RESOLUTION OF BAD DEBT FOR FOUR-WHEELED VEHICLES IN CONSUMER FINANCING AGREEMENTS AT PT MULTINDO AUTO FINANCE, JEMBER BRANCH

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ABSTRACT

Consumer financing is one of the financing models carried out by financial companies where the target market is debtors who want to meet their needs by making payments in installments. Financing Institution is regulated in Presidential Regulation No. 9/2009. In conducting their business, debtors experience default problems in the form of bad debts against objects of fiduciary collateral. This study used a normative juridical approach. The research specification was with descriptive analytical, and the sources and types of data were obtained from secondary and primary data. The data analysis method was qualitative method. The results of the research obtained are: 1) The factors that caused the debtor to experience bad debt are the debtor's negligence in paying installments which were past due; 2) Legal protection for debtors is regulated in Law Number 8 of 1999 concerning Consumer Protection; 3) the efforts taken by PT Multindo Auto Finance by providing a warning letter in advance and conducting negotiations. However, the debtors chose litigation and the court gives a decision that the debtors were guilty so that the debtors had to carry out their obligations.

Key words: bad debt, financial institutions, consumer protection.

INTRODUCTION

The development of the national automotive industry business world has resulted in massive production of various kinds of motorized vehicles, especially four-wheeled vehicles. The development of motorized vehicle production cannot be separated from the increase in community demand for work transportation, business activities, as well as increasing social status. The groups of four-wheeled vehicle users (debtors) include private and government office workers, members of the legislature, informal sector workers, and individuals.

Advances in technology have spurred the company to produce increasingly sophisticated, diverse, four-wheeled vehicle products with attractive car designs. The advantages of a new product encourage the public (debtors) to be tempted to own it, even though perhaps financially the funds to buy it are insufficient.

The public's need for financing is currently getting higher, resulting in more and more financial institutions, both banks and non-bank financial institutions, where these institutions are the destination of debtors to meet their needs, especially financing, whether it is in the form of provision of funds or capital goods. Just like banks and other official institutions, the mechanism regarding financing companies is known to the state or and has been regulated in the Minister of Finance Regulation Number 84 / PMK.012 / 2006 concerning Financing Companies.

> Financing company is defined as consumer financing *(consumer finance)* is a financing activity for the procurement of goods based on consumer needs with payment in installments. The consumer payment agreement contains several elements: a). A payment activity; b). Intended for the procurement of goods; c). To meet consumer needs; and D). Payment is made in installments. [1]

Consumer financing is one of the financing models carried out by financial companies, in addition to activities such as *leasing*, *factoring,* credit cards and so on. The target market of this consumer financing model is clear, that of the debtors. This financing institution assists the debtor by providing credit facilities to consumers to obtain a four-wheeled vehicle product which, if purchased in cash, is not possible because the price is high and the income of consumers from the middle to lower income community is relatively low.

As was the case with the PT Multindo Auto Finance Jember Branch Financing Institution in Decision Number 72 / Pdt.G / 2018 / PN.JMR the judge rejected all claims from the plaintiff, namely the FRE debtor and granted the appeal of the defendant, namely PT Multindo Auto Finance, Jember Branch. . The bad credit occurs after the debtor experiences a default, that is, he is negligent in making installment payments from the agreement agreed by both parties. This can be detrimental to both parties because the party of the *finance* will experience delays in deposits and the debtor will experience losses in the form of goods that become fiduciary collateral withdrawn by the party of the *finance* .

Law Number 42 of 1999 concerning Fiduciary Security in Article 1 point 1 provides the definition and definition of fiduciary as the transfer of ownership rights to an object on the basis of belief provided that the object whose ownership rights are

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[1] Witanto, DY, 2015. *Hukum Jaminan Fidusia Dalam Perjanjian Pembiayaan Konsumen (Aspek Perikatan. Pendaftaran, dan Eksekusi (Fiduciary Guarantee Law in Consumer Financing Agreements (Aspects of Engagement. Registration and Execution)*. Mandar Maju, Bandung, p. 29.

transferred remains under the control of the owner of the object (the provider of the Fiduciary Guarantee). Trust here means that the guaranteed object remains in the control of the debtor.

In general, consumer financing agreements have been made by companies or financial institutions. In this case the rights and obligations of the parties have been determined by the company or financing institution. The debtor only needs to agree or reject the agreement if it is not in accordance with his wishes. Therefore, it can be said that the debtor is in a weak position. In this case, legal protection is needed for debtors, so that they can get a balance.

Based on the description above, the writer would like to further examine the problem and compile it in a thesis entitled: *"Resolution of Bad Debt for Four-Wheeled Vehicles in Consumer Financing Agreements at PT Multindo Auto Finance, Jember Branch".*

PROBLEM FORMULATION

Based on the description on the background of the problem above, there are several problem formulations, including the following:

1. What factors caused the debtor to experience bad debt at PT Multindo Auto Finance, Jember Branch?
2. How was the legal protection for debtors who experience bad debt at PT Multindo Auto Finance Jember Branch?
3. How were the efforts to resolve non-performing loans for four-wheeled vehicles in the consumer financing agreement at PT Multindo Auto Finance, Jember Branch?

THEORY / LITERATURE

1. Overview of Credit

a. Definition of Credit
WJS Poerwadarminta defines credit as:
1) Selling goods with no cash payment (so payment is deferred or in installments); \
2) Buying goods with deferred or installment payments.

From this definition, there are two parties that carry out credit activities, namely the seller and the buyer. Both parties in the modern business world, especially those practiced in financial institutions, both banks and non-banks, are known as sellers or credit providers, called creditors, and buyers or consumers are called debtors. Another opinion regarding credit was expressed by Kasmir, namely that credit is a form of financing in the form of money or a bill whose value can be exchanged for money.[2]

Meanwhile, according to Veithzal Rivai and Andria Permata Veithzal, what is meant by Credit is a transfer of money, services or goods from one party to another on the basis of trust with an agreement of being able or able to pay on an agreed date. [3]

Based on these definitions of credit, it can be concluded that credit is the delivery of money, goods or services from the creditor to the debtor on the basis of trust with an agreement to be able or able to pay on the date agreed by both parties.

b. Purpose and Function of Credit

Lending from both bank and non-bank financing institutions to customers or debtors has a specific purpose and function. According to Kasmir, the objectives of providing credit include:

1) Seeking profit.
The results of this profit are obtained in the form of interest received by the bank as remuneration and credit administration fees charged to customers;
a) Helping customers' businesses
It is both for investment and funds for working capital or consumption. With these funds, the debtor will be able to develop and expand his business. In this case, both the bank and the customer benefit;
b) Helping the government
For the government, the more credit disbursed by the bank, the better, considering that more credit means disbursement of funds in order to increase development in various sectors, especially the real sector.[4]
Furthermore, the functions of providing credit are:
(1) To increase the usability of money; \

[2] Kasmir, 2016, *Manajemen Perbankan (Banking Management)*, PT. RajaGrafindo, Jakarta, p. 20
[3] Rivai, Veithzal and Andria Permata Veithzal, 2006, *Credit Management*, PT. Raja Grafindo, Jakarta, p. 4
[4] Khasmir, *Op, Cit,* p. 105

(2) To increase the circulation and traffic of money;
(3) To increase the usability of goods;
(4) To Increase the circulation of goods;
(5) As a tool for economic stability;
(6) To increase the passion for entrepreneurship;
(7) For additional income capital; and
(8) To improve international relations.[5]

c. Credit Elements

There are many elements in credit. According to Thomas Suyatno, the elements of credit consist of:

1) Trust;
2) Grace period;
3) Degree of risk;

In relation to the provision of credit for four-wheeled vehicles from non-bank financing institutions, there are elements of trust, time period, risk and achievement.

d. Types of Credit

In the business world, there are various types of credit provided by various financing credit institutions. According to Munir Fuady, credit is divided into two types, *Sale* and *Loan Credits*. What is meant by Sale *Credit* is a gift for the purchase of an item, and the customer will receive the item. Meanwhile, what is meant by *Loan Credit, the* customer will receive *cash* and is obliged to return the debt in *cash* at a later date. That way, consumer financing is classified as *Sale Credit*, because the debtor does not receive *cash*, but only receives "goods" purchased with the credit. [6]

Meanwhile, credit classification is based on collectability using Bank Indonesia Circular Letter No. 26/4 / BPPP / dated 29 May 1993 as quoted by Hasanudin Rahman consists of:

1) Current credit;
2) Non-performing credit;
3) Doubtful Credit; and
4) Bad credit.[7]

2. Special Review of Consumer Financing Institutions

a. Definition of Financing Institutions

The legal basis for Financing Institutions is Presidential Regulation Number 9 of 2009 concerning Financing Institutions. Based on this regulation, a Financing Institution is defined as a business entity that carries out financing activities in the form of provision of funds or capital goods. The existence of a financing institution is a very positive thing because with this institution, businesses that lack capital can be assisted in carrying out their activities.

In the Regulation of the Minister of Finance of the Republic of Indonesia Number 84 / PMK.012 / 2006 concerning Financing Companies, namely business entities outside of Banks and Non-Bank Financial Institutions specifically established to carry out activities included in the business sector of Financing Institutions. What is included in the business sector of financial institutions includes business activities in the form of leasing, factoring, credit card business, and or consumer financing. So, a finance company is a business entity that is specifically established to carry out these four types of business fields. A finance company that carries out more than one business activity is called acompany *multi-finance*. The legal form allowed for a finance company is a Limited Liability Company (PT) or a cooperative.

b. Definition of *Consumer Finance*

In Article 6 of the Financial Regulation Number 84 / PMK.012 / 2006 concerning Financing Companies, it is stated that *Consumer Finance* is a financing activity for the procurement of goods based on the needs of the debtor with payment in installments. Consumer needs referred to in the regulation include:

1) Motor vehicle financing;
2) Household appliance financing;
3) Electronic goods financing;
4) Housing finance.

1. Types of Financing Institutions

Referring to Article 2 of Presidential Regulation Number 9 of 2009 concerning Financing Institutions, financing institutions include among others:

1) Financing Companies;

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[5] *Ibid*, p. 106
[6] *Ibid*, p. 163
[7] Rahman, Hasanudin. 1998, *Aspek-Aspek Hukum Pemberian Kredit Perbankan di Indonesia (Panduan Dasar Legal Officer*) (*Legal Aspects of Providing Banking Credit in Indonesia (Basic Guide Legal Officer*)), PT. Citra Aditya Bakti, Bandung, p. 121

2) Venture Capital Company;
3) Infrastructure Financing Company.

Regarding business activities or business fields that can be carried out by each type of financing institution, Presidential Regulation Number 9 of 2009 regulates the following:

1) Financing companies include leasing, factoring, credit card business, and / or consumer financing activities;
2) Venture capital companies include *equity participation*, participation through the purchase of convertible bonds *(quasi equity participation)*, and financing based on the distribution of business results (profit /*revenue sharing)*;
3) Infrastructure Financing Companies includebusiness activities *direct lending* for infrastructure financing, refinancing of infrastructure that has been financed by other parties, and / or providing *subordinated loans* related to infrastructure financing.

2. Parties in Consumer

Financing There are many parties involved in consumer financing, namely:

1) consumer financing companies (creditors);
2) Consumers (debtors);
3) *Supplier*.[8] For motorized vehicles; it is usually a Dealer.

The emergence of a relationship between a finance company and a debtor begins with the making of a contract or agreement, namely a consumer financing contract or agreement. After an agreement has been agreed or signed, the parties are legally bound by their respective rights and obligations. The next juridical consequence is that the contract or agreement that has been made must be carried out in good faith and not unilaterally canceled.

RESEARCH RESULTS AND DISCUSSION

1. The Factors That Caused Consumers Experiencing Bad Credit at PT. Multindo Auto Finance Jember Branch

Bad credit on four-wheeled motor vehicle debtors at PT. Multindo Auto Finance can be categorized as a form of default. In accordance with the definition of Default, it means that the debtor does not do what he promised or breaks his promise, violates the agreement and does something he is not allowed to do. The causes of bad credit for four-wheeled motor vehicle debtors at PT. Multindo Auto Finance can be shown in bad credit that occurred at PT. Multindo Auto Finance Jember Branch Office. Factors that often occur are due to declining market or economic conditions, which causes debtors to be unable to continue their installments.[9]

In accordance with the Fiduciary Guarantee Law, credit financing companies, namely PT. Multindo Auto Finance has the right to execute a withdrawal action because in the consumer financing agreement a fiduciary certificate has been issued as well as a guarantee from the debtor in the form of a BPKB. So that if there is default or bad credit experienced by the debtor, the *finance* has the right to take over the motorized vehicle because the motorized vehicle is still the property of the *finance*, but the object of the fiduciary guarantee remains in the power of the fiduciary, namely the debtor with the right to borrow and use.[10]

As in Decision Number: 72 / Pdt.G / 2018 / PN. JMR, where a debtor experiencing bad credit is due 14 (fourteen) days late from the time agreed by both parties. In this decision, the factor that causes the debtor to default is because the debtor has failed to pay one of the installments or has passed the installment payment due date that has been agreed by both parties and is stated in the Credit Investment Financing Agreement (Vehicle Guarantee). Where every 11th the debtor has an obligation to pay installments for his motor vehicle. Because in addition to the debtor being negligent in making payments that exceed the due date, the debtor also only pays installments per month. Not followed by late payment and interest penalties that have been determined and approved by the Debtor and Creditor.[11]

If the debtor chooses to purchase a four-wheeled motor vehicle through a financing institution, the main condition for the debtor must be a fixed income. Because it will be considered quite heavy if economic factors cannot support the debtor in paying installments for four-wheeled motorized vehicles.[12]

[8] Rachmat, Budi. 2002, *Multi Finance Sewa Guna Usaha, Anjak Piutang, Pembiayaan Konsumen (Multi Finance Leasing, Factoring, Consumer Financing)*, CV. Novindo Pustaka Mandiri, Jakarta, p. 138
[9] Interview with the Legal Supervisor, PT. Multindo Auto Finance, Sartono, 15 October 2019
[10] *Ibid.*
[11] *Ibid.*
[12] *Ibid*, 05 November 2019

2. Legal Protection for Consumers Experiencing Bad Credit at PT Multindo Aauto Finance, Jember Branch.

The Fiduciary Security Law in its regulation also provides protection for debtors and movable objects that are objects of collateral. Even though in the financing institution regulations, the purpose of making this regulation is to protect the financing institution because the institution provides or acts as a provider of funds in making credit agreements.

Other protections provided to debtors are also contained in Article 33 of the Fiduciary Guarantee Law. Namely the prohibition of owning objects which are the object of collateral in the case of defaulters. The collateral object is only possible to be sold or executed if the debtor defaults and the proceeds from the sale are used to pay off the debtor's obligations. If there is any residual from the sale, the proceeds must be returned to the debtor.

The legal protection provided to debtors is divided into 2 (two), namely preventive and repressive legal protections:

a) Preventive legal protection provided by the government with the aim and purpose of preventing before the occurrence of violations and problems. This has been regulated in laws and regulations which aim to prevent debtors and creditors from harming each other.
b) Repressive legal protection. This is the final protection in the form of sanctions such as fines, imprisonment, and additional sentences that are given when a dispute has occurred or an offense has been committed. [13]
This *repressive* legal protection is provided to debtors with the aim of preventing bad credit. These protections include:
1) Making a written agreement in accordance with applicable regulations;
2) Reading and understanding carefully the contents of the agreement,
3) Knowing which company will be the destination for applying for credit.[14]

In the Law on Consumer Protection, the provisions regarding this standard clause are regulated in Chapter V concerning the provisions for the Inclusion of Standard Clauses which only consist of one article, namely Article 18 of the Consumer Protection Law. Article 18 of the Consumer Protection Law in principle regulates two types of prohibitions imposed on business actors or creditors who make standard agreements and / or include standard clauses.

In the case of bad credit at PT Multindo Auto Finance, the debtor also gets legal protection as stated in Article 18 paragraph 1 letter (g) and (h) of the Company Law. Whereas in the article it is stated that business actors in this case, namely PT Multindo Auto Finance are prohibited from including standard clauses in consumer financing agreements that are made unilaterally and weaken the position of the debtor. With the existence of Article 18 paragraph 1 in the Consumer Protection Law, it is clear that the debtor is very weak because of the clause made by the financing institution.

3. The Efforts to Settle Four-Wheeled Vehicle Bad Credit in Consumer Financing Agreement at PT Multindo Auto Finance Jember Branch

According to Article 29 letter C Law no 42 of 1999 concerning Fiduciary Security regulates that if the debtor or provider of fiduciary breaches, the execution of objects that become fiduciary collateral can be done by means of one of them selling under the hand.[15] Installment payments will end when the installments charged to the debtor have been completed or have been paid off.

With the problem of bad credit, in addition to each party having legal protection, the financial institution also has measures that can be taken to resolve bad credit. These efforts are divided into 2 (two) roads, including:[16]

a. litigation (through the court);
b. Non-litigation (through preventive measures, namely measures to anticipate the emergence of bad credit, *early warning* and negotiation efforts).

As happened in Decision Number: 72 / Pdt.G / 2018 / PN.JMR, where the FRE debtor who was negligent in carrying out his obligations was making the second installment payment which was due every 11th. As for the efforts taken by the finance party before pulling the car the object of the dispute, including:[17]

a) The creditor issued a warning letter 2 (two) times, namely SP-1 dated January 15, 2018 and SP-2 dated January 27, 2018, which essentially notifies the debtor about his obligation to pay installments. However, the debtor did not respond to the warning letter submitted by the creditor.
b) The creditor felt aggrieved so that he withdrew the car which was used as a fiduciary guarantee, but after the vehicle was withdrawn, the creditor still tried to contact the debtor to discuss the vehicle that was the object of the dispute.

[13] Interview with the Legal Supervisor, PT. Multindo Auto Finance, Sartono, 15 October 2019
[14] *Ibid.*
[15] Interview with the IT Supervisor, PT. Multindo Auto Finance, 08 October 2019
[16] Interview with the Legal Supervisor, PT. Multindo Auto Finance, 05 December 2019
[17] *Ibid.*

c) The creditor provided notification letters to the debtor 3 (three) times, namely Auction Notice dated February 7 2018, Notification Letter II dated February 12, 2018, Auction Notice III dated February 14 2018. However, the debtor still did not show good faith for the peace deliberation in order to resolve the vehicle that was the object of the dispute.

This non-litigation effort was provided by the financing institution by giving advance warning to the debtor regarding the installment payment period. At a stage like this, the debtor should have good faith by visiting the office of a financing institution that makes it easy to make loans for four-wheeled vehicles.

When there is no good faith from the debtor, the financing institution will withdraw the vehicle. This could be done by the finance party, namely PT. Multindo Auto Finance Jember Branch because it was the right of the creditor in accordance with the Investment Financing Agreement (Vehicle Guarantee) Number: 0043051371-001 which had been approved and agreed upon by creditors and debtors.

CONCLUSION

1. Conclusion

Based on the results of the discussion chapter above, it can be concluded a number of things, namely as follows:

a. The factors that cause debtors to experience bad credit are due to factors from the debtor himself, namely in the form of a declining economy resulting in problems in the installment payment process that has been determined and approved due date. Another factor is that the debtor is negligent in carrying out his obligations as agreed in the Investment Financing Agreement (Vehicle Guarantee) Number: 0043051371-001.
b. The legal protection obtained by the debtor in this case is already listed in Article 18 of the Consumer Protection Law letter (g) and letter (h). With the inclusion of a prohibition on the use of standard clauses, this is a step forward for legal development, especially the Consumer Protection Law.
c. There are 2 (two) efforts to resolve bad credit in consumer financing, namely litigation and non-litigation efforts. In practice, the financing institutions prioritize non-litigation by deliberation, but the debtors are more likely to seek litigation efforts which in the end are detrimental to the debtor itself because the costs to be paid are higher.

2. Suggestions

Based on the description of the conclusions above, the suggestions that can be given include:

a. It is expected that the debtor before taking steps to make credit payments, must be more careful in reading the agreement that will be agreed by both parties so that they will not experience bad credit. This is expected so that both parties do not suffer losses.
b. In making agreements that will later bind creditors and debtors, the financing institution should not make clauses that can harm either party. The debtor is given the opportunity to reject any clauses that are deemed to weaken the debtor's position in carrying out the financing agreement.
c. If there is default experienced by one of the parties, it should be resolved only through non-litigation, namely deliberation and negotiation efforts. Because if it is resolved through court efforts, the debtor's position will be weaker and there is no confidentiality regarding the debtor's information. And the debtor must also have good faith to resolve the bad credit dispute problem.

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