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Legal Efforts by Consumer Financing Institutions Due to Financing Agreements with Fiduciary Guarantees through Application for Judicial Review of the Fiduciary Guarantee Law at the Constitutional Court

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Abstract

This study aims to find out how to obtain legal protection for consumer financing institutions or leasing companies, which the government has not paid much attention to in dealing with naughty debtors in the sense of having defaulted or broken promises in carrying out their obligations to creditors (consumer financing institutions/companies leasing). The presence of a financial institution is a business entity that provides financing by providing capital goods or funds through an installment system. Based on the Regulation of the President of the Republic of Indonesia Number 9 of 2009 concerning Financing Institutions. Financial institutions such asleasingis a form of business activity in the form of capital goods carried out through option rights or without option rights within a period according to the agreement between the creditor and the debtor. The object of the transaction is to become the property of the financing institution (creditor) during the validity of the leasing agreement with the consumer (debtor). Until the creditor or consumer has paid off his debt to the leasing company. The research method used to discuss this problem is normative juridical, normative juridical is a way of examining legal norms and rules in applicable laws and regulations (positive law), which is related to the topic of the problem being researched.

Keywords
legal efforts; financial institutions; consumers; consequences agreement; fiduciary guarantee

I. Introduction

Consumer financing by leasing is a financing activity by facilitating and/or providing financing for an item as needed, such as electronics, vehicles, and houses, all of which can be owned by consumers in installments until paid off, and this is a way that is done as a way to meet the needs of these consumers. The existence of consumer finance institutions such as *leasing* offers these consumer financing services, and is formed on the basis of a debt or credit application, in the activity of procuring goods or providing financing facilities based on the needs of consumers or the community with an installment payment system which in carrying out business activities and risk management, so that the position of fiduciary guarantees here is as one of the material guarantees to be able to meet all the needs of the community, so that if at any time there has been a default or a breach of promise to one of the parties, the fiduciary guarantee law plays a role in providing legal certainty for both parties concerned, especially on the consumer financing institution as the owner or the holder of a fiduciary guarantee certificate.

Financing Institution is a business entity that carries out financing activities in the form of providing funds or capital goods. These financing institutions include finance companies, venture capital companies, and infrastructure finance company. Financial performance is a measuring instrument to know the process of implementing the company's financial resources (Ichsan, R. et al. 2021).

Financing Company is a business entity specifically established to perform Lease, Factoring, Consumer Financing, and/or Credit Card business.The business activities of the Financing Company include: Leasing, Factoring, Credit Card Business; and/or Consumer Financing.

Consumer financing can be explained as a financing activity for the procurement of goods based on consumer needs with an installment or periodic payment system by consumers. In carrying out business activities and in managing risk, Consumer Finance Companies arrange Fiduciary Guarantees for goods owned by consumers. The products financed through the consumer financing transaction scheme include: automotive (motorcycles and cars), electronics, and housing.

In addition to playing an important role in supporting the economy in the country, financial institutions can help with high employment absorption, where financial institutions have functions in:

a. Improving the welfare of the prosperous community through the provision of funds whose yields still benefit business actors.
b. Protecting the poor from the snares of moneylenders who provide high-interest loans.
c. Financial institutions can also develop infrastructure in the form of bailouts or project funds. This is because not all infrastructure entrepreneurs have sufficient capital to finance large projects.

In order to understand more about the activities of financial institutions, the following are some examples of financial institution companies.

1. Leasing companies registered with the OJK include Adira Finance, Otto Summit, BA Finance, and Amanah Finance.
2. Company Factoring such as SG Finance, Aditama Finance, and PT IFS Capital Indonesia.
3. Consumer finance companies such as PT Adira Quantum Multifinance.
4. Credit card issuing companies such as Mandiri bank, BCA bank, or CIMB Niaga.
5. Venture capital companies such as Fenox Venture Capital, CyberAgent Venture, and 500 startups.
6. Infrastructure financing companies such as PT Sarana Multi Infrastruktur (Persero) (PT SMI) which is a BUMN.

A financing institution that is a potential financing alternative to support economic growth. Financial institutions play a crucial role in the survival of the community as well as the current problem of development funds. The existence of financial institutions is clearly needed by people from various different backgrounds, including business people or business entities in this country.

Communities, especially in Indonesia, generally need facilitiescredit or installments that can help meet other needs such aselectronics, vehicles, and homes. This facilityindispensable for the development of the economic sector, this means that credit has an important meaning in various aspects of development such as trade, housing, transportation and so on. Related to the existence of collateral in credit between creditors

and debtors, it is necessary to have a guarantee institution. One of the guarantee institutions that are considered appropriate and often used is a fiduciary guarantee institution.

Prior to the issuance of Law Number 42 of 1999 concerning Fiduciary Guarantees (hereinafter referred to as the Fiduciary Guarantee Law). This form of guarantee is widely used in lending and borrowing transactions because the loading process is considered simple, easy and fast, although in some cases it is considered less guarantee of legal certainty. In its journey, fiduciary has experienced significant developments, for example regarding the position of the parties. In contrast to leasing, the definition of leasing is a lease made between a person/entrepreneur and a financing institution for a capital item where at the end of the lease term an option is granted to the entrepreneur, so that a levering or delivery of capital goods can be made the object of the leasing agreement.

Unlawful acts will occurwhenFinancing Agreement with Fiduciary Guarantee, in which the fiduciary guarantee certificate is with the creditor and the object of the fiduciary guarantee is on the debtor, and there is a default or breach of promise made by the debtor, so that the creditor feels disadvantaged and will have an impact on financing companies such as leasing, the parties The leasing company will try to take legal actions or actions to execute the object of the fiduciary guarantee, which will execute the fiduciary collateral.

Based on the description above, it is necessary for all parties to know that not only consumers need legal protection against agreements in financing goods and fiduciary guarantee certificates, but Financing Institutions or Leasing as companies that facilitate consumer financing need legal protection. MSo the problem formulated is:How are legal remedies for protectionconsumer financing institutions as a result ofa financing agreement with a fiduciary guarantee through a judicial review application at the constitutional court?

As for the purpose of this research, it can be seen from the background of the research where the purpose of this research is to find outlegal remedies for protectionconsumer financing institutions as a result ofa financing agreement with a fiduciary guarantee through a judicial review application at the constitutional court.

II. Research Method

The research method used to discuss this problem is normative juridical, normative juridical is a way of examining legal norms and rules in applicable laws and regulations (positive law), which is related to the topic of the problem being studied. based on laws and regulations related to the material discussed, namely Law Number 42 of 1999 concerning Fiduciary Guarantees, Presidential Regulation Number 9 of 2009 concerning Financing Institutions, Constitutional Court Decisions, namely;Constitutional Court Decision Number: 18/PUU-XVII/2019,Constitutional Court Decision Number:99/PUU-XVIII/2020,Constitutional Court Decision Number:2/PUU-XIX/2021, and other regulations related to this research.

III. Results and Discussion

3.1 Results

There are several legal remedies taken by consumer finance institutions such as leasing companies in Indonesia, these legal efforts seek to apply for a review of the Fiduciary Guarantee Law in the Constitutional Court, while the decision in question can be seen as follows:

a. Constitutional Court Decision Number: 18/PUU-XVII/2019

In the Decision of the Constitutional Court Number 18/PUU-XVII/2019 in relation to the executorial power of the fiduciary guarantee certificate. The existence of a provision that it is not permissible for the execution to be carried out alone, but must submit an application for execution to the District Court which basically has provided a balance in the legal position between the debtor and creditor and avoided the emergence of arbitrariness in the execution of the execution.

The execution of the fiduciary guarantee certificate through the district court is actually only as an alternative that can be done in the event that there is no agreement between the creditor and the debtor, both related to default and voluntary submission of the object of guarantee from the debtor to the creditor. Meanwhile, for debtors who have acknowledged a default and voluntarily surrendered the object of a fiduciary guarantee, the execution of the fiduciary guarantee can be carried out by the creditor or even the debtor himself.

Article 15 paragraph (2) of Law 42/1999 is contrary to the 1945 Constitution as long as it is interpreted back to Article 15 paragraph (2) of Law 42/1999 before it was decided in the Decision of the Constitutional Court Number 18/PUU-XVII/2019 which according to the Petitioner is precisely the existence of a Decision Court, the execution through the court has made it difficult for the Petitioners as collectors or finance companies, law enforcement officers, and consumers to carry out the execution of fiduciary guarantees. According to the Court,

Legal considerations of the Constitutional Court Decision Number 18/PUU-XVII/2019, the Court affirms that the arguments used as the basis for submitting an application in the a quo case include the long execution process, the cost of execution is greater than the income of fiduciary goods, and the potential loss of collateral objects. in the hands of the debtor, it is actually more of a concrete issue. This can happen in legal relations between private individuals which are very specific and complex. Within the limits of reasonable reasoning, these things cannot be accommodated by always aligning the norms of the law in question. Moreover, against norms that do not have constitutionality issues. Moreover, the norms requested by the Petitioners have been considered and decided in the Decision of the Constitutional Court Number 18/PUU-XVII/2019. Therefore, there is no legal reason and fundamentally different conditions for the Court to change its stance on the main issues related to the execution of fiduciary guarantee certificates.

b. Constitutional Court Decision Number:99/PUU-XVIII/2020

That the review of the proposed law is an article in Law Number 42 of 1999 concerning Fiduciary Guarantee which reads as follows: Article 15 paragraph (2) The Fiduciary Guarantee Certificate as referred to in paragraph (1) has the same executive power with a court decision that has obtained permanent legal force. Elucidation of Article 15 paragraph 2 In this provision, what is meant by "executory power" is that it can be directly exercised without going through a court and is final and binding on the parties to implement the decision.

Then interpreted through the Decision of the Constitutional Court Number 18/PUUXVII/2019 as follows:

"Stating Article 15 paragraph (2) of Law Number 42 of 1999 concerning Fiduciary Guarantees (State Gazette of the Republic of Indonesia of 1999 Number 168, Supplement to the State Gazette of the Republic of Indonesia Number 3889) as long as the phrase "executory power" and the phrase "the same as court decisions made permanent legal force" contrary to the 1945 Constitution of the Republic of Indonesia and has no binding legal force as long as it is not interpreted as "towards a fiduciary guarantee in which there is no agreement on breach of contract (default) and the debtor objected to voluntarily surrendering the object as a fiduciary guarantee, then all legal mechanisms and procedures in the execution of the Fiduciary Guarantee Certificate must be carried out and apply the same as the execution of court decisions that have permanent legal force";"Stating the Elucidation of Article 15 paragraph (2) of Law Number 42 of 1999 concerning Fiduciary Security (State Gazette of the Republic of Indonesia of 1999 Number 168, Supplement to the State Gazette of the Republic of Indonesia Number 3889) as long as the phrase "executory power" is contrary to the Constitution of the Republic of Indonesia Indonesia in 1945 and does not have binding legal force as long as it is not interpreted "with respect to fiduciary guarantees where there is no agreement on breach of contract and the debtor objected to voluntarily surrendering the object that is the fiduciary guarantee, then all legal mechanisms and procedures in the execution of the Fiduciary Guarantee Certificate must be carried out and applies in the same way as the execution of court decisions that have permanent legal force."

That in Constitutional Court Decision Number:Supplement to the State Gazette of the Republic of Indonesia Number 3889) to the extent that the phrase "executory power" and the phrase "equal to a court decision with permanent legal force" are contrary to the 1945 Constitution of the Republic of Indonesia and have no binding legal force as long as it is not interpreted "towards fiduciary guarantees that are not there is an agreement on breach of contract (default) and the debtor objected to voluntarily surrendering the object that is the fiduciary guarantee, then all legal mechanisms and procedures in the execution of the Fiduciary Guarantee Certificate must be carried out and apply the same as the execution of court decisions that have permanent legal force"; "Stating the Elucidation of Article 15 paragraph (2) of Law Number 42 of 1999 concerning Fiduciary Guarantees (State Gazette of the Republic of Indonesia of 1999 Number 168, Supplement to the State Gazette of the Republic of Indonesia Number 3889) insofar as the phrase "executory power" is contrary to the 1945 Constitution of the Republic of Indonesia and has no binding legal force as long as it is not interpreted "towards a fiduciary guarantee in which there is no agreement on breach of contract and the debtor objected to submitting it voluntarily. object that becomes a fiduciary guarantee, then all legal mechanisms and procedures in the execution of the Fiduciary Guarantee Certificate must be carried out and apply the same as the execution of court decisions that have permanent legal force.

c. Constitutional Court Decision Number:2/PUU-XIX/2021

The constitutional authority possessed by the Constitutional Court has also been stated in various laws and regulations, namely (i) Article 10 paragraph (1) letter a of Law Number 24 of 2003 concerning the Constitutional Court which has been amended by Law Number 8 of 2003. 2011; and (ii) Article 29 paragraph (1) letter a of Law Number 48 of 2009 concerning Judicial Power.

In Constitutional Court Decision Number: 2. errors in writing citations of articles that are the object of testing. The Petitioner in this case stated that the norm requested for review was Article 15 paragraph (2) of Law 42/1999 but what was quoted turned out to be the content of Article 15 paragraph (3) of Law 42/1999.

Furthermore, the Court has stated: “In addition to the error in the quotation above, the Petitioners' petition does not consistently state explicitly the object of the petition. In the section concerning the Petitioners' petition, it only mentions the review of Article 15 paragraph (2) and the Elucidation of Article 15 paragraph (2) of Law 42/1999, but on the legal standing and reasons for the petition/posita, the descriptions in both sections are related to the Constitutional Court Decision Number 18/ PUU-XVII/2019 which has interpreted Article 15 paragraph (2) and Elucidation of Article 15 paragraph (2) of Law 42/1999. As for the petitum section of the Petitioner's petition, the two objects of the petition alternatively are Article 15 paragraph (2) and the Elucidation of Article 15 paragraph (2) of Law 42/1999 before the Court's decision or Article 15 paragraph (2) and the Elucidation of Article 15 paragraph (2) Law 42/1999 which has been interpreted by the Constitutional Court in Decision Number 18/PUU-XVII/2019.

With this inconsistency, within the limits of reasonable reasoning, the object of the Petitioner's petition becomes unclear. Should the material contain paragraphs, articles and/or parts of the law that have been decided by the Court, the mention is added with the meaning as has been decided by the Constitutional Court. In the a quo petition as advised in the preliminary examination session, it should explicitly and consistently mention Article 15 paragraph (2) and Elucidation of Article 15 paragraph (2) of Law 42/1999 as interpreted by the Constitutional Court in the Constitutional Court Decision Number 18/PUU- XVII/2019.

3.2 Discussion

Fair legal protection as guaranteed by Article 28D paragraph (1) of the 1945 Constitution, due to the creation of a more severe position on one side where the creditor must take this case to court, while the debtor does not have to take this case to court.

According to Bodenheimer: "Justice requires that freedom, equality, and security be accorded to human beings to the greatest extent consistent with the common good." Recipients of fiduciary rights (creditors) may not carry out their own execution but must submit an application for execution to the district court. Thus, the constitutional rights of fiduciary givers (debtors) and fiduciary rights recipients (creditors) are protected in a balanced way.

The principle of legal certainty applies. The rule of law aims to ensure that legal certainty is realized in society. Law aims to realize legal certainty and high predictability, so that the dynamics of life together in society are 'predictable'. The principles contained in or related to the principle of legal certainty are:

a. The principles of legality, constitutionality, and the rule of law;
b. The principle of law stipulates various sets of regulations on how the government and its officials carry out government actions;
c. The non-retroactive principle of legislation, before binding the law, must first be promulgated and properly announced;
d. The principle of free, independent, impartial, and objective, rational, fair and human justice;
e. The principle of non-liquet, the judge may not reject the case because the law does not exist or is not clear;
f. Human rights must be formulated and protected by law or the Constitution.

The application of Equality (Similia Similius or Equality before the Law) where in a State of Law, the Government may not privilege certain people or groups of people, or discriminate against certain people or groups of people. This principle contains (a) the

guarantee of equality for all before the law and government, and (b) the availability of a mechanism to demand equal treatment for all citizens.

This is also a fundamental basis for the principle of democracy where everyone has the same rights and opportunities to participate in the government or carry out actions that give him the opportunity to achieve higher opportunities.

According to H. Azhary, SH. put forward 7 (seven) elements of the Indonesian legal state, namely:

1. Based on Pancasila;
2. Adhering to the constitutional system;
3. Population sovereignty;
4. Equality in law;
5. Judicial power that is free from other powers.
6. Legislation
7. MPR system.

Furthermore, Padmo Wahjono in his book entitled "Indonesia Based on Law" states that there are various opinions regarding the theoretical requirements that must be met by a rule of law. By comparing the existing formulations, Padmo Wahjono put forward 4 (four) main principles of the rule of law in Indonesia, namely:

a) Protect and respect human rights.
b) Democratic state institutional mechanisms
c) There is a legal order
d) There is an independent judiciary.

Based on the opinion of the legal experts above, it is known that one of the elements that must be fulfilled in a country is the existence of legal equality for its citizens in every sector of life indiscriminately. However, there is an inequality experienced by citizens, especially when they are the recipients of fiduciary rights (creditors) and fiduciary rights givers (debtors).

IV. Conclusion

From the 3 (three) Judgments the Constitutional Court from 2019, 2020, and 2021 is seenInequality in the provisions that require the recipient of fiduciary rights (creditors) to apply to the court regarding the execution of the object of fiduciary security in the event that the fiduciary rights giver (debtor) does not acknowledge a breach of contract (default), while the fiduciary grantor (debtor) does not need to bring a case related to court.

Fiduciary guarantees are security rights for movable objects, both tangible and intangible, as well as immovable objects, especially objects that cannot be encumbered with mortgage rights and which are specifically made to ensure the settlement of debts. (Article 1 paragraph (2) of the Fiduciary Guarantee Law). Unless otherwise agreed by the parties concerned, fiduciary guarantees consist of: (Article 10 of the Fiduciary Guarantee Law. Where it is stated that the proceeds of the object that are pledged as objects of fiduciary security, and insurance claims, in the event that the fiduciary object is insured.

So that the efforts of the financing institution or leasing company to obtain fair legal protection as guaranteed by Article 28D paragraph (1), due to the creation of a more severe position on one party where the creditor must take this case to court, while the debtor does not have to take this case to court. . It cannot be realized in the State of Indonesia, which is seen as contrary to the principle of erga omes where the authority of a decision issued by a

judicial institution lies in its binding power. The decision of the Constitutional Court (MK) is a decision that is not only binding on the parties (inter parties) but also must be obeyed by anyone (erga omnes). The principle of erga omes is reflected in the provision which states that the Constitutional Court's decision can be directly implemented without requiring the decision of an authorized official unless the laws and regulations provide otherwise. The above provisions reflect the binding legal force and due to the nature of the law publicly, they apply to anyone, not only to the litigants.

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