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Strength of Fiduciary Deed in the Implementation of Bad Credit Execution by Financial Institutions

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Abstract

As a result of a Fiduciary Guarantee that is not made a fiduciary certificate or in authentic form before a Notary Public, the Fiduciary Guarantee object has no immediate execution rights. When there is default or congestion from the consumer, the financial institution cannot execute the object of the guarantee. Financial institutions actually execute unilaterally without going through relevant government agencies and based on applicable laws. The making of a fiduciary deed by a notary is carried out through two stages in accordance with Law Number 42 of 1999 Concerning fiduciary guarantees, namely through the stages of loading and registration. Charges with fiduciary guarantees are made with a notarial deed, the notary is required to make a fiduciary guarantee deed by taking into account the procedure for loading, loading fees and the period of loading. After the fiduciary guarantee deed has been signed by the parties concerned, after that the registration of the fiduciary deed will be registered at the fiduciary registration office. As a result, the strength of the fiduciary deed made by a notary setting the position of the fiduciary deed and the role of the notary in making fiduciary deed. 1) Law Number 42 of 1999 concerning Fiduciary Guarantee states that the person authorized to make a Fiduciary Deed is a notary, while Article 17 of Law Number 2 of 2014 amendments to Law Number 30 of 2004 concerning Notary Position stipulates that the Notary Public is only authorized to make an authentic deed in the jurisdiction or jurisdiction.Obstacles in the settlement of bad debts, namely the existence of resistance by the debtor against the execution auction plan that does not have a clear legal basis, because it is only based on unilateral recognition without proof or acknowledgment from the Debtor. Because legally the position of the debtor as the creditor holding the Fiduciary Guarantee is already strong, because all the guarantee documents are notarized and based on the law, the document is an authentic deed that has perfect proofing power before the judge.

Keywords: *Fiduciary Deed; Notary; Execution*

Introduction

Leasing companies in Indonesia are more familiar with leasing. The main activity of a leasing company is to engage in financing for the purposes of capital goods desired by customers. Funding here means that if a customer needs capital goods such as motor vehicles by way of rent or purchase on credit can be obtained at a leasing company. The leasing party can finance the customer's wishes in accordance

with the agreement agreed by both parties.[1]One of the reasons for the emergence of leasing lately has been much troubled by entrepreneurs, because the market for industrial products has narrowed, this is because competitiveness is tighter between similar companies, while the purchasing power of people in cash is increasingly diminishing, to maintain continuity the results of its production, the entrepreneurs try to find a way out, namely through the leasing agency.[2]

Leasing is a contract where someone uses equipment that belongs to someone else. The user (the lessee) pays a certain amount regularly to the owner (the lessor). An important characteristic of leasing is that the use of equipment is separate from ownership. The rules in leasing provide benefits to both parties where the lessee can generate extra income by using equipment, and the owner receives income as long as he remains the owner. Companies around the world use leasing to fund vehicles, machinery and equipment.[3]

Providing credit facilities or loan money by creditors to debtors also carries risks, that is, the loans are not returned by the debtor to the creditor in accordance with what has been agreed. To anticipate this risk or at least to reduce the risk so that creditors do not experience losses on money that has been lent to the debtor, it is necessary to have a guarantee for movable and immovable objects in order to provide legal certainty to the parties concerned in this matter creditor. The form of guarantee born from jurisprudence becomes a concrete legal flow in the legislation whose extension has been confirmed in Law Number 42 of 1999 concerning Fiduciary Guarantees.[4]

Basically, the Ministerial Regulation regulates fiduciary security registration obligations within a certain period. The obligation is only charged to consumer finance companies that finance motorized vehicles as affirmed in the provisions of Article 1 of the Minister of Finance Regulation No.130 / PMK.010 / 2012 Concerning Registration of Guarantees Fiduciary For Finance Companies. Purchase of motorized vehicles in installments under Civil law is a lease which includes an Inominat agreement or an agreement that is not regulated in the Civil Code, because in the Civil Code it only regulates the sale and purchase and lease of the exchange, the sale and purchase itself with a cash cash system.[5]

Buyers of vehicles in leasing as consumers must be protected in accordance with Law No. 8 of 1999 concerning Consumer Protection in its consideration, among others, states: "that national economic development in the era of globalization must be able to support the growth of the business world so that it is able to produce a variety of goods and / or services that have technological content that can improve the welfare of many people and at the same time get certainty. goods and / or services obtained from trade without causing consumer losses. " Not infrequently the sacrifice given is not comparable with the restoration of rights that have been violated.[6]

Withdrawal of the vehicle for reasons of arrears in arrears by leasing as an officer of a financial institution is an event that is often found in various media news and experience in the community. On the basis of legal certainty for finance companies in connection with the implementation of fiduciary transactions, on the 7th of August 2012 the Minister of Finance Regulation No.130 / PMK.010 / 2012 was

[1]Kasmir, Banks and other Financial Institutions, Rajawali Pers, Jakarta, 2013, p. 242.
[2]Nurwidiatmo, Compilation of Legal Fields on Leasing, National Legal Development Agency & Ministry of Law and Human Rights Republic of Indonesia, Jakarta, 2011, p. 2
[3]Linda Deelen, Mauricio Dupleich, Louis Othieno & Oliver Wakelin, Leasing for Small and Micro Enterprises, International Labor Organization, Jakarta, 2003, p. 1
[4]Nur Adi Kumaladewi, OP. Cit., P. 61.
[5]Demy Amelia and Amanda Manalip, Legal Protection of Consumers in the Withdrawal of Motorized Vehicles conducted by the Company, Journal of Lex Administratum, Vol. V, No. 3, May 2016, p. 42
[6]Yusuf Shofie, Consumer Protection and Legal Instruments, COMPANY LIMITED Citra Aditya Bakti, Jakarta, 2000, p. 301.

published concerning Fiduciary Registration Registration for Financing Companies conducting financing for Motorized Vehicles with Fiduciary Imposition imposes. .[7]

On the basis of a trust guarantee that is fiduciary, what must be done by fiduciary recipients (creditors) if the fiduciary giver (debtor) defaults on his obligations or breach of promise in the form of Fiduciary giver (debtor) fulfilling his obligations at the time the repayment of his debt is ripe for collection, then in such an event, the fiduciary recipient (creditor) can carry out his execution of fiduciary collateral.[8]

Basically, what must be agreed upon in advance is that what is called execution is the implementation of court decisions and or deeds. The purpose of the execution is to take the debtor's debt settlement through the sale of certain objects belonging to the debtor or the third party guarantor.[9]

In this case, Izwa Farizal, as the consumer who obtained a financing credit facility from a financial institution, has 2 financing agreements. The creditors arrived with a view to forcibly withdrawing 2 Toyota Dyna Dump brand four-wheeled vehicles in which the financing agreement is due. payment is August 31 and August 30. In the debt collector's note that the debtor does not make payments on time and is considered default. According to the debtor can not make payments because his business is stuck. And debtors are forced to pay in arrears for 4 months. and the Toyota Astra Financial Service Padang Branch Limited Company made the forced withdrawal of the 2 vehicles with the withdrawal, the debtor could not make a living and continue credit. As in the case above, the Regulation of the Position of Fiduciary Deed and the Role of Notaries in the Making of Fiduciary Deed. Article 5 Paragraph (1) of Law Number 42 of 1999 concerning Fiduciary Guarantee states that the person authorized to make a Fiduciary Deed is a notary.

Abdul Kadir Muhammad, the notary in carrying out his duties and officials must be responsible, meaning:

1. Notaries are required to make the deed properly and correctly
2. Notaries are required to produce a quality deed
3. Positive effect.[10]

As a result of a Fiduciary Guarantee that is not made a fiduciary certificate or in authentic form before a Notary Public, the Fiduciary Guarantee object has no immediate execution rights. At the time of default or congestion from the consumer, the financial institution cannot execute the object of the guarantee. in fact, they carry out unilateral executions without going through the relevant government agencies and based on the applicable laws and regulations.

Result and Discussion

Fiduciary collateral is a conventional product that is applied to provide protection for creditors in particular. When a debtor defaults, the creditor can request compensation from the debtor through the execution of a fiduciary guarantee. With fiduciary registration, execution of collateral items can be carried

[7]Widaningsih, Juridical Review of Fiduciary Registration for Financing Companies (Minister of Finance Regulation No. 130 / PMK.010 / 2012), Journal, Malang State Polytechnic, 2016, p. 550.
[8]*Ibid*., p. 319.
[9]*Ibid*., p. 320.
[10]Abdul Kadir Muhammad, Indonesian Civil Law, Citra Aditya Bakti, Bandung, 1993, p. 49

out immediately without waiting for a court decision. Such conditions make it easy for financial institutions to withdraw compensation from financing provided to customers.[11]

Some legal basis which is the basis for the implementation of Fiduciary Guarantees, among others, are as follows:

1. Law Number 42 of 1999 concerning Fiduciary Guarantees;
2. Government Regulation Number 86 of 2000 concerning Procedures for Registration of Fiduciary Guarantees and Costs for Making Fiduciary Deed Guarantees;
3. Government Regulation Number 87 of 2000 concerning Amendment to Government Regulation Number 26 of 1999 concerning Tariffs for Types of Non-Tax State Revenues Applicable to the Ministry of Law and Human Rights;
4. Presidential Decree of the Republic of Indonesia Number 139 Year 2000 concerning Establishment of Fiduciary Registration Offices in Every Provincial Capital in the Territory of the Republic of Indonesia;
5. Decree of the Minister of Law and Human Rights of the Republic of Indonesia Number M.08-PR.07.01 of 2000 concerning the Opening of the Fiduciary Guarantee Registration Office;
6. Indonesian Minister of Law and Human Rights Regulation No. M. MH02.KU.02.02. Yr. 2010 concerning Procedures for Management and Reporting of Non-Tax State Revenues of Legal Services in the Field of Notary, Fiduciary and Citizenship in the Regional Office of the Ministry of Law and Human Rights.

That according to our legal system, and also the law in most Continental European countries, that the object of the debt collateral is a movable object, the guarantee is bound in the form of a pledge. The pledged mortgage pledge must be submitted to the recipient of the pledge. While for immovable property that is collateral in the form of mortgages (mortgage rights) a permanent guarantee on the debtor. In the case of movable property guarantees the debtor objects to surrender his object on the other hand the creditor also has no interest, so a new form of collateral arises where the object is movable object but the power over the object does not go to the creditor:

1. Not all land rights can be enshrined. That what drives the emergence or development of fiduciary practices is the existence of certain land rights that cannot be guaranteed by mortgages or fiduciaries;
2. Objects of civil collateral debt instruments. There are other items which are actually included as movable property but which have properties such as immovable property so that the binding with a pledge is deemed unsatisfactory, especially because of the obligation to surrender the power of the object of the debt collateral object;
3. Development of new ownership law institutions. The development of ownership of certain goods which cannot always be followed by the development of collateral, so that the rights to the goods actually do not move, but can not be bound with mortgages (mortgage rights);
4. Movable objects as collateral for debt cannot be delivered.[12]

The implementation of bad credit execution in the city of Padang is as follows:

a. The process of executing fiduciary collateral objects has been in accordance with the procedures set out in the fiduciary agreement including compliance with the warnings to the debtor.
b. Officers who execute fiduciary collateral objects are company employees or company outsourcing employees who have a letter of assignment to execute fiduciary collateral items.
c. Officers who carry out fiduciary guarantees carry fiduciary guarantee certificates.

[11]M. Yasir, Legal Aspects of Fiduciary Assurance, Syari Social & Cultural Journal, Vol. 3, No. 1, FAI Muhammadiyah University, Jakarta, 2016, p. 76.
[12]*Ibid*., p. 81.

d. The process of selling the results of the execution of fiduciary collateral objects must be carried out in accordance with the legislation of fiduciary guarantees.[13]

In carrying out the execution of fiduciary collateral carried out by the debbt collector who does not carry a fiduciary collateral certificate, the withdrawal of fiduciary collateral may not be carried out by the debt collector even if he brings a power of attorney from the company. However, in reality, the withdrawal of objects that have fiduciary guarantees has not yet proceeded as governed by the applicable law, so that many people feel disadvantaged and not a few who bring this problem to the Consumer Sangketa Settlement Board.

Consumer Sangketa Settlement Board is one of the consumer justice institutions domiciled in each regency and city level II throughout Indonesia, as regulated according to statutory regulation No. 8 of 1999 concerning consumer protection. The main task of this body is to settle consumer disputes outside the court institution and has the authority to conduct an examination of the truth of reports and statements of the parties who are taking part, seeing or seeing payment marks, bills or receipts, laboratory test results and other evidence. To complete consumer sangketa, the Consumer Sangketa Settlement Agency has members consisting of 3 elements, namely from the Government, Consumers and business actors.

In deciding the case of the consumer sangkeka, the consumer sangketa settlement body issues the decision no later than 21 working days after the lawsuit is received, when the decision has been received by the business actor, then within 7 working days of receiving the decision, the business actor is obliged to implement the decision. If the business actor feels objection to the decision so that it is not carried out by the business actor, the consumer sangketaia settlement body submits the decision to the investigator to conduct an investigation in accordance with the provisions of the applicable law.

The court makes the decision of the consumer sangk settlement body as sufficient preliminary evidence, the decision of the tribunal is requested to determine its execution to the state court where the consumer is harmed, where the state court is obliged to issue a decision on objection within 21 working days, after which the parties can submit an appeal to the Supreme Court Republic of Indonesia. The Supreme Court is obliged to issue the decision within 30 days of receiving the appeal.

Based on the results of an interview with one of the members of the consumer sangketa settlement body, the incoming process is dominated by the problems faced by motor vehicle consumers drawn by related parties and the problem of power outages, this can be seen from the handling that entered during the current year as many as 43 cases 22 of them 22 related to leasing. In 2013 the trial increased to 100 cases, but in 2014 and 2015 there was a decrease in cases to 92 and 81 cases, from 81 cases entered, as many as 73 cases had been resolved.

In POJK Number 29 / POJK.05 / 2014concerning the Operation of a Financing Company, the imposition of fiduciary guarantees which must be carried out by a Financing Company. In Article 21 paragraph (1) it states that a Financing Company that conducts financing by charging a fiduciary guarantee must register the fiduciary guarantee referred to the fiduciary registration office, in accordance with the law governing the fiduciary guarantee. While,Article 22 The Financing Company is obliged to register fiduciary guarantees at the fiduciary registration office no later than 1 (one) month as from the date of the financing agreement. Not only that, in Article 23 it states that the Financing Company is prohibited from executing collateral objects if the fiduciary registration office has not issued a fiduciary guarantee certificate and handed it over to Financing Company. Meanwhile, Article 24 confirmsEthe execution of fiduciary collateral objects by the Financing Company must fulfill the terms and conditions as regulated in the law regarding fiduciary guarantees and have been agreed by the parties in the financing agreement. Article 50 statesP.Financing Company employees and / or outsourcers handling billing are

[13]Interview with Aria Kusuma: Remedial Section Head at a financial institution, Thursday, August 1, 2019, 10:00 AM

required to have a professional certificate in the billing field from an institution appointed by the association by giving notification to the FSA and accompanied by the reason for the appointment.

The validity of an agreement regulated in Article 1320 of the Civil Code states that the objective legal requirements that must be met are legal reasons and certain matters. The notary public is the only public official who is given the authority to make a Fiduciary Deed of Guarantee and has a very important responsibility for the validity of the fiduciary deed he has made. According to Article 1868 of the Civil Code, what is meant by an authentic deed is a deed made in a form determined by law or before an authorized public official for that place where the deed was made if it fulfilled the following elements, that is:

1. Made in the form specified by law;
2. Made by or in the presence of an authorized public official for the purpose of making the deed;
3. Made in the area of authorized notary public.

Article 1868 of the Civil Code states that "Deed made by or before" indicates that there are 2 (two) groups of forms of Notary Deed, namely:

1. Made by (door) Notary Public or called the Deed of Relaas or Deed of Official (ambtelijke akten); and
2. Made before (ten overstaan) Notary or called Partij Deed (partij-akten) or also called the Deed of the parties. Partij deed or party deed (partij deed).[14]

The deed drawn up before or by a Notary has already been determined in Article 38 of the Notary Position Law. The elements include the following:

1. Initial (beginning / head) of the deed;
2. Comparative;
3. Premise (recitals) deed;
4. The contents / body of the deed;
5. End / closing of the deed Each person who makes a deed before a notary must be listed in the deed's comparison.

According to UUJN, Article 15 Paragraph (1), the authority of a Notary Public is to make a deed with the following limitations:

1. Not excluded from other officials determined by law;
2. Concerning the deed that must be made or authorized to make an authentic deed concerning all deeds, agreements, and provisions required by the law or desired by the person concerned;
3. Regarding legal subjects for the benefit of whom the deed was made.
4.

The Notary also has the authority to make an in Original deed (although the Law is included in the provisions of Article 16 Paragraphs (2) and (3), but if you see the substance, then it is the authority of the Notary), namely:

1. Payment of rent, interest and pensions;
2. Offer cash payment;
3. Protest against non-payment or receipt of securities;
4. Deed of power of attorney;

[14]Herlien Budiono, Collection of Civil Law Posts in the Notary Field, Citra Aditya Bakti, Bandung, 2007, p. 51-52.

5. Certificate of ownership; or
6. Other deeds are based on statutory regulations.

In making an authentic deed the thing to consider is that although all the terms and elements of an authentic deed have been fulfilled, an authentic deed can be said to be authentic if the deed is as long as there is no person or party in question and proves the authenticity of the deed, then the deed is still considered valid for the sake of law. Regarding the responsibilities of the notary public official in relation to material truth, there are four points, namely:

1. Civil notary responsibility for the material truth of the deed he made.
2. Criminal notary responsibility for material truth in the words he made.
3. The responsibility of the Motaris is based on the rules of the notary position on the material truth in the deed he made.
4. The notary's responsibility in carrying out his duties and positions is based on a notary code of ethics.[15]

Abdul Kadir Muhammad, the notary in carrying out his duties and officials must be responsible, meaning:

1. Notaries are required to make the deed properly and correctly
2. Notaries are required to produce a quality deed
3. Positive effect.[16]

The scope of notary liability includes material truth, it can be divided into four points:

1. Civil notary liability for material truth to the deed he made;
2. Criminal notary liability for material truth in the words he made;
3. The responsibility of the Motaris is based on the rules of the notary position on the material truth in the deed he made;
4. The notary's responsibility in carrying out his duties and positions is based on a notary code of ethics.

The factors that can cause a deed to be canceled are:

1. There is an error in the process of making a deed that is not in accordance with the law;
2. There was a typo in the copy of the notarial deed;
3. An error in the form of a notarial deed;
4. There was an error in the contents of the notarial deed;
5. Unlawful acts committed by a notary in making a deed.

The strength of a fiduciary deed made by a notary governing the position of a fiduciary deed and the role of a notary in making fiduciary deed Article 5 paragraph (1) of Law Number 42 of 1999 concerning Fiduciary Guarantee states that the person authorized to make a Fiduciary Deed is a notary, while Article 17 of the Law Law Number 2 of 2014 amendments to Law Number 30 of 2004 concerning Notary Position, which stipulates that Notaries are only authorized to make authentic deeds in their jurisdiction or jurisdiction. According to the theory of legal effectiveness states that the effectiveness of a law is determined by 5 (five factors), namely: the legal factors themselves, law enforcement factors, namely the parties who form or implement the law in this case Clipan Finance Limited Liability Company in the implementation of bad credit execution.

[15]Abdul Ghofur Anshori, Philosophy of Law, Gadjah Mada University Press, Yogyakarta, 2009, p. 34-36.
[16]Abdul Kadir Muhammad, Indonesian Civil Law, Citra Aditya Bakti, Bandung, 1993, p. 49.

Humans have a behavior that is different from each other, especially those related to the issue of responsibility relating to something that has been promised between the two parties, if in an agreement the debtor does not carry out what has been promised then it can be said he has done a default. It can also be said that he has been negligent or negligent or broken promises or even violated the agreement by doing something that is prohibited or prohibited. This has legal consequences ie the injured party or parties can demand the implementation of the achievements or other consequences set in agreement (compensation).

Warning or subpoena is very important or very necessary to be attached because in terms of proof of default is sufficiently evidenced by the passing of payment due date, and subpoena is not required. However, in general, to say that the person has no good intention is that after being rebuked and summoned, that person does not heed it (formal evidence).[17]

According to the Remedial Sectian Head of the financing agency related to the decision of the Constitutional Court Number 18 / PUU-XVII / 2019 it was not fully implemented because it was in accordance with the agreement agreed by the debtor. Before withdrawing the vehicle, the Debt Collector still requests payment assignments if the debtor is not satisfied, the Debt Collector has the right to take the vehicle.

In an effort to follow up the handling of problematic customers as described above, it is necessary to understand in advance what is meant by collection problems related to legal aspects, namely the problem of installment collection to the withdrawal of vehicles related to criminal and civil law aspects that occur at the time of collection installment payments, and or after the withdrawal of motor vehicles as financing objects is carried out.

The problems that are categorized related to legal aspects, include the following:

a. The customer uses a lawyer and / or reports the problem to the relevant apparatus (police and or any legal apparatus) so that it requires legal handling of the collection.
b. Vehicles that are objects of financing are mortgaged or sold to other parties without the permission of the Clipan Finance Limited Liability Company.
c. There is a report to the authorities regarding the executor or debt collector involved in carrying out their duties, namely to withdraw the object of financing (motorized vehicles).
d. There are certain legal issues that specifically require a legal presence, for example collection issues related to the court or other special tasks instructed by the department.

Some juridical aspects that must be considered in assessing the occurrence of a criminal offense related to a consumer financing agreement, specifically financing a two-wheeled motor vehicle at a financial institution, are:

1. Illicit Crime (Article 372 of the Criminal Code). An act can be categorized as an embezzlement, if it meets the following elements:

    a. Whoever
    b. Deliberately owning it against the law
    c. Items that are completely or partially belong to someone else
    d. The objects in his hand are not due to crime. Review of Article 372 of the Criminal Code.

The emergence of consumer debt to financial institutions, because consumers or customers have obtained financing facilities to buy goods that are the object of financing, in this case especially motor

[17]Interview with Aria Kusuma: Remedial Section Head LIMITED COMPANY Clipan Finance, Friday, August 9, 2019, 2:00 PM

vehicles. To re-guarantee the debt, the consumer or customer surrenders the goods bought fiduciary as collateral. The consequence of fiduciary delivery of collateral is that the owner of the collateral is a financial institution as long as the consumer or customer debt has not been paid off, or the liability has not been fully paid. While consumers or customers are borrowers provided by financial institutions in a trust or fiduciary manner. In this case, the consumer (customer) has an obligation to maintain and maintain the integrity of the collateral from any damage, lost or destroyed. Consumers as "Facility Recipients or Guarantors are prohibited from transferring in any way, mortgaging, or renting out collateral to other parties, except with the written consent of the Facility Giver". This provision has been explicitly contained in the Consumer Financing Agreement, in Article 6 item (1).

Then Article 6 paragraph (2) states that "The act of transferring in any way, mortgaging, or renting out collateral to another party without the written consent of the Facility Provider is a criminal offense". (See Consumer Financing Agreement Form Article 6 in the Appendix). Regarding the existence of Vehicle Number and Vehicle Owner's Certificate on behalf of consumers, cannot be a reason for consumers or customers to transfer, mortgage, lease, or sell because the status of the motorized vehicle is a collateral to guarantee the return of debt to the financing agency.

Then it can be explained that the ownership of collateral will return to the consumer or customer after all debts incurred due to financing facilities that have been received, include: principal debt + interest + penalties (if any) repaid and / or fulfilled all obligations. Therefore, consumers or customers who deliberately transfer, sell, pawn collateral before fulfilling all their obligations to financial institutions, by itself can be said to have fulfilled the elements of a criminal offense. In that case, the financial institution can submit a report to the police that there has been embezzlement of collateral items by consumers or customers. In the case of embezzlement,

2. Criminal Fraud (Article 378 of the Indonesian Penal Code). An act can already be categorized as a criminal act of fraud, if it meets the following elements:
   a. Whoever
   b. With the intention of benefiting yourself or others
   c. By breaking the law both false names or false circumstances, deception and false words
   d. Persuade people to give up something

In practice, consumers who carry out the deeds in any way, pawn, or lease collateral (motorized vehicles) to other parties without written approval from the financial institution, will be acted decisively, namely subject to criminal sanctions set in in Article 372 and Article 378 of the Indonesian Penal Code in the form of a threat of imprisonment of no longer than 4 (four) years. In the case of filing a civil lawsuit against consumers (customers) who do default, the finance company (creditors) filed the civil claim to the local District Court.

The Facility Recipient or Guarantee Provider agrees and binds himself to the Facility Provider and or his attorney regarding the occurrence or conditions of default which have passed sufficient time to prove, for which it is not necessary to prove again but sufficient with the occurrence of one or more of the following conditions:

a. The recipient of the Facility is negligent and or fails to fulfill one or more obligations as specified in this agreement and or the Fiduciary Guarantee Agreement.
b. Facility Recipient does not or fails to pay installment financing installments on the due date of the installments "

In practice the implementation of consumer financing agreements at financial institutions, a civil lawsuit against consumers (customers) who have done defaults has never been done. The case that often

occurs is the reporting of embezzlement of crime set out in Article 372 of the Criminal Code, as described above.

Meanwhile, the execution procedure by the Astra Credit Compenies Limited Liability Company according to Abdullah Aziz as Operation Head for debtors conducting defaults, through the stages of the company to conduct billing. This process is in accordance with company rules and does not violate applicable laws. The initial steps taken by the company are:

1. On 2 (two) days before the due date, Astra Credit Company will call the debtor to warn if the debtor will due 2 (two) days again and it is advisable to immediately make credit payments.
2. Notification of late payment of credit is done 1 (one) day after the due date of credit payment either by phone maupuin letter.
3. After 7 (seven) days late, the Head of Operation Collection will be visited and added with the first warning letter.
4. After waiting until the 11th day (eleven), the Head of Operation Collection was visited again and a second warning letter was added.
5. After the 15th day (fifteenth), if the debtor still has not paid the 3rd warning letter is issued to commemorate the debtor if the bill is past due
6. On the 30th (thirty) day, the debtor will be visited by the ARO colection whose position is above the collection accompanied by a power of attorney, and a summons automatically issued from the company's system, power of attorney and This summons is in the form of a power of attorney for the object of fiduciary security that has been due date.
7. After the educational approach still does not help the debtor pay his obligations precisely after 90 (ninety) days of delay, then to make a withdrawal it is submitted to the police who move according to Law No. 8 of 2011 or the debt collector used must be registered as a member of the Financial Services Authority by including evidence of the membership in the form of a certificate of an Indonesian finance company association (APPI) issued by the Financial Financial Authority.[18]
8. Withdrawal by the debt collector is also done before 90 (ninety) days, if the goods have been known to move tanbro. Legal guarantees general give creditors protection, in the case of object of collateral the fiduciary was destroyed based on article 1131 The Civil Code then the permanent debtor responsible for the debt to creditor, but if the collateral object is transferred to a third party, the droit de duit principle (principle based on the rights of a person who has the right to the object has the power / authority to defend or sue the object from anyone's hands or wherever the object is located) which is the main characteristic from material rights, if the debtor is in default, the creditor can execute the fiduciary security object in the hands of whoever the object is.
9. If the fiduciary object is found, or deliberately removed, the company can arrive at the parate execution through court (litigation). this is done so Fiduciary objects can be found or replaced by the debtor as the party responsible.
10. After the unit is pulled, put it into a pull and ready to sell. [19] the right to sell the collateral object on its own power, known as parate execution, is the right of fiduciary recipient based on article 29 paragraph (1) letter b of the Law fidusia. The right is confirmed by a promise which must be stated by task of the fiduciary giver that if the contractor is bailed out, the recipient has the right to sell the object guaranteed through general sale without first obtaining approval from the District Court as regulated in Article 15 paragraph (3) of the fiduciary law. the transaction is considered feasible, the vehicle will be released to the buyer.

According to Abdullah Aziz as Operation Head of Astra Credit Company related to the decision of the Constitutional Court number 18 of 2019 related to the decision regarding the execution of fiduciary guarantees through the court, the Astra Credit Company viewed the decision positively, Abdullah Aziz

[18]Interview with Mr. Abdullah Aziz, Operatiaon Head of Astra Credit Company, Wednesday 10 Jil 2019
[19]Interview with Mr. Abdullah Aziz, Operatiaon Head of Astra Credit Company, Wednesday 10 Jil 2019

stated that in principle Astra Credit Company had done the best in its business processes. The Constitutional Court's decision illustrates the breach of contract or breach between the creditor and the debtor in the financing agreement, the breach of promise and its consequences in handling problem debtors at the Astra Credit Company, the execution process is not directly carried out. Debtors with financial problems can consult with the Astra Credit Company team for consideration of rescheduling and restructuring payments. Astra Credit Company notifies the debtor to read and understand the entire contents of the financing agreement. In order to avoid misunderstanding by the debtor, especially regarding breach of contract / breach of contract, so that debtor financing is useful and smooth until paid off.[20]

In practice this has become an obstacle that cannot be fully carried out by the company Limited Liability Company Astra Credit Compensies. Losses from lack of debt from the debtor can not again asked to debtors for various reasons. The company as the party entitled to a debt deficit from the debtor cannot do much. There are several reasons disclosed, including through the amount of the remaining debt that small, vehicles that have been taken, up to the length of the withdrawal procedure that is passed and the amount of costs that have to be incurred to take care of debtor billing.

According to Aria Kusuma-Remedial Section Head of Clipan Finance Limited Liability Company, say that There are internal obstacles and external obstacles in the effort to settle bad debts. Internal barriers arise from problems within the institution including poor performance systems, but employees at financial institutions work well and are responsible for their work so that these internal obstacles can be avoided.[21]

According to Aria Kusuma-Remedial Section Head of Clipan Finance Limited Liability Companysay that There are also external constraints that can hamper installment collection efforts. External barriers arise from the debtor itself, namely the existence of acts against the law against credit agreements that have been agreed by the parties include:

1. Debtors are hard to find;
2. Debtor moving address;
3. Debtor difficulties in finance
4. Debtor provides collateral that is not in accordance with the value of the debt; and
5. The debtor is negligent, does not understand, or does not pay attention to the terms of the credit agreement.[22]

With the existence of various obstacles, the most ideal settlement of bad loans if there is a normative obstacle in the financing institution, the banking institution (creditors) may be subject to Article 1365 of the Civil Code which states that:

> "Every act that violates the law, which brings harm to another person, obliges the person who because of his mistake to issue the loss, compensates for the loss."[23]

According to Aria Kusuma-Remedial Section Head at one of the financial institutions, say thatin resolving bad credit there must be constraints faced, there are 2 things that most often become obstacles in resolving bad credit, namely:

[20]Interview with Mr. Abdullah Aziz, Operatiaon Head of ASTRA CREDIT COMPANY, Wednesday 10 Jil 2019
[21]Interview with Aria Kusuma: Remedial Section Head at one of the financial institutions, Friday, August 9, 2019, 2:00 PM
[22]Results of an Interview with Aria Kusuma: Remedial Section Head LIMITED COMPANYClipan Finance, Monday, 12 August 2016, 10:00 AM
[23]Article 1365, Civil Code.

1. Debtor with bad faith, where according to the results of evaluation and identification conducted by the creidtur, it is known that the debtor is actually able to fulfill his obligations to settle his credit to the financing agency as a creditor, but the debtor intentionally does not resolve his credit problems or intentionally runs away; and
2. Debtors experiencing economic problems, where the debtor can not manage his business so that it has a failure that causes the debtor is difficult to meet their obligations to resolve credit problems to the financial institutions.[24]

Obstacles in the settlement of bad debts, namely the existence of resistance by the debtor against the execution auction plan that does not have a clear legal basis, because it is only based on unilateral recognition without proof of evidence or recognition of the debtor. Because legally the position of the debtor as the creditor holding the fiduciary guarantee is already strong, because all of these documents are authentic deeds that have perfect proofing power before the judge.

According to the theory of Legal Certainty states that to find out exactly what rules apply and what is desired thereof. The law must provide certainty about the rule of law that aims to achieve justice for every human being as a member of the community. The use of this theory answers how the creditor must guarantee all legal certainty in the contents of the fiduciary agreement.

Conclusion

Based on the results of Chapter III research above, the authors draw conclusions, namely:

1. The power of fiduciary deeds in Fiduciary Security Act Number 42 1999 article 29 concerning fiduciary guarantees fiduciary guarantee has the same executive power as a court decision that has permanent legal force. If the debtor fails to promise, the fiduciary recipient has the right to sell the object which is the object of fiduciary security on his own authority.

2. Execution of fiduciary guarantees made by a notary, the arrangement of the position of the fiduciary deed and the role of the notary in making fiduciary deed Article 5 paragraph (1) of Law Number 42 of 1999 concerning Fiduciary Guarantee states that the person authorized to make a Fiduciary Deed is a notary, while Article 17 Law Number 2 of 2014 amendments to Law Number 30 of 2004 concerning Notary Position, which stipulates that Notaries are only authorized to make authentic deeds in their jurisdiction or jurisdiction.Obstacles in the settlement of bad debts, namely the existence of resistance by the debtor to the execution auction plan that does not have a clear legal basis, because it is only based on the recognition of the principle without proof and acknowledgment from the debtor. Because legally the position of the debtor as the creditor holding the Fiduciary Guarantee is already strong, because all the guarantee documents are notarized and based on the law, the document is an authentic deed that has perfect proofing power before the judge.

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