk filed a judicial review to the Supreme Court with case Number 997 PK/Pdt/2018 to obtain justice for their rights as recipients of valid fiduciary guarantees based on the Fiduciary Certificate dated twenty-fifth February two thousand and three (25-2-2003) Number W7-002825 HT.04.06.TH 2003/STD Jo Fiduciary Certificate Number: W7-1127.HT.04.07.TH.2007/P which has been registered at the Fiduciary Registration Office of the Ministry of Justice and Human Rights Republic of Indonesia with instructions "For Justice Based on God Almighty" for the existing soybean stock/inventory.

Based on the Penal of Judges consideration in the Judicial Review Verdict No. 997 PK/Pdt/2018 it was stated that there was a clear error of the judge in examining and adjudicating the case of bulk soybean commodity belonging to QC SA, where some of the evidence examined by the Penal of Judges at the first level was evidence or photocopies are not authentic evidence (*authentic*), so that the Penal of Judges is considered false in applying the law of evidence and the evidence should be set aside. Considering that based on the Jurisprudence of the Supreme Court No. 7011/K/Sip/1974 which states that: "A decision based on photocopies of evidence is invalid because the photocopy of the photocopy is declared to be the same as the original, while there are substantial differences between them. Thus *Judex Facti* has decided the case based on valid evidence." Furthermore, based on the Jurisprudence of the Supreme Court No. 3609 K/Pdt/1985 states "A photocopy of proof that has never been submitted or there has never been an original must be set aside as proof."

Another Penal of Judges considered that PT Bank Mandiri. Tbk as the applicant for judicial review, which in this case was a creditor in a fiduciary agreement, was considered a creditor in good faith because it was based on a fiduciary agreement with PT SMB which had an object of dispute by buying and paying in full. to PT AAA, that in this case the defendants for judicial review, namely PT PMI and QC SA, only have a legal relationship with PT AAA which has purchased the object of dispute from the defendants for judicial review/contestants, therefore the defendants for judicial review/opponents only has the right to sue PT AAA which has failed to pay the purchase price (default). Based on the principle of *lex specialist derogate lex generalis* which in this case, PT Bank Mandiri Tbk which is legally based on a fiduciary legal relationship with PT SMB has been protected by the provisions of Law No. 42 of 1999 concerning fiduciary security as a special law (*lex specialist*), so that this special legal provision can override other general legal provisions (*lex generalis*). Based on the provisions of the fiduciary law, a fiduciary legal relationship that has been registered and certified with *irah-irah* "On behalf of Justice in the name of one and only God" then the certificate has the same executorial power as a court decision that has obtained permanent legal force, and if the debtor breach of contract, the fiduciary recipient has the right to sell the object that is the object of the fiduciary on his own power.⁸

In this case, the position of PT Bank Mandiri. Tbk as a creditor as well as a recipient of a fiduciary guarantee in good faith, has provided a non-cash loan to PT SMB to settle the payment for the purchase of a number of soybean commodities from PT AAA and has registered the object of the soybean as a fiduciary guarantee in a fiduciary guarantee certificate which is legalized by the Fiduciary Registration Office of the Ministry of Justice and Human Rights, so that based on its fiduciary legal relationship PT Bank Mandiri. Tbk shall obtain legal protection for its rights and does not bear any liability for the consequences of the actions or omissions of the fiduciary giver, whether arising from contractual relationships or from unlawful acts in connection with the use and transfer of objects that are objects of fiduciary security.⁹ As the theory of legal protection put forward by Satjipto Rahardjo which states that legal protection is an effort to protect one's interests by allocating a right in the form of power to act in the context of his interests.¹⁰ In this case PT. Bank Mandiri Tbk. as a fiduciary recipient with good intentions shall obtain legal protection by not bearing any obligations for problems between PT. SMB with PT. AAA as well as PT AAA's problems with QC SA and PT PMI, so that the implementation of the executorial title can be allocated to PT Bank Mandiri. Tbk as the fiduciary recipient to control the object of the guarantee which has been submitted

⁷ Rayno Dwi Adityo, *Paradigma Kepastian Hukum Pembiayaan Masyarakat Pada Bank Syariah : Perspektif Hukum Positif*, Journal Hukum Vol. 6 No. 2, Unisma Bekasi, 2015, p. 31.

⁸ Indonesia, Undang-Undang RI No 42 tahun 1999 tentang Jaminan Fidusia, Art. 15 no. 1- 3

⁹ *Ibid.*, Art. 24

¹⁰ Satjipto Rahardjo, *Ilmu Hukum*, Cet V, Bandung, PT. Citra Aditya Bakti, 2000, p.54.

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through the transfer of material rights (*lavering*), which will later sell the object of the Fiduciary Guarantee on the power of the Fiduciary Recipient himself through a public auction and take repayment of his receivables from the sale proceeds.¹¹

Regarding the sale and purchase relationship between PT AAA and PT SMB involving PT Bank Mandiri Tbk. the status of the soybean commodity sold by PT AAA is still owned by QC even though PT AAA holds a bill of lading, but PT AAA have not yet settle the payments for commodity objects, according to the agreement of the parties in the sales contract PQD 1008016 which states that "The Goods sold pursuant to the Contract shall remain the Sellers property until the Buyers have paid all sums due from it to the Sellers on any account whatsoever. If such payment is overdue in whole or in part, the Sellers may (without prejudice to any of its other right) recover or resell the Goods (or any part or them) and may enter upon the Buyers premise for that purpose as set out above" which means that the goods sold pursuant to this contract shall remain the Property of the seller until the buyer has paid the full amount due from him to the seller. If such payment is past due in whole or in part, the Seller may (without prejudice to any of its other rights) recover or sell the goods (or any part thereof) and may enter the premises of the purchaser for the purposes described above.

Although the sale and purchase relationship between PT SMB and PT AAA is based on a clear legal relationship, also agreed before a notary, the payment has been paid with a fiduciary guarantee by PT Bank Mandiri Tbk. and is in accordance with the provisions of Article 584 of the Civil Code concerning property rights that can be obtained through the existence of *lavering*, the consideration of the Penal of Judges examining the case at the cassation level canceled the sale-purchase agreement based on the principle of *eksepsio non adimpleti contractus*. It is unfortunate that PT. AAA is not in this court verdict even though PT AAA is a party that deserves to be included as a defendant in this lawsuit so that it should result in an unacceptable lawsuit (*niet onvankelijk verklaart*) which is called *Exceptio Plarium Litis Consortium*, namely an exception against the lawsuit is *Plarium Litis Consortium* (the subject of the lawsuit is incomplete).¹²

Meanwhile, the Penal of Judges consideration in the case of verdict No. 997 PK/Pdt/2018 which is based on its authority and intuition to be able to explore, follow and understand legal values and sense of justice in society, in resolving every case it tries, the Penal of Judges stated that the defendants, namely PT PMI and QC SA only had legal relationship with PT AAA which has purchased the object of the dispute from the Respondents for Judicial Review/Contrasts, therefore the Respondents for Review/Confronts only have the right to sue PT Alam Agri Adiperkasa which has failed to pay the purchase price (default), for the sake of justice according to the fiduciary recipient in good faith, the Penal of Judges decided to grant the petition for judicial review of the applicant, namely PT Bank Mandiri Tbk. canceling the Supreme Court Verdict Number 2239 K/Pdt/2014 dated 24 February 2015 which confirmed the Banten High Court Verdict Number 12/PDT/2014/PT BTN dated March 5, 2014 which upheld the Tangerang District Court Verdict Number 270/Pd t.Plw/ 2011/PN.Tng dated September 11, 2012, The principle used in the resolution of legal conflicts in these two conflicting decisions is based on the principle of *lex posterior derogate lex priori*, namely the principle that states if there is a conflict between the new regulations and the old ones. Thus, the new regulations can override the old regulations. With this principle the old regulations are no longer valid. In addition, the Penal of Judges also decided to sentence the Respondents for Judicial Review to pay court fees at all levels of justice.

V. CONCLUSION

Basically, the Collateral Manager in carrying out his responsibilities shall be based on the principles of good corporate governance which include transparency, independence, responsibility, accountability, fairness and equity. Based on Article 1797 of the Civil Code, the Collateral Manager's mandatary is limited which the scope of his authority, it means that the Collateral Manager shall not allowed to do anything that exceeds of his authority or the power given to him to represent the interests of creditors and exporters in an affair. The responsibility of the Collateral Manager in this case only covers the supervision of the transfer of the object of collateral, the management of the number of commodities received based on the warehouse receipt document and the number of commodities that can be issued based on instructions from the creditor, namely ING Belgium Bank through an order issuance realease order, as well as risk management on the storage of goods.

In terms of legal protection for fiduciary recipients, based on the principle of *lex specialist derogate lex generalist*, the purpose of registering a fiduciary guarantee is to give special rights (rights of preference) to fiduciary recipients against other creditors. This is because the fiduciary gives the fiduciary recipient the right to keep control of the object which is the object of the fiduciary based on trust. In the provisions of Article 15 paragraphs 1 – 3 states that if a fiduciary relationship has been registered based on a fiduciary

¹¹ Indonesia, Undang-Undang RI No 42 tahun 1999 tentang Jaminan Fidusia Art. 29 no. 1 - 2

¹² M. Usman Syahirul Azmani, *Analisis Yuridis Pertentangan Putusan Mahkamah Agung Nomor 2206 K/Pdt/2012 Dengan Putusan Peninjauan Kembali Nomor 319 Pk/Pdt/2015 Tentang Sengketa Perdata Menurut Kitab Undang-Undang Hukum Perdata Dan Undang-Undang Nomor 42 Tahun 1999 Tentang Jaminan Fidusia*, Skripsi Program Studi Ilmu Hukum, Malang, Universitas Brawijaya, 2017, p. 187

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certificate with *irrah-irah* "For the sake of Justice Based on the One Godhead" then the certificate has the same executive power as a court verdict. It has permanent legal force and if the debtor is in breach of contract, the Fiduciary Recipient has the right to sell the object which is the object of the Fiduciary on his own power, so that based on this provision, the implementation of the executorial title can be allocated to PT Bank Mandiri Tbk. as the fiduciary recipient to control the object of the collateral which has been submitted through the transfer of the material rights (*lavering*), therefore sells the object of the Fiduciary under the authority of the Fiduciary Recipient himself through a public auction and takes the settlement of his receivables from the proceeds of the sale. As for if it is based on the provisions of Article 24 of Law No. 42 of 1999 concerning Fiduciary that if based on a fiduciary legal relationship, PT Bank Mandiri Tbk. shall obtain legal protection for its rights and does not bear any liability for the consequences of the fiduciary's actions or omissions, whether arising from a contractual relationship or from unlawful acts in connection with the use and transfer of objects that are objects of the fiduciary guarantee. The considerations and verdict of the Penal of Judges in the Judicial Review Number 997 PK/PDT/2018 have provided legal certainty to the rights of PT Bank Mandiri Tbk. as a fiduciary recipient as well as a creditor in good faith, granted the appeal filed by the applicant, punished the defendants to pay court fees at all levels of the judiciary, and based on the principle of *lex posterior derogate lex priory* the Judicial Review Verdict No. 997/PK/Pdt/2018 was enforced by canceling the Supreme Court's Verdict Number 2239 K/Pdt/2014 which upheld the Banten High Court's Verdict Number 12/PDT/2014/ PT.BTN which upheld the Tangerang District Court Verdict Number 270/Pdt.Plw/2011/PN.TNG.

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