
NON-PERFORMING LOANS AND UNILATERAL CONFISCATION BY LEASING COMPANIES LEGAL REVIEW OF DEBTORS' LEGAL PROTECTION IN FIDUCIARY AGREEMENTS

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Abstract

Fiduciary agreement is one of the legal instruments widely used in consumer financing practices, especially in the motor vehicle purchase sector through a leasing scheme. In this system, the vehicle becomes the object of fiduciary collateral that remains in the control of the debtor, while the ownership rights are legally transferred to the creditor until the debt is paid off. Although this mechanism is legally valid and supported by Law Number 42 of 1999 concerning Fiduciary Collateral, in practice there are often deviations, especially in terms of execution of collateral by leasing companies when debtors experience bad credit. One of the most crucial forms of deviation is the act of unilateral confiscation or withdrawal of fiduciary objects without going through the proper legal process, often carried out without a fiduciary certificate and involving uncertified debt collectors.

This study aims to examine the provisions of Indonesian positive law governing the procedure for executing fiduciary guarantees in cases of bad debts and to evaluate the form of legal protection that can be provided to debtors against unilateral confiscation practices by leasing companies. Using a normative legal approach and qualitative analysis, this study analyzes related laws and regulations, including the Fiduciary Guarantee Law, the Consumer Protection Law, and a number of Constitutional Court Decisions such as Decision Number 18/PUU-XVII/2019, Number 2/PUU-XIX/2021, and Number 71/PUU-XIX/2021. The results of the study indicate that unilateral execution of fiduciary guarantees without a court order is contrary to the principle of due process of law and does not guarantee fair legal protection for debtors.

This study recommends the need for more consistent law enforcement, increased supervision of financing companies, and strengthening public legal literacy, so that debtors' rights can be effectively protected in fiduciary contracts. Comprehensive legal protection is not only important to maintain the balance of legal relations between debtors and creditors, but also to create a healthy, fair, and civilized national financing climate.

Keywords: Legal Protection, Fiduciary Guarantee, Unilateral Execution

INTRODUCTION

In the dynamics of modern economic growth, the community's need for consumer financing is increasing, especially in the motor vehicle ownership sector. The most common financing scheme used by the Indonesian people is financing through a leasing company with fiduciary collateral. Fiduciary collateral is the main choice because of its flexible nature and does not transfer physical ownership of goods, so that debtors can still use the vehicle during the credit period. However, the development of this financing practice actually stores serious legal problems, especially when there is a bad credit followed by unilateral withdrawal by the leasing party, which is often carried out without valid legal procedures and tends to ignore legal protection for debtors.

Fiduciary agreement as a form of obligation between debtor and creditor is essentially a form of guarantee agreement that is subject to the provisions of Law Number 42 of 1999 concerning Fiduciary Guarantee. In the provisions of Article 1 number 1 of the Fiduciary Guarantee Law, it is stated that fiduciary is the transfer of ownership rights to an object based on trust, with the provision that the object whose ownership rights are transferred remains in the control of the owner of the object

(Law No. 42 of 1999). In other words, when a vehicle is financed on credit, the debtor still has physical control over the vehicle, but legally the ownership rights are transferred to the creditor until the debt is paid off. Problems begin to arise when the debtor fails to fulfill the installment payment obligations, and the creditor unilaterally withdraws the vehicle from the debtor's hands without proper legal procedures.

The practice of forcibly towing vehicles by leasing companies or third parties (debt collectors), often on highways, public places, even at the debtor's home, is a legal event that cannot be ignored. The towing is often done without showing a fiduciary guarantee certificate, without an official letter of assignment, and in many cases, without a court decision. This condition raises serious questions regarding the validity of the execution action and the extent to which legal protection is provided to the debtor as the injured party. The unilateral withdrawal of collateral objects by leasing is actually not in line with the principle of due process of law which is the main spirit in the modern civil law system.

Furthermore, the provisions of Article 15 paragraph (2) of Law Number 42 of 1999 state that a fiduciary guarantee certificate has the same executive power as a court decision that has permanent legal force. However, the Constitutional Court in Decision Number 18/PUU-XVII/2019 provided a constitutional interpretation of the article, namely that the executive power of a fiduciary certificate can only be enforced if the debtor admits to being in default. In the event that the debtor does not admit to being in default and refuses to hand over the collateral object, the execution cannot be carried out unilaterally by the creditor, but must go through a lawsuit mechanism or an execution application to the court (Constitutional Court, 2019). The Constitutional Court's decision is an important turning point in the renewal of fiduciary guarantee law and at the same time emphasizes that legal protection for debtors cannot be defeated by the pretext of procedural efficiency by the creditor.

However, the reality on the ground shows that after the Constitutional Court's decision, many financing companies still continue to unilaterally withdraw fiduciary collateral objects without going through the courts. Law enforcement officers often even participate in the withdrawal process on the pretext of helping to maintain security. This is contrary to the Constitutional Court Decision Number 2/PUU-XIX/2021 and Number 71/PUU-XIX/2021 which states that the phrase "authorized party" in the Explanation of Article 30 of the Fiduciary Guarantee Law can only be interpreted as the District Court. Thus, the involvement of the police in the execution of fiduciary objects without a court order is a violation of applicable legal principles (Constitutional Court, 2021).

The phenomenon of unilateral withdrawal by leasing companies which is often accompanied by intimidation, verbal or physical violence, and other arbitrary actions, not only harms debtors from a financial aspect, but also threatens citizens' constitutional rights to legal protection and a sense of security. From a consumer protection law perspective, such actions clearly contradict Law Number 8 of 1999 concerning Consumer Protection, especially Article 4 which affirms consumers' rights to comfort, security, and safety in using goods and/or services (Law No. 8 of 1999). Consumers, in this case leasing debtors, have the right to be treated humanely and fairly in legal contracts, and may not be subject to unilateral sanctions that are not in accordance with legal procedures.

In fact, in some cases, leasing debtors who refuse to hand over their vehicles because they feel they have not yet defaulted are reported to the police on charges of embezzlement as stipulated in Article 372 of the Criminal Code. This is a very crucial legal problem, because it reflects the criminalization of civil matters that should be resolved civilly. This criminalization also contradicts the principle of the *ultimum remedium* principle in criminal law which places criminal law as a last resort (*ultimum remedium*), not as the main tool in resolving civil disputes.

In the context of financing legislation, the Regulation of the Minister of Finance Number 130/PMK.010/2012 explicitly requires financing companies to register fiduciary agreements with the fiduciary registration office in order to obtain a valid certificate. Without the certificate, the financing company is not entitled to execute the collateral object. However, there are quite a few leasing companies that do not fulfill this obligation and continue to withdraw collateral objects, which from

a legal perspective can be qualified as an unlawful act (an act that violates the law and consumer rights).

This problem becomes more complex when the community as debtors do not have adequate understanding of their rights in fiduciary agreements. Weak consumer legal literacy and limited access to legal aid make many people unable to fight or question unilateral actions of leasing companies, even though these actions clearly violate the law. Therefore, this research is important to be conducted in order to unravel the legal inequality that occurs in fiduciary-based financing practices in Indonesia.

This study will examine in depth the legal aspects of the practice of unilateral withdrawal of fiduciary collateral objects by leasing companies in cases of bad credit, as well as analyzing the form of legal protection that should be given to debtors based on the positive legal framework of Indonesia. This study will also review the extent to which the Constitutional Court's decision has been implemented in practice and whether it has provided a real protective effect to leasing debtors.

As a focus in this research, two main problems were formulated, namely:

1. How do Indonesian positive law provisions regulate the procedure for executing fiduciary collateral objects in the event of a debtor defaulting on credit?
2. What form of legal protection can be provided to debtors against unilateral seizure by leasing companies that are not in accordance with legal procedures?

Through the formulation of the problem, this study aims to provide a complete and systematic legal understanding of the problem of unilateral seizure by leasing, as well as to propose legal recommendations to strengthen protection of debtor rights. This study is also important to evaluate the gap between legal theory and practice in the field, as well as to encourage regulatory improvements in the field of fiduciary guarantees and consumer protection.

Furthermore, the urgency of this research also lies in its importance in encouraging the formation of a legal culture that respects the legal process, upholds the principle of justice, and encourages financing business actors not to abuse economic power in their contractual relations with consumers. This research is also expected to be an academic contribution to the development of civil law and consumer protection law in Indonesia, as well as a practical reference for law enforcement officers, financing companies, and the wider community.

METHOD

This study uses a normative legal approach with a qualitative analysis method, which aims to examine positive legal norms governing fiduciary agreements, fiduciary guarantee execution procedures, and legal protection for debtors in cases of bad credit. The data used are secondary data in the form of laws and regulations such as Law Number 42 of 1999 concerning Fiduciary Guarantees, Law Number 8 of 1999 concerning Consumer Protection, and related Constitutional Court Decisions, especially Decision Number 18/PUU-XVII/2019 and the follow-up decision in 2021. In addition, secondary data was also obtained from legal literature, academic journals, legal articles from credible media, and official documents from related institutions such as the Financial Services Authority (OJK). The analysis was carried out using a descriptive-analytical method, namely describing the problems based on existing legal sources and analyzing them systematically to find the ideal form of legal protection for debtors in leasing practices that still deviate from applicable legal provisions.

RESULTS AND DISCUSSION

Positive Indonesian Legal Provisions Concerning the Execution Procedure of Fiduciary Guarantee Objects in the Event of Bad Debt by the Debtor



Fiduciary agreements in the context of motor vehicle financing are an integral part of the economic practices of modern society in Indonesia. When someone buys a motor vehicle with a financing scheme from a leasing company, the vehicle legally becomes an object of fiduciary collateral subject to the provisions of Law Number 42 of 1999 concerning Fiduciary Collateral. In this scheme, there is a transfer of ownership rights through trust (fiduciary) from the debtor to the creditor, but the goods remain in the physical possession of the debtor. This position creates a unique legal relationship because although the creditor is legally the owner of the goods, control of the goods remains in the hands of the debtor. When the debtor defaults or fails to fulfill installment obligations, the creditor has the right to execute the fiduciary collateral, but this right is not absolute and must be carried out in accordance with applicable legal provisions.

One of the basic rules in the process of executing fiduciary collateral objects is stated in Article 15 paragraph (2) of Law Number 42 of 1999 which states that a fiduciary collateral certificate has the same executive power as a court decision that has permanent legal force (Law No. 42 of 1999). Based on this provision, creditors are given the right to carry out direct execution of collateral objects in the event of a default, without having to file a lawsuit or application to the court. However, this norm has been reinterpreted by the Constitutional Court in Decision Number 18/PUU-XVII/2019 which confirms that the executive power of a fiduciary certificate only applies if there is an agreement between the creditor and the debtor that a default has occurred. If the debtor does not admit that he has committed a default and refuses to hand over the goods, then the execution cannot be carried out unilaterally, but must be through the mediation of the court (Constitutional Court, 2019).

The Constitutional Court's decision in principle changes the pattern of practices that have been running in the financing industry in Indonesia. For years, leasing companies and debt collectors felt they had the legitimacy to unilaterally repossess vehicles of debtors who were in arrears on installments, armed with fiduciary certificates. In practice, many leasing companies do not provide warning letters or summonses in advance, and do not even show fiduciary documents to debtors. There are also many cases where the repossession process is carried out roughly, in public places, in intimidating ways, and without the presence of authorized parties from the court. This phenomenon not only creates violations of the law, but also violates the principles of due process of law and substantive justice in civil law (Anthoni, 2023).

This change in legal interpretation is further emphasized in the Constitutional Court Decision Number 2/PUU-XIX/2021 and Decision Number 71/PUU-XIX/2021. These two decisions overturn the old interpretation of the Explanation of Article 30 of the Fiduciary Guarantee Law which states that execution can be assisted by "the authorized party". The Constitutional Court decided that the phrase "the authorized party" can only be interpreted as the District Court. Thus, financing companies are no longer allowed to involve the police or other external parties in the execution process, unless they have obtained an order from the court (Constitutional Court, 2021). This directly eliminates the practice of police security assistance in the execution of fiduciary guarantees, which has so far been a loophole for repressive and unlawful actions.

Therefore, in the event of a bad debt, the legal procedures that must be taken by the leasing company to execute the fiduciary collateral object are as follows. First, the leasing company is required to prove that they have registered the fiduciary agreement with the Fiduciary Registration Office and have a valid fiduciary certificate. This is in accordance with the provisions of the Minister of Finance Regulation Number 130/PMK.010/2012 which states that fiduciary registration must be carried out no later than 30 days after the financing agreement is signed. Without registration and the certificate, the leasing company has no legal basis to carry out the execution (SIP Law Firm, 2023). Second, the leasing company must first provide a written warning or summons to the debtor, giving the debtor the opportunity to pay off the arrears or submit their objections to the allegations of default. Third, if the debtor refuses to hand over the collateral object or denies having committed a default, the leasing company is required to file a lawsuit or application for execution with the District Court. These steps are a form of procedural protection that must be respected so that the execution process does not turn into an arbitrary act.

In addition to the specific provisions in the Fiduciary Guarantee Law, aspects of debtor protection can also be seen from Law Number 8 of 1999 concerning Consumer Protection. In Article 4 letters a and c of the Law, it is stated that every consumer has the right to comfort, security, and safety in consuming goods and/or services and the right to correct, clear, and honest information regarding the condition and guarantee of goods and/or services. Thus, in the context of fiduciary, leasing debtors as consumers have the right to receive fair and procedural treatment. Vehicle withdrawals carried out without adequate information, without legal procedures, and in an intimidating manner are a form of violation of consumer rights and can be qualified as an unlawful act (Law No. 8 of 1999).

Weaknesses in the implementation of the law are also evident from the minimal enforcement of the Financial Services Authority Regulation (POJK) Number 29/POJK.05/2014 which regulates the implementation of financing company business. This regulation states that financing companies are required to ensure that every debt collector is certified and has an official letter of assignment. In practice, many debt collectors work informally and do not meet the established competency standards, so that ethical and legal violations often occur when collecting or retrieving goods (OJK, 2021). This shows the need for stricter supervision of collection practices by leasing companies and the need for improvements in the internal control system in financing companies.

The issue of executing fiduciary collateral objects also touches on crucial aspects in the relationship between civil law and criminal law. Many cases show that leasing companies that fail to unilaterally execute vehicles will take criminal action by reporting the debtor on charges of embezzlement under Article 372 of the Criminal Code. In this context, there is criminalization of the debtor, even though the problem that arises stems from a breach of contract in a civil relationship. This approach is not in line with the principle of *ultimum remedium* in criminal law, which emphasizes that criminal law should be used as a last resort, not as an instrument of intimidation or coercion in resolving civil disputes. The Constitutional Court through its decision has emphasized that as long as there is no agreement regarding the breach of contract, the dispute must be resolved through civil, not criminal, channels (Constitutional Court, 2019).

Furthermore, legal confirmation of fiduciary execution procedures is important in creating a healthy financing climate. The financing industry must operate within a fair and transparent legal framework so that public trust in this sector is maintained. Creditors have the right to protect their economic interests, but these rights must not violate the human rights of other parties. The law grants creditors the right to execute fiduciary guarantees, but these rights are limited by the terms and procedures stipulated in the law. Violation of these procedures not only harms debtors, but also creates a bad precedent in legal practice, and can erode public trust in the judicial system and law enforcement officers.

Based on the description above, it can be emphasized that the provisions of positive Indonesian law have regulated quite comprehensively regarding the procedure for executing fiduciary collateral objects, especially in situations of bad credit. However, there is still a wide gap between legal norms and implementation in the field. The practice of unilateral confiscation carried out without a fiduciary certificate, without a letter of assignment, or without a court decision is still widespread. The Constitutional Court's decision which provides limitations on the authority of creditor execution is often ignored by financing business actors. This condition shows that the main problem lies not only in regulation, but also in weak law enforcement and supervision.

Therefore, concrete steps are needed to strengthen the supervision mechanism for financing companies, increase public legal awareness, and ensure that every execution action is carried out based on the principles of justice and correct legal procedures. Legal protection for debtors must be guaranteed, not only as rhetoric in regulations, but as a reality that is present in everyday legal practice.

Legal Protection for Debtors Against Unilateral Seizure by Leasing Companies Not in Accordance with Legal Procedures

Legal protection is a main pillar in the legal state system (rechtsstaat) which places the rights of citizens above all forms of power and arbitrary actions. In the context of fiduciary agreement-based financing, the existence of legal protection for debtors is very important considering that the position of debtors is often weaker structurally and financially compared to leasing companies as creditors. When a bad loan occurs, it is not only the issue of default that is debated, but more than that, the issue arises about how the execution process is carried out, who does it, and whether the procedure is in accordance with applicable law. The unilateral confiscation action carried out by leasing against fiduciary collateral objects without following legal procedures has the potential to violate the debtor's rights in real terms.

Normatively, the Indonesian legal system has provided regulatory instruments aimed at protecting debtors in fiduciary agreements. Law Number 42 of 1999 concerning Fiduciary Guarantees stipulates that the execution of fiduciary objects must be carried out based on the execution power attached to the fiduciary guarantee certificate. Article 15 paragraph (2) states that "The Fiduciary Guarantee Certificate has the same execution power as a court decision that has permanent legal force" (Law No. 42 of 1999). Although this norm gives creditors the right to carry out execution without going through the courts, the Constitutional Court in Decision Number 18/PUU-XVII/2019 clarifies that this provision only applies if there is an acknowledgment of default from the debtor. If there is no acknowledgment, then execution cannot be carried out unilaterally.

The Constitutional Court's decision became the starting point for strengthening legal protection for debtors in fiduciary cases. In its considerations, the Court stated that creditors cannot immediately declare the debtor to be in default because this must be based on mutual agreement or a court ruling. Furthermore, the Court emphasized that if the debtor is unwilling to hand over the collateral object, the creditor is required to file an execution application with the court (Constitutional Court, 2019). This is a progressive form of legal protection, because it opens up room for defense for debtors who feel they are not in default or have objections to the amount of the bill or the method of collection carried out by the creditor.

However, in reality, the implementation of legal protection for debtors often does not run as it should. Many leasing companies continue to forcibly withdraw vehicles without showing a fiduciary certificate or a court order. In fact, there are many cases where debt collectors withdraw on public roads in an intimidating manner, without an official letter of assignment and without adequate legal competence. Such actions are clearly a violation of the debtor's legal rights, including the right to a sense of security, the right to correct information, and the right to be treated fairly as guaranteed in Article 4 of Law Number 8 of 1999 concerning Consumer Protection (Law No. 8 of 1999).

In practice, violations of debtors' rights are often left unchecked due to weak supervision from the relevant authorities and low public legal awareness. Many debtors do not know that they have the right to refuse a withdrawal if no official documents or fiduciary certificates are shown. Not a few are also afraid to fight back because of pressure or threats from debt collectors. In fact, according to the provisions of the Financial Services Authority Regulation (POJK) Number 29 / POJK.05 / 2014, financing companies are required to ensure that debt collectors have official certification and carry out their duties in accordance with ethical provisions (OJK, 2021). If this is ignored, debt collection actions can be considered a form of unlawful act.

In addition to specific regulations on fiduciary and consumer protection, legal protection for debtors is also rooted in general principles in civil law, especially the principles of justice and fairness in contracts. In the Civil Code (KUHPerdata), Article 1338 paragraph (1) emphasizes that all agreements made legally apply as laws for the parties. However, paragraph (3) states that agreements must be implemented in good faith. This means that even if there is a clause in the fiduciary agreement stating that the debtor is willing to hand over collateral at any time in the event of default, its implementation must still be based on the principle of good faith and pay attention to aspects of justice

and humanity (Subekti, 2008). Clauses that are unilaterally burdensome can be considered as standard clauses that are detrimental to consumers and thus can be declared non-binding.

Unilateral withdrawal without a valid legal basis can also be qualified as an unlawful act (onrechtmatige daad) in civil law. Article 1365 of the Civil Code states that every unlawful act that causes loss to another person requires the perpetrator to compensate for the loss. In this context, if a leasing company or debt collector carries out forced withdrawal without valid documents, without procedures, or with violence, then the action can be sued in civil court by the debtor to request compensation. This lawsuit can be filed in court on the grounds that the creditor's actions do not meet the legal requirements and have caused material or immaterial losses to the debtor.

On the other hand, the act of withdrawal that is carried out roughly and contains elements of violence or threats can also have implications in the criminal realm. For example, if a leasing officer or debt collector seizes a vehicle by force on the highway without legal basis, then it can be qualified as confiscation or threats as regulated in Article 365 of the Criminal Code and Article 335 of the Criminal Code. Even in some cases, the police can arrest debt collectors who act outside the law. This confirms that legal protection for debtors is not only in the civil realm, but can also be extended to the criminal realm if there is an element of violation of criminal law in the act of withdrawing collateral.

Constitutional Court Decisions Number 2/PUU-XIX/2021 and Number 71/PUU-XIX/2021 further strengthen the position of debtors in facing unilateral confiscation. In both decisions, the Court stated that the phrase "authorized party" in the Explanation of Article 30 of the Fiduciary Guarantee Law must be interpreted constitutionally as "district court". Thus, all forms of assistance previously provided by the police to leasing companies in the context of withdrawing fiduciary guarantee objects have now been declared contrary to the 1945 Constitution and have no binding legal force unless interpreted as such (Constitutional Court, 2021). This decision is a real manifestation of legal protection for debtors who previously often had no bargaining power in dealing with large authorities or institutions.

Legal steps that can be taken by debtors if they experience unilateral confiscation include filing a criminal report with the police if there are elements of violence or intimidation, filing a civil lawsuit on the basis of an unlawful act, or reporting the financing company to the Financial Services Authority (OJK) and the Consumer Dispute Resolution Agency (BPSK). These institutions have the authority to take action against financing companies that violate legal and ethical provisions in executing fiduciary guarantees. In some cases, the OJK can even impose administrative sanctions in the form of warnings, freezing of business activities, and even revoking operational permits for companies that do not comply (OJK, 2021).

In addition to formal legal channels, it is also important to encourage strengthening legal literacy among the community as a form of preventive protection. Debtors need to be given an understanding that they have rights protected by law, including the right to obtain information, the right to reject unlawful actions, and the right to obtain justice through legitimate legal mechanisms. Increasing legal literacy can be done through legal counseling, cooperation with legal aid institutions, and dissemination of information through social media and mass media. By increasing legal awareness, it is hoped that the community will no longer be victims of unilateral confiscation that violates the law.

Finally, legal protection for debtors in fiduciary agreements is not only a positive legal responsibility, but also part of the development of a just and civilized legal system. A state of law must ensure that every citizen, regardless of their economic or social status, receives equal protection in the eyes of the law. By strengthening supervision of leasing companies, consistently enforcing court decisions, and increasing community participation in demanding justice, legal protection for debtors can truly be realized in real terms.

CONCLUSION

The problem of fiduciary guarantee execution in motor vehicle financing practices in Indonesia still leaves an imbalance between ideal legal regulations and the reality that occurs in the field. Although Law Number 42 of 1999 has provided a fairly clear legal framework regarding fiduciary guarantees, and the Constitutional Court has issued an important decision limiting the authority of unilateral execution by creditors, in fact unilateral confiscation actions by leasing companies still often occur. Many financing companies do not comply with legal procedures as they should, such as not showing fiduciary certificates, not going through official warnings, and even involving debt collectors who act outside the law. This condition not only violates the principles of private law, but also threatens the constitutional rights of debtors as citizens.

Therefore, legal protection for debtors must be strengthened through consistent law enforcement, strict supervision of financing companies, and legal education for the public. Debtors as the weaker party in the agreement structure must be given fair legal space to defend their interests. The state, through law enforcement officers and regulators such as the OJK, has an obligation to ensure that every fiduciary guarantee execution process is carried out based on the principles of justice, proportionality, and compliance with legal procedures. Thus, public trust in the financing and legal systems in Indonesia can be maintained, while creating a healthy and fair business climate.

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