

Withdrawal of A Motor Fiduciary Guarantee Vehicle by Financing Companies against The Debtors Experienced Loss of Loans (Study of Decision Number : 50/Pdt.G/2018/PN.Plk)

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ABSTRACT: The results of the study indicate that the issue of motor vehicle withdrawals by finance companies is against debtors who experience bad credit with fiduciary guarantees. Decision Number: 50/Pdt.G/2018/PN.Plk. The defendant as of March 12, 2015 until this case has permanent legal force and until it is carried out, for example the calculation of arrears in installments is in arrears from March 20 to March 31, 2015 = 20 days, so $Rp\ 7,970,000 \times 0.2\ \% = 15,940 \times 20$ days totaling Rp 318,800,-, so that the Defendant's responsibility is to pay a late fine of 0.2% every day starting from March 12, 2015 until this case has permanent legal force and is implemented. Based on the evidence from the letters and statements of witnesses, it is evident by law that the Defendant is bound by a lease agreement with the Plaintiff and the Defendant has an obligation to pay the lease installments to the Plaintiff for 48 months from October 12, 2013 to September 12, 2017, but the Defendant only fulfilled the obligation to pay installments for 17 months, the last installment was in February 2015, from March 2015 until the maturity date of September 12, 2017 did not pay installments, so that the Defendant only partially fulfilled his achievements/obligations. The legal consequence is the Verstek Decision, because the Defendant was never present at the trial even though he had been legally and properly summoned. The Defendant paid the late fee based on the Lease Financing Agreement and the Plaintiff's lawsuit was registered at the Palangka Raya District Court until the decision was final and binding.

Keywords: motor vehicle withdrawal, financing, debtor, bad credit, fiduciary guarantee

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INTRODUCTION

A forced withdrawal by ACC Finance's debt collector as a creditor is a violation of the law and is considered an unlawful act because it is carried out without showing a fiduciary certificate (Prabowo & Salam, 2021). This is 130/PMK.010/2012 and the provisions of Article 30 of Law Number 42 of 1999 concerning Fiduciary Guarantees which state that the fiduciary recipient can request assistance from the authorities if the fiduciary giver does not submit the object of the fiduciary guarantee. The authorities in question are the police.

Even though these regulations have been in place, many similar cases still occur, and the implementation of the recall of motorized vehicles is not in accordance with the existing regulations (Enel Reza Hafidzan, Ery Agus Priyono, 2015). This situation clearly provides discomfort and a sense of injustice to the debtor, and from a legal point of view the act of forcible withdrawal is an unlawful act that should not be allowed to continue (Khariati, 2020).

Therefore, this study aims to answer the question: what is the problem with the withdrawal of motor vehicle fiduciary guarantees by finance companies against debtors who experience bad credit Decision Number: 50/Pdt.G/2018/PN.Plk? what is the consideration of the panel of judges on the withdrawal of motor vehicle fiduciary guarantees by finance companies against debtors who experience bad credit? Decision Number: 50/Pdt.G/2018/PN.Plk? what are the legal consequences in withdrawing motor vehicle fiduciary guarantees by finance companies against debtors who experience bad credit? Decision Number: 50/Pdt.G/2018/PN.Plk?

THEORETICAL REVIEW

Fiduciary is the transfer of ownership rights to 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, based on Law Number 42 of 1999 concerning Fiduciary Guarantees (Usman, 2021). Fiduciary comes from the Rowawi language, namely *fides* which means trust. The term fiduciary is also taken from the Dutch language, *Fiduciare Eigendom Overdracht* and English, *Fiduciary Transfer of Ownership* which means the transfer of property rights based on trust (Zaman, 2020; Febriyanti, 2021)

In Law Number 42 of 1999 concerning Fiduciary Guarantees, there are parties who are referred to as Fiduciary Givers and Fiduciary Recipients with the following meanings: First, fiduciary Giver is an individual or corporation that owns the object that is the object of the Fiduciary Guarantee. Second, fiduciary Recipients are individuals or corporations that have receivables whose payment is guaranteed by Fiduciary Guarantees.

In fiduciary practice, the owner of the property only hands over ownership to another party, but he still owns the ownership. Therefore, there is also the term Fiduciary Guarantee where the transfer of ownership is also accompanied by the provision of guarantees to other parties. Fiduciary Guarantee is a guarantee right on movable objects, both tangible and intangible and immovable objects, especially buildings that cannot be encumbered with

mortgage rights, based on Law Number 42 of 1999 concerning Fiduciary Guarantees (K Siwi, 2017; Kandou et al., 2021).

METHODOLOGY

The type of research in this legal research is normative or doctrinal legal research. Terry Hutchinson as quoted by Cahyana (2020) defines that doctrinal legal research is: Doctrinal research is research that provides a systematic explanation of the rules governing a particular legal category, analyzes the relationship between regulations, explains areas of difficulty and may predict future development.

The nature of this research is analytical descriptive, namely: "A study that seeks to provide a comprehensive, in-depth picture of a situation or phenomenon under study" (Raco, 2010; Hasudungan, 2021). The nature of this research is descriptive because the results obtained from this study are expected to provide an overview of the juridical analysis of motor vehicle withdrawals by finance companies against debtors who experience bad loans with fiduciary guarantees. Decision Number: 50/Pdt.G/2018/PN.Plk.

RESULTS AND DISCUSSION

A. Situation of Withdrawal of Motorized Vehicles by Financing Companies Against Debtors Who Have Bad Credit With Fiduciary Guarantees Decision Number: 50/Pdt.G/2018/PN.Plk

Since March 2015 the Defendant has stopped paying monthly installments to the Plaintiff as long as the Defendant has received a profit of Rp. If this lawsuit is registered at the Registrar's Office of the Palangka Raya District Court, the Defendant's profit is not less than 36 months x Rp is a temporary advantage because if the Tanky Mobil Unit remains in the control of the Defendant and is still operated as long as the legal process is still ongoing and or before this case has permanent legal force (In-crach), then the Defendant's profit is still possible to continue to grow, but on the contrary, it is experienced Plaintiff, where is Terg every month, the Plaintiff calculates the profit, the Plaintiff calculates the loss every month.

Because the Defendant's actions are clearly in breach of contract, the Plaintiff has repeatedly reprimanded, reminded, made verbal and written warning letters but all efforts of the Plaintiff have always been ignored by the Defendant, and every time the Plaintiff meets the Defendant at home or at his office with the aim of withdrawing the car unit. Tangky, the Plaintiff always received threats from the Defendant.

Because the Defendant's good etiquette has greatly deviated from the Lease Financing Agreement that had been agreed upon and it was clearly a breach of contract and brought losses to the Plaintiff, among others, the Plaintiff did not get a monthly installment of the Tanky Car and could not control the Tanky Car which belonged to the Plaintiff, then the Defendant should have sentenced to hand over the Tanky Car Unit in good condition to the Plaintiff. Because the Defendant has clearly broken his promise by not paying monthly installments of Rp. 7,970,000,- since March 2015, it is reasonable and appropriate if the Defendant is sentenced to pay compensation

of Rp. 7,970,000,- every month which is paid in lump sum to the Plaintiff, starting from March 2015 until this case has permanent legal force and is implemented.

Based on the Plaintiff's agreement with the Defendant as stated in the Right to Cultivate Financing Agreement No: 08091320404 dated 12 September 2013 in the terms of the Lease Agreement Article 4 (LATE FINE) letter (a) it is explained: "for any delay in payment of lease installments that must be paid by the Lessee to the Lessor, the Lessee is subject to a late penalty of 0.2% (Zero Point Two Percent) per day of each amount of money to be paid from the number of overdue installments which is calculated daily starting from the date the payment is due until the payment is due. the date the payment is made to the Lessor". This late penalty must also be the responsibility of the Defendant as of March 12, 2015 until this case has permanent legal force and until it is carried out, for example the calculation of arrears in installments is in arrears from March 20 to March 31, 2015 = 20 days, so Rp 7,970. 000 x 0.2 % = 15,940 x 20 days totaling Rp 318,800,- (Three Hundred Eighteen Thousand Eight hundred Rupiah), so that the Defendant's responsibility is to pay a late fine of 0.2% every day from March 12, 2015 until This case has permanent legal force and is implemented.

B. Considerations of the Panel of Judges Against Withdrawal of Motorized Vehicles by Financing Companies Against Debtors Who Have Bad Credit With Fiduciary Guarantees Decision Number: 50/Pdt.G/2018/PN.Plk

The consideration of the Panel of Judges should be in petitum no. 4 to no. 8 if:

1. Against the Plaintiff's petition number 4 (four) which asks the Defendant to pay installments of Rp. 7,970,000,- (seven million nine hundred and seventy thousand rupiahs) at once to the Plaintiffs starting from March 2015 based on the Lease Financing Agreement Number 080913200404 dated September 12, 2013 and pay installments of Rp. 7,970,000,- (seven million nine hundred seventy thousand rupiahs) at once to the Plaintiff as of March 2015 based on the Lease Financing Agreement Number 080913200405 dated September 12, 2013 until this case has permanent legal force and is executed, according to the Panel of Judges less relevant or excessive if each installment must be paid by the Defendant from March 2015 until this case has permanent legal force and is implemented.
due to the due date of payment of each installment in September 2017, wherein the Defendant has paid the installments of the two lease financing agreements each 17 (seventeen) times of the total installment payment obligations of 48 times each. Therefore, the Defendant is obliged to pay the shortfall in installments at once in 31 (thirty one) installments, thus the Plaintiff's petition number 4 (four) must be partially granted as long as it punishes the Defendant so that the Defendant pays an installment of Rp. 7,970,000,- (seven million nine hundred and seventy thousand rupiahs) at once to the Plaintiffs starting from March 2015 to September 2017 based on the Lease Financing Agreement Number 080913200404 dated 12 September 2013 and pay installments of Rp. 7,970,000,- (seven million nine hundred

and seventy thousand rupiahs) at once to the Plaintiffs starting from March 2015 to September 2017 based on the Lease Financing Agreement Number 080913200405 dated September 12, 2013. The material of the claim of the Plaintiff's Attorney is default/broken promise, in the event that an engagement is not fulfilled or only part of the performance is fulfilled, the defendant must be punished to replace costs, losses and interest in general for the losses that have been suffered by the Plaintiff and the profits that could have been enjoyed by calculation since the Defendant failed to fulfill his obligations. to the Plaintiff.

2. Against Plaintiff's Petition number 5 (five) regarding late fees calculated every day of late/due payment of monthly installments starting from March 12, 2015 for each lease financing agreement, the Panel of Judges considers it irrelevant regarding the timing of the late fine comes into force, the Panel of Judges refers to article 1250 of the Civil Code jo. State Gazette/Sttb No.22/1948 is 6% (six percent) per month of the total monthly installments calculated from the time the Plaintiff's lawsuit is registered in the Court until the decision is final and binding. Therefore, the Panel of Judges grants petitum number 5 (five) in part, as long as it punishes the Defendant to pay a late fee in the aquo case based on the Lease Financing Agreement Number 080913200404 dated 12 September 2013 and the Lease Financing Agreement Number 080913200405 dated 12 September 2013 respectively. % (six percent) per month x total monthly installments of Rp. 7,970,000,- (seven million nine hundred and seventy thousand rupiah) in the amount of Rp. 478,200,- (four hundred seventy eight thousand two hundred rupiah) every month since the Plaintiff's lawsuit is registered at the Palangka Raya District Court until the decision is final and binding.
3. Against the Plaintiff's petitum number 6 (six) regarding forced money (dwangsom), because forced money (dwangsom) can only be carried out for a penalty to perform an achievement, while in the aquo case the Defendant is sentenced to pay an amount of money not to perform an achievement, then This petition must be declared rejected (Indrawati, 2009).
4. Against the Plaintiff's petition number 7 (seven) regarding the confiscation of collateral in this case. The Panel of Judges did not carry out the confiscation of bail because the Plaintiff and/or their Legal Counsel did not apply for a confiscation of bail and the Panel of Judges considered that there was no reason to place a confiscation of collateral in this case, thus this petition has no legal basis and must be declared rejected (Hadisantoso, 2018).
5. Against the Plaintiff's petition number 8 (eight) regarding the decision, the decision can be carried out first/immediately (uit voorbar bij voerraad) even though there is a verzet, appeal or cassation, because it does not fulfill the provisions of Article 191 RBg/ Article 180 HIR and SEMA No. 3 of 2000 jo. SEMA No. 4 of 2001, then the legal reason must be declared rejected.
6. Sentencing the Defendant to pay a late fee based on the Lease Financing Agreement Number 080913200404 dated 12 September 2013 and the Lease

Financing Agreement Number 080913200405 dated 12 September 2013 respectively 6% (six percent) per month x total monthly installments of Rp. 7,970,000,- (seven million nine hundred and seventy thousand rupiah) in the amount of Rp. 478,200,- (four hundred seventy eight thousand two hundred rupiah) every month, since the Plaintiff's lawsuit is registered at the Palangka Raya District Court until the decision is final and binding.

7. Sentencing the Defendant to pay the costs incurred in this case amounting to Rp.391,000, - (three hundred and ninety-one thousand rupiah).
8. Reject the Plaintiff's claim for other than and the rest.

C. The Legal Consequences In Withdrawal Of Motor Vehicles By Financing Companies To Debtors Who Have Bad Credit With Fiduciary Guarantees Decision Number: 50/Pdt.G/2018/PN.Plk

1. Legal consequences for the Plaintiff

The Defendant has never been present in court even though he has been legally and properly summoned, and has not sent another person to represent him, then the Panel of Judges considers that the Defendant will not exercise his rights in this case and based on article 149 Rbg/78 Rv/125 paragraph (1) HIR , the Panel of Judges continued to examine this case without the presence of the Defendant, then the Panel of Judges continued this examination by reading the Plaintiff's Claim Letter and apparently the contents were retained by the Plaintiff (Slamet, 2013).

The Defendant's good etiquette can no longer be expected to pay monthly installments, so in 2016, the Plaintiff requested in good terms or family that the Tank Car Unit was handed over to the Plaintiff, but the Defendant always refused and even received threats, and entered 2017 s /d This lawsuit was filed, the Plaintiff always looks for the Tank Car Unit in the Defendant's place and outside the City of Palangka Raya, it turns out that the car's whereabouts are no longer known.

2. Legal consequences for the Defendant

The Defendant paid installments of 7,970,000,- (seven million nine hundred and seventy thousand rupiah) at once to the Plaintiff from March 2015 to September 2017 based on the Lease Financing Agreement Number 080913200404 dated September 12, 2013 and paid installments of Rp. 7,970,000,-(seven million nine hundred and seventy thousand rupiahs) at once to the Plaintiff from March 2015 to September 2017 based on the Lease Financing Agreement Number 080913200405 dated 12 September 2013. And the Defendant to pay the costs incurred in this case amounting to Rp.391,000,-(three hundred and ninety-one thousand rupiah).

CONCLUSIONS AND RECOMMENDATIONS

CONCLUSIONS

There is a motor vehicle withdrawal case by a finance company against debtors who experience bad credit with fiduciary guarantees. Decision Number: 50/Pdt.G/2018/PN.Plk. The defendant as of March 12, 2015 until this case has permanent legal force and until it is carried out, for example the calculation of arrears in installments is in arrears from March 20 to March 31, 2015 = 20 days, so

Rp 7,970,000 x 0.2 % = 15,940 x 20 days total IDR 318,800,- . So that the Defendant's responsibility is to pay a late fee of 0.2% every day starting from March 12, 2015 until this case has permanent legal force and is implemented. For the Defendant's actions in violating the Lease Agreement by not keeping the promise to pay monthly installments, the Plaintiff has repeatedly reminded the Defendant through oral or written warnings to carry out his obligations every month, but the Defendant always refuses to pay and even if found at the Defendant's home or office , the Plaintiff actually received threats.

The consideration of the panel of judges on the withdrawal of motorized vehicles by finance companies against debtors who experience bad credit with fiduciary guarantees Decision Number: 50/Pdt.G/2018/PN.Plk. namely: based on the evidence from the letters and statements of witnesses, it is evident by law that the Defendant is bound by a lease agreement with the Plaintiff and the Defendant has an obligation to pay the lease installments to the Plaintiff for 48 months from October 12, 2013 to September 12, 2017, however The Defendant only fulfilled the obligation to pay installments for 17 months, the last installment was in February 2015, from March 2015 until the maturity date of September 12, 2017 did not pay installments, so that the Defendant only fulfilled part of the achievements/obligations, where the legal obligation to pay the lease installments to the Plaintiff only partially has not been fully carried out by the Defendant even though the deadline promised by the Defendant has been exceeded and the Plaintiff has given warning letters and made repeated collections, but the Defendant did not pay the installments and did not also submit capital goods as the object of the lease agreement business in the form of 2 mitsubishi tank trucks, thus the Defendant is declared to have committed Default or Default.

Therefore the Plaintiff's Petition number 2 has legal grounds and must be granted. The legal consequence in the withdrawal of a motor vehicle by a finance company against a debtor experiencing bad credit with fiduciary guarantees is that the Defendant has never been present in court even though he has been legally and properly summoned, nor has he sent another person to represent him, then the Panel of Judges considers that the Defendant will not use In this case and based on article 149 Rbg/78 Rv/125 paragraph (1) HIR, the Panel of Judges continued to examine this case without the presence of the Defendant, then the Panel of Judges continued this examination by reading the Plaintiff's Letter of Claim and it turned out that the contents were retained by the Plaintiff. The Defendant's good etiquette can no longer be expected to pay monthly installments, so in 2016, the Plaintiff requested in a friendly manner or in a friendly manner that the Tank Car Unit be handed over to the Plaintiff.

However, the Defendant always refused and even always received threats, and entering 2017 until this lawsuit was filed, the Plaintiff always looked for the Tank Car Unit at the Defendant's place and outside the City of Palangka Raya, it turns out that the car's whereabouts are no longer known. The Defendant paid installments of 7,970,000,- (seven million nine hundred and seventy thousand rupiah) at once to the Plaintiff from March 2015 to September 2017 based on the Lease Financing Agreement Number 080913200404 dated September 12, 2013 and paid installments of Rp. 7,970,000,- (seven million nine hundred and seventy

thousand rupiahs) at once to the Plaintiff from March 2015 to September 2017 based on the Lease Financing Agreement Number 080913200405 dated 12 September 2013. And the Defendant to pay the costs incurred in this case amounting to Rp.391,000, - (three hundred and ninety-one thousand rupiah).

RECOMMENDATIONS

For the settlement of bad credit due to default by the debtor in order to get fair results for both parties, then for the debtor if the ability to pay off the principal installments of the debt is not sufficient, then the debtor should return the four-wheeled motor vehicle as a financing item. However, if the debtor's ability to pay off is adequate, the debtor is required to pay the principal installments according to the time specified in the consumer financing agreement. Because of the credit agreement, and if the interest earned is too large, you can apply for an interest reduction request.

For creditors, namely consumer finance companies, must further increase preventive efforts that can minimize the incidence of default. Consumer finance companies in accepting consumer financing applications must be more careful or more thorough. The 5C (Collateral) aspect must always be prioritized if you want to accept consumer financing applications. This includes accuracy when conducting interviews with debtors, surveying the debtor's residence, calculating installments. This aspect is used to minimize bad loans due to default by debtors.

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