



Legal implications of agreement default credit using fiduciary collateral objects obtained unlawfully at BCA INC finance Banda Aceh

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Abstract

Default in an agreement often occurs in the society. Default is negligence in carrying out obligations or not fulfilling the achievements as specified in the agreement between the creditor and the debtor. This research is intended to provide an explanation of the legal consequences of default on credit agreements using fiduciary collateral objects obtained unlawfully. This research is normative juridical research using conceptual approach, case approach, and statutory approach. The data collection was obtained from primary data in the form of legal materials and secondary data were taken from cases related to credit and fiduciary guarantees. The legal theory used as an analytical tool in this study is the theory of legal certainty, the theory of legal responsibility and the theory of dispute resolution. The results of this study show that legal consequence of a credit agreement that uses a fiduciary collateral object obtained illegally is that the guarantee object cannot be executed because the guarantee object does not belong to the debtor. In terms of agreement this type of agreement is not legitimate because creditors and debtors both of them have no legal standing as required by Article 1320 of the Civil Code.

Keywords: default; credit; guarantee, fiduciary, collateral object

Introduction

The existence of finance companies in Indonesia is currently increasingly needed by people from various walks of life. Financing Companies in carrying out their business and activities require a contractual agreement between the customer as the debtor and the Financing Company acting as a creditor both in financing practices, provision of capital funds and services. A contract agreement is generally made in the form of a standard contract, the form of the agreement has been prepared and printed in advance in a format that already contains the contents or clauses of the agreement by the finance company as the creditor (Salim, 2006, p. 147) ^[11].

BCA Inc. Finance Banda Aceh Branch is a finance company that conducts its business activities in the consumer finance sector, which focuses on financing motorcycles, cars, both new and used. Financing activities are carried out through a credit system in which payments by consumers are made in installments or periodically. The process of providing financing by BCA Inc. Finance and other financial institutions to consumers must be accompanied by a guarantee. Collaterals that are generally used are movable objects which can still be used by their owners, which are commonly referred to as fiduciary guarantees (Arista and Agus, 2017) ^[2]. Guarantees that also have economic value can be used by debtors in applying for financing. The rules regarding fiduciary guarantees are regulated in Law Number 42 of 1999 concerning fiduciary guarantees.

Basically, the fiduciary guarantee given by the debtor must be clear, that is, the goods are one's own property, not someone else's. Applying for credit using fiduciary guarantees by using objects belonging to other people should not be done, because it is feared that by including fiduciary guarantees belonging to other people the debtor will easily default or not carry out his achievements, and when the creditor confiscates the object of his fiduciary

guarantee will experience a long debate because of object ownership which is not clear. However, in reality many financial institutions still allow this, which then results in problems that do not have a good light. One of them is BCA Inc. Finance, which still provides credit to debtors who apply for credit using collateral that is not theirs.

Several previous studies also discussed financing and credit, namely: Meike and Abraham analyzed the legal consequences of transferring mortgage rights without the creditor's knowledge in reviewing the principles of balance and good faith in court decisions, the focus of this research is on the legal status of debtors who transfer collateral objects of mortgage rights without knowledge creditors in a review of the principle of balance (Meike and Abraham, 2020) ^[9]. Intan *et al* in their research on the legal consequences of debtors renting fiduciary collateral objects without written approval from creditors, the research focus is on legal consequences for debtors who rent out fiduciary collateral objects without written approval from creditors (Intan *et al*, 2022) ^[8]. Then by Arista who researched the legal consequences of consumer financing agreements with the imposition of fiduciary guarantees that were not registered, the issues studied were regarding the legal construction of financing with fiduciary imposition, the relationship between the financing agreement as the main agreement and the deed of fiduciary guarantees as an additional agreement (*accessoir*), as well legal consequences for the parties to the financing agreement with unregistered fiduciary charges (Arista, 2014) ^[1].

This journal was written to expand and enrich previous research related to credit and fiduciary guarantees in banks and other financial institutions. In this research, the researcher focuses on the legal consequences of financing agreements that use collateral objects obtained unlawfully. This study explains what legal consequences will be received by the parties to the object of collateral obtained

unlawfully, more specifically to credit in which there is default by the debtor and the object of the fiduciary guarantee in the form of goods belonging to other people and is usually said to be against the law.

Research Method

The type of research used in this study is normative juridical, namely legal research conducted by examining literature or secondary data alone (Soerjono Soekanto and Sri Mamuji, 2009, pp. 13-14) ^[12]. Apart from that, as an addition, empirical legal research methods are also used, namely a study that compares the reality that occurs in society with the applicable legal provisions (Bambang Waluyo, 2002, pp. 15-16) ^[5]. The research approach used in this study is: a conceptual approach, namely to analyze legal material so that the meaning contained in legal terms can be known (Hajar M, 2015, p. 41) ^[6]. Then the case approach is carried out by conducting a study of cases related to issues that have become court decisions, which have permanent legal force (Syamsudin, 2007, p. 58) ^[13]. The statutory approach is carried out by examining and analyzing the contents contained in the laws and regulations concerned with the legal issues being studied (Bambang Sunggono, 2015, p. 91) ^[4]. The sociological approach is to look at the reciprocal relationship between law and social phenomena empirically and analytically, this approach tries to understand the law as it really is, not what it should be (Umar Sholahuddin, 2017, p. 50) ^[14]. The data collection technique in this research is literature study, and also uses interviews, document studies. The data obtained in this study were analyzed qualitatively using an inductive analysis instrument, namely analyzing the legal implications of default on credit agreements using fiduciary guarantee objects obtained illegally at BCA Inc. Finance Banda Aceh.

Results and Discussion

1. General overview of credit

Credit is a customer who has the trust of the bank in the form of a loan of a sum of money, giving credit by the bank to the customer occurs with the trust in the customer (Silondae and Wirawan, 2012, p. 73) ^[3]. In Article 1 paragraph (1) Law Number 10 of 1998 concerning Banking it is formulated that credit is the provision of money or claims that can be equated with it, based on a loan agreement or agreement between the bank and another party that requires the borrower to pay off the debt after a certain period of time, certain time by giving interest (Hermansyah, 2009, p. 57) ^[7]. This understanding shows that the achievement that must be made by the debtor on the credit given to him is not merely to pay off the debt, but also accompanied by interest in accordance with the previously agreed agreement.

Judging from its use, the provision of bank credit can take the form of: working capital credit, investment credit and consumption credit. Working capital credit, namely short-term credit provided to finance the working capital needs of a company. Investment credit, namely medium term and long term loans in order to finance the procurement of fixed assets of a company. Meanwhile, consumer credit is credit given to the public (Zainal Asikin, 1995, pp. 57-60) ^[16].

To prevent non-performing loans from occurring in the future, the assessment of a bank to give approval for a credit application is carried out based on the 4P formula and 5C formula. The 4P formula is: Personality, Purpose, Prospect,

Payment, and those included in the 5C formula are: Character, Capacity, Capital, Collateral, Condition of Economy.

In connection with the conditions for granting credit above, basically lending by banks to debtor customers is guided by 2 principles, namely: the principle of trust and the principle of prudence. According to the provisions of Article 12 paragraph (3) of Bank Indonesia Regulation No. 7/2/PBI/2005 concerning Asset Quality Rating for Commercial Banks, credit quality is divided into 5 collectibilities, namely: current, on special mention, substandard, doubtful, and loss. The elements contained in the credit agreement are: 1) approval and agreement, 2) made jointly between the creditor and the debtor, 3) the debtor's obligations, the debtor's obligations, namely (returning the credit he has received, paying interest and fees other).

In applying for credit, the debtor must also provide guarantees for the loan. Collateral is a bank's belief in the ability of the debtor to pay off the credit as agreed (Article 2 paragraph (1) of the Decree of the Directors of Bank Indonesia Number 23/69/KEP/DIR dated February 28, 1991 concerning guarantees for granting credit). As for Article 1131 of the Civil Code, it is emphasized that the function of the guarantee is as an effort to fulfill the debtor's obligations valued in money, namely to be fulfilled by making payments.

Article 1131 of the Civil Code states that the guarantee law has general principles, namely: 1) a person's wealth is collateral for his debts, 2) this wealth also includes objects that will be obtained or owned in the future, 3) this wealth includes objects that are movable and immovable objects, 4) creditors are not allowed to take collateral items to be directly owned and considered as repayment of the debtor's debt.

Guarantees in banking are commonly referred to as Fiduciary guarantees, namely guarantee rights over movable objects, both tangible and intangible and immovable objects, especially buildings that cannot be encumbered by mortgage rights as referred to in Law Number 4 of 1996 concerning Mortgage Rights referring to article 1 number 2 of Law Number 42 of 1999 concerning Fiduciary Guarantees, it is explained that objects that can be used as collateral in a fiduciary are movable objects. Goods submitted as collateral in fiduciary terms are objects or items that can economically support the smooth running of the debtor's business activities.

2. Financing Process at BCA Inc. Finance

As for the process of applying for financing or credit at BCA Inc. Finance, prospective creditors are required to carry out several processes, namely: the existence of a credit application, which must be able to fulfill the rules determined by the company in the form of an Indonesian citizen who is 18 years of age and over at the time of application and the maximum age 64 years old when paid off, then the prospective debtor is required to complete the required documents in the submission process, in the form of: a) Photocopy of the applicant's Id Card, wife's or husband's Id Card, family card, marriage or divorce certificate, b) Photocopy of PBB or proof of electricity or Municipal Waterworks account, c) Photocopy of Tax Id Number or Tax Id Number statement, d) Photocopy of current or savings accounts for the last 3 months, e)

Photocopy of business license, f) Photocopy of Certificate of Company Registration, photocopy of deed of establishment and amendment as well as the Minister of Justice's certificate, g) Copy of domicile statement, photocopy of financial statements in the last 2 years, h) Photocopy of Id Card complete management, i) Photocopy of license to practice, j) Photocopy of salary slip for the last 1 month or letter income statement (original). Then after the credit application has been made, the creditor will conduct a credit investigation and analysis, namely checking directly the field to find out the condition of the debtor, after that there will be a credit decision, and the final process is the process of repayment or credit payment (Yentina and Widya, 2020) ^[15].

Objects of Fiduciary Guarantees in Financing or Credit Agreements at BCA Inc. Finance is in the form of goods whose identity is well known, the type and shape and status of the goods are clearly guaranteed by the fiduciary provider. If the fiduciary item is in the form of a car, the data that must be described in the fiduciary agreement include the car brand type, paint color, year of manufacture, police number, chassis number, chassis number and other characteristics. If the collateral is in the form of a watch, what is stated is the form of goods, condition of goods, date of acquisition, brand, country of manufacture and so on. If there is more than one type of goods used as collateral, then a fiduciary agreement does not need to be made according to the number of objects, but only one fiduciary deed and in the deed are clearly described one by one the fiduciary objects. Including the identity data of the goods that are used as objects of fiduciary guarantees functions to check the truth of what is written in the fiduciary agreement with the actual condition of the goods, so that if the fiduciary object is to be executed as stated in the fiduciary agreement, the execution can run smoothly because of the clarity of the object (Putri Ayi Winarsasi, 2020, pp111-112) ^[10].

3. Legal Consequences of Credit Agreements Using Fiduciary Guarantee Objects Obtained Unlawfully

The Standard Operations and Procedures carried out by BCA Inc. Finance in issuing credit licenses to debtors in practice have deviated from existing standard operating procedures and procedures. Deviations can start from the credit application stage, credit analysis and credit decision stages. If this error occurs, there is a risk of a default in payment by the debtor or other legal consequences, such as not being able to carry out a guarantee sales auction as a result of default. As happened with BCA Inc. Finance in Banda Aceh through an agreement to extend credit to debtors residing in Aceh Besar Regency.

The case began with a credit agreement agreement (contract name Consumer Financing Agreement) between BCA Inc. Finance and an individual debtor in a Consumer Financing Agreement Contract Number 1111007001-PK-001 dated July 1 2015 with a debtor named M. Rizal with the submission of the Mitsubishi Pajero Sport proof of motor vehicle ownership, black color, Year 2009, Police Number BL 613 ZV which is used as the object of collateral for a financing loan at BCA Inc. Finance, with a tenor of 36 months, with a financing value of IDR 150,000,000.00 (one hundred and fifty million rupiah) and the total installment value per month is Rp. 4,270,000.00 (four million two hundred and seventy thousand rupiah).

When the debtor signs the PPK (Consumer Financing Agreement) at the BCA Finance office, the debtor states that the proof of motor vehicle ownership Mitsubishi Pajero Sport Police Number BL 613 ZV is his, which the car was previously purchased from someone else and has not changed its name to the proof of motor vehicle ownership. However, when the debtor gave this statement, the legal office and the credit committee did not verify the truth of the statement given by the debtor. Then after completing the PPK (Consumer Financing Agreement) signature at the BCA Finance office, the funds are issued according to the debtor's request.

Then in the payment process the debtor defaults, the debtor only pays credit for two months, after that the debtor does not carry out its obligations to pay. Then BCA Inc. Finance is doing further handling of bad credit. After verification, it was discovered that the collateral object that had been used as collateral for debt at The BCA Inc. Finance Banda Aceh was obtained by the debtor unlawfully or without the permission of the legal owner of the car, this is evidenced by the report of a complaint filed by the legal owner of the car, brother Budiwansyah, to Banda Aceh Police Investigators on suspicion of embezzlement.

From this problem it can be seen that there is unclear object in the credit application made by the debtor, and the creditor (BCA Inc. Finance) does not see or ensure the ownership of the object that is used as collateral by the debtor, so it can be analyzed that the main error occurred at the credit application. Supposedly, BCA Inc. Finance's Credit Analysis Team had to be more careful and careful in issuing credit approval recommendations. The standard operating procedures have been violated by the credit analysis team so that the error is internal to BCA Inc. This case has violated the principle of prudence as stipulated in the Decree of the Director of Bank Indonesia No. 27/162/KEP/DIR dated March 31, 1995. The Prudential Principle is a principle which states that a bank in carrying out its functions and business activities must apply the Precautionary Principle in order to protect public funds entrusted to it. This is stated in Article 2 of Law Number 10 of 1998 concerning Banking, that Indonesian banking in carrying out its business is based on economic democracy by using the precautionary principle. The purpose of the precautionary principle is so that the bank is always in good health. With the application of the precautionary principle, it is expected that public trust in banks will remain high, so that people are willing and not hesitate to save their funds in banks. In the precautionary principle of 5C of Credit which includes character (character), capacity (capability), capital (capital), collateral (collateral), condition of economy (business prospects of the debtor).

When viewed from the point of view of the validity of the agreement as stipulated in Article 1320 of the Civil Code, the credit agreement between the parties remains valid, but when the debtor does not carry out his obligations or defaults in the form of arrears in payment that does not have the good faith to pay, then the guarantee for the Mitsubishi Pajero Sport Car Police Number BL 613 ZV cannot be executed. The legal consequence is that BCA Inc. Finance cannot confiscate and sell debtor guarantees that are not in its name, even though the proof of motor vehicle ownership for car guarantees is still controlled by BCA Inc. Finance. The position is not clear, because an auction cannot be carried out as compensation for the debt. In fact, there is an

opportunity to file a lawsuit by those who have the right to the car that is used as collateral, against debtors and creditors (BCA Inc. Finance) on the basis of unlawful acts (Article 1365 of the Civil Code). Article 1365 of the Civil Code stipulates that any unlawful act that results in harm to another person obliges the person who committed the act to compensate for the loss. Therefore, BCA Inc. Finance is legally at a disadvantage and at risk of being sued by the car owner for controlling the rights to the proof of motor vehicle ownership of car without the formal approval of the owner.

Conclusion

Implementation of the credit agreement with BCA Inc. Finance in the case of the Consumer Financing Agreement Contract Number 1111007001-PK-001 dated 01 July 2015 with a debtor named M. Rizal with submission of proof of motor vehicle ownership of Mitsubishi Pajero Sport, black color, Year 2009, Police Number BL 613 ZV which was used as an object of collateral for financing loans at BCA Inc. Finance has violated the principle of prudence as stipulated in Law no. 10 of 1998 concerning Banking and Bank Indonesia Regulation No.7/2005 Jo PBI No.8/2005.

From an internal aspect, BCA Inc. Finance does not carry out Standard and Operational Procedures related to 5C of Credit which includes character (character), capacity (ability), capital (capital), collateral (collateral), condition of economy (business prospects of the debtor). Collateral is the main problem or a factor that causes the creditor to be in a weak position due to the proof of motor vehicle ownership guarantee of the Mitsubishi Pajero Sport Car Police Number BL 613 ZV as stated in the financing agreement, not on behalf of the debtor but on behalf of another person. Here there is negligence in the credit application examination stage which should have been known from the start to have legal risks that should not have happened if a strict selection was made of the ownership of the object. The team working for credit analysts should know the weaknesses in the credit application, but they still let this happen until the credit agreement is approved. The existence of a default by the debtor can be predicted beforehand and the legal consequences.

The legal consequence of a credit agreement that uses a fiduciary collateral object obtained unlawfully is that the Mitsubishi Pajero Sport proof of motor vehicle ownership guarantee Police Number BL 613 ZV cannot be executed because the guarantee does not belong to the debtor so that BCA Inc. Finance will suffer losses when the Debtor defaults on the agreement. Regarding the Consumer Financing Agreement Contract Number 1111007001-PK-001 is valid according to Article 1320 of the Civil Code, but the creditor here cannot carry out direct execution regarding the object, because the object does not have definite clarity belonging to the debtor, there is a third party involved in the ownership the object.

References

1. Arista Setyorini. "Akibat Hukum Perjanjian Pembiayaan Konsumen Dengan Pembebanan Jaminan Fidusia Yang Tidak Didaftarkan", Thesis, Fakultas Hukum Universitas Surabaya, 2014.
2. Arista Setyorini, Agus Muwoto, Akibat Hukum. Perjanjian Pembiayaan Konsumen Dengan Pembebanan

- Jaminan Fidusia Yang Tidak Dapat Didaftarkan, *Mimbar Keadilan Jurnal Ilmu Hukum*, 2017.
3. Arus Akbar Silondae dan Wirawan B. Ilyas, *Pokok-pokok Hukum Bisnis*, Salemba Empat: Jakarta, 2012.
4. Bambang Sunggono, *Metodologi Penelitian Hukum*. Jakarta: Rajawali Pers, 2015.
5. Bambang Waluyo, *Penelitian Hukum Dalam Praktek*. Sinar Grafika: Jakarta, 2002.
6. Hajar M. *Model-Model Pendekatan dalam Penelitian Hukum dan Fiqh*, Pekanbaru: UIN Suska Riau, 2015.
7. Hermansyah. *Hukum Perbankan Nasional Indonesia*, Kencana: Jakarta, 2009.
8. Intan Sania. Sanusi dan Darmawan, Akibat Hukum Debitor Yang Menyewakan Objek Jaminan Fidusia Tanpa Persetujuan Tertulis Kreditor, *Jurnal Hukum Magister Kenotariatan Fakultas Hukum Universitas Syiah Kuala*, 2022, 8.
9. Meike Binsneyder dan Abraham Ferry Rosando, Akibat Hukum Pengalihan Hak Tanggungan Tanpa Spengetahuan Kreditor Dalam Tinjauan Asas Keseimbangan Dan Itikad Baik Dalam Putusan Pengadilan, *Jurnal Hukum Bisnis*, 2020:3(1).
10. Putri Ayi Winarsasi. *Hukum Jaminan di Indonesia*, Surabaya: CV Jakat Media Publishing, 2020.
11. Salim. *Perkembangan Hukum Kontrak Di Luar KUHPdata*, Raja Grafindo Persada: Jakarta, 2006.
12. Soerjono Soekanto dan Sri Mamuji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat*, Jakarta: Rajawali Press, 2009.
13. Syamsudin, *Operasional Penelitian Hukum*. Jakarta: Raja Grafindo Persada, 2007.
14. Umar Sholahuddin. "Pendekatan Sosiologi Hukum dalam Memahami Konflik Agraria", *Jurnal Dimensi*, 2017:10(2):50.
15. Yentina Siregar dan Widya Simanungkalit. Analisis Pengendalian Internal Atas Pengelolaan Pemberian Kredit Studi Kasus Pada PT. BCA Finance Batam, *Jurnal Bening Prodi Manajemen Universitas Riau Kepulauan Batam*, 2020:7(2).
16. Zainal Asikin. *Pokok-pokok Hukum Perbankan di Indonesia*, Raja Grafindo Persada: Jakarta, 1995.