EXECUTION OF FIDUCIARY GUARANTEE ON THE MOTOR VEHICLE FINANCING AGREEMENT

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Submitted:March 2022, 04; Reviewed:October 2022, 25; Accepted: November 2022, 02
DOI: 10.2504/iplr.v3i2.2579

Abstract

Guarantee fiduciary this is basically for make it easy Public in get help credit, howeve iin implementation still arise various problem. Among them is in Thing execution guarantee fiduciary, where is the action arbitrary moment billing still bloom happen. Problem execution guarantee fiduciary return Becomes attention public post decision Court Constitution Number 2/PUU-XIX/2021 on August 31, 2021. There is an assumption that Decision Court Constitution the give convenience to company financing for execute guarantee fiduciary. Destination study this is (1) for analyze execution guarantee fiduciary in agreement financing vehicle motorized post Decision Court Constitution Number 2/PUU-XIX/2021, and (2) for analyze enforcement law to violations committed by debt collectors (debt collectors). Study this use method study law normative, with approach law. Fiduciary guarantee is basically conseptualized in order to deliver acess for public to gain credit. However in its implementation, it still arises various problem. Ome of the problem is its execution. This problem become public attention after the decision made trough court constitutionale Number 21 PUU-XXX/2021 on August 2021. There is an assumtion that the decision of constitutional court to company financing for fiduciary guarantee. The purpose of this study is: first analyzing execution in fiduciary guarantee in agreement financing motorized vehicle after the constitutional court decision Number 21 PUU-XXX/2021 was made. Second, this study also interded to analyze law enforcement to violations committed by debt collectors. This study use normative legal method consisting of legal approach.

Keywords: Agreement Financing, Execution, Guarantee Fiduciary

A. Introduction

Needs to procurement goods consumption is type the so called financing with financing consumers.1 Moment this, activity effort financing consumer (Consumer Finance) is growing so fast. That thing no miss from facilities offered companies that are involved in the financing consumer to society (consumers).2 It was also triggered with the atmosphere in Indonesia that looks increase the more many and become one reason happening traffic jam, where already Becomes a frequent phenomenon happen. Increase needs to tool transportation is everything that follows spike growth resident. The means of transportation in question is vehicle motorized wheel four (cars) and vehicles motorized wheel two (motorcycle).3 On life Public moment this, transportation is one very important thing. Transportation as if as the part that doesn't

inseparable from life.\(^4\) This thing utilized perpetrator effort for open business company financing.\(^5\) In the process of distribution credit to debtor, creditor always require existence guarantee credit must submitted by the debtor.\(^6\) Guarantee agency fiduciary no only could used in agreement credit to the bank, but also to the agreement financing consumer made Among debtor or consumers.\(^7\)

Guarantee fiduciary divert ownership on something thing made guarantee without existence displacement on mastery by physique object that \((\text{constitutum possessorium})\) therefore, the owner still could dominate object that, only just ownership by temporary switch to creditor until debtor complete obligation the debt.\(^8\) Guarantee fiduciary is guarantee tree in financing where are consumers usually whole related documents with ownership the item in question will held by party company financing consumers (creditors) to installment paid for by the consumer.\(^9\) Although fiduciary this existence is make it easy Public in get help credit because guaranteed goods permanent is at in power debtor, however in implementation still arise various problem.\(^10\)

One of them in Thing execution guarantee fiduciary because credit stuck, where are things this is problem frequent classic occur in the process of distribution credit.\(^11\) Due to tall ratio credit congested that, the perpetrators effort service finance to do all method for push credit stuck, one of them with To do billing by maximum to debtor. In order to obtain results maximum, perpetrator effort service finance often justify all method in To do billing to debtor. This thing of course will cause potency loss as well as appearance dispute with debtor.\(^12\) Practice showing many there is execution by forced to do debt collectors as debt collectors power creditor, hing the is something violation law and action oppose law if conducted without showing letter fiduciary. There are several action forced by debt collectors because threaten will kill petitioners, attack self personal, honor, dignity and worth.

There is Decision South Jakarta District Court Number 345/PDT.G/2018/ PN.Jkt.Sel on action that, which states that action receiver fiduciary as described above is deed Against the Law.\(^13\) Another case that happened is beatings perpetrated by a group debt collectors who commit beating against one member Indonesian National Army (TNI). Description short the thing is a TNI members who are currently help sick neighbor heart with bring it to house sick use vehicle personal suddenly intercepted and beaten by a group debt collector (\(\text{debt collector}\)) at the time want enter West Koja Toll Gate, North Jakarta on the day of Saturday 8 May 2021.\(^14\) Regardless from problem execution still Keep going happened, that execution guarantee


\(^{5}\)Milawatati T. Ruslan , \(\text{Op Cit}\) , p. 2.

\(^{6}\)Priyanto Hadiasputro , \(\text{Fiduciary Guarantee, Execution and Problems: After the Decision of the Constitutional Court Number 2/PUU-XIX/2021}\), ( South Jakarta : Adhi Sarana Nusantara , 2021 ), p. 1


\(^{9}\)Sunaryo , \(\text{Law on Financial Institutions}\), (Jakarta, Sinar Graphics , 2008) , p. 105.

\(^{10}\)Nurlela , \(\text{Debt With Guaranteed Goods Without Fiduciary Certificate of Legal Disability}\) , (Publishing Law, 2019) p. 2-3

\(^{11}\)Priyanto Hadiasputro and Ulya Yasmine Prisandani. \(\text{Billing Ethics: Upholding Morality and Professionalism}\) , ( South Jakarta : Adhi Sarana Nusantara , 2021 ) , p. 1

\(^{12}\)\(\text{Ibid.}\) p. 5


\(^{14}\)Priyanto Hadiasputro and Ulya Yasmine Prisandani . \(\text{Op-cit.}\) p. 99-100
fiduciary return becomes attention public after existence Decision Court Constitution Number 2/PUU-XIX/2021 on August 31, 2021. There is an assumption that Decision Court Constitution the give convenience to company financing for execute object guarantee fiduciary to debtors (consumers) who have proven default, which means company financing could To do execution without determination court though without volunteering debtor and neither there is deal default between the parties.

Besides Thing that, there is different view that is execution guarantee fiduciary could conducted if there is agreement of the parties in Thing injury promise, also above base debtor with volunteer deliver object guarantee. If not there is condition that then execution conducted with submit application to District Court. With so, decree court required if provision the no achieved.\(^{15}\) Use debt collectors (\textit{debt collectors}) are reasonable thing in the billing process credit/receivables, however must permanent obey ethics billing and regulations applicable legislation. When a debt collectors have harmful debtor with series violating action ethics and regulations legislation, of course action the \textit{debt collector} could processed by law.\(^{16}\) In To do billing credit traffic jam, \textit{debt collector} no seldom or often terrorize, intimidate, persecute, confiscate goods owned by debtor or threaten party guarantor accounts receivable.\(^{17}\)

Novelty in this study is to explain the execution of fiduciary guarantees in motor vehicle financing agreements after the Constitutional Court Decision Number 2/PUU-XIX/2021 and law enforcement against violations committed by debt collectors. In study this writer use method law normative, that is research consisting of on principles law, systematics law, level synchronization law, history law and comparison law.\(^{18}\) In study this, using approach law.

Based on background behind problem that has been described, author interested for To do research entitled “\textit{Execution Guarantee Fiduciary in Agreement Financing Vehicle Motorized Post Decision Court Constitution Number 2/PUU-XIX/202}”. Approach legislation conducted with study all regulation relevant laws and regulations with issue law.\(^{19}\) Approach Constitution will produce answer on problem law to execution guarantee fiduciary after existence decision Court Constitution Number 2/PUU-XIX/2021 and enforcement law to violations committed by debt collectors (\textit{debt collectors}). The data used in study this is secondary data consisting of from ingredient primary law, material law secondary and material law tertiary. This data collection conducted with library studies.

B. Discussion

1. Execution Guarantee Fiduciary in Agreement Financing Vehicle Motorized Post Decision Court Constitution Number 2/PUU-XIX/2021


Based on Article 29 of the Law Number 42 of 1999 concerning Guarantee Fiduciary, execution to object guarantee fiduciary could conducted with a number of way, namely:

1. Execution of the executorial title by the recipient fiduciary
2. Sale thing that becomes object guarantee fiduciary on power receiver fiduciary alone through auction general as well as take repayment the debt from results sales.


3. Sales below hand done based on deal giver fiduciary if with method thereby could obtained price highest that benefits the parties with conditions:
   a. Conducted after past 1 (one months) since it was notified by written by the Giver and/or Receiver fiduciary to interested parties.
   b. Announced at least in 2 (two) letters news spread in the area concerned.  

   Based on provision chapter that, then to debtors who have injury promise creditor can direct To do execution guarantee fiduciary. But in 2019 the couple husband wife Apriliani Dewi and Suri Agung Prabowo submit a judicial review to chapter the namely those contained in Article 15 paragraph (2) and paragraph (3) of the Law Number 42 of 1999 concerning Guarantee Fiduciary, and exit Decision Court Constitution Number 18/PUU-XVII/2019 on January 6, 2020. So that existence Decision Court Constitution Number 18/PUU-XVII/2019 then implementation execution guarantee fiduciary to debtors who are in default (injury promise) has change.  

   In principle execution direct still could conducted if Fulfill condition namely (1) in thing injury promise of the parties agreed will thing the and (2) object guarantee fiduciary handed over by voluntarily by the debtor.  

   That is there is Decision Court Constitution Number 18/PUU-XVII/2019 no cancel Constitution Guarantee Fiduciary however with condition must Fulfill condition as mentioned above.

b. **Execution Guarantee Fiduciary in Agreement Financing Vehicle Motorized Post Decision Court Constitution Number 2/PUU-XIX/2021**

   Test Constitution Number 42 of 1999 concerning Guarantee Fiduciary still conducted because considered contrary with the 1945 Constitution of the Republic of Indonesia at once harmful rights and/or authority constitutional applicant. Joshua Michael Djami one of employee at a company finance with position internal collector and has certified profession in the field of billing submit a material test. Test The Petitioner's Law apply in case this is Article 15 paragraph (2) and Elucidation of Article 15 paragraph (2). Basically provision Chapter the already once submitted a material test to Court Constitution on February 27 2019 and decided with Decision Court Constitution Number 18/PUU- XVII /2019 on January 6 2020. According to Applicant provision Chapter the has experience interpretation by the Court Constitution.

   Based on consideration law, court think that to strength executive certificate guarantee fiduciary on Decision Court Constitution Number 18/PUU-XVII/2019, that Applicant no understand by intact to provision no may to do execution alone is for prevent happening arbitrariness at the moment execution done. More further, according to Court, that determination Relevant District Court execution guarantee fiduciary, if no there is deal Among deep creditors and debtors. Thing injury promise as well as submission by volunteer object guarantee from debtor no exists, then determination State court can done. With so, thing the only character alternative.

   Based on consideration that, the Court Constitution in amar the verdict reject application Applicant for entirely, with so Decision Court Constitution Number 18/PUU-XVII/2019, stated valid and binding. Furthermore, against the arguments used base for submit petition for judicial review by the Petitioner, according to Court requested norm

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22 *Ibid.* p. 146

23 Priyanto Hadisaputro, *OpCit*, p. 86-87

25 Constitutional Court Decision Number 2/PUU-XIX/2021 , p. 83-84


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Applicant has considered and decided in Decision Court Constitution Number 18/PUU-XVII/2019.

Because of that, not yet there is reason fundamentally different laws and conditions for Court for change his stance to issue related subject with executive guarantee fiduciary. Basically Decision Court Constitution Number 2/PUU-XIX/2021 in line with Decision Court Constitution Number 18/PUU-XVII/2019, because no can determination injury promise determined by unilaterally by the creditor, but must conducted on agreement together. It means "injury" promise "(default ) must based on deal between the parties, namely Among creditors and debtors .

Based on the description above, then can be analyzed that basically Decision Court Constitution Number 2/PUU-XIX/2021 concerning Submission Constitution Number 42 of 1999 concerning Guarantee Fiduciary, only give affirmation to Decision Court Constitution Number 18/PUU-XVII/2019. Besides that Decision Court Neither does the new constitution have fundamental difference with decision previously because nature only confirmed. What the Court confirmed Constitution is execution guarantee fiduciary could requested to District Court by creditors is "alternative". What is meant alternative here is that execution guarantee fiduciary with submit application to Local District Court is is a choice if no achieved something deal default Among creditors and debtors as well as no there is submission by volunteer object guarantee fiduciary by the debtor. Because of it can observed that in Decision Court Constitution to meaning Article 15 paragraph (2) related equation certificate fiduciary with powerful judge's decision law fixed, then consequence from decision the is must more formerly held deal to injury promise (default) between giver fiduciary (debtor) and recipient fiduciary (creditor), as well as party giver fiduciary (debtor) must by volunteer deliver object guarantee fiduciary, then execution could implemented.

Based on consideration law Court, then writer give opinion that is first, top consideration law The court that stated must there is deal between the parties in Thing default, with thereby execution no can conducted itself by creditors, as well as Thing the with destination prevent arbitrariness moment execution no happen. On consideration Court that, author agree because if the parties feel right his has violated so could referring to the decision Court Constitution that. That is, Judgment this implication protected the rights of the parties, good debtor nor creditor. For example, if debtors (consumers) get treatment arbitrary moment execution guarantee fiduciary conducted or no in accordance with procedure or applicable rules so debtor could submit lawsuit to court. Likewise for party creditor (company) as receiver fiduciary, if for example debtor default and not want to deliver object guarantee fiduciary by like willing, then party creditor could submit application execution guarantee fiduciary to District Court. This thing could prevent happening arbitrariness and creation order, and relationships good between the parties.

Second, top consideration The court that stated that application execution to The District Court is alternative if deal between the parties no achieved in Thing injury promise as well as debtor no want to deliver object guarantee fiduciary, then on consideration Court that, author agree, because execution by direct still can carried out by creditors with provisions that have been required. With thereby execution direct still allow for conducted because no all debtor

27 Constitutional Court Decision Number 2/PUU-XIX/2021 , Loc Cit , p. 84
29 Priyanto Hadisaputro , Op Cit , p. 96.
ethical no good. Because that, according to writer Decision the already appropriate because confirm Decision before. Writer agree with what was stated by the Court, because Thing that is part from risk in operate something sometimes effort course not can creditor avoid.

Sometimes debtor ethical no good with no doing agreement as should, however no all debtor ethical no good so that Thing the can just no happen. However so, should be debtor doing agreement as should be with doing performance or his obligations with pay installment on term the time that has been set as has been agreed in agreement. Faith good of course Becomes important thing in implementation something agreement because faith good must there is by together at the moment make agreement, implement agreement, and in state compel for look for solutions that keep interest second split party. However reason the no means give right to party companies represented by debt collectors for To do execution guarantee fiduciary by arbitrary with To do execution guarantee fiduciary by force or with use violence. Though there is factor error or no existance faith good from party debtor in debt repayment, however no should debt collectors do less actions ethical and dangerous safety debtor.

In principle, no there is ban for party creditor for use service party third in doing debt collection. However like cases that occur, ethics often considered trivial even ruled out in progress billing. Actions without ethics actually will cause various risk for creditor, ok from side reputation nor violation law. Debt collectors are one of the profession work, so ethics, morality should permanent upheld tall in doing function billing.

2. Law Enforcement Against Violations Committed by Debt Collectors

Legislation is form from the law, where is the law the load the rules that must obeyed. In order to create justice and prosperity for society, then what becomes basics and guidelines for the country in operate his government is Pancasila which is state philosophy. Enforcement law always related with related values, ideas, attitudes and behaviors with law. Existence ethics often not heeded by debt collectors (debt collectors) in doing function billing to debtor. Even existence regulation legislation that should Becomes guidelines from every action debt collectors (debt collectors) are often violated. This thing proven with the more rampant offenses ethics by debt collectors on collecting debtor. That thing showing that part big has lost his morality at the time bill debtor. As form countermeasures offenses ethics carried out by debt collectors (debt collectors), enforcement optimal law is necessary done because of that, enforcement law the required for create order and obedience law specifically in activity debt collection. Enforcement law the could realized through gift strict sanctions good penalty administrative, sanction civil nor penalty criminal.

Enforcement law conducted to debt collector (debt collector) individual and/or company user service the debt collector. With so, then all related parties with use service internal and external debt collectors external, will more pay attention and care importance guard ethics in To do billing as well as obey regulation applicable legislation. As for the shape enforcement law that can conducted among others through gift sanctions administrative, civil, and criminal could spelled out as following:

a. Penalty Administrative

Giving penalty administrative is form punishment to debt collectors who have proven to do violations that are administrative. Giving penalty administrative this seen need if proven debt collector violate regulations set by the company. Giving penalty administrative could given in form warning, warning good by oral as well as writing, dismissal temporary nor dismissal. Financial Services Authority can even give penalty in the form of revocation permission and followed by participation in blacklist debt collector.

In principle, sanctions administrative no only could given to only debt collectors, however should also be given to companies that use service debt collectors remember the debt collector Act for interests and above name, as well as based on gift power from company that. Based on Thing this, proven company to do violation should also could given penalty administrative. Penalty to company the could given in form warning, reprimand, fine, termination temporary even revocation permission effort with consider heavy lightness the violation committed.

b. Penalty Civil

Giving penalty civil is form punishment to debt collectors who have proven To do deed oppose law at the time to do billing. Giving penalty civil more emphasize existence change make a loss consequence all action debt collectors who cause loss. Enforcement law through penalty civil could realized with applied provision Articles 1365-1367 of the Civil Code (KUHPerdata). Provision Chapter this need established optimally as form accountability by civil good debt collectors (debt collectors) and company giver power with give change make a loss to debtor consequence action the collector who doesn't ethical and cause loss for debtor.

c. Penalty Criminal

Penalty criminal is something punishment because result, cause is the case and the consequences is the law. Accountability criminal no can released from deed close crime relation with mistakes made. Giving penalty criminal is form punishment to debt collectors who have proven to do act criminal at the time operate Duty billing. As sanctions that have nature ultimate remedial, sanction criminal already should be give drug the last one able give effect deterrent to debt collectors (debt collectors). Debt collectors in principle is scope connection civil, however no could denied in level practical there is potency happening act criminal so that enforcement law crime is also considered need To use cope no crime committed the debt collector.

Related execution guarantee fiduciary, if execution the done on the road, then could said as act criminal confiscation. The action could snared Article 368 of the Criminal Code and if execution guarantee fiduciary conducted by force at home, then could said as act criminal theft as stated in Article 362 of the Criminal Code and if conducted with violence or threat violence so can snared with Article 365 paragraph (1) of the Criminal Code. For guarantee not there is again act crimes committed by debt collectors so perpetrator must processed until to level court and maximize verdict criminal prison to have effect deterrent to perpetrator.

C. CLOSING

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36 Ibid. p. 172-174.
41 Imaculata Sherly Mayasari, and Nynda Fatmawati Octarin, Op Cit, p. 150
1. Conclusion
a. Basically Decision Court Constitution Number 2/PUU-XIX/2021 only give affirmation as well as no have fundamental difference with decision previously that is Decision Court Constitution Number 18/PUU-XVII/2019. Provision existence determination from District Court against execution guarantee fiduciary in agreement financing vehicle motorized post Decision Court Constitution Number 2/PUU-XIX/2021 only character alternative. Determination could requested when no achieved something deal between the parties in thing injury promise and surrender by volunteer object guarantee fiduciary by debtor no there is. On the contrary determination no required when debtor want to deliver by volunteer object guarantee fiduciary.

b. Enforcement law to debt collector (debt collector) against violations committed, can given penalty in the form of penalty administrative , sanction civil nor penalty criminal. Giving penalty administrative could given in form warning, warning good by oral as well as writing, dismissal temporary nor dismissal. Penalty civil could given on deed receiver considered work deviate or violate regulation applicable laws as stated in Article 1365 of the Civil Code (KUHPerdata) which can be categorized as as deed oppose law, and giving penalty criminal could given to debt collectors who do action execution by force, where is the action this could said as act criminal confiscation, which can snared with Article 368 of the Criminal Code and if execution guarantee fiduciary conducted by force at home, then could said as act criminal theft as stated in Article 362 of the Criminal Code about theft or if conducted with violence or threat violence so can snared with Article 365 paragraph (1) of the Criminal Code.

2. Suggestion
To party creditor (financing company Consumers) for more selective in choose candidate debtors to avoid from ethical debtor no good, and to obey regulations in force at the time To do execution guarantee fiduciary in agreement financing vehicle motorized. This thing for avoid happening arbitrariness at the moment to do execution, so that implementation execution Guarantee fiduciary in agreement financing vehicle motorized can walk with good. To debt collectors (debt collectors), in order to keep respect tall morality and professionalism with no To do actions that can threaten safety debtor. That thing in skeleton the creation of an ethical debt collection process to debtor. To debtor (Consumer), in order to comply contents agreement with doing achievement at the time set. With doing agreement as should, will prevent happening execution guarantee fiduciary by force or action arbitrarily committed by debt collectors

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