STUDY ON ENGAGEMENT OF FINANCING WITH FIDUCIARY GUARANTEE

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ABSTRACT

This study seeks to learn the engagement of financing with fiduciary guarantees at finance companies. Normative legal research is used in this study. The findings show that finance companies often made the engagement of the fiduciary guarantee objects after the fiduciary deed is issued with a notarial deed but yet to register the deed to the fiduciary registry office. The finance companies feel that they have not faced serious problems conducting business with fiduciary guarantees. They only register the fiduciary deed if debtors fail to keep their promises. On the other hand, during the execution, problems often arise, both during the seizure and the sale of the fiduciary object. Some default debtors make legal resistance during the seizure. Creditors often carried out forced executions without legal assistance and sold the fiduciary objects without public auctions or made under-table sales without the consent from the fiduciary grantor. This clearly violates the Fiduciary Guarantee Law. Violations in the financing agreement are not only done by the creditors, but also by the debtors. Debtors sometimes reduce the quality of the collateral objects and transfer the ownership of the collateral objects without the consent of the creditors.

Keywords: Engagement, Financing, Fiduciary Guarantee.

INTRODUCTION

The financial institution is a non-bank business that plays a critical role in financing. This financial institution provides funds or capital goods by not withdrawing funds directly from the public in the form of giro, deposits, savings, and promissory notes. Based on its activities, this financial institution serves as a potential alternative source of financing to encourage national economic growth. The financial institution referred to in this paper is the consumer finance.

Consumer finance is a financing activity that provides goods based on consumer needs with the payment made through an installment or periodic financing system by the consumers (Sunaryo, 2008).

Financing made by the finance companies is the same as the credit granted by banks. Consumer finance companies also require a guarantee for the finance companies to trust that the consumers (debtors) will be able to fulfill their obligations following the financing agreements signed by the two parties. In addition to the guarantee of trust that the consumers can be trusted and are able to fulfill their obligations, an additional engagement is also made on the movable property, such as a motorcycle purchased by the consumers through financing. This security engagement on the vehicle is known as a fiduciary guarantee.

The word "*fiduciary*" comes from the Latin word fides, which means "*trust*." Fides believes in other honesty that is loyalty to the word given. At first, it was used in informal agreements (Mangatchev, 2009).

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The government has enacted Law Number 42 of 1999 concerning Fiduciary Guarantees Law (UUJF) to govern fiduciary guarantee arrangements as a means to assist business activities and to provide legal confidence to the parties involved (Law Associate, 2016).

The Article 5 paragraph (1) of the Fiduciary Guarantees Law stipulates that every object charged with fiduciary guarantees must be made with a notarial deed in Indonesian and is the deed of fiduciary guarantee. Furthermore, Article 11 and 12 demands that movable objects charged with fiduciary guarantee must be registered at the fiduciary registration office.

The Article 15 paragraph (1), paragraph (2) and paragraph (3) of the Fiduciary Guarantees Law state that the Fiduciary Security Certificate as referred to in the Article 14 paragraph (1) must mention the phrases "*For the Sake of Justice Based on the Almighty God*." The Fiduciary Security Certificate, as referred to in paragraph (1), has the same executorial power as a court decision that has obtained permanent legal force.

If the debtors fail the promise, then the fiduciary grantee has the right to sell the object of a fiduciary guarantee.

According to Fiduciary Guarantee Law, every object charged with a fiduciary guarantee must be made with a notary deed in Indonesian, and the deed must be registered at the fiduciary registration office. However, in practice, not all agreements made by finance companies (creditors) and consumers (debtors) tied with fiduciary engagement or at least mentioned a clause granting the power from the debtors to the creditors to install fiduciary guarantees. It means that the practice of financing agreements between the creditors and the debtors does not involve a fiduciary guarantee institution, or in other words, there is no fiduciary guarantee agreement as an additional engagement (accessoir) in the financing agreement.

Besides, finance companies in conducting financing agreements need to include words '*fiduciary guaranteed*', but ironically the engagement was not made in a notarial deed and was not registered at the Fiduciary Registration Office to obtain a fiduciary guarantee certificate. Such a deed can be called an under-table fiduciary deed. By doing the under-table engagement, the financial institutions seek to reduce the burden of customer costs, ease business competition, and establish a small credit in a relatively short period of time.

In fiduciary guarantees, the Fiduciary Guarantee Law is often violated. In executing fiduciary collateral objects, finance companies often face legal resistance from the default debtors. Creditors often carry out forced executions without the assistance from law enforcement agencies. They sell collateral objects without public auctions, or in the case of under-table sales of the fiduciary objects, an agreement with the fiduciary grantor does not accompany the sale. This clearly contradicts the Fiduciary Guarantee Law. The violation in the financing agreement is not only performed by the creditor, but also by the debtor by reducing the quality of the guaranteed objects and transferring them without the consent from the creditors.

Research Question

1. How is the engagement of the financing with a fiduciary guarantee implemented at a finance company?
2. How is the execution of the financing with a fiduciary guarantee implemented at a finance company?

METHOD

This study used the normative legal approach, namely research on fiduciary guarantee legislation, and is supported by secondary data obtained from books, journals and court decisions.

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DISCUSSION

Financing Engagement with Fiduciary Guarantees at Finance Companies

Basically, in consumer financing engagement in Indonesia, the parties involved make not only one type of agreement but also other types of engagement. The main agreement is the consumer financing agreement, and from this financing agreement, an additional agreement or other accessoir agreements are made, such as a fiduciary guarantee engagement (Salim, 2006). When examined in practice, each financial institution has an additional type of agreement that applies to one another. However, in each additional agreement, there generally is an agreement to provide fiduciary guarantees, such as the practice carried out so far by the finance company. These additional agreements include:

1. An agreement to grant fiduciary guarantees.
2. An agreement by the debtor/power of attorney to install fiduciary guarantees.

The fiduciary guarantee agreement is made with a notary deed in Indonesian in the form of a fiduciary deed (Article 5 paragraph (1) Fiduciary Guarantee Law). In line with the provisions regarding mortgages and mortgage rights, the fiduciary deed must be done with an authentic deed (notarial deed). The official authority to issue the deed is a notary appointed by law.

To provide legal assurance, Article 11 of the Fiduciary Guarantee Law requires objects charged with fiduciary guarantees to be registered at the Fiduciary Registration Office. This obligation remains valid even if the objects charged with fiduciary guarantees are outside the territory of the Republic of Indonesia.

In financing agreements, not all arrangements made by financial institutions (creditors) and their consumers (debtors) have adhered to fiduciary agreements or stated a clause granting power from the debtors to the creditors to install fiduciary agreement.

This means that in practice, the creditors and the debtors do not use a fiduciary guarantee institution, or in other words, there is no agreement to binding guarantees. In the financial agreement, there is only one agreement, a financing agreement without any additional agreement (accessoir) such as guarantee engagement.

The financial institution has the view that as long as the fiduciary guarantee has not been signed and registered, the debtor must recognize that the ownership of the financed object has been surrendered by the debtors to the creditors, even though the object is registered in the name of the debtors or third party. Hence, the debtors do not have any rights or interests in the object other than as the borrower.

The borrower here means that the debtors only borrow the goods from the creditors. They believed that even though the goods are registered in the debtors' name, the debtors have voluntarily surrendered their ownership to the creditors because the creditors have purchased the vehicle from the dealers. Thus, there is a legal debt relationship based on the financing agreement between the financial institution and the debtors.

In the financing agreement, the main agreement is an agreement that can stand alone and usually stands alone, although it is also possible for other agreements to be attached to the main agreement. Herein lays the main contents of the agreement. In the sale and purchase, for example, the relationship of the main rights and obligations between the seller and buyer is regulated. An accessoir agreement is an engagement that is affixed to the main agreement

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without which it cannot stand alone. Its existence depends on the presence and omission of the main engagement (Satrio, 1993).

The transfer of ownership to creditors in fiduciaries eigendoms overreach is not a transfer of ownership in the real sense as in the sale and purchase, and that the creditor will never be the full owner (volle eigenaar). The creditors are just a bezitloos eigenaar or collateral objects. Because it is in accordance with the intent and purpose of the agreement regarding the agreement itself, the authority of the creditor is similar to the authority possessed by a person entitled to the guaranteed items. The position of the fiduciary grantee is as the holder of the guarantee, while the authority is still tied to the guarantee itself. Therefore, its authority as the owner over the object is limited (Paparang, 2014).

The surrender of the movable object carried out by the non-owners to grantees with a good intention is legal. However, an unreal surrender (constitutum possessorium) can be justified if the person delivering the item has the authority to hand it over on the basis of a legal relationship with another party. A creditor in a debt agreement with fiduciary guarantees is impossible to investigate in advance whether the debtor is really the owner, meaning the person who can act freely on the guaranteed objects since the guaranteed items are in the form of movable objects. The creditor can only ask the debtors to promise that he/she is truly the person who has the right to act freely on the guaranteed items (Paparang, 2014).

There are several formal stages attached to the Fiduciary Guarantee:

1. Making charging agreement in a notarial deed;
2. The registration statement must contain the identity of the fiduciary grantor and grantee; date, deed number, name and address of the notary who made the deed, the main agreement data guaranteed with fiduciary, a description of the fiduciary guaranteed object, the guarantee value and the value of the fiduciary guaranteed object.
3. Administration stage at the Registration Office. This includes recording the fiduciary guarantee in the fiduciary registry book on the same date as the date of application registration, issuing, and submitting the fiduciary guarantee certificate to the fiduciary grantees.
4. The issuance of a fiduciary guarantee certificate on the same date as the recording of the fiduciary guarantee in the fiduciary registry. The fiduciary guarantee certificate has the same executorial power as a court decision that has obtained permanent legal force, due to the phrases "*For the Sake of Justice Based on The Almighty God*." If the debtors fail the promise, the fiduciary grantee has the right to sell the fiduciary guaranteed object on its own authority. It implies that the execution can be directly carried out without going through a court. It is final and binds the parties to carry out the decision. Its existence is one of the features of the fiduciary guarantee, which is in the form of a parate execution institution (the implementation of the agreement directly without going through a trial decision) (Simorangkir, 2000).

The execution can be carried out only if the fiduciary grantor fails the promise. To guarantee legal certainty, the creditors made a notary deed and registered it to the Fiduciary Registration Office. The creditors will later obtain a fiduciary guarantee certificate bounded by the phrases "*For the Sake of Justice Based on The Almighty God.*" Under the Fiduciary Guarantee Law, the certificate has the power of direct executorial rights if the debtors violate the fiduciary agreement with the creditors (parate execution), in practice, some financial institutions in making financing agreements include the fiduciary guaranteed phrase. Still, ironically, they are not made in a notarial deed and are not registered at the Fiduciary Registration Office to obtain a certificate. Such a deed can be called an under-table fiduciary deed. By making under-table fiduciary agreements, the financial institutions aim to reduce the burden of customer costs, ease business competition, and swiftly establish a fiduciary agreement.

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Even though the under-table deed uses the title of the fiduciary agreement, the deed cannot be registered because it is made by default and not with a notarial deed.

As a result, the executorial power of the deed is lost. However, financial institutions often involve in this practice because it eases their operation, and during the course of such practice, they do not find it detrimental. In addition, many consumers do not object to the standard agreement made in the fiduciary agreement (Muhtar, 2013).

The problem may arise from such practice. When the debtors fail to pay installments within a specific time or do not pay off the full installment, the finance company could not directly seize the fiduciary object. The seizure must be done by first filing a civil suit to the District Court and following the civil procedural process until the court's decision has permanent legal force. This process indeed takes time. Even though it is admitted that some debtors make payments to the full amount, it cannot be neglected that some fail to do so (Olii, 2017).

It seems that financial institutions refuse to register the fiduciary guarantees to the legal notary perhaps because they object the obligations specified in Article 5 paragraph (1) of the Fiduciary Guarantee Law in which the agreement must be registered with a notarial deed. Making a notary deed for fiduciary guarantee engagement under a specific value such as motorcycle sales is considered burdensome. Therefore, in the future, Fiduciary Guarantee Law should set a certain value threshold for credit agreements that require a notarial deed. If necessary, fiduciary grantees with certain value agreements can register themselves online at the fiduciary registration office. Thus, it is not as flat as it is today, and this should serve the principle of justice for all parties (Donald, 2018).

Without any fiduciary installation on the guaranteed object, the creditors' position is just like that of general creditors (concruent). The creditor is entitled to an equal distribution of the bankrupted debtors' assets after deducting the priority rights (preferential). Different scenarios would apply should the creditors have installed fiduciary on the financed objects. Fiduciary installation would establish the creditors as preferen creditors who have exclusive rights. As preferen creditors, they would have the privilege over the guaranteed goods. If, at any time, the debtors breach the promise, the creditors have the right to seize the guaranteed object.

Execution of Fiduciary Guarantee Object by Finance Companies

The fiduciary guarantee certificate has the same executorial power as a court decision that has obtained permanent legal force. With this executorial title, the fiduciary grantee can directly execute the fiduciary objects through a public auction without having to go through a court.

Article 29 of the Fiduciary Guarantee Law stipulates that should the debtor or fiduciary grantor breach the contract in a financing agreement through fiduciary guarantee, confiscation of the fiduciary guaranteed object could be carried out by:

1. Selling the fiduciary-guaranteed objects on the authority of fiduciary grantor only if the collateral object has been registered and has received a fiduciary certificate;
2. Selling the fiduciary-guaranteed objects on the authority of the fiduciary grantee through public auctions and paying off the debt from the sale of the object. Under- table deals may be performed based on an agreement between the fiduciary grantor and grantee, and only if opting this way, the highest price can be attained in favor of both parties. The sale may be carried out 1 (one) month after the fiduciary grantor and grantee made a written notification to the parties involved and announced in at least 2 (two) newspapers circulating in the relevant areas.

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If the fiduciary-guaranteed objects consist of trading objects or stock that can be sold on the capital market or stock exchange, the sale could be made in these places by adhering to the applicable laws and regulations (Article 31 of Fiduciary Guarantee Law). For stock listed on the capital market, the laws and regulations in the capital market shall automatically apply.

In the case of execution, the fiduciary grantor must surrender the fiduciary objects for the seizure. If the seizure is executed against the provisions of Article 29 and Article 31 of the Fiduciary Guarantee Law, the execution is null and void (Article 32 of Fiduciary Guarantee Law).

Article 29 and 31 of the Fiduciary Guarantee Law are binding and cannot be ruled out, even if the agreement approved by each party. Therefore, any promises to carry out the execution of fiduciary objects in a way that is contrary to Article 29 and 31 shall be considered null and void.

Furthermore, fiduciary guarantees are collateral items, and the transfer of ownership rights through the constitutum prossessorium is intended solely to provide collateral with prior rights to the fiduciary grantee. Hence, all promises that grant power to the fiduciary grantee to seize the collateral objects are null and void according to Article 33 of the Fiduciary Guarantee Law.

Conversely, a fiduciary agreement that does not have a notarial deed and is not registered at the fiduciary registration office, known as an under-table fiduciary deed, would have legal consequences. The creditor cannot execute if the debtors fail to keep their promises. In other words, when executing their rights, the creditors can be considered acting alone and arbitrary. Since financing of fiduciary objects is usually not given in full based on the value of the goods, and the debtors have partially fulfilled their obligations on the agreement made, it can be said that both creditors and debtors have the rights on the object. If the execution of fiduciary objects is not carried out through an official price appraisal agency or a public auction body, the execution can be considered as criminal acts according to Article 1365 of the Criminal Code and could be sued for compensation. Creditors who refuse to register fiduciary guarantee object put themselves at risk because they do not have executory legal rights (Dewi et al., 2017).

In legal principle, every agreement that does not have an executorial power must go through a court before execution. It is the legal court that has the right to grant seizure and make the execution decision. Without a court decision, the execution is against the law. In case of law violation, the debtors, as the injured party due to the illegal execution, can file a lawsuit (claim rights) to the court.

The execution of fiduciary guarantee objects in the financing agreement begins with withdrawing the fiduciary object from the debtor who has broken the promise to make payments to the finance company.

During the debt collection, if the debtors can be found, two possible settlement scenario can be made: (1) The debtors promises the finance company to pay off the installments owed within a specified period; (2) If the debtors can settle their installments, the seizure of the motorcycle should be halted, and the process shall be deemed clear. Thus, debtors' payment can be processed.

If the debtors cannot be found, the finance company will send a subpoena to the debtors. The subpoena is aimed to give a warning to the debtors because they have neglected their obligation to make installment payments guarantee, which results in arrears.

After the first subpoena, the finance company would act following the debtors' response to the first subpoena. If the debtors make the payment, their money can be processed, and the motorcycles are not seized. However, if the debtors fail to pay the installment of the motorcycle

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owned, the company will send a second subpoena to the defaulting debtors. After the second subpoena, the finance company would follow the process as in the first subpoena notice. If the defaulting debtor can make their payments, the debtors' money can be processed, but if the debtors are unable to pay the arrears, the debtors' vehicles are seized.

In a financing agreement, the specific time for motorcycle seizure is usually not stated should the debtor defaults. This is intended to prevent debtors from bad intent.

The bad intention referred to in this case is, if the defaulting debtors know from the beginning when the finance company will seize the motorcycle, there is a possibility that the defaulting debtors will "*deliberately*" eliminate the motorcycle before being withdrawn, for example by hiding or selling the vehicle. This will certainly be detrimental to the finance company (Ramadhanneswari et al., 2017).

When withdrawing the fiduciary object, the finance company visits the debtor on the residential address listed on the identity attached to the financing agreement document. Upon the visit, the finance company officers would bring the legal documents such as a power of attorney document to withdraw the vehicles, a vehicle withdrawal letter, a financing agreement between the creditors and debtors, and a fiduciary guarantee certificate.

After the motorcycle is seized from the debtors, the finance company will bring the vehicle to be temporarily stored for a price assessment. After the assessment is done, the debtor will receive an invitation to resolve the problem of the outstanding installment arrears. However, the process of withdrawing vehicles in the field is not as easy as it seems. Often, during the withdrawal process, unexpected problems arise.

Such problems include:

1. The motorcycles were mortgaged, transferred, and sold;
2. The debtors (facility grantee) are not found;
3. The debtors resist during the seizure;
4. The finance company fails to provide the fiduciary guarantee certificate during the seizure;
5. The identity of the fiduciary object has been altered (Ramadhanneswari et al., 2017).

When these problems arise, the finance company will make efforts to solve these problems, such as:

1. Using a finance company interactive SMS program;
2. Using debt collector services;
3. Reporting to the police;
4. Requesting police assistance to secure the withdrawal process.

Some efforts mentioned above are against the regulations. However, these efforts may be taken if the procedural settlement, in accordance with the legislation, fails to uphold. They are the last resort that the finance company should take in withdrawing the financed vehicle owned by the debtors.

Fiduciary Guarantee states that the fiduciary guarantee certificate should use the phrases "*for the Sake of Justice based on the Almighty God*." This means that its power is the same as the power of a permanent court decision. These promises provide an executorial title and means that the deed can be executed without having to go through a court decision. Thus, under the provisions, the financial institution, as the fiduciary grantee in the financing agreement, will be able to execute the fiduciary guarantee directly should the debtors fail to keep their promises.

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However, in practice, it is not easy for financial institutions to execute fiduciary agreements due to debtors' opposition, even though the financing agreement is also accompanied by a fiduciary guarantee agreement that has been made with a notary deed and has been registered with the fiduciary guarantee registration agency.

The debtors sometimes also take a legal fight during the execution of the fiduciary object. Debtors may seek to fight over the execution of the fiduciary agreement. They may resist or object the executions of the fiduciary agreement, as seen from the Medan District Court decision No. 468/Pdt.Sus-BPSK/2016/PN.MDN, between PT. Summit Oto Finance (Applicant) vs. SE/initials (Respondent).

The dispute between the creditors and the debtors due to the debtors failing to keep their promises results in the finance company to seize the fiduciary objects. The debtors objected the confiscation of the fiduciary object and filed a suit to the Medan City Consumer Dispute Settlement Agency (BPSK) with Decision Number No. 91/ARB/2016/BPSK-MDN on July 28, 2016, which states: "*The Business Actors (PT. Summit Oto Finance) are required to submit the motorcycle BK 6772 AFS to the consumer in good condition*" (instruction 3). Petitioners Objection, in this case, the Financing Institution (the creditor) filed an objection to the BPSK Medan Decision No. 91/ARB/2016/BPSK-MDN on July 28, 2016. However, based on the facts revealed at the trial, the case files from BPSK Medan, and according to the opinion of the panel, no fact showed that the Petitioners of Objection and Respondent of Objection have agreed to settle their dispute through arbitration at the Consumer Dispute Settlement Agency (BPSK) of Medan.

Because it is a legal choice of each party, the authority to examine and adjudicate disputes between the petitioner and respondent is the authority of the Medan District Court. The Panel of judges believed that BPSK Medan is not authorized to examine and decide the complaints from the respondent's objection. The decision of the Consumer Dispute Settlement Agency (BPSK) of Medan Number: 91/ARB/2016/BPSK-MDN on July 28, 2016, is nullified and void. Therefore the panel of judges believed that the objection filed by the petitioner or finance company is reasonable to be granted.

The case above indicates that the defaulting debtor resisted the execution of the fiduciary object in the financing agreement.

Since some debtors may not be able to keep their promises on financing agreements and fiduciary guarantee agreements, the creditors have the right to take back the fiduciary object even if it is under the authority of the debtors. If the debtors do not resist the collection of goods, then no problem shall arise.

Problems will arise if the debtors fight against the execution of the fiduciary object. However, the creditor does not have the authority to force the debtors to surrender the fiduciary goods but could ask the legal apparatus to carry out the execution. If the creditor attempts to execute without assistance from the legal apparatus in seizing the fiduciary object, the action is deemed unlawful.

In addition to forced executions without the assistance of law enforcement agencies, the sales of collateral objects often occur without public auctions or, in the case of under-table sales, are not accompanied by an agreement with the fiduciary grantor. This act clearly contradicts Article 29 of Fiduciary Guarantee Law which requires the sales of fiduciary objects to go through a public auction or if sold under the table, must obtain consent from the fiduciary grantor. Otherwise, such actions qualify as unlawful acts.

Similar fate applies to when the creditors execute the object held by debtors that are only bound by a financing agreement without a fiduciary guarantee agreement.

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No problem arises should the debtors opt not to fight. However, regardless of the fight, the execution done by the creditors is still deemed unlawful. This is because the financing agreement without a fiduciary guarantee agreement does not have executive power. In other words, to execute the goods held by the debtors, the seizure must first be determined by the court. Only then the seizure of the assets held by the debtors can be performed.

Even though the confiscated party (the debtor) does not object to the seizure without an executive agreement, but in private law, the creditors' action is illegal. However, this act of breaking the law has no consequences. The enforcement of private law requires actions from those who feel aggrieved. The enforcement can only be done if those who feel disadvantaged file a lawsuit. Without a lawsuit, no act of private law violation shall be assumed. In contrast to the public law enforcement, a report to public law enforcement (in this case, the police) is sufficient for prosecution.

Tan Kamello, in the Seminar of Technical and Strategy for Safeguarding the Execution of Fiduciary Guarantees, based on the Regulation of the National Police Chief Number 8 of 2011 stated that if the fiduciary registration office has not issued a fiduciary guarantee certificate, the creditors (finance companies such as leasing) are prohibited from seizing fiduciary objects from debtors (consumers). Knowing the fact that many consumers are default, finance companies shall not carelessly issue fiduciary guarantees without fiduciary certificates. Finance companies must understand the contract law regulated in the Civil Code. They need to feel safe about the goods sold to consumers, considering the goods are bound as collateral for the debt. This fiduciary guarantee law is regulated in Article 1177 of the Civil Code. The Article is a general guarantee between the debtor and the creditor. In addition to registering fiduciary guarantees at the fiduciary registration office, Tan Kamello also said that the objects with fiduciary guarantees must also have anotarial deed. Even though it is not compulsory and, the under-table deed can easily be achieved, but the act is at the risk of breaching the law.

Likewise, the act of the creditors or fiduciary grantees in selling fiduciary goods not through public auctions and under-table without the agreement from the debtors or fiduciary grantors, a lawsuit can be filed. Although the fiduciary grantor and grantee

are bound by a financing agreement and a fiduciary guarantee agreement, the provision of Article 29 of the Fiduciary Guarantee Law for selling through auctions are absolute and cannot be neglected. Violation of this provision is an act that impairs the interests of the fiduciary grantor. Therefore, the fiduciary grantor can file a lawsuit against the fiduciary grantee.

In addition to making civil efforts, the debtors can also carry out criminal legal measures against the creditors' act, seizing objects without an executable agreement as described above. The debtor, as the victim, must report the creditors' actions to law enforcement officials such as the police on the basis of coercion as regulated in Article 335 of the Criminal Code. In addition to reporting coercion, forcefully taking object against their will should also be reported, considered as stealing, as regulated in Article 362 of the Criminal Code. Furthermore, in the act of fiduciary grantee selling goods without going through public auction or selling goods under-table without an agreement from the fiduciary grantor, the fiduciary grantor can report the act of the fiduciary grantee to the legal apparatus (police) as a stealing crime as referred to in Article 372 of the Criminal Code.

The embezzlement of the fiduciary grantee can also be subject to embezzlement by weighting, as referred to in Article 374 of the Criminal Code.

The difficulty in executing a consumer financing agreement is actually the implication from the disorder implementation of the agreement by a financial institution. The creditors fail to fulfill their obligations and cause difficulties in the execution of default debtors in the

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future. The lack of information on fiduciary guarantees to the debtors also hampers the dispute resolution between debtors and creditors on the collateral object. These difficulties are driven by violations of the law that occur in the initial agreement of fiduciary guarantees (Purwanto, 2012).

The most common violations committed by creditors are: not registering fiduciary objects in the Fiduciary Registry Office, registering fiduciary guarantees only when debtors violate their promises, employing debt collector services to seize the fiduciary object and selling the fiduciary object to their relatives. The debtors are often not informed of the sale amount.

Besides the creditors, the debtors also violate the provisions in Fiduciary Guarantee Law. Violations that often done by the debtors are taking actions without the permission of the fiduciary grantee (the creditor), reducing the quality of fiduciary guarantee objects, and transferring ownership of fiduciary objects.

CONCLUSION

The Fiduciary Guarantee Law stipulates that fiduciary guarantees must be made with a notarial deed and registered for a fiduciary guarantee certificate issued at the fiduciary registration office. However, in practice, the engagement on the fiduciary guarantee financing at finance companies often takes place after the deed of a fiduciary guarantee is made with a notarial deed but unregistered. The creditors believe that fiduciary guarantees made with a notary deed are safe enough for them. They learn that fiduciary guarantees are not too problematic, and they only register the deed if debtors fail to keep their promises. For security reasons, creditors prefer making agreements with notarial deeds, but some only use under-table deeds.

Execution of fiduciary guarantees usually begins with the seizure of fiduciary objects from the debtors who violate the promises to pay the agreed settlement. If the debtors do not make any attempt to settle the debt, the fiduciary objects may be seized following the Fiduciary Guarantee Law. During the execution, problems often arise, both during the seizure and the sale of the fiduciary object. Some default debtors make legal resistance. Creditors often carried out forced executions without legal assistance and sold collateral objects without public auctions or made under table sales without the consent from the fiduciary grantor. This clearly violates the Fiduciary Guarantee Law. Violations in the financing agreement are not only done by the creditor, but also by the debtor. Debtors sometimes reduce the quality of the collateral object and transfer the ownership of the collateral object without the consent of the creditors.

REFERENCES

Dewi, R.P., Purwadi, H., & Saptanti, N. (2017). *Executional strength of fiduciary guarantee certificate based on law number 42 of 1999 concerning fiduciary guarantee*. Doctoral dissertation, Sebelas Maret University.

Donald, H. (2018). Problems with financing implementation with fiduciary guarantee agreements. *De Jure Journal of Legal Research, 18*(2), 183-204.

Law Associate. (2016). *Regulation of the Kapolri number 8 of 2011 concerning security of the execution of fiduciary security.*

Mangatchev, I.P. (2009). *Trust with creditor's contract in EU law.*

Muhtar, M.M. (2013). Legal protection for creditors in fiduciary agreements in practice. *Lex Privatum, 1*(2), 1-9.

Olii, C.P.R. (2017). The legal consequences of execution of objects of fiduciary security that are not registered according to law no. 42 of 1999 concerning fiduciary guarantees. *Lex Privatum, 5*(4), 1-9.

Paparang, F. (2014). Implementation of fiduciary guarantees in lending in Indonesia. *LPPM Journal of EcoSosBudKum, 1*(2), 56-70.

Purwanto, P. (2012). Some issues consumer financing agreement with fiduciary. *Rechtsvinding Journal, 1*(2), 1-9.

Citation Information: Bahar, M.A. (2022). Study on engagement of financing with fiduciary guarantee. *Journal of Legal, Ethical and Regulatory Issues, 25*(5), 1-11.

Ramadhanneswari, S., Suharto, R., & Saptono, H. (2017). Withdrawal of motorized vehicles by financing companies against debtors who have bad credit (default) with fiduciary guarantees from a juridical aspect. *Diponegoro Law Journal, 6*(2), 1-14.

Salim, H.S. (2006). *The development of contract law outside the civil code*. RajaGrafindo Persada.

Satrio, J. (1993). *Law of engagement.* Bandung: Alumni.

Simorangkir, J.C.T (2000). *Legal dictionary.* Jakarta: Various Sciences.

Sunaryo. (2008). *Financing institution law.* Jakarta: Sinar Grafika.

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