



Legal Protection for Debtors for the Execution of Fiduciary Guarantee Objects (Case Study at PT. Summit Oto Finance Denpasar Branch)

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Abstract. The inclination of today's society to purchase items in installments multiple times makes consumer finance institutions the best option for sales and purchase agreements made in installments or regularly. How the execution of the object of fiduciary guarantees is carried out by the consumer finance company PT. Summit Oto Finance Denpasar Branch as a creditor and how is the legal protection for debtors for the execution of fiduciary guarantee objects at PT. Summit Oto Finance Denpasar Branch is the formulation of the problem in this study. This study employs an empirical method of legal research with a descriptive analytic approach, and its data sources include both primary and secondary data. This study reveals the execution of the goal of fiduciary assurances by consumer financing businesses acting as creditors. By granting a power of attorney to a third party (collector), the creditor executes the agreement between the debtor and creditor to withdraw the collateral. Legal protection for debtors for the implementation of fiduciary guarantee objects in consumer finance businesses, namely protection for consumers who face forced withdrawals on the highway. The government, through the decision of the Constitutional Court, has issued a new regulatory breakthrough that prohibits financing companies from forcibly withdrawing motorized vehicles from the highway or unilaterally unless there is a court decision and a mechanism that must be passed, the sale of fiduciary guarantee objects is conducted through a process of public auction and the debtor has the right to make the transfer by selling independently, and the debtor has the right to repurchase the object.

Keywords: Legal protection · Fiduciary Guarantee Execution · Financing Company

1 Introduction

The tendency of today's society to buy an item with payment in installments several times is not only done by the middle and upper economic class. For those whose economic conditions are middle to lower, this method is also considered very helpful in overcoming the need for the desired goods, so that the best way to overcome the problem for buyers who cannot afford to buy the goods needed in cash is through consumer financing institutions where the agreement buying and selling which payments are made in installments or periodically.

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In financing the purchase of a motor vehicle, the financing institution requires the existence of a guarantee, namely the motor vehicle itself as collateral for the loan. The financing institution as a creditor requires the existence of a guarantee from the debtor. The provision of credit and guarantees has a very close relationship. Creditors on the one hand, in order to guarantee the repayment of debts from the debtor, often do not want to give credit if there is no guarantee, other than having to be preceded by an agreement that underlies the birth of debts or obligations from the debtor to the creditor [1].

In practice that occurs in society, the emergence of a fiduciary guarantee binding agreement generally begins with a debt agreement between a creditor and a debtor where the fiduciary guarantee binding agreement is intended as an anticipatory measure for creditors if it turns out that the debtor cannot fulfill his obligations to pay off his debts as stated in the agreement and agreed in the debt agreement.

This academic paper proposes a study named Legal Protection Against Debtors on Execution of Fiduciary Guarantee Objects at Consumer Financing Company Pt. Summit Oto Finance Denpasar Branch based on the aforementioned context. The research aims to determine how the consumer finance company PT. Summit Oto Finance Denpasar branch as creditor carries out the execution of fiduciary guarantee objects and how the legal protection for debtors relates to the execution of fiduciary guarantee objects in consumer finance companies at PT. Summit Oto Finance Denpasar branch.

2 Method

This research employs empirical legal research, which is a legal research method with a true meaning and studies how law functions in society; hence, the empirical legal research method can be considered sociological legal research. It is possible to say that legal study is based on existing facts in a community, legal organization, or government agency.

This research utilizes both primary and secondary data sources. Data gathered directly from the first source in the field, namely respondents and informants, as well as the findings of field observations conducted at the PT. Summit Oto Finance Denpasar branch, constitute primary data.

Secondary data are data gathered by researchers through library research and documents, which are the products of the research and processing of others and are already available in the form of books or documents that are typically supplied by libraries or private property.

3 Result and Discussion

According to the results of interviews with Anton, employees of PT. Summit Oto Finance Denpasar branch, the process of granting credit has several stages, namely [2]:

a. Stage of credit application activities

The debtor submits an application for credit to the dealer/showroom, it must be submitted in writing and using the data format that has been determined using the application document from the credit giving institution, namely PT. Summit Auto Finance. Upon

the application, the crediting institution will conduct research whether the application is accepted or rejected.

b. Credit analysis and evaluation stage

Credit analysis and evaluation is stated in a predetermined format.

c. Stages of granting credit applications

Credit applications are made by credit employees based on analysis/evaluations made by credit analysts. The results of credit applications are a conclusion from the analysis and evaluation of credit applications presented by employees of the credit analysis department.

d. Credit decision stage

The granting of the credit decision must be carried out by an authorized official and must be made in writing and proven by giving a signature on the credit decision form. If the credit decision has been given, then the credit document is submitted to the credit administration to prepare other documents, such as:

- 1) Credit decision offer letter, this letter contains the structure and type of credit as well as credit terms and conditions that must be met by the customer.
- 2) Credit agreement document, the credit agreement contains the elements of the desired agreement as stated in the credit decision and contains the collateral provided and its binding.
- 3) Documents for disbursement, credit disbursement documents are binding on customers with consumer finance companies that regulate the rights and obligations of both parties.

Bad credit does not just happen suddenly, in most cases there are various symptoms of a decrease in the determination of payments every month. In addition, there is a delay in interest payments or credit installments that are due.

The factors causing bad credit according to Anton, an employee of PT. Summit Oto Finance can be categorized into 3 parts [4]:

1. Character of the debtor.
2. Economic conditions
3. Global crisis

According to the results of interviews with Anton Employees of PT. Summit Oto Finance that based on data obtained in 2020–2022 there were 600 debtors who defaulted on late payments, and there were units that were withdrawn by the creditor from the debtor's hands because they were unable to pay the installments, with an agreement between the debtor and creditor [5].

From the research results, a credit is categorized as bad at PT. Summit Oto Finance Denpasar branch delay in payment or negligence in the implementation of payments specified in the credit agreement. Therefore, if the debtor does not fulfill the obligation to pay the installments that have been determined in the amount in the agreement until the debt agreement ends, the debtor is said to have defaulted.

Delays on D-1 (after one day) are contacted by telephone, if there is no installment payment until after 8 days (past eight days) a warning letter (sumasi) is issued, until

after 21 days (past twenty one days) until past 91 days. There is a warning made by the finance party with a letter of warning or a summons through several stages [6]:

1. The first warning is the initial warning delivered by PT. Summit Oto Finance to debtors to always do as promised.
2. The second warning is essentially a warning delivered by PT. Summit Oto Finance to follow up on the first warning which has not been fulfilled by the debtor, this second warning is more assertive than the first warning, with the hope that the debtor will actually carry out his obligations. The third warning is the final warning by PT. Summit Oto Finance for debtors who still do not fulfill their obligations even though they have been warned beforehand. If the debtor still does not heed this last warning, the debtor's vehicle as collateral can be withdrawn based on a power of attorney to withdraw the object of the fiduciary guarantee that has been made previously.

The debtor is required to submit the object that is the subject of the fiduciary guarantee as part of the execution of the fiduciary guarantee. If the debtor fails to provide the fiduciary security at the moment of execution, the creditor has the authority to seize the item securing the obligation.

Any promise to carry out the execution of the object of the fiduciary guarantee in a way adverse to the aforementioned conditions is worthless, as is any promise to allow the fiduciary giver to own the object if the debtor breaches the promise. In the event that the result of the execution exceeds the value of the debtor's remaining debt, the creditor is required to return the excess to the debtor; but, if the result of the execution is insufficient to pay off the debt, the debtor remains liable [7]. If the fiduciary donor fails to present the item at the time of execution, the fiduciary recipient has the right to seize the object that is the subject of the fiduciary guarantee and may, if necessary, seek assistance from the authorities. Any promise to carry out the execution of objects that are the subject of a fiduciary security in a manner inconsistent with the aforementioned provisions is void [8].

Therefore, the premise is that the sale of objects subject to a Fiduciary Guarantee must be conducted through a public auction, in the hopes of obtaining the best price. However, if public auctions are not expected to provide the greatest price that is lucrative for either the Fiduciary Giver or the Fiduciary Recipient, it is conceivable to sell under the hands if both parties agree and the rules and circumstances for the sale's execution are met.

The process of executing the object of fiduciary security carried out at PT. Summit Auto Finance [9]:

1. Provide a power of attorney to a third party (collector) to withdraw the object of collateral with an agreement between the debtor and creditor;
2. After being withdrawn by the consumer finance company, it will then provide an opportunity to pay off the remaining debt for 3 days.

After the execution was carried out by PT. Summit Oto Finance and debtors are given a period of 3 (three) days to pay off their debts to finance companies. However, if the time given by the financing company to pay off the debt, the debtor does not pay off, the object

of the guarantee will be executed to pay off the debt through auction/sale. The creditor requests that the debtor surrender the collateral or it will be sold at auction. Then, prior to the auction, PT Summit Oto Finance sends a notification letter to the debtor regarding the auction. The results of the auction of the object of fiduciary guarantees are typically a number of debtors owing to finance businesses, specifically PT. Summit Oto Finance, and if the auction revenues exceed the debtor's debt, it will be given to the debtor.

The fiduciary giver commits a breach of contract; consequently, the fiduciary recipient executes, but the fiduciary giver refuses to voluntarily submit the object of collateral at the time of execution; if this refusal occurs, the law gives the fiduciary recipient the right, in his position and capacity as legal owner, to seize the object of fiduciary security from the hands of the fiduciary giver, in his position and capacity as economic owner [10].

According to Anton Employees of PT. Summit Oto Finance, there are several obstacles in the withdrawal of collateral objects. The obstacles in withdrawing collateral are [11]:

a. Object of Fiduciary Guarantee is Transferable

Transferred means that the object of the guarantee is sold in cash without any promises to a third party by the recipient of the facility, while the reasons for the recipient of the facility to sell the object of the guarantee, such as, need money urgently, because the object of the guarantee such as a motorbike is easily transferred, so it is quick to bring in money to pay for it. Cover the needs of the recipient of the facility.

b. The object of the collateral is pawned

The object of the fiduciary guarantee that is not found/is not in the hands of the debtor can occur because the debtor has mortgaged it to a third party. The process of pawning in question is an underhand pledge between the recipient of the guarantee and a third party with the object of the guarantee being the collateral item from the debtor financing agreement of PT. Summit Auto Finance.

c. Debtor Changed address, Address Unknown

The debtor changed address, the move was not informed to PT. Summit Auto Finance. Changing addresses without knowing where the new address is, it's very difficult to track the whereabouts of the collateral object to make a withdrawal.

d. The debtor refuses to submit the object of collateral

In this case, the debtor who has clearly breached his contract to the creditor does not want to hand over the object of collateral in his hands on the grounds that the debtor still has rights in the object of the guarantee in the financing agreement because he has paid part of the installment of the object of the guarantee.

e. Loss of Collateral Object

In the event that the fiduciary guarantee agreement is canceled because the fiduciary object is lost or destroyed, the main agreement for which the fiduciary guarantee is given remains intact. So that it does not change the position of the fiduciary giver as a debtor, it's just that now the creditor's position is as a concurrent creditor.

While the impact of the loss of fiduciary guarantees for the PT. Summit Oto Finance as a creditor is not having material guarantees that can be executed if the debtor defaults on the debt agreement (principal agreement).

After a credit is declared non-performing, it must be immediately notified to the debtor to find a solution. The execution of objects that are the object of a fiduciary guarantee can also be carried out through underhand sales, as long as there is an agreement between the fiduciary giver and the fiduciary recipient. Underhand sales can be carried out even though sales through public auctions have been carried out but are less profitable for the parties.

From the results of research conducted on debtors who experience bad credit and require settlement by way of hands/peace and deliberation between the creditor and the debtor is due to the good faith of the debtor to pay off his debt or by selling his own fiduciary collateral in this case the vehicle motorcycle.

This is intended so that one day the debtor needs another credit to buy a vehicle so that the loan can be obtained again. However, if the debtor does not settle the bad debt amicably and through deliberation, it is possible that the debtor has bad intentions to delay/do not pay off his credit, he will become an uncooperative debtor. When one day the debtor needs credit again, it is closed for him to get the opportunity to make loans to other finance.

From the results of interviews with PT. Summit Oto Finance, the conditions for selling under the hands of collateral objects that are bound by fiduciary guarantees in general are [13]:

- a. There must be a good relationship between the finance party and the debtor, there must be an agreement between the two parties regarding the sale to be made, which is usually stated in a written agreement made by both parties.
- b. There is notification to interested parties. So the way of selling under the hands that is conveyed is almost the same as ordinary buying and selling, it's just that in the sale under the hands of what is meant by the finance party determines, especially in terms of price, because there appears a form of selling under the hands of the creditor's own version.

Results of interviews with Anton, Employees of PT. Summit Oto Finance Denpasar branch, The sale of collateral objects by the company is carried out through an auction at the auction hall [14].

The auction can be carried out if the vehicle is a Fiduciary Guarantee item, and from the beginning the vehicle to be leased by the leasing company has been bound by a consumer financing agreement with the transfer of ownership rights on a fiduciary basis, if the leasing company does not register the agreement with the Fiduciary Registration Office, it makes a binding Fiduciary becomes imperfect so that it has no legal force and does not have preferred rights so that the leasing company becomes a concurrent creditor.

The Fiduciary Guarantee Law also controls the sale method of Fiduciary Guarantees. The Fiduciary Guarantee Law was enacted to satisfy legal requirements that can further stimulate national growth, to ensure legal certainty, and to be able to provide legal protection for interested parties. Specifically, by way of a public auction, whereby legal certainty will be achieved between the buyer and seller of the Fiduciary Guarantee items.

The legal concept of legal protection for consumers who experience forced withdrawals of motorized vehicles is a topic that must be researched, as there is a very close

relationship between legal developments, particularly in cases of forced withdrawals on the highway that frequently occur in communities.

In relation to the legal protection provided to consumers who experience forced withdrawals on the highway, the government has issued a new regulatory breakthrough through the Constitutional Court Decision Number 71/PUU-XIX/2021 that prohibits finance companies from forcibly withdrawing motorized vehicles from the highway. Additionally, the law prohibits unilateral confiscation unless there is a court order and there is a mechanism that must be passed, and the government has issued a suggestion to amend the law.

Withdrawal of collateral objects in the form of motorized cars by a finance business must comply with the terms and conditions stated in the law regarding fiduciary assurances and agreed upon by the parties in the motor vehicle consumer financing contract. If the lending firm persists in seizing the car, consequences up to and including the freezing and revocation of business licenses will be applied.

In a financing agreement, of course there are parties who have their respective rights and obligations. The rights and obligations of the parties are [15]:

- a. Rights and Obligations of Creditors, Creditor Rights include, among others, the Creditor has the right to withdraw a motorized vehicle financed by the debtor who is in default of the contents of the agreement that has been mutually agreed upon with the provision that the creditor has given a warning letter or SP to the debtor which is listed in the contents of the Standard Contract Agreement. Financing Between PT. Summit Oto Finance Denpasar Branch With debtors late in making installment payments, where in the first week of late installments they are given SP 1, if there is no response from the debtor, then the second week of delay the creditor will give SP 2 to the debtor, if the debtor does not make payments as well then the creditor will again give SP 3 to the debtor, then if the debtor who has been given SP 1, SP 2, and SP 3 the debtor still does not want to carry out his obligations to pay installments, then PT. Summit Oto Finance Denpasar Branch will authorize a 3rd party (collector) to make a vehicle withdrawal wherever the vehicle is located [16].

The creditor's obligations include, among others, the creditor is obliged to agree that the motorized vehicle ownership book (BPKB) and vehicle registration certificate (STNK) are registered in a name to be determined later by the debtor, provided that after completing the processing of the application letters, the debtor and the vehicle owner agree and therefore bind themselves to the creditor to submit and fiduciary guarantee on the BPKB of the vehicle until the completion of all obligations of the debtor and/or vehicle owner based on this agreement.

- b. Debtor Rights and Obligations Debtor Rights [17]:
 - 1) The debtor has the right to receive the vehicle unit that is the object of the financing company agreement in accordance with all the requirements contained in the financing agreement.
 - 2) The debtor has the right to receive proof of payment in the form of an official receipt dated and the official seal of PT. Summit Oto Finance every month during the installment payment period.
 - 3) The debtor has the right to receive a vehicle registration certificate when it is in the installment payment period and receive BPKB after the installment period has been

repaid by showing proof of payment, and after that the vehicle becomes the full property of the debtor.

The debtor's obligations are [18]:

- 1) The debtor is obliged to examine and understand the contents of the financing agreement contract that has been mutually agreed with the creditor.
- 2) The debtor is obliged to make vehicle installment payments in accordance with what has been agreed with the creditor.
- 3) The debtor is obliged to have good faith in carrying out all the achievements contained in the financing agreement.
- 4) The debtor is obliged to carry out maintenance and care for the vehicle that is the object of the agreement in financing.

According to the results of interviews with Anton, employees of PT. Summit Oto Finance Denpasar branch, the debtor has the right to apply for compensation, namely [19]:

The application for compensation can be submitted if there is an agreement between the debtor and the creditor, the compensation received by the debtor is in the form of the remaining proceeds from the sale of the collateral object through auction, the object of the guarantee is auctioned due to the negligence of the debtor for not fulfilling the obligation to pay installments in accordance with the provisions made. In the agreement the financing company PT. Summit Oto Finance Denpasar Branch If the object of collateral is included in the auction process, then before the tender is carried out the PT. Summit Oto Finance Denpasar Branch provides a notification letter to the debtor regarding the auction. The results of the auction of the object of fiduciary guarantees are generally a number of debtors owed to finance companies, namely PT. Summit Oto Finance Denpasar Branch and if the proceeds from the auction exceed the debtor's debt, it will be given to the debtor.

According to the results of interviews with Anton, employees of PT. Summit Oto Finance Denpasar branch, Execution at PT. Summit Oto Finance Denpasar Branch, the object of fiduciary guarantee is registered as a fiduciary and during execution does not use a request for execution from the district court, during execution only uses a power of attorney from the company for a 3rd party (Collector) to carry out voluntary executions [20].

4 Conclusion

On the basis of the discussion's outcomes, the following can be concluded:

1. Execution of the object of the fiduciary guarantee is carried out by the financing company as the creditor; previously, the financing company sent a summons or warning letter to the debtor regarding a delay in payment of up to 91 days; however, if there is no good faith from the debtor, the creditor executes it by granting the debtor power of attorney. With consent between the debtor and creditor, a 3rd person (collector) may withdraw the item of collateral. After PT Summit Oto Loan has carried out the execution, debtors are given three days to pay off their obligations to

finance businesses. However, if the debtor does not pay off the debt within the time allotted by the finance company, the object of the guarantee will be executed to pay off the debt through an auction/sale, and the creditor will ask the debtor to submit the object of the guarantee to the creditor or it will be auctioned off. PT Summit Oto Finance notifies the debtor through letter of the upcoming auction. If the auction revenues surpass the debtor's obligation, the surplus will be paid to the debtor.

2. Legal protection for the execution of the object of fiduciary guarantees at the consumer finance company PT. Summit Oto Finance Denpasar Branch, as a debtor, namely debtor legal protection given to consumers who experience forced withdrawals on government roads through the Constitutional Court's new regulatory breakthrough that prohibits financing companies from forced motorized vehicle withdrawals. The law prohibits unilateral confiscation absent a court order and a mechanism that must be passed, the sale of the fiduciary guarantee object is conducted through a public auction process and the debtor has the right to make the transfer by selling independently; the debtor has the right to seek compensation.

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