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JURIDICAL ANALYSIS OF UNLAWFUL ACTS OF FORGERY OF FIDUCIARY GUARANTEES ARTICLE 35 AS REGULATED IN LAW NUMBER 42 OF 1999 CONCERNING FIDUCIARY GUARANTEES

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Abstract:

Background: Fiduciary law was created to provide legal certainty and ease of access to credit in this regard, so the researcher is interested in juridically examining decisions related to the criminal acts of unlawful acts regulated in Law Number 42 of 1999 concerning Fiduciary Guarantees.

Aim: The primary focus of the research is to evaluate the judge's legal considerations in applying criminal provisions to the defendant, paying attention to the elements of criminal acts contained in the law.

Methods: The research method used is normative legal research with a case analysis approach. The data includes court decisions, laws and regulations, and related legal literature.

Results: The study's results show that judges vary in their application of the law in fiduciary guarantee cases.

Conclusions: This analysis also highlights the implications of the ruling on legal certainty in fiduciary guarantee practice.

Implication: This research is expected to contribute to developing legal understanding of fiduciary guarantees and judicial practices in Indonesia.

Keywords: fiduciary, credit, credit agreement, legal protection, law.

INTRODUCTION

The proliferation of leasing companies or companies that provide motor vehicle financing in the community indicates the number of people who are also interested in buying a motor vehicle with a credit system. The credit system related to motor vehicles in Indonesia has been protected by the Fiduciary Guarantee Law Number 42 of 1999. Protection related to fiduciary guarantees includes protection for motor vehicles and other things, such as falsifying personal data.

The rise of fraud cases involving falsification of vehicle data and fiduciary guarantees is a serious concern. This practice causes significant economic losses for several parties, ranging from financial institutions to consumers and the state. This crime takes advantage of legal loopholes and weaknesses in the existing surveillance system, so it needs to be studied more deeply.

The rapid development of information and communication technology, especially in the banking and financial institutions sectors, provides easy access and dissemination of information. However, criminals also use this technology to falsify motor vehicle data and commit fraud by using fiduciary guarantees as a tool to obtain profits illegally. The falsification of the data can be in the form of manipulating frame numbers (VIN), engine numbers, or vehicle ownership documents.

The fiduciary guarantee system, designed to provide legal certainty and easy access to credit, is an easy target for criminals. Weaknesses in data verification systems and less stringent oversight allow falsification of vehicle data to escape and be used in fiduciary transactions. This results in financial losses for the financing institutions that provide credit and harms consumers who are victims of fraudsters.

In this case, the suspect with the initials (W) falsified personal data and changed it. Then the data was used in terms of taking credit for a four-wheeled motor vehicle with the Mitsubishi/Xpander Ultimate CVT brand, year 2022, pearl white color, nopol E 15XX WI, noka 4A91-KAP2607, nosa MK2NCLTATNJ002XXX at PT. BXX Multifinance Indonesia Cirebon Branch. In this case, after the suspect with the initials (W) received the credit vehicle using falsified personal data, the suspect with the initials (W) acquired 1 unit of Mitsubishi/Xpander Ultimate CVT brand car, which was the object of the fiduciary guarantee to you. (R) a resident of Gekbrong Village, Gekbrong District, Cianjur Regency, with a pawn value of Rp. 90,000,000 (Ninety million rupiah). (Decision Number 41/Pid.B/2024/PN.Mjl on May 20, 2024 at the Majalengka District Court)

METHOD

This research method uses qualitative research. Qualitative research is a specific approach to studying social relations related to the pluralization of the world of life. This method is applied to see and understand the subjects and objects of research, including people and institutions, based on facts as they appear. Through this approach, information will be revealed about actualization, social reality, and perception of the research target.

This research uses descriptive research, which is directed to provide systematic and accurate data, facts, or events regarding the characteristics of a particular population or area. In this descriptive research, there is less need to look for or explain the interrelationship and test hypotheses.

Therefore, an investigation or descriptive research can occur by comparing the similarities and differences of certain phenomena and then comparing or measuring a dimension by directly researching the Judge's Decision Number 41/Pid.B/2024/PN.Mjl that is being researched. It can also be conducted by conducting classifications, assessments, and determining the standard of the position relationship between one and the other. In this case, the author uses a descriptive qualitative method. (Decision Number 41/Pid.B/2024/PN.Mjl on May 20, 2024 at the Majalengka District Court; Page (8))

RESULTS AND DISCUSSION

This problem began on Friday, February 18, 2022 at the Candana Block rt 002 rw 005 Cintaasih Village, Cingambul District, Majalengka Regency, the defendant (W) entered into a credit agreement (multipurpose financing) for the purchase of 1 (one) unit of four-wheeled

motor vehicle of the Mitsubishi Xpander Ultimate CVT brand, in 2022, pearl white color, nopol E 15XX wi, noka 4A91-KAP2607, Nosin MK2NCLTATNJ002XXX through PT BXX Multifinance Indonesia Cirebon Branch under the fiduciary guarantee certificate number: W11.00474023.AH.05.01 of 2022 dated 08-04-2022 at 00.03.24, which at the time of filing the credit complaint the Defendant (W) used a family card (KK) and an Identity Card (KTP) containing data that was not under the data registered in the population information system (SIAK) of the Sukamantri District Population Office of the Majalengka Civil Registry. The family card (KK) and Identity Card (KTP) were made by the defendant (W) with the help of his friend, Mr. D Alm, Residents of Bagjasari village, Cikijing District, Majalengka Regency.

That around May 2022 at the yard of the Sukamantri village head's office, Sukamantri district, Ciamis regency, the defendant with the initials (W) mortgaged 1 (one) unit of Mitsubishi/xpander ultimate CVT brand/type car which was the object of fiduciary guarantee to the initials (R) DPO of the residents of Gekbrong village, Gekbrong district, Cinajur Regency with a pawn value of Rp. 90,000,000,-(ninety million rupiah without permission and without the knowledge of PT BXX mulfinance indonesia branch Cirebon as the fiduciary recipient;

That around May 2022, PT. BXX Multifinance Indonesia Cirebon Indonesia Branch Cirebon Branch issued SP-1 regarding the arrears of installment payments of the initial defendant (W) and submitted the SP-1 to the initial defendant (W) through his family. Then 1 (one) week later, PT. BXX Multifinance Indonesia, Cirebon branch, again issued SP-2 regarding the arrears of installment payments of the defendant with the initials (W) that have not been paid, and the SP-2 was submitted to the defendant with the initials (W) through his family. Furthermore, 1 (one) week later, because the arrears of installment payments had not been paid, the SP-2 was submitted to the initials (W) through his family. And 1 (one) week later, due to the arrears of Multifinance Indonesia, the Cirebon branch issued SP-3 and submitted it to the defendant's initials (W). However, after being conveyed by the SP-1, SP-2, and SP-3, the defendant with the initials (W) did not have good faith and always avoided contact and was difficult to contact. Then on Wednesday, September 6, 2023, the Cirebon branch of PT BXX Multifinance Indonesia reported the incident to the Majalengka resort police for follow-up. (Widjaja & Yani, 2001)

Definition of Fiduciary Guarantees

Fiduciary Guarantee based on Article 1 paragraph (1) of Law Number 42 of 1999 concerning Fiduciary Guarantee states that a fiduciary is the transfer of the rights of an object based on trust, with the provision that the object whose ownership rights are transferred remains in the possession of the property owner.

Article 1 paragraph (2) in Law Number 42 of 1999 concerning Fiduciary Guarantees states that fiduciary guarantees are the right to guarantee movable objects, both tangible and intangible, and immovable objects, especially buildings that cannot be encumbered with dependents as referred to in Law Number 4 of 1996 concerning Dependent Rights that remain in the control of the fiduciary, as the repayment of certain debts, which gives the fiduciary a preferential position to other creditors.

Article 4 of Law Number 42 of 1999 concerning Fiduciary Guarantees lists the nature of fiduciary guarantees. This article states that fiduciary guarantees are a follow-up agreement to a principal agreement that imposes obligations for the parties to fulfill an achievement. These achievements can be in the form of giving something or doing something that can be valued with money.

The fiduciary has fiduciary rights based on evidence. The evidence explains the object of the fiduciary guarantee and who is interested in this fiduciary guarantee. The data of the principal agreement pledged with the fiduciary is also related to the value of the guarantor in the form of a fiduciary guarantee certificate.

Fiduciary guarantees can be removed in several ways. This is stated in Article 25, paragraph (1) of Law Number 42 of 1999 concerning Fiduciary Guarantees, some of these things are:

- a. Write-off of fiduciary-pledged debts;
- b. Release of the right to fiduciary guarantees by the recipient of the fiduciary guarantee;
- c. Destruction of objects that are the object of fiduciary guarantees;

Based on the provisions of Article 26, paragraph (1) and paragraph (2) of Law Number 42 of 1999 concerning Fiduciary Guarantees, namely:

- a. The removal of the fiduciary guarantee referred to in Article 25 is that the Fiduciary Registration Office crosses out the fiduciary guarantee record from the fiduciary register book.
- b. The Fiduciary Registration Office issued a certificate stating that the fiduciary guarantee certificate was no longer valid. (Sofwan S. S., 1997)

Object of Fiduciary Guarantee

The objects that can be the object of fiduciary guarantees are as follows:

- a. The object must be legally owned and transferred
- b. To be able to see things in real life
- c. It can also be for intangible objects, including receivables
- d. Moving objects
- e. Immovable objects that cannot be tied to dependents
- f. Immovable objects that cannot be bonded with a mortgage
- g. Both for existing objects and those that will be obtained in the future. In the event of an object to be obtained later, there is no need for a fiduciary deed
- h. Can be on a unit of object type
- i. It can also be on more than one type of object unit
- j. Including objects that have become objects of fiduciary
- k. This also includes the results of insurance claims from objects that are the object of fiduciary guarantees
- l. Inventory objects (trading stocks) can also be the object of fiduciary collateral

Legal remedies taken by finance companies for unlawful acts or criminal acts committed by debtors, as stipulated in Fiduciary Law Number 42 of 1999.

Legal protection for creditors in credit agreements with fiduciary guarantees is undoubtedly vital, this is because the object that is a fiduciary guarantee is in the debtor's possession, so that if the debtor commits an act of default or unlawful acts against the credit agreement with fiduciary guarantees, the interests of the creditor can be protected because of the guarantee.

Law Number 42 of 1999 concerning Fiduciary Guarantees regulates legal protection for interested parties in credit agreements with fiduciary guarantees. Objects encumbered with fiduciary guarantees must be registered, and then a fiduciary guarantee certificate is made, which includes the title "For the sake of justice and the one god", so that the fiduciary guarantee certificate has the same executory power as a court decision that has acquired permanent legal force. The creditor has the right to execute the execution as stated in the fiduciary guarantee certificate if the debtor defaults or commits an unlawful act.

Creditors also have the right to sell objects that are the object of fiduciary guarantees through auction and repayment of receivables from the proceeds of sales based on an

agreement between creditors and debtors. Law Number 42 of 1999 also regulates criminal provisions for fiduciaries or debtors who transfer, control or lease objects that are the object of fiduciary guarantees carried out without prior written consent from the fiduciary or creditor.

So the legal remedies that can be taken by a finance company (FINANCE) for unlawful acts and criminal acts committed by the debtor, as stipulated in articles 35 and 36 of the fiduciary law number 42 of 1999, include, namely:

Through Criminal

The financing company can report the debtor to the police for alleged criminal acts, referring to the following articles:

- 1) Article 35 of the Fiduciary Law: If the debtor deliberately falsifies, alters, omits, or provides misleading information in the fiduciary agreement, the penalty is a minimum of 1 year and a maximum of 5 years, with a fine of at least Rp . 10,000,000 and a maximum of Rp. 100,000,000.
- 2) Article 36 of the Fiduciary Law: If the debtor acquires, organizes, or leases the fiduciary collateral object without the written consent of the fiduciary, they can be subject to criminal sanctions, the penalty imposed is imprisonment for a maximum of 2 years and a maximum fine of Rp . 50,000,000.

Through Civil

In addition to criminal routes, finance companies can also take the civil route to claim compensation for losses suffered due to the debtor's unlawful acts, which can be in the form of a default lawsuit (breach of agreement) or an unlawful act lawsuit. The civil lawsuit will focus on recovering the company's financial losses.

CONCLUSION

This case of data falsification in motor vehicle financing shows weaknesses in the fiduciary guarantee system in Indonesia. Legal protection for the debtor in a credit agreement with fiduciary guarantees is necessary, considering the object of the fiduciary guarantee. Although Law No. 42 of 1999 on fiduciary guarantees is designed to provide legal certainty and ease of access to credit, data falsification shows that there are loopholes in the data verification and supervision system. This results in financial losses for financing

institutions and consumers. This study examines cases of data falsification in motor vehicle financing based on the judge's decision number 41/Pid.B/2024/PN.Mjl.

The study found PT. BXX Multifinance took legal steps by reporting this case to the police. The crime of falsifying data in fiduciary guarantees is a criminal offense that can be ensnared by law.

IMPLICATION

This study found that the fiduciary guarantee system in Indonesia is still weak.

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