

Criminal Liability in Withdrawing Fiduciary Collateral to Leasing Parties by Debt Collectors Based on Law Number 42 Year 1999 on Fiduciary Guarantee

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Abstract: This journal will discuss the criminal obligation of the leasing participation in withdrawing fiduciary collateral through current and future debt collectors in line with law number 42 of 1999 regarding Fiduciary guarantees. Leasing participation on Withdrawal of Fiduciary Collateral through Debt collectors according with the regulation. Efforts for criminal liability of the leasing participation within the revocation of fiduciary ensures through the gathering authority according with law number 42 concerning fiduciary collateral, indicating that a person who has a strength of attorney from a financial organization to a 3rd part for fiduciary ensures A guarantee penalty has in no way been held criminally responsible, it should be based on for that reason this series of actions, the person who offers the power of legal professional to withdraw from the fiduciary assure can satisfy the necessities inside the article of the criminal Code.

Abstrak: Jurnal ini akan membahas mengenai pertanggungjawaban pidana pihak leasing dalam melakukan penarikan agunan fidusia oleh penagih hutang saat ini serta pada masa yang akan datang sesuai Undang-Undang nomor 42 Tahun 1999 perihal agunan Fidusia. Pihak Leasing pada Penarikan agunan Fidusia oleh Penagih Hutang sesuai Undang-Undang. Upaya penanggungjawaban pidana pihak leasing dalam pencabutan agunan fidusia oleh otoritas penagihan sesuai dengan undang-undang nomor 42 tentang agunan fidusia, memperlihatkan bahwa orang yang memiliki surat kuasa dari perusahaan finansial pada pihak ketiga untuk jaminan fidusia Hukuman jaminan tidak pernah dipertanggungjawabkan secara pidana, itu harus didasarkan pada Dengan demikian rangkaian tindakan ini, orang yang memberi kuasa untuk menarik diri dari jaminan fidusia dapat memenuhi syarat dalam pasal KUHP.



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INTRODUCTION

The rapid development of the global economy has resulted in intense competition for the supply of capital between market participants, in addition to the increase in the quality and quantity of services, has led to the emergence of various merchant products to facilitate consumers. The development of services and the provision of local devices provided from market participants are not without investment risks, so investors prefer services that have legal aspects, such as laws that guarantee the company concerned.

In the world of business and business, there are several forms of supporting organizations, one of which is considered a financial institution. There are many types of financing institutions, such as leasing, working capital, cards, factoring, and customer financing. They usually use an agreement approach that includes fiduciaries for fiduciary collateral objects. In practice, the finance company provides the goods requested by the consumer, and then on behalf of the borrower. As a result, the debtor becomes subject to the fiduciary lender.

Which means that the debtor as a fiduciary owner will become a lender to those who have the position of a fiduciary beneficiary. A simple example on fiduciary collateral is that the debtor/owner requests financing from the creditor, both agree to use the debtor's fiduciary collateral and a notarial deed is registered at the trustee registration office. The borrower as the fiduciary receiver will receive a fiduciary certificate, then the duplicate can be handed over to the debtor. Through obtaining the fiduciary collateral certificate, the creditor/recipient has immediate execution rights on the spot, as well as for bank loans and borrowings. The criminal pressure of

the deed is equivalent to a court decision that has permanent force.

RESEARCH METHODS

The method of approach used by the author in this journal is the normative legal method, which is an approach that explores criminal acts committed by perpetrators in the context of the elimination of fiduciary collateral through debt collectors in accordance with Law 42 of 1999 concerning fiduciary collateral. Through the results of the study using normative legal studies through the review of files that can be secondary information and hereinafter referred to as literature studies.

The subject of research in this study discusses the form and efforts of criminal law liability in the revocation of fiduciary guarantees through creditors on the basis of the range of regulations 42 of 1999 concerning fiduciary collateral. The fact analysis technique used in this review is descriptive evaluation, including collecting facts, explaining and describing the facts obtained when related to the core of the existing discussion, after which analysis is carried out. The approach used in this research is a scientific or librarian study where statistics are obtained from the Criminal Code, laws and regulations and data that are appropriate and relevant to the object of the problem examined in this evaluation.

RESULTS AND DISCUSSION

A. Analysis of the criminal liability of the parties to a finance lease for the withdrawal of fiduciary collateral by debt collectors on the basis of Law No. 42 of the 1999 Fiduciary Guarantee Act.

1. Review of Article 372 of the Criminal Code.

Pursuant to article 14 paragraph 2 of the Consumer Contract, in the event of disputes arising from the contract, the parties will resolve them by deliberation, in the absence of an amicable settlement, the parties agree to a permanent and invariable legal venue, without suppressing the creditor's right to file a lawsuit against the debtor before another court, wherever the creditor deems appropriate, in accordance with the applicable law, being the creditor's weapon to sue the debtor who is deemed to have committed embezzlement or fraud. This is one of the features of the standard contract implemented in the finance lease contract. The composition of the crime of embezzlement is divided into subjective and objective elements, namely:

a. Subjective element.

1) Element of Willfulness.

This element is the element of intentional misappropriation. In criminal law, fault comes in two forms, namely intent and negligence. The Criminal Code does not provide information on willfulness. Willens en wetens explains further, namely a person who commits an act intentionally means that he wants the action to occur and he knows, understands the value of the action and realizes the consequences that will arise from the actions that have been carried out. Or if it is associated with the intention contained in the formulation of crimes such as embezzlement, then the intention is said to exist if there is a will if there is knowledge of an act or of an object / element and desire and / or knowing or knowing the consequences of an act. The element of intent in the formulation of a criminal offense always refers to the underlying element, or in other terms, the

element underlying the word intentional is always covered by the element of intent itself.

2) Unlawful Element.

A fiduciary agreement that is not created by a deed and registered at the fiduciary registry office is created underhand. What is meant by a deed under the hand is a deed made between the parties which is not made before a deed maker in accordance with the official law as prescribed by law. Underhand deeds are not authentic deeds that have legal value. Meanwhile, a real deed is an act or deed that goes beyond the legal one designated by laws and regulations that can be perfectly accounted for. Deeds completed with personal potential need to be authenticated through the parties if they are to be used as evidence, for example in court.

The question is whether a deed executed by hand is valid and has evidentiary value? In the author's opinion, it is the most effective crime to use if the event is well known for its lifestyle and content, but for the act to be strong, it still needs to be ratified by using a legitimate authorized party. They usually use an agreement procedure consisting of a fiduciary for the object of the fiduciary guarantee. As a result, the debtor is subject to the fiduciary grantor. This means that the debtor as the owner of the property account will be a fiduciary to the borrower who is the fiduciary. The record on the floor shows that the organization in the financing agreement includes a fiduciary clause. However, satirically, it is no longer done at a time and is no longer registered with the registrar to obtain a deed. The act can be certified as an act of personal guarantee. Therefore, if the fiduciary encounters

difficulties in practice, he or she can request the court through an injunction for protective relief. This runtime security assistance can be addressed to the police officer, where the acceptance as a true object is placed. Thus, the establishment of a safety certificate trustee protects the donor trustee if the donor trustee does not fulfill the needs as stipulated in the second settlement of the event.

b. Objective Elements.

1) The act of possession (Zicht toe igenen)

The notion of possession in embezzlement is different from the term possession in theft. What distinguishes in the term possession, theft takes the form of subjective elements, such as the intention to possess. However, in embezzlement, possession comes in the form of an objective element, namely the element of behavior or conduct prohibited in embezzlement. In the case of theft, it is not required that there is actually a form of ownership element, this ownership is only covered as an element of intention. But possession in embezzlement, since it is one of behavior, takes the form of an objective element, therefore possession must have a form, which must have been a requirement for embezzlement.

2) Objects (eenig goed)

The embezzlement of goods is stipulated in Article 372 of the Criminal Code. which includes the act of embezzlement, namely the act of recognizing other people's property in whole or in part or whose property management is in the hands of the perpetrator, but the control has been legally valid. Meanwhile, fraud is regulated in Article 378 of the Criminal Code. Degnan aims to enrich themselves or others by

unlawful means, using a false name, trickery or lies to persuade them to send something to him or give him a debt or cancel a debt.

3) Partially or wholly belonging to another person.

Goods that do not belong to him, both at the beginning and before the abandonment of his property rights are always the object of embezzlement. different people are cited because this owner is the object of embezzlement, not the claim of this person who is the victim, or the person specifically, anyone as long as it is not his own act..

2. Fiduciary Collateral Execution Process.

The principle of pacta sun servanda agreement stipulates that the agreement made by the parties to the agreement will become the law of both parties, remains valid and becomes the subject of agreement law. However, agreements that provide fiduciary collateral cannot do so. The law enforcement procedure is carried out by filing a civil case to the district court through the general procedural law procedure until the court decision. This is a formal legal procedural option in order to uphold justice and enforce the content of substantive law. This procedure is bound to take a long time, if the parties use all available legal remedies. They, the ordinary citizens who are customers, must also be careful and meticulous in their transactions. As for the government, facts, law and order are very important. especially based on deviations and criminal acts that create complicated and risky prison outcomes. Criminal movements as well as unilateral actions and arrogance of debt creditors that continue to cause unrest in society. so that there is resistance and systematic attacks by the wider community against systems and systems of society that are not in accordance with legal

guidelines and policies which certainly have a negative impact on nation and society as consumers.

B. An Examination of Criminal Liability Efforts of Leasing Parties in the Withdrawal of Fiduciary Collateral by Debt Collectors Based on Law Number 42 Year 1999 on Fiduciary Guarantees.

Finance companies usually use the settlement method of providing fiduciary collateral for fiduciary collateral items. The main idea of fiduciary collateral is that the car purchased through the debtor is "transferred ownership" to the multifinance. Through the participation of the finance company, the transfer of property rights is recorded in a deed of guarantee and then registered at the fiduciary workplace of the debtor. After the fiduciary collateral certificate is issued, as long as the debtor cannot pay off the installments, the finance company has the right to withdraw the car from the debtor. To ensure the implementation of fiduciary collateral, the National Police issued National Police Chief Law No. 8/2011 with the aim that the implementation of fiduciary collateral is safe, orderly, easy and responsible; protecting the safety of the trustee of the insurance recipient, the insurance carrier and/or the wider community against losses that can result in the loss of property and/or death of a person.

The City of Pontianak when executing fiduciary collateral changing hands often uses the help of third parties, this often raises dangers or movements that can be contrary to the law, from third parties, so that it can even endanger the lives and bodies of the leaders of the trustees and third parties, the financier has a better choice which is to report it to the police regarding the elements of fiduciary collateral changing hands with Article 372 of

the Criminal Code, the illegal trustee holder can be prosecuted under Article 480 of the Criminal Code and the collateral has been confiscated by the police as evidence.

One of the cases of execution of fiduciary collateral that has been submitted on the third birthday of the legal professional electrician has criminal and risky consequences, namely: harboring and possession of weapons without license and bad driving case, incident Wednesday, January 20, 2016 at 17.00. WIB inside the pontianak megamall complex, the chronology of PT. Adira Dinamika Multi Finance Pontianak mobilized power to debt collectors with initials, to dump truck Mitsubishi plate F 8183 J whose car had bad credit by Adira consumers, because the withdrawal effort became a reality, the creditor used coercion, which the unit holder resisted with sharp weapons, threatened with sharp weapons that could no longer be done, and secured both parties at the police station.

CONCLUSION

Criminal liability for leasing events in the event of revocation of fiduciary collateral by debt collectors in accordance with law 42 of 1999 on fiduciary collateral, regulating the custody of cars during the cost of rental payments that deviate from the stated contents can be categorized as a criminal act of fraud as referred to in article 372 and criminal offense as referred to in article 480 of the Criminal Code meets the requirements of the 2 articles stipulated in the Criminal Code.

Attempts at criminal liability for events in the context of revocation of fiduciary guarantees through creditors are based entirely on various regulations 42 of 1999 concerning fiduciary, this shows that the law is under the authority of payment and no longer under the authority of the seller of the collection offer who acquires the

debt employed through the lessor. Thus, in the event of the acquisition of the car at a certain time of the term of the lease settlement fee, the creditor and the depositary may impose sanctions specifically according to articles 55 and 56 of the Criminal Code. According to Article 55 of the Penal Code, the emphasis on "to" in the sense of "collectively committing" must be at least a human being, a person who owns it and a person who participates in committing the crime.

SUGGESTION

The power of attorney of the tax collector should be subject to Articles 55 and 56 of the Criminal Code, emphasizing that there is a difference between "participating in" a crime and "helping to commit" a crime. By "participating" there is conscious cooperation between the perpetrators and they jointly commit, and have a purpose in committing the crime..

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