

AN IMPLICATIONS OF THE DEBTOR'S DEFAULT ON THE EXECUTION OF TWO-WHEEL MOTORCYCLES WITHOUT A FIDUCIARY GUARANTEE CERTIFICATE

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Abstract

This research aims to explain to the public regarding fiduciary issues as well as the consequences that the finance company will receive if it assigns a debt collector forcibly withdrawing two-wheeled motorized vehicles without a fiduciary guarantee deed. This paper uses normative legal research with a statutory regulatory approach (Statuta Approach). The results of this research show that the execution of the fiduciary guarantee object cannot be carried out whether they have a fiduciary guarantee deed or not, except based on the debtor's voluntariness or based on a court decision which says that the debtor is in default, This is based on the decision of the Constitutional Court which said the sound of article 15 paragraph (2) of Law No. 42 of 1999 is unconstitutional.

Keywords: Default; Debtor; Fiduciary; Guarantee; Motorcycle.

A. INTRODUCTION

Humans are basically social creatures who need each other to meet their respective economic needs. Prosperity in economic terms is a desire of society, which is also the ideal of the Indonesian nation based on Pancasila and the 1945 Constitution who want to provide prosperity and a sense of just prosperity to society by making economic development part of national development.¹

To meet these needs, Some people are forced to pay debts to finance companies, this phenomenon is commonplace and growing all around us and maybe we are even part of the perpetrators, This act is not only carried out by people who have a weak economy, but it is also carried out by those who have a middle economy, or even the rich ones.²

Starting from the many financing companies that offer two-wheeled motorbike loans, the author wants to know the implications of the debtor's default on the execution of two-wheeled motorized vehicles without a

1 Gentur Cahyo Setiono dan Herry Sulisty Satriyani Cahyo Widayanti., Cidera Janji Dalam Perjanjian Kredit Jaminan Fidusia, *Jurnal Transparansi Hukum*, Vol. 4, No. 1, 2021, page. 62.

2 Ismail Koto dan Faisal., Penerapan Eksekusi Jaminan Fidusia Pada Benda Bergerak Terhadap Debitur Wnprestasi, *Journal Of Education, Humaniora and Social Sciences (JEHSS)*, Vol. 04, No. 2, 2021, page. 775.

fiduciary deed. This is due to the widespread withdrawal of two-wheeled motorbikes by debt collectors.

This research is the latest research, This is proven by previous studies written by Egi Adriyan Karendra entitled "Implementation of Credit Agreements at PT. Federal International Finance Group Teluk Kuantan Branch Kuantan Singingi Regency" which was published by Juhan Perak in vol. 1 No.1 of 2020.³

The similarities between these two studies lie in the discussion of credit financing. As for where the difference lies. The research above is survey/interview research that focuses on discussion What is the procedure for resolving defaults in credit payment agreements at (FIF GROUP) Teluk Kuantan Branch, This is very different from the focus of this research on how to execute two-wheeled motorized vehicles without a fiduciary guarantee certificate as well as the existence of a fiduciary guarantee which will also be connected to the interpretation of the Constitutional Court regarding the contents of article 15 paragraph (2) of Law No. 42 of 1999 concerning Fiduciary Guarantees.

The purpose of this research is, first is to provide readers with an understanding of credit and fiduciary financing while also providing scientific contributions to civil law, secondly, to find out what the consequences of the withdrawal of two-wheeled motorbikes by the finance company were without a fiduciary deed.

B. RESEARCH METHODS

Based on the above background, This paper uses normative legal research with a statutory regulatory approach (*Statuta Approach*). Examining a phenomenon of widespread withdrawal of two-wheeled motorized vehicles by financing parties based on literature materials related to this research, then analyzed using Law No. 42 of 1999 concerning Fiduciary Guarantees which was then linked to the decision of the constitutional court which stated that Article 15 paragraph (2) of Law No. 42 of 1999 was unconstitutional.

C. RESULTS AND DISCUSSION

1. Rules for Credit Guarantee and Fiduciary Agreements According to Indonesian Legislation

As time progresses, Currently many companies offer financing to the public in the form of credit, which also causes a lot of disputes because the debtor breaks his promise (default).⁴ Providing credit by finance companies to debtors this can occur due to the belief that the debtor can make credit payments in accordance with the agreed

3 Egi Adriyan Karendra., Pelaksanaan Perjanjian Kredit di PT. Federa Internasional Finance Group Cabang Teluk Kuantan Kabupaten Kuantan Singingi yang telah diterbitkan J, *Juhan Perak*, Vol. 1, No. 1, 2020.

4 Klaudius Ilkam Hulu., *Problematika Perjanjian Kredit*, Jawa Tengah, CV Lutfi Gilang, 2021, page.1.

agreement.⁵

The agreement itself is explained in article 1313 of the Civil Law Code which says that an agreement in which one or more people bind themselves to one or more other people.⁶ According to Subakti An agreement is where someone makes a promise to another person or done by two people who promise each other to do something. If seen from this understanding, it has an impact on binding oneself to other people.⁷ It can be said that an agreement is a way to create an agreement.⁸

The parties to an agreement that binds themselves to each other can be said to be valid by law if it has fulfilled the cumulative requirements.⁹ In article 1320 of the Civil Law Code says an agreement must have an agreement between the parties to enter into an agreement, where the parties have the ability to enter into an agreement regarding a certain object that is permitted by the applicable regulations.¹⁰

In securing the credit agreement so that the financing company does not suffer losses if the debtor defaults, then every credit or loan made by the debtor to the finance company or bank must have collateral, This has also been regulated in Article 1131 of the Civil Law Code which says that all of the debtor's assets, whether movable or immovable, whether existing or which will exist in the future will become collateral for the obligations made by the debtor with the creditor.¹¹

Article 1132 of the Civil Law Code states that if the debtor defaults and the collateral object is sold, then the proceeds become part of the repayment of the debtor's dept.¹² The debtor can be considered in default if the financing party has issued a summons, This is explained in article 1238 of the Civil Code.¹³

In order to guarantee the return of your two-wheeled motorbike credit, used by fiduciary institutions as security for creditors against objects used as collateral if the debtor defaults, this is where the importance of registering fiduciary guarantees with a fiduciary institution

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- 5 Khifni Kafa Rufaida dan Rian Sucipto., Tinjauan Hukum Terhadap Objek Eksekusi Fidusia Tanpa Titel Eksekusi, *Refleksi Hukum: Jurnal Ilmu Hukum*, Vol. 4, No. 1, 2019, page. 22.
 - 6 Pasal 1313 Kitab Undang-Undang Hukum Perdata, t.t.
 - 7 Hendra Arjuna dan Atika Thahira., *Kumpulan Catata Pengertian Dasar Tentang Hukum*, Surabaya, CV. Jakad Media Publishing, 2021, page. 64.
 - 8 Dodi Oktarino., *Hukum Bisnis Perjanjian Kredit dan Jaminan Pemegang Saham*, Bogor, Guepedia, 2021, page. 46.
 - 9 Dwi Tatak Subagiyo., *Hukum Jaminan Dalam Perspektif Undang-Undang Jaminan Fidusia (Suatu Pengantar)*, Surabaya, UWKS Press, 2018, page. 107.
 - 10 Pasal 1243 Kitab Undang-Undang Hukum Perdata, t.t.
 - 11 Ari Wirya Dinata., Lembaga Jaminan Fidusia: Pasca Putusan Mahkamah Konstitusi Nomor 18/PUU-XVIX/2019, *Nagari Law Review*, Vol. 3, No. 2, 2020, page. 89.
 - 12 Andin Sofyannoor., Prosedur Penanganan Gadai Saham Yang Melakukan Wanprestasi, *Jentera: Jurnal Ilmu Hukum*, Vol. 3, No. 2, 2019, page. 220.
 - 13 Syafrida dan Ralang Hartati., Eksekusi Jaminan Fidusia Setelah Putusan Mahkamah Konstitusi Nomor 18/PUU/XVII/2019), *ADIL: Jurnal Hukum*, Vol. 11, No. 1, 2020, page. 114.

lies.¹⁴ Fiduciary guarantees are registered by the fiduciary recipient or authorized by another person to register.¹⁵

In a fiduciary agreement, the goods or objects used as objects of fiduciary collateral will remain in the control of the owner of the object (debtor) and not be controlled by the creditor, then it can be said that the transfer of ownership of an object is carried out without handing over the physical thing, so that the debtor can use the item according to its function.¹⁶ This is also regulated in article 1 number 1 of Law No. 42 of 1999 concerning Fiduciary Guarantees.¹⁷

Article 23 paragraph (2) mandates to debtors that fiduciary collateral objects under control are prohibited from being transferred, pawn, or rent to other people unless written approval has been obtained from the fiduciary recipient, , if the provisions of the above article are violated by the debtor, based on article 36 the debtor can be sentenced to imprisonment for a maximum of 2 years and a fine of 50,000,000.¹⁸

2. The Execution of two-wheeled motorized vehicles by debt collectors without a fiduciary guarantee certificate

Debtors who do not make credit payments or the cool term is often called defaulters.¹⁹ This is an act of breach of contract or violating the credit agreement that has been agreed between the creditor and debtor whether intentional or unintentional, where the action is not justified in the agreement.²⁰

To avoid losses caused by non-payment of credit for the two-wheeled motorbike, Finance companies can execute collateral in two ways, Firstly, if the debtor defaults provided that there is an agreement that regulates the debt and receivables agreement when the debtor will return it to the creditor.²¹ Second, based on the debtor's willingness to carry out the execution.²²

Execution of two-wheeled motorized vehicles cannot be carried out because the fiduciary guarantee object is not registered, because the

14 Fira Amalia Sugianto dan Rani Apriani., *Pandangan Aspek Hukum Terhadap Peranan dan Efektivitas Fidusia Sebagai Lembaga Jaminan*, *Jurnal Meta-Yuridis*, Vol. 4, No. 2, 2021, page. 43.

15 Wiwin Dwi Ratna Febriyanti., *Eksekusi Objek Jaminan Fidusia Pasca Putusan Mahkamah Konstitusi Nomor 18/PUUXVII/2019*, *Adhaper*, Vol. 6, No. 2, 2020, page. 44.

16 Syahron Sahputra., *Pertanggungjawaban Pidana Terhadap Pengalihan Benda Jaminan Fidusia dalam Perjanjian Kredit*, *Jurnal Ilmiah "Advokasi"*, Vol. 8, No. 1, 2020, page. 37.

17 Pasal 1Angka 1 Undang-Undang Nomor 42 Tahun 1999 Tentang Jaminan Fidusia, t.t.

18 Suriono., *Tanggung Jawab Pemberi Fidusia Terhadap Benda Jaminan Dalam Perjanjian Kredit*, *Jurnal Ilmiah "Advokasi"*, Vol. 07, No. 02, 2019, page. 153.

19 Yaman., *Karakteristik Wanprestasi Dan Tindak Pidana Penipuan*, 2 ed., Kencana, 2016, page. 81.

20 Suhaila Zulkifli, Tiara Yunita Sundari, dan Mario Hans Kristian Silalahi., *Penyelesaian Wanprestasi Dalam Perjanjian Kredit Multi Guna (Studi di PT Bank Sumut)*, *Jurnal Darma Agung*, Vol. 30, 2022, page. 877.

21 Roma Barunami Olivia., *Eksekusi Jaminan Fidusia Berdasarkan Putusan Mahkamah Konstitusi Nomor 2/PUU-XIX/2021*, *Jurnal Darma Agung*, Vol. 31, No. 4, 2023, page.1032.

22 Pasal 15 Ayat (2) Undang-Undang Republik Indonesia Nomor 42 Tahun 1999 Tentang Jaminan Fidusia, t.t.

requirement for carrying out the execution is the existence of a fiduciary guarantee certificate obtained at the time of registration of the fiduciary guarantee, This of course also violates the provisions of article 11 paragraph (1) of the Fiduciary Guarantee Law which explains that objects encumbered with fiduciary guarantees must be registered.²³

To secure the guarantee the importance of registering fiduciary guarantees by finance companies, However, in reality there are still companies that do not register it. As a result of this, the company does not have a *droit de suite* characteristic and creditors do not have priority rights, in addition to the loss of preferential rights from creditors The right to execute the executive title is also lost because it does not have legal force like the one in the Fiduciary Guarantee Certificate.²⁴

The problem of registering fiduciary guarantees is in the spotlight Minister of Finance of the Republic of Indonesia by issuing regulations Number 130/PMK.010/2012 concerning Fiduciary Guarantee registration. The regulations say that Registration of fiduciary guarantees for financing companies for motor vehicle consumers is mandatory.²⁵ This registration is in accordance with the principle of publicity who has understanding that all rights used for collateral must be registered, this is so that third parties can find out that the object is used as collateral in the imposition of collateral.²⁶

A situation where the debtor breaches his contract or defaults as explained in article 1243 of the Civil Law Code within the time frame agreed upon in the main agreement, then based on article 29 of Law No. 42 of 1999 concerning fiduciary guarantees The creditor can execute the collateral as stipulated in Article 15 paragraph (2) which says that the fiduciary guarantee certificate has the same executorial power as a court decision.²⁷

This executorial power only applies before it exists the decision of the Constitutional Court which says that the fiduciary guarantee certificate has the same executorial position as the court as stated in article 15 paragraph (2) of Law No. 42 of 1999 is unconstitutional.²⁸ So if the agreement does not regulate provisions for default agreed by the

23 Muhammad Ikhsan Awaljon Putra., Eksekusi Terhadap Benda Jaminan Fidusia Yang Tidak Didaftarkan Pada PT. Capella Multidana, *JOM Fakultas Hukum*, Vol. III, No. I, 2016, page. 8.

24 Kadek Cintya Dwi Lestari, Nyoman Putu Budiarta, dan Ni Made Puspatusari Ujianti., Hilangnya Objek Jaminan Fidusia Yng Tidak Didaftarkan, *Jurnal Analogi Hukum*, Vol. 2, No. 3, 2020, page. 385.

25 Harniawati., Perjanjian Dengan Jaminan Fidusia Berdasarkan Peraturan Menteri Keuangan Republik Indonesia Nomor 130/PMK.010/2012, *Ensiklopedia Of Journal*, Vol. 3, No. 4, 2021, page. 101–2.

26 Robert Bouzen dan Ashibly., Pelaksanaan Eksekusi Jaminan Fidusia Terhadap Debitur Yang Wanprestasi Setelah Keluarnya Putusan Mahkamah Konstitusi Nomor 18/PUU-XVII/2019, *Jurnal Gagasan Hukum*, Vol. 3, No. 02, 2021, page. 139.

27 Benny Krestian Heriawanto., Pelaksanaan Eksekusi Objek Jaminan Fidusia Berdasarkan Title Eksekutorial, *Legality: Jurnal Ilmu Hukum*, Vol. 27, No. 1, 2019, page. 61–62.

28 Pasal 15 Ayat (2) Undang-Undang Republik Indonesia Nomor 42 Tahun 1999 Tentang Jaminan Fidusia.

parties and the debtor does not admit that he has committed a default as well as objections to surrendering the object of fiduciary guarantee, then the resolution must be through a court decision.²⁹

It seems that the Constitutional Court's decision is only in favor of protecting debtors, The author thinks this is unfair to finance companies, because resolving the case in court will take time and money, especially like a guarantee for a two-wheeled motorbike which might cost under 20 million, if the company spends more money to litigate in court, it will cause losses to the company because it will increase the burden of court costs.

For avoid losses that the company will experience due to the debtor's default as stipulated in Article 1243 of the Civil Code, then companies that do not register a fiduciary guarantee and do not have a fiduciary deed other than through court.³⁰ Finance companies can negotiate between creditors and debtors so that fiduciary collateral objects can be sold either privately or through auction. because if the company is determined to carry out execution without a court decision, then the debtor who feels objection can fight back by reporting back to the company with charges of unlawful acts.

D. CONCLUSION

Execution of two-wheeled motorbikes by a finance company with or without a fiduciary guarantee deed because a default cannot be enforced by force, this is based on the Constitutional Court decision Number 18/PUU-XVII/2019 which interprets article 15 paragraph (20 of Law No. 42 of 1999 as unconstitutional. So the way that can be taken apart from going through court is by negotiating with the debtor to voluntarily provide collateral objects for auction or private sale to cover the credit shortfall. If the finance company makes withdrawals or executions through forced debt collectors, then the act is an unlawful act. The debtor feels that he has suffered a loss as a result of this action and can report it to the police.

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29 Eko Suryo Presetyo., Implikasi Putusan Mahkamah Konstitusi Nomor 18/ PUU-XVII/2019 Terhadap Pelaksana Eksekusi Lembaga Jaminan, *Refleksi Hukum: Jurnal Ilmu Hukum*, Vol. 5, No. 1, 2020, page. 44–45.

30 Pasal 1243 Undang-Undang Hukum Perdata.

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