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Debtor's Legal Consequences of Approval of Motor Over Credit Without the Leasing Party's Knowledge

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Abstract: The Over credit process is a method of purchasing an asset by transferring credit from the initial debtor to the new debtor. In the motorbike overcredit scheme, the first party who transfers their motorbike credit to the second party will receive compensation in the form of cash as a substitute for the down payment or what is usually called Down Payment. Meanwhile, the second party will continue the remaining installments from the previous installments. Transfer of fiduciary guarantees or over credit transfer is the process of transferring ownership of an object along with installment payments that are still on credit to an individual who is a third party. The fiduciary guarantee itself is a security right for an object in the credit process that remains in the control of the debtor. The development of leasing companies is quite rapid in Indonesia, the types of goods financed are increasingly varied, not only in the field of transportation but also expanding to the industrial, telecommunications, agricultural and other sectors. Financing carried out by the leasing party is stated in the credit agreement between the leasing party and the debtor.

Keyword: Leasing Company, Default, Fiduciary Guarantee.

INTRODUCTION

Along with the progress of globalization, society is also developing rapidly. With the advancement of Internet technology, there are no longer any boundaries between worlds. Economic development is also progressing rapidly, requiring fast movement from the audiences involved. One of the things that can support the acceleration of public mobility is motorized vehicles. Motorized vehicles can transport people and goods between places quickly and in large quantities. The two types of motorized vehicles that are commonly used are cars and motorbikes. Motorbikes are more affordable than cars, but they don't carry as much cargo. On the other hand, cars are more expensive, but they carry a lot of cargo. Even though for some people the prices of motorbikes and cars are not cheap if bought with cash,

the public still needs these vehicles to make traveling faster and easier . On the other hand, car and motorbike dealers want their products to be sold to the public to make a profit. Financial institutions emerged to solve this problem. The form of automotive financial institution is leasing, renting, or finance which was established in accordance with the OJK (Financial Services Authority) supervision and regulatory obligations in accordance with Law No. 21/2011, and its mission is to provide integrated regulations to build a supervisory system for the implementation of all activities in the service sector. finance. When it comes to rental financing, financial institutions are very helpful to buyers, but often they do not show good intentions in paying the installments incurred when purchasing a bicycle. This can be seen from the large number of problem loans. The existence of problem loans means that capital cannot be returned to the company, resulting in losses for financial institutions. Laws play a crucial role in resolving the problem of bad credit. So it is very crucial to know the legal relationship between the buyer and the financial institution. After understanding the relationship, you can then decide on the right legal solution to solve the problem.¹

Over credit comes from the phrase "Take Over Credit" and refers to the stage of transferring ownership and payment of an object to a third party who is still on credit. Car overcredit actions are usually carried out during the rental period when the customer/lease applicant (lessee) cannot pay the vehicle installments to the bank/leasing institution (lessor).

Usually, the leasing agreement is the main contract, accompanied by an evaluation contract and supporting contracts which serve as collateral for the rented property. The role of this guarantee is to strengthen the position of the leasing institution as a creditor if the customer breaks their promise. A car warranty contract is a fiduciary contract. Fiduciary guarantees are stipulated in Law No.42/1999 concerning Fiduciary Guarantees. The customer acts as the fiduciary and the leasing institution acts as the recipient.²

Regarding the issue of whether the renting party must recognize excess credit for the vehicle, Article 23 Paragraph 2 of the Fiduciary Law regulates that the fiduciary can guarantee, assign or transfer the rental object to another person and they do not rent out inventory without prior written permission from the fiduciary. Based on Article 23 Paragraph 2 of the Fiduciary Law, customers are prohibited from transferring leased products without the approval of the leasing institution. As is known, law enforcement issues play a crucial role in security regulations. If a vehicle goes bankrupt without the understanding of the leasing institution, the leasing party can report the customer to the police (criminal law) or sue the customer (civil law) . The leasing institution will report to the police based on Article 372 of the Criminal Code, namely regarding embezzlement (people who deliberately violate the law by confiscating other people's property, whether all or part of it is theirs, but it is their property. or failure to control crime is threatened with punishment maximum imprisonment of 4 years or maximum fine of IDR 900,000.00). Customers control their products by selling them to third parties. Furthermore, the report explained that Article 36 of the Fiduciary Law, namely "No one may, without prior written permission, transfer, lease and pawn fiduciary collateral as defined in Article 23(2) which is carried out without the permission of the fiduciary, is subject to imprisonment. maximum 2 years and a maximum fine of IDR 50,000,000.00."³

The problems raised in the following research include:

1. What are the legal consequences of debtors who overdo credit without the knowledge of leasing?
2. What are the appropriate over-credit arrangements according to the rules?

¹ Republic of Indonesia Supreme Court, Leasing Issues. Supreme Court Publications Section, Jakarta, 1989 p.6

² R. Wiryono Projodikoro , *Principles of Legal Agreements* , Bandung: Sumur 1933 p 9

³ Article **372 Criminal Code (KUHP)**

METHOD

In the following research, researchers use an empirical approach. The reason researchers chose this method is because the data used is primary data, which is mostly obtained from field studies, and the supporting data is secondary data, obtained from literature studies, legal regulations, legal policies, legal principles that are relevant to the problem at hand. discussed by researchers.

RESULTS AND DISCUSSION

The definition of fiduciary is the transfer of ownership rights to an object based on trust, with the condition that the owner of the object remains in control of it. Before the enactment of Law Number 42 of 1999 concerning fiduciary guarantees. Fiduciary comes from the Latin "fides", which means trust. This term has long been known in Indonesian and is also used in Law Number 42 of 1999 concerning fiduciary guarantees. In Dutch terminology, this term is often referred to in full as Fiduciare Eigendom Overdracht (FEO), which refers to the transfer of property rights in trust. Meanwhile, in English, the term used is Fiduciary Transfer of Ownership.⁴

In credit, creditors must be prepared to bear large risks, especially in terms of potential default by the debtor. Default is one of the main risks that creditors must face. When faced with a situation where the debtor does not fulfill his obligations, creditors must act with extreme caution. This is because this problem is technically very related to the credit analysis that has been carried out by the creditor, especially related to the assessment of objects used as collateral in the credit transaction. In this context, creditors need to ensure that the credit analysis process is carried out carefully and thoroughly to reduce the risk of default and protect the interests and assets of the companies or financial institutions involved.⁵ A business entity is an institution that directly or indirectly finances products or capital goods for the production process. The purpose of this financing is that capital goods are needed for certain business or production purposes, such as buying or renting a car on credit through a loan. In the following conditions, financial institutions can finance needs according to agreements and conditions mutually agreed between debtors, creditors, loan recipients and lenders. Another financial institution is a business lending activity to provide various types of products and capital goods that can be used for a certain period of time. Generally, payment stages occur periodically, and the extension of time depends on the remaining money belonging to the institution and is carried out based on a mutual agreement. Based on this explanation, it can be concluded that leasing is a contract between the customer and the renting party. A lender or owner of a financial institution is a person who provides capital goods which are then used as capital by customers or borrowers. However, the lessor's compensation comes in the form of rent paid by the lessee over a certain period of time.⁶ Contract law in Indonesia adheres to an open system, which means that in this system, the law provides freedom for individuals or parties involved to draw up agreements according to their wishes, provided that it does not conflict with the provisions of law, principles of public order and moral norms. applies. Thus, this open system provides flexibility in making agreements, but still ensures that these agreements do not violate legal and moral norms that apply in society.⁷

In terms of credit, there are certainly debtors who are unable to pay off credit or are stuck on the road, as experienced by Karsim Mulyadi, a resident of Kaliaren Village Rt 04 Rw 05 kec. Majalaya District. Karawang. Brother Karsim bought a Vario 125 motorbike with

⁴ Hamzah and Sendung Manulang, *Guarantee law*, Rineka Cipta Jakarta p. 167

⁵ Sutarno, *Legal Aspects of Puda Bank Credit*, (Jakarta: Alfabeta, 2003), p. 118

⁶ <https://www.equiperp.com/blog/apa-itu-leasing/> accessed on May 9, 2024 at 20.00

⁷ A. Qirom Syamsudin, *principles of Agreement law and its development*, Yogyakarta 2006 p9

registration number T 2478 HB on credit from the Otto Credit Motor Karawang Company. At the time of the 4th installment Karsim was unable to pay the installments so Karsim offered Brother Aldi to continue the credit installments, but Aldi asked Karsim to do so. over credit under your own hands without involving the Leasing party. Without thinking, Karsim agreed to Aldi's conditions because at that time Karsim needed money, because Karsim thought that if he involved the leasing party, the process would take a long time. The over credit process occurred, after the over credit process it turned out that Aldi had not paid the installments and Aldi could not be contacted. In the name of the vehicle, Karsim continues to be billed by the leasing party even though Aldi is the party continuing the installments, because Karsim has made an unofficial overcredit. As a result, Karsim violated Civil Regulations because he violated the rules.

If not by peaceful means, then such a letter is executed by order and under the leadership of the Chairman of the District Court whose jurisdiction includes the place of residence or domicile of the debtor, the position chosen by the debtor) in the manner stated in the articles preceding this Article 224 , but with the understanding that bahors ampat body pulses can only be carried out if it is permitted by the Akim's decision, if the judge's decision must be carried out in its entirety on a portion of the pumasan, then the provisions in Article 195 (2) and the continuation of the HIR must be followed.

Article 14 of the Mortgage Rights Law No. 4.196 explains that the Mortgage Law certificate contains instructions "for the sake of justice according to God Almighty". A mortgage deed according to the law has permanent legal force based on a court decision, and according to the land mortgage law, is considered a grosse substitute for the mortgage deed. And Article 15 of the Fiduciary Law No. 42/1999 explains that the fiduciary guarantee deed contains the words "for the sake of justice based on belief in the Almighty God". Thus, a fiduciary deed has the same legal force as a court decision which has full legal consequences. Through this article, it can be seen that one of the conditions for implementing a fiat execution is that the document contains the words above which give a property right, or binding title, and thus make the legal force consistent with the court's decision. This means that the document only needs to be executed (without requiring a court decision).⁸

Factors that cause losses for Creditors and Debtors if they over-credit without the Creditor's knowledge

1. Arrears/bad credit occur if the unit holder does not make payments
2. There is a defect in the agreement between the debtor and creditor
3. It is possible that the unit will be lost either in pawn or bought and sold
4. The name of the first hand will be disabled if the second hand does not make installment payments
5. The first debtor will remain responsible for installment payments due to unofficial overcredit

Legal Consequences of Debtors Who Take Over Credit Without the Leasing's Knowledge.

In civil law, leasing institutions sue customers for unlawful actions based on Article 1365 of the Civil Code. In other words, unlawful actions that cause harm to another person impose an obligation on that person to compensate for the loss. If the lease contains a clause prohibiting illegal over-crediting, the leasing institution can sue the customer for breach of contract. In addition, because complaints to the police (criminal law) and lawsuits (civil law) can be filed at the same time, the leasing institution can apply for both routes at the same time. Additionally, it is important to note that leasing institutions not only have the option of

⁸ Munir Fuady " *Debt Guarantee Law* " Jakarta 2013 p. 30

pursuing civil legal action, but can also choose to report the matter to authorities, such as the police, which is part of the criminal law. Thus, leasing institutions can take both civil and criminal legal steps simultaneously, depending on the nature of the violation that occurred.⁹

What are the appropriate over-credit arrangements according to the rules?

Motorbike Over Credit Procedure Without Violating the Law In Indonesia, the procedures for car overcredit are regulated by law. Therefore, this mechanism must be accompanied by a consent form to ensure that the procedure complies with the law.¹⁰

If an individual does not do it in the correct way and without involving the institution where the installments will be made, they risk being criminally prosecuted. Article 372 of the Criminal Code regarding embezzlement of funds applies to sellers, and Article 480 of the Criminal Code regarding embezzlement of funds applies to buyers.

So, in order to understand how to carry out over credit correctly based on the law, use the following steps :

1. The first debtor and the party who wants to continue come to the leasing office and the party who wants to continue brings the requirements as well as the credit application requirements
2. The office conducted a survey of parties who wanted to continue motorbike credit.
3. Whether or not it is appropriate for the 2nd party to continue/continue depends on the results of the leasing party's survey.

Complete Document Requirements The first stage in the motorbike overcredit process is fulfilling the document requirements. Documents required for car overcredit transactions generally include:

1. Photocopy of Identity (KTP)
2. Photocopy of Family Card (KK)¹¹
3. Photocopy of savings account for the last 3 months
4. Photocopy of income statement, which can be a pay slip or business financial report
5. Over Credit Agreement Letter
6. Do It Officially

After the document requirements are complete, the buyer must officially complete the over credit. This means that the transaction must be carried out directly with the leasing partner where the bicycle is registered and completed with the requirements. This process helps officially notify the original leasing institution that the buyer wants to transfer the bicycle loan installments to another person. The second buyer then pays the remaining installments. An overcredit agreement is also required to ensure legal and safe purchases. The purchase contract must detail the bike's identification, monthly payment terms and installment amount.

CONCLUSION

In terms of civil law, leasing institutions sue customers for unlawful actions based on Article 1365 of the Civil Code. In other words, unlawful actions that cause harm to another person impose an obligation on that person to compensate for the loss. If the lease contains a clause prohibiting illegal over-crediting, the leasing institution can sue the customer for breach of contract. In addition, because complaints to the police (criminal law) and lawsuits (civil law) can be filed at the same time, the leasing institution can apply for both routes at the same time.

⁹ p origin **1365 Civil Code (KUHPerdata)**

¹⁰ Warman Johan, *Bank Credit* , Jakarta 2018 p. 152

¹¹ Vol 4, No 1 Kadek Cinthya Dwi Lestari*, I Nyoman Putu Budiarta and Ni Made Puspasutari Ujiti, 2020, "Loss of Unregistered Fiduciary Security Objects", *Legal Analogy Journal*, Article **1365 Civil Code (Civil Code)**

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