

## Consumer Protection Against Forced With drawal by the Leasing Party in Fiduciary Guarantees Based on Justice

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**Abstract.** *The research objectives in this study are to analyze consumer protection against forced withdrawals by leasing parties in fiduciary guarantees, consumer protection constraints against forced withdrawals by leasing parties in fiduciary guarantees, and to analyze consumer protections against forced withdrawals by leasing parties in fiduciary guarantees in the future. This study uses a sociological juridical approach, with a descriptive analytical research method. The data used are primary and secondary data which will be analyzed qualitatively. The research problem was analyzed using the theory of justice. The results of the study concluded that forced withdrawals were made to the debtor both physically and mentally due to the lack of heeding of the wishes of the leasing party. When the action that has a criminal threat is carried out by leasing, then there is no word for criminal abolition for them, except for certain reasons. The first party should use legal channels, namely through the courts in resolving the problem of default by the second party, so that there is permanent power in confidence of goods against debtors in the event of bad credit. The use of Fiduciary Guarantees still has several obstacles, including: 1). Fiduciary Guarantee Registration. 2). Guaranteed vehicle withdrawals. 3). Elimination of Fiduciary Guarantee after the debt has been repaid. Consumer protection against forced withdrawals in fiduciary guarantees in the future should continue to be consistent with Law Number 8 of 1999 concerning Consumer Protection (UUPK). The enactment of this law provides hope for the people of Indonesia, to obtain protection for losses suffered by transactions of goods and services. UUPK guarantees legal certainty for consumers.*

**Keywords:** Consumer; Fiduciary; Forced; protection.

## 1. Introduction

The Republic of Indonesia is a state of law (*Rechtsstaat*) which requires all actions of the ruler and citizens to be based on law. As a state of law based on Pancasila and the 1945 Constitution, Indonesia aims to protect the nation, advance welfare, and educate life. The government's task is to prosper the people, making Indonesia a welfare state.

Economic development is an important part of efforts to achieve fair and prosperous people's welfare. In this case, both the government and the community need large funds to continue development, which are often obtained through borrowing and lending. The diverse needs of the community often encourage individuals to engage in debt to meet their living needs. Debt is now common, not only among low-income individuals but also among those who are able. The decision to provide debt is often based on the integrity of the debtor who is trusted by the creditor to fulfill the repayment obligation. However, changes in the debtor's financial circumstances can threaten their ability to repay the debt.

In the context of constitutionalism, Indonesia adopts the principle of welfare state, which requires the state to be actively involved in the social and economic life of the community. For this reason, financing guarantees are needed that allow debtors to access credit while still using collateral. Law Number 42 of 1999 concerning Fiduciary Guarantees provides a legal basis for the transfer of ownership rights on the basis of trust as collateral.

Criminal liability for the act of forcibly taking a vehicle of a defaulting debtor by a leasing company after the Constitutional Court Decision Number 18/PUU-XVII/2019 is an act of coercion and violence from a person claiming to be a party authorized to collect the debtor's debt, and can even give rise to arbitrary acts carried out by the fiduciary recipient (creditor). This is clear evidence of the existence of an unconstitutionality problem in the norms regulated in the UUF and the attachment of criminal law can also be carried out.<sup>1</sup>

When the debtor fails to fulfill his obligations, the creditor can execute the fiduciary collateral. In practice, there are two parties involved, namely the creditor and the debtor, each of whom has rights and obligations based on the existing agreement. Criminal acts can occur if the execution process does not follow the correct legal procedures. Leasing companies that carry out forced vehicle withdrawals can violate the law, especially after the Constitutional Court Decision Number 18/PUU-XVII/2019 which prohibits such actions without a trial. This forced takeover can be categorized as a crime of theft or violence if carried out in

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<sup>1</sup>Agus Yudha Hernoko in James Ridwan Efferin, 2020, Execution of Fiduciary Guarantee Objects After Constitutional Court Decision Number 18/PUU-XVII/2019, *Yuriska: Journal of Legal Studies* Volume 12, Number 1, p. 46.

a manner that is detrimental to the debtor, so it is important to comply with legal provisions in every fiduciary collateral execution process...

## 2. Research Methods

The problems raised in this study use the sociological juridical research method, which uses secondary data types where the data is obtained indirectly including primary legal materials. The data obtained is then collected through documentary study data collection techniques or literature studies by collecting data based on legal materials that have been used in this study, and analyzed using qualitative data analysis techniques. As the purpose of the study is one of them as a prediction, in order to provide a description of the findings that are then obtained in this study and also to find conclusions that are correct and can be scientifically accounted for.<sup>2</sup>

## 3. Results and Discussion

### 3.1. Consumer protection against forced withdrawal by the leasing party in fiduciary guarantees

Consumer Protection is an effort to provide legal certainty and protection to consumers, who are individuals who use goods and services for personal, family, and other living things. In Indonesia, the two main legal instruments underlying consumer protection are the 1945 Constitution and Law Number 8 of 1999 concerning Consumer Protection (UUPK). UUPK ensures protection against losses that consumers may experience in transactions of goods and services. In practice, leasing companies (lessors) who forcibly withdraw goods, either through threats or violence, are legally responsible, although they often use third parties such as debt collectors. Coercive actions taken by the lessor violate the provisions of UUPK and cannot be justified as a means of resolving disputes. It is better for the authorities to resolve the problem through legal channels.

The legal basis for criminal liability in this case is based on the principle of legality and the principle of fault. The lessor can be held criminally liable if there is a fault in the action taken. However, the Criminal Code does not recognize corporate liability, so criminal liability lies entirely with the individual who committed the act.

#### 1) Coercive acts (dwingen)

The law does not explain what is meant by coercion. Coercive acts are acts (active and in this case using violence or threats of violence) that are pressuring (will or desire) on a person, so that the person does something that is contrary to the

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<sup>2</sup>Tan, D. 2021, Legal Research Methods: Examining and Reviewing Methodology in Conducting Legal Research. NUSANTARA: Journal of Social Sciences, 8(8), p. 2463-2478.

person's own will. From the understanding of coercion in this way in relation to extortion.

2) Coercive actions are directed at people

The person here, whether the owner of the object or not, does not have to be the person who surrenders the object, the person who gives the debt or the person who cancels the debt. This is in accordance with what is meant that, "The person who receives coercion, does not have to be the same as the person who surrenders the object, the person who gives the debt or the person who cancels the debt."

3) Attempts of violence and threats of violence

Coercive acts are in the form of material acts (physical acts) therefore they must be active, and also in the form of abstract acts. These abstract acts will become more concrete in nature and more limited in form, after being connected with efforts or ways of doing them, namely with violence and threats of violence.

4) The purpose which is also a consequence of the coercive act, namely a person handing over an object, a person giving a debt and/or a person writing off a receivable

It is called an objective, because: the act of forcing in an attempt at extortion is aimed at the 3 consequences (called constitutive consequences), which before the act is carried out, in the perpetrator there is a thought/awareness that in order to achieve the intention of benefiting himself or another person (the subjective element of extortion), there must be a person handing over goods, a person giving a loan, or a person writing off a debt.

5) Intent to benefit oneself or another person unlawfully

What is meant by self-benefit is adding a certain amount of one's wealth from the wealth that already exists. This addition of wealth is either for oneself or for others, which in extortion does not have to have been realized. The condition for the occurrence or completion of extortion is not the realization of the addition of wealth, but rather whether from the act of coercion there has been a handover of goods by someone or not. Benefiting oneself is the intention of the perpetrator alone, and does not have to have been realized, the intention is already in him before committing the act of coercion. This is an element of wrongdoing in extortion.

Fiduciary collateral is used in leasing agreements, where the debtor hands over ownership of the goods as collateral but can still use them. In the event of default, the leasing company has the right to withdraw the collateral. The implementation of the execution of fiduciary collateral is regulated by the Regulation of the Chief

of Police No. 8 of 2011, which stipulates procedures to ensure security during execution.

Legal protection for creditors is guaranteed in several forms, including general and special guarantee institutions. Fiduciary guarantees provide certainty over the creditor's rights to the collateral. However, if the fiduciary guarantee is not registered, the creditor loses his preferential rights and only has the position of a concurrent creditor.

The theory of legal protection is a development of the concept of recognition and protection of human rights (HAM) which developed in the 19th century. The direction of the concept of recognition and protection of HAM is the existence of limitations and the placement of obligations on society and the government..<sup>3</sup>

The execution of fiduciary guarantees must be carried out in accordance with legal provisions and must not violate consumer rights. Legal protection aims to protect human rights and prevent arbitrary actions by authorities. The theory of legal protection includes preventive and repressive actions to resolve disputes and protect the public from violations of the law.

### **3.2. Constraints on consumer protection against forced withdrawal by leasing parties in fiduciary guarantees**

Fiduciary guarantee is a guarantee right on movable and immovable objects, which remain in the control of the Fiduciary Provider as collateral for debt repayment, giving priority to the Fiduciary Recipient compared to other creditors. The Fiduciary Provider is required to hand over the collateral object during execution. If not, the Fiduciary Recipient has the right to take the object with the assistance of the authorities, such as the National Police, as regulated in the Regulation of the Chief of the National Police of the Republic of Indonesia Number 8 of 2011 concerning the Security of the Execution of Fiduciary Guarantees.

The provision of loans by creditors to debtors depends on the debtor's trust to repay the debt, and fiduciary guarantees arise to meet the capital needs of people who do not have collateral for immovable objects. Fiduciary guarantees are more practical than mortgages or pawns, because the debtor can still control the collateral. However, there are various problems in the use of fiduciary guarantees, including registration, withdrawal of collateral objects, and write-off after the debt is paid off. The registration obligation aims to provide legal certainty and prevent re-guaranteeing that is detrimental to creditors. Although registration is now done online, there are still obstacles faced by finance companies. Problems with the withdrawal of collateral objects, such as vehicles, often occur because the

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<sup>3</sup>Luthvi Febryka Nola, 2016, Integrated Legal Protection Efforts for Indonesian Migrant Workers (TKI), *Jurnal Negara Hukum*, Vol. 7, No. 1, June 2016.

company does not carry a Fiduciary Guarantee Certificate and involves debt collectors who do not have a permit.

In addition, it is important to remove the fiduciary guarantee after the debt is paid off so that consumers can use the object for subsequent debt agreements. A study of the problem of utilizing fiduciary guarantees is important to increase public trust in the financial services sector, ensuring that the process takes place in an accountable and sustainable manner. Philosophically, the law must create peace and social justice through a clear and consistent system. Legal certainty will be achieved if regulations are made and enacted clearly and logically, without causing doubt or conflict of norms.

### **3.3. Consumer protection against forced withdrawal by the leasing party in the future of fiduciary guarantees**

Consumer Protection is an effort to provide legal certainty and protection to consumers, who are individuals who use goods and services for personal, family, and other living things. In Indonesia, the two main legal instruments underlying consumer protection are the 1945 Constitution and Law Number 8 of 1999 concerning Consumer Protection (UUPK). UUPK provides protection against losses experienced by consumers in transactions of goods and services, and guarantees legal certainty for them.

The Pancasila State aims to realize social justice, which means that the state must create justice for all individuals. Justice in law means that actions that are in accordance with the law are considered just, while violations of the law are considered unjust. When violations occur, the courts play a role in restoring justice, emphasizing the importance of Pancasila as the basis for national law.

Pancasila as the foundation of the state is the basis for the view of justice in national law, especially the fifth principle which emphasizes social justice. Justice is the recognition and balanced treatment of rights and obligations, which demands a fair relationship between individuals and groups. Indonesia is a state of law (Rechtsstaat) which requires all actions of the rulers and citizens to be based on law. As a modern state of law, the government's task is to prosper the people, making economic development part of the effort to achieve general welfare.

In the context of development, people often make debts to meet their living needs. Debts are given based on the debtor's integrity, even though their financial circumstances can change. To meet the needs of the community, Law Number 42 of 1999 concerning Fiduciary Guarantees was enacted as a solution to the limitations of existing guarantees. Overall, consumer protection and fiduciary guarantees are interrelated and provide justice and legal certainty for consumers and creditors in Indonesia.

#### 4. Conclusion

Based on the discussion above, the author provides the following suggestions: Consumer protection related to forced withdrawal of fiduciary collateral debtors includes physical and mental aspects arising from unlawful leasing actions. Leasing actions that threaten and carry out forced withdrawals cannot be eliminated from the criminal law, unless there is a specific reason. It is better for leasing to resolve defaults through legal channels so that there is permanent power in the seizure of goods in the event of bad credit. Obstacles in consumer protection against forced withdrawal by leasing companies include: 1) registration of Fiduciary Guarantees that must be carried out, 2) withdrawal of collateralized vehicles without proper procedures, and 3) removal of Fiduciary Guarantees after the debt is paid off. In the future, consumer protection against forced withdrawal in fiduciary guarantees must be consistent with Law Number 8 of 1999 concerning Consumer Protection (UUPK). UUPK is expected to provide protection for the community and guarantee legal certainty for losses experienced in transactions of goods and services.

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