

Analysis of Legal Protection against Buyers of Leasing Objects (Study of Law Number 42 of 1999 Concerning Fiduciary Guarantees)

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ABSTRACT

The purpose of this study is to examine legal protection for buyers of leasing goods that are still subject to a fiduciary promise under Law Number 42 of 1999. In practice, buyers often do not know that the goods they buy are objects of fiduciary guarantees, so that it can cause legal disputes between buyers, sellers, and creditors. This study uses a normative legal approach that analyzes laws and regulations, various legal literature, and legal doctrines as well as relevant case studies. The results of this study indicate that legal protection for buyers can be provided through the principle of good faith, civil dispute resolution, and the role of government supervision in ensuring the transparency of information related to the status of fiduciary objects. This study recommends strengthening regulations related to transparency and imposing strict sanctions on parties who neglect to include the fiduciary guarantee status on leasing objects.

INTRODUCTION

In Indonesia, vehicle buying and selling transactions are one form of transaction that is often carried out by the community. Vehicles not only function as a means of transportation for the community, but also provide high-value assets and are often used as financing objects through leasing. Leasing has become a financing institution that is relatively utilized by the community than other institutions. The existence of leasing in Indonesia was legalized based on the Joint Decree of the Minister of Finance, Minister of Industry and Minister of Trade Number KEP-122 / MK / IV / 2/1974, Number 32 / M / SK / 2/1974, and Number 30 / KPBB / 1/1974 Concerning Leasing Business Licensing. This leasing financing institution in Indonesia has an important role in meeting the needs of companies in providing capital goods to meet the needs of the community in the Indonesian economy.

In Indonesia, leasing is developing very rapidly, the factors that drive its development include because this system is in line with the ongoing economic trend, thus providing significant benefits in terms of management. In line with the development of financing companies in Indonesia, with the convenience provided and having high risks to the company. Although with the pressure of competition that is becoming increasingly fierce between companies, both bank and non-bank financial institutions, it does not rule out the possibility of the development of financing companies in Indonesia.

Financing institutions are governed by Article 1 paragraph (1) of Presidential Regulation Number 9 of 2009 regarding Financing Institutions, which states that "financing institutions are business entities that carry out financing activities in the form of providing funds or capital goods". Leasing companies as financing institutions in the mechanism of sales and purchase agreements with credit connect interested parties. The parties include the leasing party as a creditor who provides financing assistance and the provider of goods that will be given to the debtor as the buyer of goods while also paying off the credit according to the agreed agreement. With the existence of financing institutions in Indonesia, the community has the opportunity to help them meet their daily economic needs by providing goods or capital.

Leasing (lease) is a contract between the lessor (owner of capital goods) and the lessee (user of capital goods), in which the lessor allows the lessee the right to use capital goods for a set length of time, with a periodic compensation from the lessee, the amount of which depends on the agreement between the lessor and the lessee, the lessee can be given the option right to buy the capital goods at the end of the contract period. As a result, the lessor retains ownership of the capital goods during the contract's term. The phrase leasing is derived from the word lease, which meaning rent. Because leasing is essentially the same as renting. Leasing is thus a derivation of renting. But then in the corporate sector, renting developed in a specific form termed leasing, or sometimes referred to as simply a lease, and has changed its function to become one type of finance.

In a leasing transaction there are 4 (four) parties involved, namely; lessor, lessee, supplier and bank. Lessor, leasing company or party that provides

financing services to the lessee in the form of capital goods. The leasing agreement must contain:

- a) Leasing object
- b) Ownership of leased goods;
- c) Length of contract;
- d) Obligations of the lessor and lessee;
- e) Warranty coverage

The existence of opportunities from the financing institution, many phenomena occur between the party providing funds or goods such as leasing with the recipient of funds or goods (debtor) due to violations of the agreement that has been agreed upon together. Often the debtor (recipient of goods) does not fulfill the agreement that has been agreed upon such as late payment of installments with a long period of time or even not completing the payment of installments to transferring ownership of goods provided by the financing institution (leasing) which turns out that the vehicle is still in debt to the leasing party.

In some cases that often occur among Indonesian people, many buyers do not know the status of the vehicle they are buying which can result in financial losses and legal consequences. Losses to buyers are caused by the vehicle being purchased still being under leasing debt, so that at some point the leasing party can confiscate or forcibly withdraw the vehicle. For this reason, legal protection is needed for buyers in vehicle buying and selling transactions to prevent losses.

Law Number 42 of 1999 concerning Fiduciary Guarantees regulates objects or goods or vehicles that are still under fiduciary guarantee, such as vehicles that are still under debt *leasing*. This legislation defines fiduciary guarantee as a guarantee right for movable things, including both tangible (such as vehicles) and intangible (such as debts). The guarantee is given by the debtor to the creditor as a form of certainty of debt payment, so that fiduciary guarantees give the creditor the right to the object used as collateral by the debtor, meaning that the creditor has the right to the object if the debtor does not fulfill his obligations. In this case, ownership of the collateralized vehicle remains in the hands of the creditor, but the legal right of control will fall into the hands of the creditor. So if the debtor fails to pay off the debt against the collateralized vehicle, the creditor has the right to execute the collateralized vehicle. The leasing party has the right to withdraw the vehicle that is still a collateral or guarantee of debt payment by the previous vehicle owner. In this case, even though the vehicle has been purchased by a new buyer, because the vehicle is still under debt and bound by an agreement with the leasing company, the buyer can lose the vehicle without compensation, because the leasing party has the legal right to withdraw it.

With the above description, a vehicle that is still in the object of fiduciary guarantee cannot be transferred without the knowledge and consent of the leasing party. However, many people do not understand and lack awareness which causes legal problems and results in losses for buyers. Therefore, supervision and legal confirmation for each party involved in this sale and purchase transaction is very important to prevent losses to the parties involved,

especially the consumer (buyer). In this condition, consumers who do not know the status of the vehicle that is still under debt can get protection through a lawsuit for losses caused by fraud or unclear information.

In Law Number 8 of 1999 concerning Consumer Protection provides an explanation of the form of protection for the rights of consumers who suffer losses due to transactions of goods and services, including in this case the purchase of vehicles that are still under leasing debt. Article 4 of Law Number 8 of 1999 on Consumer Protection explains consumer rights, specifically the right to choose and obtain goods and/or services in accordance with the exchange rate and conditions and guarantees promised, as well as the right to accurate, clear, and honest information about the conditions and guarantees of goods and/or services. In this case, the buyer of a vehicle that is still bound by leasing debt has the right to obtain complete information about the status of the vehicle before making a transaction. If the seller does not provide this information or intentionally hides it, the buyer may suffer a loss.

Stricter law enforcement against vehicle sales transactions involving leasing is needed to prevent misuse by certain irresponsible parties. Legal action against sellers who are not transparent about the status of the vehicle must be able to provide certainty and legal protection for the rights of buyers and buyers do not have to bear the burden of unsettled debts. In the applicable legal concept, consumer protection is a right that must be guaranteed by law. Vehicle buyers have the expectation of full rights to the vehicle they buy and should not be harmed if the vehicle is still bound by leasing debt. Therefore, there needs to be clarity on legal protection for consumers who are victims in vehicle sales disputes and what mechanisms are needed to resolve adequate sales transaction problems.

Based on the description of this study, it will discuss how legal protection for buyers of leasing objects according to Law Number 42 of 1999 concerning Fiduciary Guarantees and how legal efforts can be made by buyers to sellers if the leasing object cannot be controlled. So through this study, the author examines this matter more deeply by conducting research through this writing entitled: Analysis of Legal Protection for Buyers of Leasing Objects (Study of Law Number 42 of 1999 concerning Fiduciary Guarantees).

This analysis provides insight to buyers, both consumers and business actors, regarding the legal protection available when purchasing objects that are still bound by fiduciary guarantees. With this understanding, buyers can be more careful and make more informed decisions before purchasing objects that are bound by leasing agreements. By analyzing this law, buyers and sellers can understand their rights and obligations in leasing object sales transactions. This reduces the potential for disputes that may arise in the future and helps create a more transparent business climate. This analysis is useful for legal practitioners, such as lawyers or legal consultants, to provide more appropriate advice to their clients in leasing and fiduciary-related object sales and purchase issues. Leasing parties and financing institutions can also use the results of this analysis to formulate internal policies that comply with legal provisions.

The purpose of this study is to provide knowledge about legal protection for buyers who experience losses on a leasing object. This study provides knowledge about how to obtain legal protection for each party involved in the main problem and the legal efforts that can be made by the parties to obtain their respective rights.

LITERATURE REVIEW

Leasing Overview

Leasing is a new "word or term" from a foreign language that entered the Indonesian language, which until now its equivalent in good and correct Indonesian, is not or has not been felt to be suitable for it. In general, leasing involves equipment funding, specifically financing equipment and capital goods to be used in a company's manufacturing process, either directly or indirectly.

Article 1 of the Joint Decree of the Three Ministers of Finance and the Minister of Trade and Industry of the Republic of Indonesia No. KEP122/MK/IV/2/1974, Number 32/M/SK/2/1974, and Number 30/KPB/I/1974 dated February 7, 1974, defines leasing as "Every company financing activity in the form of providing capital goods for a certain period of time, based on periodic payments accompanied by the right to vote for the company to purchase the capital goods involved and extend the leasing period based on the value and money that have been mutually agreed upon."

Overview of Legal Protection

Legal protection is defined as the protection provided to legal subjects by legal instruments, both preventative and repressive, written and unwritten (Amalia, 2021). According to R. La Porta in the Journal of Financial Economics, a country's legal protection is divided into two categories: preventative (prohibited) and punitive. According to Philipus M. Hadjon, legal protection is a subjective condition that states the presence of a need in a number of legal subjects to immediately obtain a number of resources for the continuation of legal subjects guaranteed and protected by law, so that their power is organized in the process of political and economic decision-making, particularly in the distribution of resources, both at the individual and structural levels.

METHODOLOGY

This research is a type of normative juridical legal research using an approach to statutory regulations, various legal literature, and legal doctrines as well as case studies that are relevant to the main problem that can solve the legal problems faced.

This research uses library data collection techniques that are relevant and support the legal issues discussed in the research through library studies of laws and regulations, legal literature or books, legal articles, and other references that discuss the main issues discussed in this research.

RESEARCH RESULTS AND DISCUSSION

Forms of Legal Protection for Buyers of Leasing Objects and Legal Actions that Can Be Taken if the Object Cannot Be Controlled

Leasing transactions are transactions that involve a large amount of capital and the possibility of default by the parties, especially in developing countries like Indonesia. So to assure the seamless and orderly payment of rent (rentals) and prevent losses for the lessor, this guarantee institution is used to obtain a sense of security. Default (breach of promise) here means that during the running of the leasing agreement contract, one party or both parties do not do what is promised but not as promised, do what is promised but late or do something that according to the agreement should not be done. In this case, the emphasis is on the default (breach of promise) carried out by the lessee, so that the existence of such a guarantee institution is needed in the provision of leased goods. Fiduciary guarantees cannot be separated from credit problems.

In a credit agreement that has been used as an object of fiduciary collateral, one of which is a mobile object, such as a car or motorcycle, but the security for the debtor's monthly payments is in the form of a vehicle ownership record. The control of the creditor as the recipient of the fiduciary over the fiduciary object used as collateral is only in the form of legal control, which means that as long as the agreement is still ongoing in the debt guarantee, the debtor providing the fiduciary can still use the vehicle physically. The creditor receiving the fiduciary only has the authority to execute it if the debtor violates the agreed agreement or is called a default, so that in order to guarantee legal certainty and to obtain legal protection for each party involved, the guarantee certainly needs to be made a Notary Deed (a deed made by a notary) In the form of a Fiduciary Guarantee Deed, which is then registered at the Fiduciary Registration Office, a fiduciary guarantee certificate is issued and submitted to the fiduciary's recipient.

Article 20 of Law Number 42 Concerning Fiduciary Guarantee states that the fiduciary guarantee continues to accompany the object that is utilized as the object of fiduciary guarantee in the hands of anyone who holds the object. Except for the transfer of inventory objects subject to Fiduciary Guarantee. This is called the principle of "droit de suite" which means that if the object of fiduciary guarantee has changed hands and has become the property of another party, the creditor still has the right to execute if the debtor defaults.

After the enactment of Law No. 42 of 1999 concerning Fiduciary Guarantees followed by its implementing regulations, it is expected to provide more legal certainty, especially to the recipient of the fiduciary. The most important stages of the fiduciary guarantee process are the imposition of the fiduciary guarantee and the registration of the fiduciary guarantee deed. The birth of the property rights over the fiduciary guarantee is when the deed of imposition of the fiduciary guarantee is registered at the Fiduciary Registration Office (KPF) which is within the scope of the duties of the Department of Law and Human Rights. According to the provisions of Article 5 paragraph (1) of the Fiduciary Guarantee Law, it states that "The imposition of objects with Fiduciary Guarantees is made by a notarial deed in Indonesian and is a Fiduciary guarantee deed". The Fiduciary Guarantee Deed contains the following main points at least:

1. Fiduciary donor and recipient identity;

2. Fiduciary agreement data;
3. Fiduciary guarantee object description:
4. Guarantee value
5. Value of the collateral object.

The most important stage of fiduciary guarantee registration is the date of recording in the Fiduciary Registration Book. The Fiduciary Registration Office will issue and give the fiduciary recipient with a Fiduciary Guarantee Certificate, which is a copy of the Fiduciary Registration Book. The fiduciary assurance certificate expresses the irah-irah "For the Sake of Justice Based on the Almighty God" which has the same executorial power as a court order with permanent legal effect.

Through the registration of the fiduciary recipient, the leasing party who has registered the fiduciary guarantee has the right to execute the leasing object when there is a default in the form of bad credit which is carried out based on a fiduciary guarantee deed that has permanent legal force. With this fiduciary guarantee deed, it means that the lessor can seize the collateral through a public auction and take debt repayment from the proceeds of the sale. In general, execution is the implementation of a court decision or deed. Fiduciary guarantee execution is the seizure and sale of objects that are used as fiduciary guarantee objects.

The purpose of executing the fiduciary guarantee is to sell the fiduciary guarantee as a settlement for the lessee's unfulfilled obligations. The lessor has the right to recover the lessee's performance, including all unpaid installments and other fees, and to execute the leased object used as a fiduciary guarantee without having to repay the excess amount from the sale. This fiduciary guarantee execution arises if the lessee is in default (unable to fulfill his performance) or breaks his promise. Default is in principle a condition of not being carried out or being unable to carry out an agreement, in addition to other conditions, namely being negligent or negligent or breaking a promise or also violating an agreement, if he does or does something that he is not allowed to do. In a lease agreement, default can occur if:

- a. The lessee fails to pay the installment amount stipulated in the agreement;
- b. The Lessee does not fulfill the obligation to pay fees and other costs or late fines within the specified time period;
- c. The lessee has done something that is prohibited in the agreement, for example transferring rights to another person, re-leasing, mortgaging the object of the agreement.

However, in practice, vehicle buying and selling transactions that are still under leasing debt often occur in society so that it can pose quite serious legal risks for buyers. Many irresponsible people take advantage of the situation by committing fraud. They can sell vehicles that are still bound by leasing at very cheap prices so that many buyers are not careful and are deceived. In some cases, vehicles that are still under leasing debt are sold by their owners due to the ignorance of the leasing party and without making payment in advance. Many

people do not know the status of the vehicle before buying a vehicle with the status of ownership rights still in the hands of the leasing party.

The provisions in Article 4 of Law Number 8 of 1999 concerning Consumer Protection explain that the rights of buyers as consumers are:

1. The right to comfort, security, and safety when using products or services.
2. The right to choose and receive goods and/or services based on agreed-upon exchange values, conditions, and guarantees.
3. Customers have the right to accurate, clear, and honest information about the condition and guarantee of products and services.
4. Customers have the right to criticize and complain about the items and services they utilize.
5. Consumers are entitled to advocacy, protection, and effective dispute resolution.
6. Consumers have the right to assistance and education;
7. The right to be treated equally and without bias.
8. The right to reimbursement, damages, or replacement for products or services that do not satisfy agreed-upon criteria. Other statutory requirements govern these rights.

Through the description of the contents of article 4 above, it has been explained that consumers have the right to obtain correct, clear, and honest information about the goods or services purchased. So that sellers who do not provide clear information about the status of vehicles that are still on lease violate this consumer right. As a form of legal protection, buyers who are harmed can request compensation for losses from the seller and can cancel the sale and purchase transaction with the seller. According to Article 4 of Law Number 8 of 1999 on Consumer Protection, "the right to obtain compensation, damages, and/or replacement, if the goods and/or services received do not comply with the agreement or are not as they should be"

So, someone who has caused a loss is governed in According to Article 1365 of the Civil Code, "every act that violates the law and causes loss to another person requires the person who caused the loss due to his mistake to replace the loss." With the broad interpretation since 1919 of Article 1365 of the Civil Code, there are many things that previously could not be prosecuted or subject to sanctions or punishment, but now the perpetrator must pay compensation.

However, if the leasing object that has been purchased cannot be controlled by the buyer, then the buyer can resolve the dispute to obtain compensation for losses so that they can get their rights back by canceling the sale and purchase transaction to the seller. So that the seller is required to compensate for the losses and return the rights in full to the buyer who has been harmed. This cancellation can be done based on Article 1320 of the Civil Code due to legal defects by one of the parties not fulfilling obligations and fraud in the transaction.

The form of dispute resolution of leasing objects can be done by litigation and non-litigation. Dispute resolution by litigation can be done by filing a lawsuit against the seller in court. This lawsuit can be done with the aim of canceling the

sale and purchase transaction and demanding compensation from the seller. The advantages of resolving disputes through litigation are that court decisions have definite legal force, are final, provide legal certainty with the winning or losing positions of the parties (win and lose position), and the implementation of the decision can be enforced if the losing party does not want to carry out the contents of the court decision (execution). However, there are pros and cons to the litigation dispute resolution process. In the litigation dispute resolution process, the decisions made do not meet the common interest and produce a win-lose solution. Because of this, some are satisfied and some are not, which can cause new problems for the disputing parties. Not only that, the litigation dispute resolution process also requires a lot of money and takes a long time.

Therefore, buyers who have been harmed by irresponsible sellers can file a lawsuit against the seller to regain their rights according to the losses they have experienced. Buyers who are disadvantaged in the sale and purchase of vehicles that are still under the burden of leasing debt can file a lawsuit in court. Here are some steps that can be taken:

- a. Make sure the vehicle purchased is not used as collateral for credit to a third party.
- b. If the creditor (leasing company) forcibly seizes the vehicle, the debtor (consumer) can file a lawsuit in court.
- c. If a breach of contract occurs, the consumer has the right to receive compensation, damages or services in accordance with the agreement.

However, if it turns out that there is a bad credit on the purchased vehicle, the leasing company is required to report it to the police. So that the process of executing a vehicle that is stuck in the creditor is the authority of the court after there is a decision from the court.

The form of settlement that can be done other than through litigation is through non-litigation. Non-litigation dispute resolution is the settlement of disputes outside the court such as mediation. According to Article 1 paragraph (1) of the Supreme Court Regulation (MA) No. 1 of 2016 about Mediation Procedures in Court, mediation is a means of resolving conflicts through a negotiation process to reach an agreement between the parties with the assistance of a mediator. A Mediator is a judge or other impartial party with a Mediator Certificate who aids the parties in the negotiating process by identifying several options for settling the dispute rather than determining or demanding a settlement. Mediation is a "good faith" technique in which disputing parties describe how the mediator will resolve the disagreement because they are unable to do so themselves. Through this independence, the mediator can propose a creative solution through a type of settlement that the court cannot carry out, while the opposing parties profit jointly. Through the mediation process, the leasing party, the seller can resolve the dispute more quickly, efficiently, and more beneficially for both parties. If the settlement through mediation is successful, then the dispute can be resolved without having to go through the court (litigation).

CONCLUSIONS AND RECOMMENDATION

Law Number 42 of 1999 concerning Fiduciary assurances offers legal protection for customers who purchase things that are still bound by fiduciary assurances. If the leasing object is still a guarantee for the seller's debt, then the buyer has the right to receive clear and complete notification regarding the status of the guarantee. The Consumer Protection Law (Law No. 8 of 1999) also provides protection for buyers as consumers who do not know that the object being purchased is still bound by fiduciary guarantees. Buyers have the right to receive clear and correct information regarding the status of the object to be purchased. If a loss occurs due to fraud or misinformation, the buyer can claim compensation in accordance with the provisions applicable in the Consumer Protection Law. In this case, the seller and the leasing party have the responsibility to provide correct information to the buyer regarding the status of the object being sold. The seller is required to notify the status of the fiduciary guarantee rights for the object being sold, while the leasing party must also ensure that the object being sold is not still bound by guarantee rights that have not been fully paid. So that the form of dispute resolution on leasing objects can be done in two ways, namely; litigation and non-litigation. Dispute resolution through litigation is dispute resolution through the courts, while non-litigation dispute resolution is dispute resolution outside the courts, such as mediation led by a mediator.

In this writing, the author realizes that there are still many shortcomings both in terms of language, presentation form, and writing due to the author's own limitations and abilities. Therefore, for the sake of perfection in this writing, the author expects suggestions or supportive criticism from various parties.

ADVANCED RESEARCH

Further research can be conducted to explore the effectiveness of implementing legal protection efforts and legal awareness in minimizing violations of vehicle purchase and sale transactions that are still fiduciary objects in order to prevent losses to all parties involved.

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