



Binding of Third Party Guarantee Objects in Financing Agreement in PT Multindo Auto Finance in Padang City

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Abstract

Financial institutions both banks and non-banks play an important role. Financial Institutions is one non-bank institution that is developing rapidly. Consumer financing is one form of financing institutions that is often encountered. The financing institution in practice uses Guarantees provided by the debtor are not entirely the debtor's personal property, but are collateral which is the property of third parties submitted as collateral. Default is one that can occur during the ongoing financing and a third party as the owner of the Guarantee can also be made compared to an increase in default. In the financing agreement the parties only consist of creditors and debtors. The formulation of the problem in this return is how the binding of third parties as collateral in spending and how legal protection to third parties The research method used is a sociological juridical method, namely discussing the problem by looking at applicable legal norms then discussing with legal facts that in the field. The study was conducted at PT Multindo Auto Finance Kota Padang. Binding of objects belonging to third parties is done with a letter of release of vehicle ownership rights and financing agreements are only signed by creditors and debtors. One of the legal protection for guarantees is through fiduciary. Decision of the Constitutional Court Number 18 / PUU / XVII / 2019 regarding the implementation of fiduciary executions that were not voluntarily approved by the debtor, the procedure must be carried out to execute a court decision with permanent legal force. Protection of the owner.

Keywords: *Binding; Collateral Objects; Financing Agreement*

Introduction

Financial institutions, both banks and non-banks, play a strategic role in economic and business transaction traffic in the current developing era, almost all business activities today require the services of financial and banking institutions, because the system continues to change from a manual transaction system to a digital transaction system using electronic devices and the internet, This reality is triggered by several reasons including the digital transaction system which is seen as providing more convenience, speed and practicality because it can be done anytime and anywhere for an unlimited time.

One of the non-bank institutions that is growing rapidly now is a financial institution. Financial institutions are business entities that carry out financing activities in the form of providing funds or capital goods by not withdrawing funds directly from the public. Financial institutions consist of;

- a. Rent Business use;
- b. Venture Capital;
- c. Securities Trading;
- d. Factoring Receivables;
- e. Credit Card Business;
- f. Consumer finance.¹

High community needs that are not offset by purchasing power in cash, be a positive signal for businesses to develop business in the field of financing and financial services. The provision of financing facilities with a variety of flexible and flexible installment periods has become an attractive choice for financing consumers. The payment model in installments (in installments), in terms of financially able to provide many benefits for consumers of financing, the financial institution's business is more emphasis on the financing function, namely in the form of providing funds or capital goods by not withdrawing funds directly from the public.²

At present people if they need an item do not need to provide large amounts of cash to be able to have the goods they want. Payment can be offered for a period according to the ability of its consumers. Finance companies can act as a type of business and at the same time make a purchase of a product. Give credit or loans to anyone, but for legal certainty for the parties, they make a bond in the form of a binding agreement that continues to a financing agreement. The existence of this agreement, will be increasingly clear what is the responsibility of the parties. The borrower is obliged to surrender or repay the loan along with the specified interest, whereas the recipient of the loan is obliged to submit the loan in addition to being entitled to receive the money he has borrowed. That is, the agreement between the parties is reciprocal with the rights and obligations that are expected to be balanced.

For certain groups of people it will be difficult to get loan facilities from banks because they are unable to meet the required collateral criteria. The emergence of financial institutions can be an alternative for meeting the consumption needs of the middle class people who are able to reach down to the lower middle class of society through a mechanism for guaranteeing collateral that is easier and more flexible than the system used by banking institutions.³ The many conveniences offered by finance companies, both in terms of interest and loan term, make finance companies interested in the middle class and below, because the consumer finance company does not need to provide sufficiently large funds and high-value guarantees to be able to obtain a vehicle and other items needed.

Financing companies that offer financing for a product with a credit return also need a form of collateral, in the sense that a person can only obtain credit if financing is done with a guarantee. Whether it's collateral in the form of objects or collateral in the form of people. Construction of collateral is an anticipation of the possibility that creditors do not carry out what has been agreed with the finance company. In the meantime, facilities provided by finance companies are utilized by the public in purchasing certain goods or increasing business capital.

The collateral for the debt in the financing agreement made is guaranteed by the vehicle that was purchased, so that the financiers (creditors) have the convenience of disbursing funds. The recipient of the financing (the debtor) in this case the consumer of the financing becomes very profitable because the

¹ D.Y. Witanto, 2015, *Fiduciary Guarantee Law in the Consumer Financing Agreement*, Mandar Maju, Bandung, p. 14.

² Sunaryo, 2008, *Law of Financing Institutions*, Sinar Grafika, Jakarta, p. 1.

³ Munir Fuady, 2004, *Law on Funding Institutions in Theory and Practice*, Citra Aditya Bakti, Bandung, p. 3.

vehicle can still be used freely by the consumer. The guarantee is then carried out fiduciary binding. This aims to ensure legal certainty and provide legal protection for interested parties.

Debt guarantees to be provided to financial institutions are vehicles purchased by consumers. The Civil Code provides an understanding of the materiality of Article 499 of the Civil Code, namely: according to the understanding of the law, called goods, namely: each item and each right, which can be controlled by property rights. That the material security rights give a creditor a special position or better than other creditors, the position includes:

- a. Creditors are prioritized and facilitated in paying off bills from the sale of certain objects belonging to the debtor;
- b. There are certain objects belonging to the debtor that are held by the creditor or bound to the creditor's rights that are valuable to the debtor and can provide a psychological pressure on the debtor to fulfill his obligations properly to the creditor.⁴

The position of collateral in a civil law relationship is as important as the principal achievement promised because the collateral is located as an effort to fulfill substitute achievements (substitution) if the principal obligation is not carried out by the debtor, so in addition to the guarantee for performance obligations in practice it also requires that the guarantee must have a value that is at least the same or even higher than the value of the obligation that must be fulfilled by the debtor to the creditor in this case the financier.

Collateral is very mandatory in financial institutions because without a guarantee, the finance company will not get legal certainty in channeling funds to consumers financing, the use of the term collateral is sometimes confused in its sense, based on the results of the National Law Development Board Seminar held in Yogyakarta on July 30, 1977, concluded that the definition of Guarantee is to guarantee the fulfillment of obligations that can be valued with money arising from a legal engagement.⁵

While there is also a guarantee that the translation is a translation of the Dutch word *zekerheid or cautie*. These two words, if interpreted more or less the ability of the debtor to meet and pay off his stomach to the creditor which is done by holding certain objects of economic value as dependents on loans or debts received by the debtor against his creditors.⁶

The definition of collateral is also mentioned in a different meaning by Mariam Darus Badrulzaman, which is to formulate collateral as a liability given by a debtor and / or a third party to a creditor to guarantee his obligations in an engagement.⁷ The importance of regulating collateral rights institutions is due to the increasing development activities in general and economic development in particular. For this reason, a significant amount of development funding is needed which is mostly obtained through credit activities. Whereas Hatono Hadisaputro stated that a guarantee is something given by the debtor to the creditor to create confidence that the debtor will fulfill obligations that can be valued with money arising from an engagement.⁸

In principle there is no credit that does not contain collateral, because the law has determined that any material belonging to the debtor, both movable and immovable, both existing and new ones in the future become liabilities for their debts, even though the law determines this does not mean that any repayment process with guaranteed objects will run smoothly and easily, because in reality the creditors

⁴ J. Satrio, 2002, *Law on Guarantees of Material Security Rights*, Citra Aditya Bhakti, Bandung, p. 12.

⁵ Rahmadi Usman, 2008, *Civil Security Law*, Sinar Grafika, Jakarta, p. 32.

⁶ Herowati Poesoko, 2001, *Legal Dynamics of Execution Parate, Object of Mortgage*, Aswaja Pressindo, Yogyakarta, p. 25.

⁷ Mariam Darus Badrulzaman, 2000, *Some Legal Issues for Guaranteed Rights*, Article in *Journal of Business Law* Volume 11, Foundation for the Development of Business Law, Jakarta, p. 12.

⁸ Hartono Hadisaputro, 1984, *Series of Civil Law, Principles of Civil Law and Guaranteed Law*, Liberty, Yogyakarta, p. 50.

who face the problem of bad credit (default) are always faced with all kinds of problems and problems in an effort to take the repayment of their receivables.

The law stipulates that all debtors and third parties 'existing and existing goods, both movable and immovable by law, are guarantees of debts and third parties' debts, The statement contains a suspicion that there is no credit (receivable) that does not contain collateral. Such collateral in addition to occurring by law, covers all debtor and third party property and applies to all creditors whose principles have the same position and is therefore referred to as their general collateral.

In fulfilling everyday life people often carry out economic and business transactions. As economic and business people will think of ways to protect their rights and obligations, one way for people to protect their rights and obligations through agreements. According to Article 1313 of the Civil Code (hereinafter referred to as the Civil Code) an agreement is a legal act by which one or more people commit themselves to one or more other people. From this incident arises a legal relationship between two or more people who are called an agreement or in other words, the agreement issues an agreement between two or more people who made it.

The increasing interest of the people in Padang in financing services provided by non-bank financial institutions which are considered easier and more practical compared to credit facilities provided by banking institutions, making finance companies continue to show significant development with a significant increase. One of the financial institutions in the city of Padang is the Multindo Auto Finance Limited Company. This finance company obtained a business license in the field of financial institutions which includes consumer financing, leasing and credit cards. Multindo Auto Finance Padang Limited Company provides consumer financing in the case of purchases of movable objects, namely cars.

Consumer financing is poured in the form of a credit agreement. In a credit agreement, the consumer acts as the debtor and the Multindo Auto Finance Limited Company as the creditor. Consumer financing agreements in the form of standard agreements. To guarantee legal certainty of credit given by creditors, the debtor provides a guarantee. Collateral acts as a collateral to the creditor if the debtor defaults during the term of the credit agreement. To guarantee the legal certainty of the guarantee, the creditor takes measurements of the debtor's collateral objects in the form of fiduciary. Binding of fiduciary guarantees is done by a notary.

In practice, there are ownership of guarantees given by creditors which belong to the debtors themselves and guarantees owned by third parties. During the credit agreement, the risk of default is very possible. This will also have an impact on the third party that guarantees the debtor to default. The binding of collateral belonging to a third party is necessary to guarantee the legal certainty of the parties involved in the financing agreement. Then how is the implementation of binding financing guarantees belonging to third parties, because in practice the financing agreement only consists of the debtor and the creditor.

Methodology

The development of financial institutions is important to regulate the right of guarantee institutions because of the increasing development activities in general and economic development in particular. For this reason, a significant amount of development funding is needed which is mostly obtained through credit activities.⁹ In principle, there are no loans, including financing which does not contain collateral, because the law has determined that any material belonging to the debtor, both movable and immovable, both existing and new ones will be borne in the future the debts. However, even

⁹ Rachmadi Usman. (2008). *Civil Security Law*, Jakarta: Sinar Grafika., p. 32.

though the law has determined so, it does not mean that any repayment process with guaranteed objects will run smoothly and easily, because in reality the creditors who face the problem of bad credit (default) always have to be faced with all kinds of problems and problems in an effort to take the repayment of the receivables.

Agreements and guarantees are related to one another. If the agreement goes smoothly, then we won't feel it is important to talk about guarantees, because what was agreed can run smoothly, but if in the middle of the road the debtor experiences traffic jams and is no longer able to pay the installments as promised, then it feels important to think about collateral, not only that the type and position of collateral will affect how likely the creditor can withdraw the funds he has given to the debtor.¹⁰

J. Satrio said that the material security rights give a creditor a special position or better than other creditors, These positions include:

- a. Creditors are prioritized and facilitated in paying off bills from the sale of certain objects belonging to the debtor.
- b. There are certain objects owned by the debtor held by the creditor or bound to the creditor's rights that are valuable to the debtor and can provide a psychological pressure to the debtor to fulfill his obligations properly to the creditor.¹¹

The guarantees given by debtors to creditors are distinguished based on the type of collateral. Article 503 and 504 of the Civil Code divides the goods into:

1. Tangible and intangible goods.
2. Movable property and immovable property

A good debt guarantee, is a guarantee that can place the creditor's position as a party that can take repayment of all bills easily and freely without any interference from other creditors. Good guarantee criteria are:

- a. Easy and fast in the process of binding guarantees.
- b. Debt guarantees do not put their creditors in dispute.
- c. The price of the collateral is easily assessed.
- d. The value of the guarantee can be increased or at least stable.
- e. Debt guarantees do not impose certain obligations for creditors such as the obligation to treat and repair goods to pay taxes and so on.
- f. When loans are bad, debt guarantees are easy to execute with an easy execution model, low cost and do not require debtor assistance, which means that a debt guarantee must always be in a state close to cash.¹²

Financing agreements also require collateral to provide financing to the public or debtor. Collateral proposed in the financing agreement can be in the form of collateral owned by the debtor itself or objects belonging to third parties. The binding of these third-party collateral is applied to one of Multindo Auto Finance Limited Companies, which is a financial institution in the city of Padang. The Multindo Auto Finance Limited Company allows debtors to provide guarantees that are not their own. Granting guarantees by third parties to debtors is in the form of a document under the hand, namely a letter of release of ownership of objects. In the letter of release of ownership of this object contains information that a third party agrees to release the ownership rights of the object owned by him in the

¹⁰ D.Y. Witanto, 2015, *Fiduciary Guarantee Law in Consumer Financing Agreement*, Bandung: Mandar Maju, p. 38.

¹¹ J. Satrio, 2002, *Law on Guarantees of Material Security Rights*, Bandung: Citra Aditya Bhakti, p. 12.

¹² Munir Fuady, *Debt Guarantee Law*, Erlangga, Jakarta, 2013, p. 34.

form of a vehicle to the debtor. The contents of the letter of release of ownership rights of the vehicle is the identity of the parties then information related to the goods belonging to third parties that will be guaranteed and then the statement of the release of ownership rights from third parties to the debtor. Then signed by both parties, namely the third party and the debtor, while the creditor does not participate. The guarantee is given when the debtor submits the application together with other specified general requirements, then submits the documents to the Multindo Auto Finance Limited Company.

As for the process of providing financing and binding of collateral objects, it will be described in more detail where Multindo Finance Limited Company is one of the financial institutions in the city of Padang. The Multindo Finance Limited Company was established in 1989 and started operating in November 1990. Initially the company was named the Subentra Finance Fleet Limited Company which is headquartered in Semarang. During its development, the name changed to Multindo Auto Subentra Finance Limited Company in March 1996 and on October 13, 1992 it changed its name back to Multindo Auto Finance Limited Company. December 31, 1998 Altra Finance Limited Company merged with the Multindo Auto Finance Limited Company. The company is engaged in the business of financial institutions which include consumer financing, leasing and credit cards based on the Decree of the Minister of Finance of the Republic of Indonesia No. 858 / KMK.013 / 1990 dated August 1, 1990 and Decree of the Minister of Finance of the Republic of Indonesia No. KEP-210 / KM.10 / 2012.¹³

Multindo Auto Finance Limited Company has branches spread across the islands of Sumatra, Java, Kalimantan, Sulawesi and Bali and one of the Multindo Auto Finance Limited Company branches is in the City of Padang. The company provides services to the community by implementing a strategy that is fast, precise and flexible. Products that can be funded by Multindo Auto Finance Limited Company are:

- a. Trucks, types of light trucks and heavy trucks
- b. City transportation, type of minibus or microbus
- c. Pick ups, types of box models and tub models
- d. Passenger, a sedan car financing facility, MPV and SUV

Currently there are many developing various financing institutions, one of which is the Multindo Auto Finance Limited Company. This financing consists of the debtor, the financier and the creditor, the recipient of the financing. The process of providing this funding is contained in the form of an agreement consisting of the parties, i.e. the debtor and creditor, as well as a third party if the collateral submitted by the creditor is not his own. In article 1328 of the Civil Code, agreement is divided into 2 types, namely the agreement named (nominaat) and the agreement is not named (innominaat). Financing agreements are agreements that are not specifically regulated in the Civil Code, so the consumer agreement is one of the agreements not named or innominaat. The need for an agreement is contained in an agreement to guarantee legal certainty for the parties.

Republic of Indonesia Presidential Regulation No. 9 of 2009 concerning Financing Institutions that consumer financing is financing activities for the procurement of goods based on the needs of consumers with payments made in installments and through several stages. The stages in the provision of financing are:

1. Application stage to be able to obtain financing facilities in the form of goods needed by consumers.
2. Stage checking and field inspection
3. The stage of making a customer profile that describes the prospective debtor.
4. Stage of submission of proposals to the credit committee.
5. Credit committee's decision.

¹³ Admin, Multindo Auto Finance Limited Company, <http://www.multindo.co.id/profil/sejarah.html>, accessed on 30 September 2019 at 11.33 WIB.

6. Binding stage.
7. Stage of ordering consumer goods.
8. Stage of payment to the supplier.
9. The billing or payment stage.
10. Taking a guarantee letter.

The process of granting credit to the Padang City Multindo Auto Finance Limited Company consists of three stages, these stages are:

a) Order a showroom

At this stage, prospective customers who want to purchase a vehicle unit with a Multindo Auto Finance limited company, visit the showroom, which partners with a Multindo Auto Finance Limited Company. If the prospective customer with the showroom has agreed to the price of the vehicle unit, then an advance payment will be made. Then the showroom placed an order with the Multindo Auto Finance Limited Company through the multindoku android application.

b) Multindoku internal

After going through the order showroom stage, the next stage is the showroom placing an order with the Multindo Auto Finance Limited Company, that there are prospective buyers who will purchase the unit by providing price details and vehicle data to be ordered. The process at this stage involves several structures in the relevant branch office, namely Area Managers, Branch Heads, Head Credit, Surveyors and Customer Service. The area manager has a role in making an agreement with the showroom relating to the customer's loan in accordance with the procedures in the Multindo Auto Finance Limited Company.

If it has reached an agreement, it will be continued with the deepening of prospective customers. This is done by surveyors, who will carry out surveys related to prospective customers. Furthermore, the results of the survey are discussed with the head credit and branch heads to decide whether the prospective customer is eligible or not worthy of being given a loan. If after a customer survey is deemed inappropriate, the credit application is refused. If the customer is deemed worthy then the credit application is accepted and immediately processed by the customer services to check the list of customer data and existing vehicles to fulfill the loan requirements.

If all loan conditions are complete, the customer's loan application is continued to the authorization related to Standard Operating Procedures that exist in Multindo Auto Finance Limited Company. If the authorization approves, the credit application continues to the central booking submission through the Multindo Auto Finance Information System.

c) Multindo Auto Finance Information System

In the Multindo Auto Finance Information System stage, customer data that has been approved is committed at the branch office and related authorization, and then forward to the booking list (the process of applying for customer loans) to the central office through Multindo Auto Finance Information System. This stage is carried out by the head operation as a distributor to the head office (OP Booking). If the data of the vehicle and customer units meet the requirements that are in accordance with the company and the provisions of the Financial Services Authority to be given credit, the customer's submission will be approved. After approval, customer and vehicle data will be registered with the notary and sent to the central office for disbursement.¹⁴

After all the required documents have been prepared by the Multindo Auto Finance Limited Company, the debtor also provides guarantees that will be used in the financing agreement. Collateral provided can be in the form of debtor's own property or third party's. The Multindo Auto Finance Limited Company allows debtors to provide guarantees owned by third parties. The collateral used is a movable object, a vehicle. In practice, the guarantee owner gives the power to the debtor. This is made in a document that is a letter of release of vehicle ownership rights. This document was prepared by the

¹⁴ Interviewed with Mrs. Zuryati, Head of Operations at PT Multindo Auto Finance on October 15, 2019 at 13.30 WIB.

guarantee owner, who explained that the guarantee holder relinquished his ownership rights to the vehicle to the debtor and the debtor has the right to use it as collateral to the Multindo Auto Finance Limited Company. The contents of the release of ownership rights of the vehicle are the identity of the parties, namely the owner of the guarantee and the recipient of the guarantee (the debtor) and the information about the vehicle. The letter of release of ownership of this vehicle is made under the hand.¹⁵

The signing of the credit agreement was only signed by PT Multindo Auto Finance as the creditor and the debtor. The third party as the owner of the guarantee is not included in the signing of the credit agreement. Even third parties as owners of collateral are not required to be present when the credit agreement is held. Even third parties as owners of collateral are not required to be present when the credit agreement is held. The letter of release of vehicle ownership rights has met the requirements to get credit at the Multindo Auto Finance Limited Company.

A letter of waiver of ownership is given if the collateral given by the debtor belongs to a third party. The guarantee given is in the form of movable objects. Provision of this financing is investment financing, namely medium-term and long-term financing provided for the purchase of capital goods, financing new projects or expansion projects of a company, such as buildings, machinery, heavy equipment and vehicles. In this case the Multindo Auto Finance Limited Company provides financing for vehicle purchases. The period given to the debtor varies, starting from installments with a period of 24 months, 36 months and the longest is 48 months. This financing can provide guarantees in the form of vehicles that have been used or second.

Multindo Auto Finance Limited Company in the implementation of financing with consumers, binding guarantees fiduciary. Binding of collateral is very important for both creditors and debtors. The terms of a good collateral object are:

- a. Can easily assist the acquisition of credit by those who need it
- b. Does not weaken the potential (strength) of the credit seeker to do or continue his business
- c. Providing certainty to creditors, in the sense that collateral is available at any time to be executed, if necessary it can already be cashed in to pay off the debt recipient's debt.¹⁶

Binding of collateral as a form of legal protection for Multindo Auto Finance Limited Companies as creditors, carried out in a fiduciary manner as outlined in a fiduciary deed made by a notary public. The making of this fiduciary deed is to protect the Multindo Auto Finance Limited Company which acts as the creditor if the debtor defaults. This is a form of legal protection for the debtor. The binding of collateral to carry out this fiduciary deed is carried out by both the debtor's personal and other party's collateral. The benefit of this guarantee for creditors is the realization of security against closed trade transactions and providing legal certainty for creditors.

For debtors with collateral, they can obtain credit facilities and not worry in developing their business. Capital security is that the credit given by the creditor to the debtor is not afraid or worried that the capital will not be returned. Providing legal certainty is providing certainty for creditors and debtors. Legal certainty for creditors is certainty to receive repayments of loan principal and interest from the debtor. As for the debtor, is certainty to return the specified principal and interest as well as certainty in doing business. If the creditor is unable to return the principal and interest, the creditor can execute the collateral. If the debtor breaks a promise, the creditor's rights are:

- a) The right to demand fulfillment of the engagement (nakomen)

¹⁵ Interviewed with Mrs. Zuryati, Head of Operations at PT Multindo Auto Finance on October 15, 2019 at 13.30 WIB.

¹⁶ Salim HS, 2004, *Development of Guarantee Law in Indonesia*, Jakarta: Limited Company Raja Grafindo Persada. p. 29.

- b) The right to demand termination of the engagement or if the engagement is reciprocal, requires the cancellation of the engagement (ontbinding)
- c) The right to claim compensation (schade vergoeding)
- d) The right to demand fulfillment of the agreement with compensation
- e) The right to demand termination or cancellation of an agreement with compensation.¹⁷

The material security right also gives a creditor a special or better position than other creditors, according to J. Satrio, the position includes:

- a) Creditors are prioritized and facilitated in paying off bills from the sale of certain objects owned by the debtor
- b) There are certain objects owned by the debtor that are held by the creditor or bound to the creditor's rights that are valuable to the debtor and can provide a psychological pressure to the debtor to fulfill their obligations well to the debtor.¹⁸

Article 5 Paragraph (1) of the Fiduciary Law states that "the imposition of objects in fiduciary guarantees is made with a notarial deed in Indonesian and constitutes a fiduciary deed". After being made with a notarial deed, the fiduciary deed is then registered. The fiduciary registration office may refuse to record fiduciary collateral against a large debt value if the fiduciary guarantee agreement is not made with an authentic deed. Fiduciary registration made through authentic deeds has benefits, especially for creditors. For creditors with the registration of fiduciary guarantees with an authentic deed it will provide strong legal certainty for the creditor. This is due to the fiduciary agreement made with a notarial deed so that it has formal and material proof of value, so that if a dispute occurs then the creditor's position is quite strong.

According to Mariam Darus Badruzaman, the process of surrender of ownership rights in fiduciary takes place through several stages, namely:

- a. First phase
Obligatory agreements (titles) between the fiduciary party and the recipient of an agreement are held, whereby it is determined that the debtor borrows an amount of money with a promise to hand over fiduciary rights as collateral to the lender (this agreement is consensual obligatoir)
- b. Second phase
The material agreement (zakelijke overeenkomst) between the two parties (the fiduciary giver and receiver) is carried out in a constitutum possessorium (the object is still controlled by the fiduciary giver)
- c. Third phase
A loan agreement (bruiklening) between the two parties (fiduciary giver and recipient) is held an agreement, that the fiduciary owner lends out his property which is already in the fiduciary recipient's authority to the fiduciary giver.¹⁹

Fiduciary deed based on article 6 of the Fiduciary Law contains:

- a. The identity of the fiduciary giver and receiver
- b. Data of basic agreement guaranteed by fiduciary
- c. A description of the object which is the object of fiduciary security
- d. Guarantee value

¹⁷ Taryana Soenandar, H, Fathurrahman Djamil, Mariam Darus Badruzaman, Sutan Remy Sjahdelni and Heru Seoprptomoto, *Compilation of Legal Engagement*, Citra Aditya Bakti Limited Company, Bandung, 2016, p. 21.

¹⁸ J. Satrio. (2002). *Law on the Assurance of Material Rights*, Citra Aditya Bhakti, Bandung, p. 1.

¹⁹ D.Y. Witanto, *Fiduciary Security Law in Consumer Financing Agreements (Aspects of Registration and Execution Commitments)*, CV, Mandar Maju, Bandung. p. 111.

e. The value of the object which is the object of fiduciary security

After the Multindo Auto Finance Limited Company and the debtor signed an investment financing agreement (vehicle guarantee) and a fiduciary guarantee loading agreement (addendum investment financing agreement / vehicle guarantee) then the next process is the making of a fiduciary deed by a notary party based on a power of attorney given by a third party (the guarantee owner) to the debtor. Then the Multindo Auto Finance Limited Company as the creditor faces the notary to make a fiduciary deed against the collateral guaranteed by the debtor. After making a fiduciary deed by a notary then it is registered with the General Law Administration System. The registration of a fiduciary deed can be done by a creditor or it can also be done by a notary public with a deadline for registration of one month after the fiduciary deed is numbered by the notary. If the registration is past the one month deadline, then the fiduciary deed registration cannot be processed again. To re-register, the fiduciary deed must be given a new number by the notary public and new registration can be done again.

After completing the above registration, based on the nominal amount of guarantee, a Non-Tax State Revenue will appear to be paid by the Multindo Auto Finance Limited Company within 7 days. If within this time period, the creditor does not pay the Non-Tax State Acquisition, then the registration cannot be done. To make payment of Non-Tax State Acquisition that has passed the specified time period, then the creditor must take care of the cancellation of payment to the bank that has been determined to be asked to write off payment. After that, the registration for payment of the Non-Tax State Acquisition is re-registered.

If the registration is carried out by the notary, then the notary gives the document to the creditor in the form of a copy of the fiduciary guarantee certificate, fiduciary guarantee certificate, fiduciary guarantee statement and object sheet. However, if the registration is carried out by the creditor himself, the Multindo Auto Finance Limited Company, the notary will only submit a copy of the fiduciary guarantee certificate. But in practice, the registration of fiduciary deeds is often done by a notary public.

The agreement is an important element in the implementation of financing between the debtor and creditor. The agreement provides legal certainty and includes rights and obligations between the two parties both to the debtor and the creditor. In an agreement, the interests of both parties must be balanced and protection is guaranteed. During the duration of an agreement, default is a risk that can occur at any time during the term of the agreement. Default is a risk that can occur during the term of the agreement is ongoing. Losses that will arise when the default occurs not only harm the creditor but also the third party as the owner of the guarantee. Default or broken promise can be in the form of not doing what was promised, carrying out what was promised but not as it should be, carrying out what was promised but late or doing something according to the agreement may not be done.²⁰

A party that feels aggrieved by a default may demand fulfillment of the agreement, cancel the agreement or request compensation from the party performing the default. Factors causing debtors not to carry out their obligations are:

- a. Low economic conditions
- b. The willingness of the debtor to pay the debt is very low
- c. The collateral value is smaller than the principal and interest payable
- d. Bankrupt debtor business
- e. Credit received by the debtor is misused
- f. Debtor business management is very weak
- g. Fostering creditors for debtors is very lacking²¹

²⁰ <https://www.hukumonline.com/klinik/detail/ulasan/cl33/wanprestasi-dan-fraud/>, accessed on October 2, 2019 at 11:30 WIB.

²¹ H. Salim HS, 2011, *Development of Guarantee Law in Indonesia, Raja Grafindo Persada Limited Company*, Jakarta. p. 270.

Debtor guarantees which are the property of third parties are also binding. The third party as the owner of the guarantee gives the power to the debtor to make his property as collateral. In Limited Companies. Multindo Auto Finance, the power of attorney granted by a third party is poured in the form of a letter of release of ownership of the vehicle made underhanded. Then this letter was used as the basis for binding guarantees by the Multindo Auto Finance Limited Company, which was carried out with a fiduciary deed made authentically by a Notary. On binding guarantees, third parties are not present in the process of signing the credit agreement. The signing of the credit agreement is only attended by the creditor and the debtor. This does not provide strong legal protection for third parties as owners of guarantees. In contrast to creditors who have strong legal protection in the event of default by the debtor.

Legal protection for third parties in Multindo Auto Finance Limited Companies only uses solutions based on mutual agreement. If there is a default, the creditor will extend the term of the agreement. The extension of the agreement period is intended to reduce installments that must be paid by the debtor. This is done so that the debtor is still able to pay installments and guarantees that third parties are still safe, no execution of defaults by the debtor is carried out.

Decision of the Constitutional Court Number 18 / PUU / XVII / 2019 provides stronger legal protection for the debtor as well as the owner of the guarantee when the default occurs. The main petition for the Constitutional Court's decision is article 15 paragraph (2) and paragraph (3) of Law Number 42 of 1999 concerning Fiduciary Security. Article 15 paragraph 1 of Law Number 42 Year 1999 concerning Fiduciary Guarantee states that: The fiduciary guarantee certificate as referred to in article 14 paragraph (1) includes the words "FOR THE SAKE OF JUSTICE UNDER THE ALMIGHTY GOD", then in article 15 paragraph (2) states:

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

And Article 15 paragraph (3) states:

If the debtor fails to promise, the fiduciary recipient has the right to sell the object which is the object of fiduciary security at his own authority.

Article 15 paragraph (2) and paragraph (3) of the Fiduciary Guarantee Law are deemed irrelevant because it harms the fiduciary party (debtor). Therefore the Constitutional Court ruled:

- a. The phrase "executive power" and the phrase "the same as a court decision with permanent legal force" is against the 1945 Constitution and does not have binding legal force insofar as it is not interpreted "against fiduciary guarantees for which there is no agreement on breach of contract (default) and the debtor objects to voluntarily surrendering the object which becomes fiduciary guarantee, then all legal mechanisms and procedures in carrying out the execution of fiduciary guarantee certificates must be carried out and apply the same as the execution of court decisions that have permanent legal force".
- b. Article 15 paragraph (3) of the Fiduciary Guarantee Law on the phrase "breach of contract" is contrary to the 1945 Constitution and has no binding force so long as it does not mean that "the existence of a breach of promise is not determined unilaterally by the creditor but on the basis of an agreement between the creditor and the debtor or on the basis of legal efforts to determine the occurrence of promulgation".

With the Constitutional Court's decision, the recipient of a fiduciary guarantee cannot execute directly, but must go through and follow the procedure of executing a court decision that has permanent

legal force. And in determining the occurrence of default is a joint agreement between the creditor and debtor.

Conclusion

- a. Binding of third party objects submitted by the debtor as collateral to a Multindo Auto Finance Limited Company is done through a Vehicle Ownership Certificate and the financing agreement is only signed by the creditor as the financier and the debtor as the recipient of the financing. Third parties do not participate in signing the financing agreement. This cannot provide strong legal protection to third parties guarantee owners.
- b. Legal protection for third parties guarantee holders is by binding fiduciary objects of collateral and in the event of default the creditor extends the financing agreement. Extension of this financing agreement letter to reduce the amount of installments paid each month to creditors by increasing the term of the financing agreement. Then the Constitutional Court Decision Number 18 / PUU / XVII / 2019 also provides legal protection to the debtor, namely the execution of fiduciary guarantees that are not submitted voluntarily by the debtor then it must follow the procedure of executing a court decision that has permanent legal force and determining the occurrence of breach of joint agreement between the creditor and the debtor.

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The results of an interview with Mrs. Zuryati, Head of Operations at Multindo Auto Finance Limited Company on October 15, 2019 at 13.30 WIB.

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