

Unlawful Actions against Financing Agreements with Fiduciary Guarantees in Civil Cases

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Abstract. *This research has a purposed to find out and analyze the causes of unlawful acts regarding financing agreements with fiduciary guarantees and to know and analyze the results of legal considerations in the Judge's decision in civil case number: 345/PDT.G/2018/PN.Jkt.Sel. The research method used is a normative legal research method using normative case studies in the form of legal behavior products. The research results show that the unlawful act in case Number 345/PDT/2018/PN.Jak.sel fulfills the elements of an unlawful act in accordance with the unlawful act. The law itself, only not against the Defendant but rather the Plaintiff himself based on the evidence available through the Defendant's reconvention. Juridical considerations of the Panel of Judges in examining and deciding case Number 345/PDT/2018/PN.Jak.sel, namely based on the evidence submitted by the Plaintiff and Defendant. The Panel of Judges in providing their legal considerations is in accordance with the applicable legal terms and conditions.*

Keywords: Acts; Fiduciary; Unlawful.

1. Introduction

An unlawful act is an action of a person that is considered to violate the legal rules of the laws and regulations that apply in society. Actions carried out that are considered unlawful are not only actions that violate statutory regulations, but also every action that violates propriety, prudence and decency in relations between fellow citizens and towards other people's objects.

The elements of an unlawful act in criminal law are that the act is clearly declared to violate the law, then the act is also carried out without authority and power and is an act that violates general principles in the field of law. Meanwhile, in civil law, the elements of an unlawful act are the existence of an act, the act is against the law, there is a fault on the part of the perpetrator,

there is a loss for the victim and there is a causal relationship between the act and the loss.

The development of society is increasingly catching up with the era at a very fast pace. Boundaries or distances in the world no longer have an effect with internet technology. In terms of economics, it is also experiencing very rapid development and also demands speed of mobility for the people involved in it.

The increasing public need for the role of financial institutions in business and trade activities has simultaneously triggered the birth of non-bank financial institutions that provide financing facilities (services) for the community through an installment payment (credit) system. This shows that the level of people's needs for consumption of goods and services continues to increase. This condition is certainly a promising opportunity for business actors to be able to attract profits by opening up business opportunities in the field of financing and financial service facilities.

With the existence of consumer finance, people do not need to provide funds that are too large to realize their desire to buy the goods they need, just by providing 10 to 20% of the price of the goods as a down payment (DP) then people can carry take home the things he wants.

The nature of the guarantee agreement is that it is an accessor agreement. A collateral agreement is a special agreement made by a creditor with a debtor or third party which makes a promise by binding certain objects or third party capabilities with the aim of providing security and legal certainty for credit repayment or implementation of the main agreement.

The material security institutions that are widely applied in credit agreements are mortgages or mortgages, pledges and fiduciary guarantees. Mortgage security institutions are used if the object of collateral or collateral is a fixed object (immovable object). If the collateral objects are movable objects, they can be tied with a pledge or fiduciary guarantee.

There was a related case in the South Jakarta area, where 2 (two) cars became the object of problems because obligations were not carried out as they should in financing with fiduciary guarantees and had to be withdrawn by the guarantor without the knowledge of the vehicle owner. So the owner of the vehicle felt aggrieved and filed a lawsuit against the law at the South Jakarta District Court.

The Plaintiff, as an entrepreneur in the rental and education services sector, experienced losses due to the car confiscation carried out by the Defendants. This coincided with the ongoing tender process for the procurement of cars for the Plaintiff's company contractor, which was very detrimental to the Plaintiff's

business activities because it eliminated various tender opportunities and activities that could have been carried out by the Plaintiff. The activities carried out by people ordered by the Defendants have created fear for some of the Plaintiff's partners and families and have damaged the Plaintiff's credibility in the neighborhood where he lives. Therefore, for all the hardships, embarrassment, losses and unpleasant actions that the plaintiff has caused negligence due to unlawful acts carried out by people ordered by Defendant I and Defendant II, So the Plaintiff asked for material compensation from the Defendants, namely Defendant I, amounting to IDR 900,000,000,- (Nine hundred million rupiah) and Defendant II IDR 800,000,000,- (eight hundred million rupiah).

2. Research Methods

This type of research is normative legal research using normative case studies in the form of legal behavior products. The main point of study is law which is conceptualized as a norm or rule that applies in society and becomes a legal reference in cases in concreto, legal systematics, level of synchronization, comparison of each person's behavior. The data source used is secondary data, data obtained by researchers from library and document research, which is to determine the development of judges' decisions and the reasons used by judges in deciding cases involving unlawful acts regarding fiduciary financing agreements.

3. Result and Discussion

3.1. Unlawful Acts in Civil Case No. 345/PDT.G/2018/PN.Jak.Sel

An unlawful act occurred regarding a financing agreement with a fiduciary guarantee in civil case Number: 345/PDT.G/2018/PN.Jkt.Sel) between Azhar Fuadzy as the Plaintiff who filed a lawsuit against PT Astra Sedaya Finance as Defendant I and PT. Swadharma Bhakti Sedaya Finance as Defendant II. From the case decision Number: 345/PDT.G/2018/PN.Jkt.Sel) the author obtained data that corresponds to the first problem that the author examined, namely:

- a. This case began when Azhar Fuadzy as the Plaintiff went to the Motor Vehicle Insurance Company Representative office and met with Ihlam to make an insurance claim for the loss of the Plaintiff's car with plate number BM 1341 DT. At that time it was said that the Plaintiff could not make a claim for the loss of the car because the insurance had been canceled by the Defendant on May 31 2018 unilaterally.
- b. Then on May 26 2018 and November 16 2018 it was discovered that Defendant I and Defendant II had unilaterally signed a financing agreement with a fiduciary guarantee in the name of and imitated the Plaintiff's signature for the

motor vehicle purchase financing facility without prior approval from the Plaintiff.

c. On May 31 2018, Defendant I and Defendant II are known to have signed unilaterally and jointly a letter requesting cancellation of motor vehicle insurance on behalf of the Plaintiff with Astra Buana insurance, namely Garda Oto, for 2 (two) units of cars by Defendant I and Defendant II with the name of the insured on both policies is the name of the Plaintiff.

d. Then the Defendants took the premium refund funds from the insurance company without prior approval or notification to and from the Plaintiff.

e. On 23 August 2018 Defendant I confiscated 1 (one) car in the name of the Plaintiff by Mr. M. Fauzi S on the orders of Defendant I when the car was in the control of a partner or service user in the Plaintiff's business. So in the end the Plaintiff filed a lawsuit at the South Jakarta District Court to claim his rights.

However, after filing the lawsuit at the South Jakarta District Court, the Panel of Judges could not accept the lawsuit submitted by the Plaintiff because the South Jakarta District Court did not have the authority to try the case. In accordance with the letter of agreement that has been agreed upon by the parties, namely the Plaintiff and the Defendant, that if a problem occurs between the parties then all of them will be tried at the South Jakarta District Court. So it is appropriate that the Panel of Judges cannot accept the lawsuit submitted by the Plaintiff.

Apart from that, Defendant I and Defendant II also proved that they did not commit any unlawful acts and that this was not fundamental. In reality, in the agreement that was agreed upon, the Plaintiff did not carry out its obligations in paying off the financing that should have been made to the Defendants, so that the Defendants suffered losses and were forced to withdraw or take the goods that had become collateral in their agreement. This is included in the previously existing agreement between the parties,

Based on Article 118 HIR/142 RBG, lawsuits may be submitted in writing and may be submitted orally based on Article 120 HIR/144 RBG (Riduan, 2009: 25). The Plaintiff finally filed a lawsuit against the Defendant in writing to defend the rights that the Plaintiff should have.

According to Suhamoko (2004: 116), just like the purpose of a lawsuit for an unlawful act is to place the Plaintiff's position in its original state before the unlawful act occurred. So the Plaintiff's lawsuit is a lawsuit against the law in Article 1365 of the Civil Code, namely that there is an action carried out by the Defendant which is an unlawful act in the form of a mistake and causes losses to

the Plaintiff.

The plaintiff filed a lawsuit at the South Jakarta District Court through a civil liability mechanism based on article 17 of Law Number 39 of 1999 concerning Human Rights, which states: "Everyone, without discrimination, has the right to obtain justice by submitting applications, complaints and lawsuits, both in criminal, civil and administrative cases and tried through a free and impartial judicial process, in accordance with procedural law which guarantees an objective examination by an honest and fair judge to obtain a just and correct decision.

The plaintiff also filed a lawsuit with the South Jakarta District Court through a civil liability mechanism based on Article 1367 of the Civil Code, which states, "Employers and those who appoint other people to represent their affairs are responsible for losses. issued by their servants or subordinates in the course of the work for which these persons are employed."

In the reconvention of the Defendants, they explained that the lawsuit filed by the Plaintiff stating that Defendant I and Defendant II had committed unlawful acts was refuted by presenting several pieces of evidence to strengthen the arguments for their denial.

a. Legal Considerations in District Court Judge Decisions

Based on the arguments in the lawsuit submitted by the Plaintiff, the Panel of Judges provided the following legal considerations:

In Provisions:

- 1) The Panel of Judges was of the opinion that the Plaintiff's lawsuit was a provisional lawsuit. Provisional lawsuits are usually filed regarding certain matters or actions that could harm the Plaintiff.
- 2) Considering that the provisional claim submitted by the Plaintiff is declared rejected because what the Plaintiff is demanding is regarding the application of security confiscation to a car unit in the name of the Plaintiff.

Based on the exception submitted by Defendant I and Defendant II, the Panel of Judges provided the following legal considerations:

Regarding the Authority to Judge:

That regarding the exceptions of Defendant I and Defendant II, the Panel of Judges has studied it carefully by paying attention to the Plaintiff's response and

the Defendant's response. The Panel of Judges stated that regarding the Financing Agreement Letter with Fiduciary Guarantee number 01.500.506.00.114123.3 (exhibit P-4 corresponds to evidence TI-2), number 02.500.506.00.120076.6 (exhibit P-11 corresponds to evidence T.II-2) where the Plaintiff's signature along with that of his wife has been denied, but if adjusted to the KTP each signature is identical.

A signature serves to identify the characteristics of the signer and guarantee the correctness of the contents of the document being signed. A signature guarantees that it is true that the person signing an agreement is in accordance with his or her Identity Card, and that he or she truly agrees to the clauses in the agreement. By signing an agreement, the signer explains who he is and at the same time he acknowledges the truth of what is stated in it.

b. Legal Considerations of High Court Judges

Considering that Article 199 paragraph (1) RBg determines the time limit for filing an appeal against the decision of the District Court is 14 (fourteen) days after the decision is handed down or 14 (fourteen) days after notification of the decision, in other words that the Plaintiff has submitted an appeal Within the time limit in accordance with the terms and conditions of the law, the appeal application can be formally accepted.

2) That the Plaintiff/Appellant requests the Panel of Judges at the Appellate Level to correct the decision of the South Jakarta District Court Number 345/Pdt.G/2018/PN.Jak.Sel dated 27 March 2018. 3) Considering, that in response to the Appeal Memorandum of the Plaintiff/ The Appellant, the attorney for Defendants I, II/Appellee I, II has submitted a counter-appeal memorandum which basically states that the Plaintiff/Appellant's arguments for canceling the decision of the South Jakarta District Court Number 345/Pdt.G/2018/PN.Jak.Sel March 27 2018 should be rejected or at least unacceptable. 4) Considering, that after the Panel of High Court judges studied and carefully observed the decision of the South Jakarta District Court Number 345/Pdt.G/2018/PN.Jak.Sel dated 27 March 2018 which was requested for appeal, It turns out that what is the legal basis for handing down this decision, the considerations of the Panel of Judges of First Instance have been used as considerations by the Panel of Judges of the High Court to confirm and defend the decision. 5) Considering, that because the Plaintiff/Appellant remains on the losing side, he must also be sentenced to pay court costs at both levels of justice. 6) Based on the legal considerations given by the Panel of Judges at the District Court and High Court levels, the author is of the opinion that the legal considerations given are in accordance with the provisions.

c. South Jakarta District Court Decision

Regarding the Plaintiff's lawsuit, the South Jakarta District Court has made a decision, namely Decision No. 345/Pdt.G/2018/PN.Jak.Sel dated 9 October 2013 which reads as follows:

- a. IN THE PROVINCE: Rejects the Plaintiff's provincial claim
- b. IN EXCEPTION: 1) Accept the Defendants' exception; 2) Declare that the South Jakarta District Court has no authority to try this case
- c. IN THE MAIN OF THE CASE: Declare that the Plaintiff's claim cannot be accepted
- d. IN RECONVECTION: Burdens the Plaintiff to pay court costs in this case amounting to IDR 966,000,-

d. South Jakarta High Court Decision

Regarding the appeal request, the South Jakarta High Court has made a decision, namely decision No. 345/PDT.G/2018/PN.Jkt.Sel) whose instructions are as follows:

- a. IN PROVISION: Reject the Plaintiff's provision claim;
- b. IN EXCEPTION: 1) Accepting the defendants' exceptions 2) Declaring that the South Jakarta District Court has no authority to try this case.
- c. IN THE MAIN OF THE CASE: Declare that the Plaintiff's claim cannot be accepted;
- d. IN RECONVENTION: Declare that the claim of the Reconvention Plaintiff cannot be accepted;
- e. IN CONVENTIONS AND RECONVENTIONS: Burdens the Plaintiff to pay court costs in this case amounting to IDR 966,000,- (Nine hundred and sixty six thousand rupiah)

4. Conclusion

The result of an unlawful act by withdrawing collateral without the consent of both parties ultimately results in material and immaterial losses. The unlawful act in civil case no.345/PDT/2018/PN.Jak.sel has fulfilled the elements of an unlawful act based on the evidence that has been submitted. However, in this case, the Plaintiff's lawsuit could not be accepted by the Panel of Judges because it was not in accordance with the authority of the Panel of Judges at the South

Jakarta District Court to try it, because in the agreement previously agreed upon by the parties that any problems or disputes that occurred between the parties would be resolved at the South Jakarta District Court. The Plaintiff was unable to prove his arguments in evidence before the District Court Panel of Judges.

5. References

Journals:

M. Yasir, *Aspek Hukum Jaminan Fidusia*, Vol. 3 No. 1, 2016.

Muhammad Hilmi, *Akibat Hukum Jaminan Fidusia Yang Tidak Didaftarkan Menurut UU Nomor 42 Tahun 1999*, Vol. 4 No. 3, September 2017.

Setiawan, Empat Kriteria Perbuatan Melanggar Hukum dan Perkembangannya Dalam Yurisprudensi, *Varia Peradilan*, Nomor 16, December 2006.

Regulations:

1945 Constitution of the Republic of Indonesia.

Law Number 4 of 2004 concerning the Principles of Judicial Power. Law Number 14 of 1985 concerning the Supreme Court.

Law Number 42 of 1999 concerning Fiduciary Guarantees. RBG (Rechtsreglement BuitenGewesten).