



Legal protection against debtors from forced withdrawal of motorcycles by creditors under law no. 42 of 1999

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ABSTRACT

A fiduciary guarantee certificate or deed is required for the execution or withdrawal of cars, according to Law Number 42 of 1999 respecting Fiduciary Guarantees. The question that this essay seeks to answer is: How are fiduciary guarantees governed in Indonesia? What factors lead to creditors forcibly retaking motorcycles? Regarding PT. Adira Dinamika Multifinance Branch 0601 Medan Graha Niaga's Law No. 42 of 1999 concerning Fiduciary Guarantees, how well-protected are debtors against attempts to forcibly withdraw motorized vehicles? This study employs a descriptive interviewing method in conjunction with an empirical research design. Primary, secondary, and tertiary legal sources are used as secondary data in qualitative research, and the research site is the PT office. Branch 0601 of Adira Dinamika Multifinance, Medan Graha Niaga The Fiduciary Guarantee Law, the Housing and Settlement Law, and the Copyright Law all regulate fiduciary guarantees in Indonesia. Aspects of Debtor Default, The creditor may withdraw the object of fiduciary collateral in order to transfer fiduciary objects and prevent them from being freely surrendered. The inference drawn is that fiduciary promises must underpin all commercial agreements in order to provide debtors with fair and transparent legal certainty. The government and police have been advised to keep offering debtors legal protection when it comes to carrying out fiduciary guarantees.

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1. Introduction

Driving is a mode of transportation, and driving is a vital part of people's life these days as they go about their daily lives and perform their jobs. The two-wheeled vehicles known as motorbikes and the four-wheeled vehicles known as cars are the forms of transportation that are under consideration. The expense of life will always go up for someone who uses transportation. Purchasing products on credit or in installments is the most convenient way for someone to obtain transportation. The public favors and chooses to purchase products on credit

for a number of reasons, including the fact that it is a simple and quick process without requiring a significant down payment or other upfront fees (Ruslan, 2021).

When buying products on credit, the phrases lender and borrower must be stated. In this instance, the party making the loan is referred to as the creditor, while the borrower is referred to as the client or debtor. As a guarantee of protected consumer security, every business offering services or services in exchange for money or credit has to be registered with the Financial Services Authority. PT. Adira Dinamika Multi Finance is one of the financing companies that is registered with the OJK and offers services for credit purchases of goods (Indayatun, 2020).

A contract can be made between two or more parties by an act known as an agreement, as stated in Article 1313 of the Civil Code. To put it briefly, an agreement is a legal document that, when executed by the parties, creates, modifies, or ends a legal relationship or set of rights. The arrangement has legal ramifications as a result. When using contracts or agreements to create a business, all parties must take the initiative to come to a mutually advantageous agreement that permits them to split the anticipated profits. Contract-based legal interactions don't always accomplish their objectives. When a debtor or creditor doesn't pay their debts, this can occur (Ramdhani, 2021).

Based on the background above, researchers are interested in conducting a review of the protection concept of purchasing motorized vehicles using PT licensing services. Adira Dinamika Multifinance Branch 0601 Medan Graha Niaga.

2. Method

An empirical legal research method is used in this research, which analyzes and studies the application of legal regulations that directly impact society (Sindra, 2020). The data gathering method utilized was derived from Branch 0601 of PT. Adira Dinamika Multifinance in Medan Graha Niaga. Direct data collected from the field as a research data source constitutes the primary data used in this study. Because the goal of field research is not fresh discoveries but rather the researcher's capacity to solve a specific problem, this kind of research emphasizes formal rather than material components more. The source of the information is Pringadi, who serves as a surveyor at PT. Adira Dinamika Multifinance Branch 0601 Medan Graha Niaga. Pringadi, who serves as a Surveyor at PT. Adira Dinamika Multifinance Branch 0601 Medan Graha Niaga, conducted the research at PT. Adira Dinamika Multifinance Branch 0601. The method used for data analysis in this research is collecting data from sources. Meanwhile, data analysis was carried out qualitatively, meaning that natural objects were studied without the intervention of researchers, and the presence of researchers did not have much influence on the dynamics of these objects. Therefore, the theories used are temporary and based on the observations of researchers in the field.

3. Analysis and Results

Fiduciary guarantees aim to facilitate financial support for members of the public at all levels, particularly when it comes to repaying products that have been acquired on credit. According to the terms of the Regulation of the Minister of Finance of the Republic of Indonesia Number 130/PMK.010/2012, the fiduciary registration office must provide a fiduciary guarantee certificate and submit it to the finance company before the finance company removes the fiduciary guarantee from the purchased vehicle. The fiduciary expects the fiduciary giver to transfer ownership of the goods after the obligation is paid off. However, the fiduciary recipient is certain that the fiduciary donor won't misuse the promise he is in possession of. Fiduciary guarantees are governed by Law Number 42 of 1999 covering fiduciary guarantees in Indonesia. Article 1 Paragraph 1 defines fiduciary as "the transfer of ownership rights to an object based on trust, provided that the object whose ownership rights remain under the control of the owner of the object"(Usman, 2021).

Law Number 42 of 1999 concerning Fiduciary Guarantees, which defines fiduciary and

fiduciary guarantees, has, as previously mentioned, led to the development of fiduciary collateral objects, which include immovable objects, such as buildings, that are not subject to mortgage rights in addition to movable objects. Regardless of the nature of property, when a building or piece of land is used as collateral for a loan owing to the bank, a collateral institution determines a fiduciary guarantee. The Law of the Republic of Indonesia Number 42 of 1999 about Fiduciary Guarantees specifies that a fiduciary is a material guarantee institution. If a fiduciary engagement follows a significant engagement, such a debt and receivable engagement, it is known as an appraisal engagement (Ukus, 2023).

Collateral for fiduciary debt cannot be utilized indefinitely; eventually, it will be taken away for any number of reasons. The guarantee agreement and the debt and receivables agreement terminate because there is no longer any debt to be guaranteed. The Civil Code does not specifically address the form of agreement known as an anonymous contract (*onbenoemde overeenkomst*). As a result, this agreement is known as an anonymous agreement (*onbenoemde overeenkomst*) (Khairina & Bustamam, 2019).

On the other hand, the Civil Code's general engagement provisions govern fiduciary arrangements. This is consistent with one of the tenets of agreement, which is consensuality – that is, the notion that an agreement starts with a consensus. Fiduciary assurances are included in the 1992 Housing and Settlement Law's Article 4. This law clarifies that a homeowner's property may be pledged as security for debt in line with Article 15 paragraph (1). In addition, paragraph (2) letter (a) establishes that the original deed executed by a notary public in compliance with legal requirements serves as evidence of the house's fulfillment of its fiduciary duties (Kosali, 2020).

Mortgage rights meant for non-land products are referred to as fiduciary guarantees, per Housing and Settlement Law Regulation Number 4 of 1992. Therefore, fiduciary guarantees relate to residences, not land rights. The status of land rights is not explained by this law. This demonstrates the application of horizontal principles that permit housing tax exemptions under the Housing and Settlement Law. Fiduciary guarantees serve as a means of safeguarding movable assets as well as establishing criteria for individuals who place duties on property that does not belong to them, since this law incorporates the idea of horizontal separation (Frankel, 1983). However, due to Law Number 4 of 1992, as revised by Law of the Republic of Indonesia Number 1 of 2011, State Gazette of the Republic of Indonesia Number 7 concerning Housing and Settlement Areas, the beneficiary of the guarantee, as the preferred party, has not gained legal certainty. Fiduciary Guarantee pursuant to 2014's Copyright Law Number 28. Thanks to the Law of the Republic of Indonesia Number 28 of 2014 and State Gazette of the Republic of Indonesia Number 266 governing copyright (also known as UUHC), which specifically regulate copyright as an object of fiduciary assurance, artists can now obtain loans from banks by promising their work. The primary aim of Law Number 42 of 1999, also referred to as Law Number 42 of 1999, is to establish a legal basis for the regulation of fiduciary pledges within Indonesia's written legal system. The duration and scope of a person's fiduciary rights are made clear by this statute (Ferindoni, 2021).

According to Article 36 of the Fiduciary Guarantee Law, a fiduciary holder who transfers, entrusts, or rents out goods that have become fiduciary collateral as intended in Article 23 paragraph (2) without first confirming or obtaining written approval from the fiduciary recipient may be subject to sanctions. Punishment is punishable by a maximum imprisonment of two years. The maximum penalty for this offense is a fine of IDR 50,000,000 (fifty million rupiah) (Arifah & Fidhayanti, 2021). Creditors have the legal right or ability to use force to release fiduciary guarantees from third parties by enforcing terms and conditions if the debtor transfers them to another person without the creditor's knowledge. Law Number 42 of 1999 outlines fiduciary guarantees and their implementation provisions. Debtors are hesitant to provide fiduciary guarantees to creditors after a default occurs. If the fiduciary holder or debtor defaults, Law Number 42 of 1999 concerning Fiduciary Guarantees, specifically Article 29 paragraph 1, allows for the execution of the object of the fiduciary guarantee. It is rare for

debtors to be willing to hand over fiduciary guarantees after a default occurs. In many cases, the creditor kindly asks the debtor to do so, but the debtor refuses. According to Law 42 of 1999, Article 30, "The fiduciary giver is obliged to hand over the object that is the subject of the fiduciary guarantee and to be executed in order to carry out the execution of the fiduciary promise (Haroen, 2022).

The fiduciary recipient has the legal authority to seize the fiduciary guarantee if the fiduciary holder declines to willingly surrender his collateral at that point, as stated in the explanation of Article 30 of the Fiduciary Guarantee Law. Collateral items may be seized from fiduciary holders by the fiduciary recipient. According to J. Satrio, default is predicated on Article 1238 of the Civil Code, which stipulates that a debtor shall be deemed to have forgotten or purposefully neglected after the time has elapsed, which is determined, if he remains in a state of deliberate negligence following a summons (reprimand) and does not carry out his obligations or conform to his own wishes. This complies with Law Number 42 of 1999's Article 15, Paragraph 3.

Based on information collected by Pringadi (Surveyor of PT. Adira Finance Graha Medan Branch), information on new and used motorbike financing as of December 31, 2019 and 2018 is as follows: Table 1 below shows the company's new motorbike financing movement as of December 31, 2018 and 2019.

Table 1. Motorcycle Financing data in 2018 and 2019

Information	2018			2019		
	Financing (Rp) Miliyion	Number of unit	New motorcycle market (%)	Financing (Rp)	Number of unit	New motorcycle market
New Motorcycle	13.995	756	11.8	14.988	765	11.8
Used Motorcycle	6.518	644	-	6.490	677	-

It is against the law for business actors who supply goods and/or services for trade to draft and include standard phrases in each customer agreement that grant the business actor the right to act unilaterally, directly or indirectly. Law Number 8 of 1999 for Consumer Protection (hereafter referred to as UUPK) number 1 letter D states, "in relation to products purchased by customers in installments" (Rahmawati et al., 2019). Article 45 UUPK, namely paragraph (1), describes the channels via which consumers can settle complaints with business operators. It is said that as service users, all customers and users have the right to seek legal protection. As a result, the PT has legal protection as a debtor. The forced withdrawal operation by Adira Finance Medan is based on Law Number 42 concerning Fiduciary Guarantees, Article 11, which states that in order for financing institutions to perform fiduciary guarantees, collateral must be registered at the Fiduciary Guarantee Registration Office. Should the sponsoring institution be unregistered, the debtor may consider the execution to be a theft crime (Karmila & Jabaruddin, 2022).

4. Conclusion

Based on the research and discussion that the researcher has examined in each discussion sub-chapter, in this case the researcher draws the following conclusions from this research: In this case, the contract that Leasing makes for the customer to sign is in the form of a private agreement contract. Seeing that the contract is standard, made by one party, and signed not in front of a notary are the characteristics of a private contract. Looking at the legal conditions for a contract in Article 1320 of the Civil Code, the contract agreement remains valid according to the applicable regulations. What is required to sign the contract before a Notary or must be an authentic deed is when the fiduciary guarantee deed is drawn up. Article 5 paragraph 1 of Law Number 42 of 1999 concerning Fiduciary Guarantees states that the fiduciary guarantee deed must be made in authentic form. If the Fiduciary Guarantee Deed is not signed before a notary,

you will not get a Fiduciary Certificate. Regarding signing in front of a notary, the customer can be represented for convenience and smoothness of the process fiduciary registration. This can of course be with proof using a power of attorney, or simply with approval. According to Article 15 paragraph (2) of Law No. 42 of 1999 concerning Fiduciary Guarantee which reads "The fiduciary guarantee certificate as intended in paragraph (1) has the same executive power with a court decision that has permanent legal force". This means that if you have a Fiduciary Certificate, the party (Leasing) can carry out execution if the customer defaults. Meanwhile, according to Article 18 paragraphs (2) and (3) of the National Police Chief's Regulation No. 8 of 2011 concerning Securing the Execution of Fiduciary Guarantees which reads paragraph (2) "The implementation of the execution is safe, orderly and smooth, 60 security personnel are passive." This means that if security is running well, police personnel can act passively (just supervise, observe and carry out security). However, article (3) states "In the event that an execution occurs when there is resistance from the person being executed, the personnel will be active." This means that the police can act actively if there is resistance from the customer..

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