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### CONSUMER PROTECTION LAW ON VEHICLE LEASING AGREEMENT IN INDONESIA

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#### ABSTRACT

This article aims to study the legal protection for the consumers of motor vehicles in regards to their financing agreement. The study uses the statute, conceptual, and contractual approach. The results of the research show that the act of forced effort carried out by creditors against motor vehicles as objects of fiduciary security can be said as an unlawful act, because the execution carried out is not in accordance with the method regulated in Article 29 of the Fiduciary Guarantee Act. The purpose of this study is to analyze the status of motor vehicles ownership in a consumer financing agreement when a bad credit occurs, and to analyze the execution of a motor vehicles caused by a consumer default. This study concludes that legal protection should be improved, consumers should be able to be more careful in choosing the services of motor creditors.

#### INTRODUCTION

The middle and upper class people tend to buy motor vehicles in cash. Financial institutions that play a role as public financial intermediaries have relate to the banking sector; these institutions are needed by the community. What is desperately needed is a holistic perspective that unites not only consumer law and sustainability but that also analyses the role and function of the digital economy and society (Mathios et al, 2020). The most difficult problem is introducing an effective system of applied legislation and jurisdiction (Elena et al, 2016).

Financial Institutions can be classified as Non-Bank Financial Institutions and Bank Financial Institutions. In practice, the community largely utilizes Non-Bank

Financial Institution. This is because the Bank Financial Institutions could not meet the various funding needs needed by the public. In addition, the community experience difficulties in accessing funds from banks due to the uneven distribution of bank credit.

In practice, the Financing Company considers the presence or absence of collateral owned by the debtor because the Financing Company will not take the risk for the absence of collateral. In general the Financing Company must ask for collateral in the form of goods purchased with funds from consumer Financing Companies.

In practice, debtors often experience bad credit. Bad credit can occur because the debtor avoids payment that should be an obligation for the debtor in the consumer financing agreement. Payments that are not made by the debtor will turn into a debtor default in regards to their failure in making payments in the due date.

Consumer as debtor is positioned as a weak party in an agreement, the consumer cannot propose an act other than approving a point. Whereas consumer financing agreements are guaranteed by fiduciary collateral, the consumer is the owner of the collateral motor vehicle and the creditor is only the holder of the guarantee. Even though in various laws and regulations relating to this agreement the provisions that regulate and or protect consumers have also been indirectly imposed, in reality their use include certain obstacles that "complicate consumers".

Until now in Indonesia, the basis for consumer protection is POJK No. 1/POJK.07/2013 About Consumer Protection in the Financial Services Sector. With POJK No. 1/POJK.07/2013 About Consumer Protection The Financial Services Sector provides protection for debtors as consumers to be able to claim their rights as consumers. From this arises problems related to consumer rights related to ownership of motor vehicle objects if the consumer experiences bad credit.

The purpose of this study is to analyze the status of motor vehicles ownership in a consumer financing agreement when a bad credit occurs, and to analyze the execution of a motor vehicles caused by a consumer default.

This research is expected to provide benefits in the form of clarity in legal protection for debtors who buy motor vehicles on credit, passing the Non-Bank Financing Company, and providing education to guarantee the protection of debtors so they feel safe in entering into a motor vehicle loan agreement.

## **RESEARCH METHODS**

This research is a legal research. This study applied statute approach, conceptual approach, and contractual approach. Statute approach, i.e. all problems are reviewed based on applicable laws and regulations. While the conceptual approach, which is an approach by discussing based on the opinions of scholars as supporters as well as carrying out a search of law books (treaties) where in these books there

are many legal concepts that are relevant to the formulation of the problem to be discussed (Marzuki, 2007). And the last one is a contractual approach, which is an approach by linking the agreement.

### ***Financing Agreement, Legal Relations and Property Rights***

Agreement is one source of engagement. Agreement gives birth to an agreement, the birth of an agreement creates an obligation on the parties to the agreement. As in the consumer financing agreement, the obligation imposed on the debtor in the agreement gives the creditor the right to the agreement to carry out the achievement of the engagement made in the agreement. The understanding of the agreement is in the provisions of Article 1313 BW which reads that the agreement is an act by which one or more persons commit themselves to one or more persons.

An agreement is an event where a party makes a contract or promise to another party on a matter. From this incident, arises a relationship between the two people called an engagement. The agreement issues an agreement between the 2 (two) people who made it. In its form, the agreement is in the form of a series of words containing promises or abilities that are spoken or written (Subekti, 1987).

In connection with the consumer financing agreement, as long as the agreement fulfills the legal requirements of the agreement, the agreement is valid and has binding power as applicable (*Pacta Sunt Servanda*) and as stated in Article 1338 BW which states that "All agreements made by lawfully applies as a law for those who make it. An agreement cannot be withdrawn other than by agreeing on both sides, or for reasons which are stated by law to be sufficient. An agreement must be carried out in good faith." Based on the consequences of a valid agreement associated with a consumer financing agreement, according to Rutten, the legal principles of the agreement provided for in Article 1338 BW (Patrik, 1994).

The characteristics of consumer financing for motor vehicles is first related to the objectives of the financing is clear, namely consumers who need motor vehicles. The second characteristic is the object of financing in this case in the form of motor vehicles. Third, the amount of financing provided by consumer finance companies to consumers is relatively small. This is what is different from credit, where the amount of funding is greater. Because consumer financing is relatively small so the risk of financing is relatively safer because financing is spread across many consumers (Sunaryo, 2008).

In the promise of consumer financing for motor vehicles (fiduciary guarantees) there are several parties, namely financing companies, consumers, and suppliers. Each party has a legal relationship with each other, the finance company has an obligation to purchase an item from a supplier whose payment is made periodically or in installments by consumers. The legal relationships of the parties in a consumer financing agreement are three legal relationships, namely the legal relationship between consumer and consumer finance companies, the legal relationship between

consumer finance companies and suppliers (suppliers) and the legal relationship between consumers and suppliers (suppliers)

In terms of ownership, motor vehicles financed by consumer finance companies are fiduciary guarantees, so motor vehicle ownership documents are held by consumer finance companies (fiduciary transfer of ownership) until the final installments are paid. Submission of motor vehicle ownership documents is based on the theory of surrender used in fiduciary guarantees.

Fiduciary is a term that has long been known in Indonesian, Law Number 42 of 1999 has used the term "fiduciary". The notion of fiduciary is also regulated in the Law, namely Article 1 number 1 states that "Fiduciary is the transfer of ownership rights of an object on the basis of trust provided that the object whose ownership rights are transferred remains in the control of the owner of the object". Whereas the definition of fiduciary guarantee according to Law Number 42 of 1999 states that "Fiduciary Guarantee is the right of guarantee to both tangible and intangible movable objects and immovable objects, especially buildings which cannot be encumbered with mortgage rights as referred to in Law Number 4 of 1996 concerning Rights Dependents that remain in the possession of the Fiduciary Giver, as collateral for paying off certain debts, giving a preferred position to the Fiduciary Recipient of other creditors".

The motor vehicle consumer financing agreement using fiduciary collateral is a collateral (*accessoire*), which is always a contracted agreement with the principal agreement (Sofwan, 1980), the principal agreement in consumer financing is a debt and credit agreement. Credit agreement is said to be the principal agreement, because in consumer financing there has been a legal relationship between creditors and debtors, each of which has rights and obligations, whereby the creditor gives motor vehicles to the debtor with the debtor agreement will repay motor vehicles that have been purchased by means of periodically or installments.

### ***Legal Consequences***

As long as the consumer financing agreement is still ongoing, and between the parties do not experience problems or obstacles in the sense that both parties carry out their rights and obligations as agreed, then the dispute will not arise. However, in practice, problems or obstacles in the consumer financing agreement still often occur, especially problems made by the debtor regarding the repayment of payments, payments which are the debtor's obligations are often not done by the debtor on the grounds that the debtor experiences bad credit. Before the debtor experiences bad credit, of course the bad credit experienced is measured from the collectibility of the credit in question.

This means that when a loan is said to be bad can be seen from the collectibility, the collectibility itself is the condition of the principal or installment payments and credit interest by the debtor and the likelihood of the fund being reclaimed. As for

the credit collectibility criteria, namely the criteria of current credit, credit criteria substandard, credit criteria doubt, and the last criterion of bad credit (Rahman, 1998).

Based on Article 28 of the Financial Services Authority Regulation Number 29/POJK.05/2014 Said to be stuck if there are delays in payment of principal and / or interest that have exceeded 180 calendar days. So, the criteria for bad credit can be said if the credit does not meet the current criteria, substandard credit and doubtful credit and meet the criteria in doubt but within a period of 180 days since classified as doubt there has been no repayment or credit rescue effort. Bad credit can be regarded as a form of default done by the debtor in making payments according to maturity.

As a result of defaults by the debtor, based on Article 1243 BW Debtor.

Perform "Reimbursement of costs, losses, and interest due to not fulfilling an agreement, then begins to be required, if the debtor, after failing to fulfill the agreement, still neglects it or if something that must be given or made, can only be given or made within the grace period that has been he did."

The statements contained in the consumer financing agreement are clearly signed by the debtor but when the debtor's obligation that originally made the payment is made but not carried out so that the debtor is declared default the debtor still does not want to hand over the object of the motor vehicle that is the guarantee. In addition, the debtor must surrender the object of collateral in the form of a motor vehicle, against defaults made by the debtor will bring legal consequences to him. The legal consequences are in the form of punishment or sanctions regulated in BW (Muhammad, 2017).

Consumer financing agreements if the debtor does not carry out his achievements namely making payments as agreed by the creditor, the debtor is said to have defaulted. Default performed by the debtor will result in the execution of collateral. What is intended by the execution of fiduciary collateral is the seizure and sale of objects which are subject to fiduciary collateral (Hs, 2004). The implementation of fiduciary guarantees that are expected to be carried out easily and quickly certainly cannot be applied, as they see many obstacles that occur in practice, whereas in Article 29 of Law No. 42 of 1999 has regulated models of fiduciary guarantee execution, i.e. If the debtor or fiduciary giver or the promising fiduciary giver, the execution of the object which is the object of fiduciary collateral can be done by:

- a). Implementation of the executorial title referred to in Article 15 paragraph (2);
- b). The sale of objects that have become the object of Fiduciary Guarantee under the authority of the Fiduciary Receiver's by means of public auction as well as taking the settlement of receivables from the proceeds of sales; c.) Underhand sales are carried out based on the agreement of the fiduciary giver and receiver if in this way a high price can be obtained that benefits the parties.

Law Number 42 of 1999 concerning Fiduciary Guarantees has made it easy to carry out executions. In fact, in practice, the execution of guarantees remains difficult because the execution of guarantees must be preceded by "voluntary" submissions by the debtor. But the surrender is always complicated by the problem of the debtor not wanting to hand over a motor vehicle which is the object of fiduciary collateral.

Because of this problem, the creditor has the right to take the object that is the object of fiduciary security and if necessary can ask for the help of the competent authority on the basis stipulated in the explanation of Article 30 of Law No. 42 of 1999 but in that Article the fact is not explained in detail what is meant by the authorities. In practice, creditors take motor vehicles unilaterally without assistance from the authorities, the authorities here can be said to be the legal apparatus. Hence, if the creditor takes the motor vehicle unilaterally by force, then this action is an illegal act.

Unlawful acts carried out by creditors will provide legal protection for the debtor for the execution actions carried out by the creditor that are not in accordance with the methods of execution stipulated in Law No. 42 of 1999 concerning Fiduciary Guarantees. In addition, legal protection for debtors as consumers is also given related to consumer rights that should be obtained from the use of consumer financing services, that is when related to a consumer financing agreement is the right to be treated properly and honestly as regulated in Article 4 letter g of the Law Number 8 of 1999 concerning Consumer Protection. Meanwhile according to Law No. 39/1999 concerning the human rights of Indonesian, protection is a defense towards human rights. Every human being has the same rights and obligations, in which each has the same right to protection (Prakoso and Setyaningati, 2018).

Regarding legal protection for debtors, it can be done through Settlement through court according to Article 48 of Law Number 8 of 1999 concerning Consumer Protection, the provisions referring to the prevailing general court. Means that the procedural law used in the procedure for trial and examination of cases is a civil procedural law. There are stages in the settlement through the court namely filing a lawsuit, examination and verification and compensation.

Meanwhile, out of court settlement there are institutions that handle The settlement is the Consumer Dispute Resolution Agency (CDRA). CDRA in resolving consumer disputes takes care by following the provisions of Law Number 30 of 1999 Concerning Arbitration and Alternative Dispute Resolution.

In practice, consumers more often report the act of executing a motor vehicle that is carried out in violation of the law because the implementation is not in accordance with what is regulated in Law No. 42 of 1999 concerning Fiduciary Guarantees to the police. Finally, legal certainty arose with the issuance of the Circular of the Indonesian Police Headquarters BINKUM dated April 12, 2011 and the Regulation of the Indonesian National Police Chief Number 8 of 2011 Concerning Execution of Guarantees.

## CONCLUSION

The status of motor vehicle ownership in a consumer financing agreement that is bound by a fiduciary guarantee at the time the consumer financing agreement is born is in the consumer as the debtor, ownership in the creditor during the agreement is only as a guarantee to avoid the risk of default by the debtor. When the consumer financing agreement is written off because of the debtor's payment, the creditor returns the ownership and proof of ownership to the debtor. Acts of forceful measures taken by creditors against Motor vehicles as objects of fiduciary security can be said as unlawful acts, because the executions carried out are not in accordance with the method regulated in Article 29 of the Fiduciary Guarantee Act and can also be said to be an unlawful act because in the act of the creditor contains an element of violation of one's subjective rights, namely the right of the debtor to be treated correctly and honestly by the inclusion of standard clauses that have been made in advance by the creditor as a business actor.

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