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**CONSUMER PROTECTION AGAINST WITHDRAWAL OF MOTOR
VEHICLES BASED ON FIDUCIAN COLLATERAL**

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Abstract

In the current era, all people can own a motorized vehicle in an easy and fast way. This is triggered by the way to buy a motorized car with credit. In terms of withdrawing vehicles, finance companies use the role of a third party (a debt collector) to carry out their actions in collecting creditors and also carrying out forced withdrawals of collateral objects, where the financing company feels that the actions taken are safe. A debt collector is a third party who assists a finance company in resolving a credit problem that the finance company cannot determine. The problem is how the collector department's implementation of the motorized vehicle withdrawal process is linked to law number 42 of 1999 concerning fiduciary guarantees and how consumer protection for motorized vehicle withdrawals by the collector department is linked to law number 42 of 1999 concerning fiduciary contracts. The research method is qualitative, with the approach used in this research being normative juridical. The results of his study show that Consumer Protection Against Motor Vehicle Withdrawal has not gone well because when a consumer's motorized vehicle has been withdrawn, there is no further information on the vehicle's whereabouts, whether it is being sold or auctioned. So that when the car is going to be auctioned or sold, the consumer needs to know that the result is more than or sufficient to pay off the consumer's debt. Many unscrupulous debt collectors do not have a clear professional status and sometimes threaten consumers, which causes harm to consumers and the most crucial factor they register. A fiduciary Guarantee is the registration of a motorized vehicle as a fiduciary guarantee to have legal certainty for both the party providing the financing and the party receiving the funding. No legal counseling is carried out to the Financing Company related to fiduciary guarantees, especially in registering fiduciary collateral goods, where registration of fiduciary warranties is basically to obtain legal certainty over the object's position fiduciary as well as confidence for the parties agreeing within it.

Keywords: Legal Protection, Consumers, Debt Collector

INTRODUCTION

Indonesia has a large population and has grown economically relatively fast. This contributes to the growing needs of society, one of which is vehicle transportation. The desire to own a motorized vehicle is a tertiary need that develops into a secondary condition. On the other hand, people need motorized vehicles to facilitate mobility and live a hedonistic lifestyle. Compared to the past, owning a private vehicle, especially a motorized vehicle, is very different today. In the past, only middle and upper-class individuals could afford to buy a motorized vehicle; today,

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however, it is easy and quick for anyone to acquire a motorized vehicle (Panggabean, 2012).

A finance or multi-finance company is established to carry out activities within or throughout the financial institution's business fields. These activities include leasing, securities trading, factoring, venture capital, consumer finance, and credit cards. This entity is not a bank or a non-bank financial institution. A consumer finance company is a type of financial institution whose activities consist of providing funds for consumers to buy products from suppliers, with consumers making regular payments (installments). As a result, three parties are involved in a consumer finance legal relationship: the consumer, the supplier, and the consumer finance company. This consumer financing is nothing more than a type of consumer credit, provided that a non-bank financing company carries out the consumer financing (Munir, 2002).

The negotiation process between the parties is usually the first step in formulating such a contractual relationship. During the bargaining process, the parties try to reach an agreement to bring together something they want (interests). The parties in a business relationship usually have the goal of exchanging interests. According to Roscoe Pound's definition, "interest" is "a request or desire that a human being wants to fulfill, either individually or through a group or association in a relationship" (interest is a request or desire that is fulfilled by a human being, either individually or through a group or association) (Yudha, 2010).

Since every step in a business transaction is legal, the parties always exchange their interests through a contract. "contract" refers to an ongoing personal relationship governed by rules. In the case of contracts or agreements that are always used or used to frame a business, both parties must play an active role in reaching a deal so that everyone gets an equal share of the profits (Isnaeni, 2018).

Civil law in people's lives embodies the norms that apply in society that regulate the way of life between individuals and individuals in the state. Each party has the legal right to demand implementation of and compliance with restrictions agreed upon by the other party voluntarily under the contract, which creates a private entity between the parties. Contractual legal relationships only sometimes go according to plan. This can be caused by a default by creditors or debtors, coercion, mistakes, fraudulent acts, or force majeure, namely a force that comes from outside parties. This situation has the effect of causing the cancellation of the contract, making it null and void (Erawati & Budiono, 2010).

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Almost every region worldwide, including Indonesia, has been affected by the Corona Virus Disease 19 pandemic. Both the economic and health sectors have been devastated by the Corona Virus Disease 19 pandemic. Apart from the industrial sector, the Covid-19 pandemic has affected reducing the income of small and medium businesses, the center of the world, and companies in the tourism sector in Indonesia. Due to the industry's inability to function normally due to this incident, the pandemic had a negative impact, resulting in reduced employment and significant price increases. People use their means of transportation to make a living and make a living for everyday life, for example, by becoming an online motorcycle taxi. Many people even use their means of transport as collateral for financing institutions which are currently a means to achieve a goal. This is because people's needs are increasing due to the Covid-19 pandemic.

A leasing guarantee agency, also known as a leasing, is the most common type of financial institution that the general public uses to secure their car finance. Leasing is a type of financing that provides capital goods, either through leases with option rights (Finance Lease) or without option rights (Operating Lease), so that Lessees can use them for a certain period. Based on full payment. Leasing is known as leasing in Indonesia. Leasing is a support business that primarily existed in Indonesia in the mid-1970s, and guidelines were first developed in 1974. A non-bank financial institution is a leasing company. An independent business entity can run a leasing company.

According to the Decree of the Minister of Finance No. 1169/KMK.01/1991, leasing is a financing activity that includes the provision of capital goods, either through leasing with option rights (financing lease) or leasing without option rights (operating lease), to be used by lessees for a predetermined period as a reward for regular payments. To ensure the legality of withdrawals by the leasing party, the finance company must have a certificate or deed of fiduciary guarantees when executing or withdrawing the vehicle. However, as in the field, many finance companies still need this certificate. In the case of vehicle withdrawals, finance companies use third parties, known as debt collectors, to collect debts from creditors and make collateral withdrawals when the finance company believes this action is safe. Third parties who assist finance companies in solving credit problems that finance companies cannot resolve are called debt collectors.

This often occurs due to a need for more knowledge about the bargaining power of clients against creditors as owners of funds and additional knowledge about law,

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particularly regarding agreements or contracts and consumer protection. As a result, financial industry players, especially banks that practice fiduciary guarantee fraud, take advantage of this ignorance as a ground to exploit the public. Consumers must be protected from various fraudulent transactions by having the right to obtain transparent information and, of course, the right not to be disturbed and guaranteed security under the provisions of Law Number 8 of 1999 concerning Consumer Protection. This regulation states that every consumer's rights must be protected by the guarantee.

Meanwhile, even though the regulation states that the first debt collector has problems withdrawing a motorized vehicle, the process carried out by debt collectors still needs more clarity and legal certainty. In addition, many debt collectors are still involved in the implementation process that uses violence to force customers to make payments or even harm customers.

Based on the description above, the author believes that it is necessary to have legal certainty in the case of motorized vehicle withdrawals by the collector department without violating applicable legal rules and regulations so that this becomes the basis for conducting research. To strengthen the level of purity of writing, the author includes two previous research results that are related to the reports made by the author, including:

1. Novia Dwi Khariati, *Consumer Legal Protection for Forced Withdrawal of Vehicles by Debt Collectors, Legal Perspectives*, Vol.20 No.2 November Faculty of Law, Airlangga University 2020. This study found that the forced removal of a vehicle from a financing agreement indicates that the customer has defaulted. Still, Forced repossession is invalid if the finance company does not register the vehicle at the Fiduciary Registration Office as a fiduciary guarantee object. The consumer can then file a lawsuit for confiscation based on the forfeiture article of the Criminal Code if the objection is too forceful, taking that it is not following the applicable provisions. If this cannot be resolved, the consumer can submit a complaint to the finance company based on a mutual agreement in the criminal procedure financing agreement.
2. I Gede Arianta, et al. *Consumer Protection Against Motorized Vehicle Withdrawals by the Dept. Collector in Palu City*, Collaborative Journal of Science, Faculty of Law, Muhammadiyah University of Palu, 2022. Law Number 8 of 1999 concerning Consumer Protection can be implemented in two ways: preventive and repressive. In contrast, Law Number 42 of 1999

concerning Fiduciary Guarantees protects consumers if a finance company registers a fiduciary guarantee. Still, the financing institution does not do so, so consumer protection guarantees are not covered. (2) Legal remedies that consumers can take against the forced withdrawal of motorized vehicles carried out by service collectors in Palu City can be in the form of out-of-court dispute settlement in the form of settlements. (1) Legal protection for consumers is prioritized, and financing institutions must include clauses on settling bad loans in one of their agreements. (2) Financing in Palu City should try to protect consumers in every fiduciary strengthening contract.

From the results of the research above, it will become the author's basis as the similarities and differences regarding the writing will be made so that it is explained that the similarities in the paper regarding the substance of the report are that they both discuss legal protection for consumers for vehicle recalls by the collector department. The differences are covered in scope writing and theories that will be used later, as stated in the title raised in this study.

Based on the description above, the author is interested in studying the problem of consumer protection against motorized vehicle withdrawals by debt collectors in connection with law number 42 of 1999 concerning fiduciary guarantees. And the problem that the author will analyze in this article is How Consumer Protection Against Withdrawal of Motorized Vehicles by Debt Collectors is Connected with Law Number 42 of 1999 concerning Fiduciary Guarantees and Inhibiting Factors in Providing Protection for Consumer Rights Against Withdrawal of Motorized Vehicles by Debt Collectors.

ANALYSIS AND DISCUSSION

1. Consumer Protection Against Withdrawal of Motorized Vehicles by Debt Collectors Related to Law Number 42 of 1999 Concerning Fiduciary Guarantees

The concept of consumer protection law is a law that regulates the provision of consumer protection in the context of efforts to fulfill consumer needs. Consumer rights and responsibilities, producer rights and responsibilities, and ways to meet these obligations are covered in consumer protection laws (Macaulay, 1979). Legal certainty can protect consumers by giving them more dignity, making obtaining accurate information about available products and services easier, and encouraging actors to be honest and responsible (Hosanna & Nanakorn, 2018). Legal efforts to

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protect consumers (citizens) from dishonest business practices, domestically and abroad, are known as consumer protection. Therefore, consumer protection is a real effort by the state and government to protect consumers (citizens) following the mandate of the 1945 Constitution of the Republic of Indonesia (from now on referred to as the 1945 Constitution of the Republic of Indonesia) for the welfare. Country. 1945).(Ohlhausen & Okuliar, 2015; Ramsay, 2006) Legislation and regulations designed to protect consumer rights, such as the 1999 Consumer Protection Act. According to Article 1, paragraph (1), "consumer protection guarantees legal certainty to safeguard consumers."

Consumer protection issues will never end, and society will continue to discuss them. The problem will never be solved because many customers still lose money. Therefore, laws and regulations that can protect both parties must pay attention to the protection issue. Suppose you pay attention to the position of consumers, who always need to improve compared to the work of producers as business actors. In that case, efforts to protect consumers are significant to balance the position of consumers and financial institutions. Like what often happens to customers with bad credit, unscrupulous debt collectors often use violence to force customers to withdraw their vehicles, which can even harm them.

In addition, procedures for withdrawing problem motorized vehicles are regulated in Law Number 42 of 1999 concerning Fiduciary Guarantees (Jamil, 2021). According to the understanding given in Article 1, a fiduciary sells ownership rights to an object on deposit, provided that the owner retains control over the thing being transferred (Usman, 2021).

In addition, there are mortgage rights over movable property, both tangible and intangible, as well as immovable property, especially buildings that cannot be burdened with mortgage rights as referred to in Law Number 4 of 1996 concerning Mortgage Rights and which remain in the control of the Fiduciary Giver (Ginting et al., 2020). This security right is used as collateral for settling certain debts and gives the Fiduciary Recipient a priority position over other creditors. In addition, it is regulated in Article 15 that the Fiduciary Guarantee Certificate contains the word Fiduciary Guarantee Certificate which has the same executive authority as a court decision that has permanent legal force for the sake of justice based on Belief in One Almighty God (Harjono et al., 2022). The Fiduciary Guarantee Certificate has the same executorial power as a court decision that has permanent legal force, and if the

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debtor defaults, the Fiduciary Recipient has the right to sell the Object, which is the Object of the Fiduciary Guarantee on his power (Markum et al., 2021).

Given the provisions in Law Number 42 of 1999, particularly Article 15, various inventions relate to the most common ways the trustee is withdrawn as a motorized vehicle in the case of dangerous credit. Some argue that starting a motorized vehicle must be done through court. Still, some say that a person can withdraw independently or unilaterally with authority granted by law. This is what happens in society when debt collectors start motorized vehicles. In the hope that there will be a uniform understanding of the implementation of fiduciary guarantees in general, the Constitutional Court issued a decision number 18/PUU-XVII/2019 in 2019. and specifically the withdrawal of motorized vehicles with problematic credit, with the following rulings:

Judging:

1. Partially grant the petition of the Petitioners;
2. Declare that Article 15 paragraph (2) of Law Number 42 of 1999 Concerning Fiduciary Guarantees (State Gazette of the Republic of Indonesia of 1999 Number 168, Supplement to the State Gazette of the Republic of Indonesia Number 3889) does not have binding legal force as long as the phrase "executive power" and "same as a court decision that has permanent legal force" does not mean "against fiduciary guarantees where there is no agreement regarding default (default) and the execution of court decisions that have permanent legal force";
3. Declare Article 15 paragraph 3 of Law Number 42 of 1999 concerning Fiduciary Guarantees (State Gazette of the Republic of Indonesia of 1999 Number 168, Supplement to the State Gazette of the Republic of Indonesia Number 3889) is invalid and has no legal consequences as long as the phrase "default" is not interpreted that "the default existence is not determined unilaterally."
4. Stating the Elucidation of Article 15 paragraph (2) of Law Number 42 of 1999 concerning Fiduciary Guarantees (State Gazette of the Republic of Indonesia of 1999 Number 168, Supplement to the State Gazette of the Republic of Indonesia Number 3889) as long as the phrase "executive power" is contrary to the Constitution The Republic of Indonesia of 1945 and does not have binding legal force as long as it does not mean "against a fiduciary guarantee where there is no agreement regarding default and the debtor objects to

voluntarily surrendering the object that is a fiduciary guarantee, then all legal mechanisms and procedures in executing the Fiduciary Guarantee Certificate must be carried out and applies the same as the execution of a court decision that has permanent legal force";

5. Ordering the publication of this decision in the State Gazette of the Republic of Indonesia as appropriate;
6. Rejecting the petition of the Petitioners for other than the rest.

With the Constitutional mentioned above Court decision, withdrawing motorized vehicles with bad credit still has other disclosures in the execution process. Some say that it is more apparent that execution or repeal must be carried out through a court, and some think that the parties can do so directly. Creditors or debt collectors, as long as the parties agree on default and delivery of vehicles or fiduciary guarantees.

Regardless of the decision of the Constitutional Court 18/PUU-XVII/2019, the data above shows that there are still differences of opinion regarding the technical implementation of executing or recalling motor vehicles with credit problems. However, the execution or withdrawal of the car by the debt collector must be accompanied by the following matters, according to the agreement:

1. There is a fiduciary certificate
2. Power of attorney or withdrawal assignment letter
3. Professional certificate card
4. Identity Card

The concept of law and the understanding of consumer protection can be seen to have a deeper meaning than the understanding put forward by Az Nasution, who said that all the principles and rules that regulate the provision of protection for consumers, especially for providing a product for the benefit of consumers, can be said to be a form of consumer protection regulation.

Consumer protection regulation is a form of instrument that protects the interests of every consumer. This can be seen from the principles and objectives embodied in the regulation. Regulations on consumer provisions are all the rules that underlie every doctrine and practice of law in every consumer bond with other consumers in carrying out human life. Consumer protection arrangements are clearly stated in the provisions of Law Number 8 of 1999, which says, "Consumer protection is all efforts that guarantee legal certainty to protect consumers." Thus it can be ensured that regulations on consumer protection can guarantee and provide legal certainty in fulfilling consumer rights.

So based on the discussion above, it can be said that Consumer Protection Against the Withdrawal of Motorized Vehicles by Debt Collectors based on Law Number 42 of 1999 concerning Fiduciary Guarantees is not going well because when a consumer's motorized vehicle has been withdrawn, there is no further information on the existence of the car whether it is being sold or auctioned. So that when the vehicle is going to be auctioned or sold, the consumer needs to know that the result is more than or sufficient to pay off consumer debt. Many unscrupulous debt collectors do not have a clear professional status and sometimes make threats against consumers which causes harm to consumers.

2. Inhibiting Factors in Providing Consumer Rights Protection Against Withdrawal of Motorized Vehicles by Debt Collectors

Consumer protection aims for the implementation of an order. Security empowers consumers to choose every goods and service they need and can be used to determine consumer rights. The protection also has several elements that must create legal certainty, especially in disclosing information consumers require in using goods or services. But what underlies the purpose of protection is none other than for the conscious attitude of business actors so that they do not escape their responsibilities..

With the aim of consumer protection, it is possible to provide a position to consumers so that their rights and obligations can be protected. In other words, the place between consumers and business actors has a balance with each other. But even so, consider that consumers are strong, so this situation allows business actors not to act in good faith in carrying out an activity. The most crucial factor for registering a Fiduciary Guarantee is the registration of a motorized vehicle as a Fiduciary guarantee to have legal certainty, both the party providing the financing and the party receiving the funding, and there is no legal counseling to the Financing Companies related to Fiduciary guarantees, especially in the process of registering collateral items. Fiduciary, where registration of fiduciary contracts is basically to obtain legal certainty over the position of the object to be fiduciary and confidence for the parties agreeing to it. However, there is absolutely no power of attorney explaining the withdrawal of motorized vehicles owned by consumers. Because the retreat was carried out by force and directly by the debt collector.

CONCLUSION

Consumer Protection Against Withdrawal of Motorized Vehicles by Debt Collectors based on Law Number 42 of 1999 concerning Fiduciary Guarantees is not

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The inhibiting factor in protecting consumer rights against the withdrawal of motorized vehicles by debt collectors is the most critical in the registration of a Fiduciary Guarantee is the registration of a motorized vehicle a fiduciary guarantee has a legal certainty both the party providing the financing and the party receiving the funding, and there is no legal counseling to Financing Companies related to fiduciary guarantees, especially in the process of registering fiduciary collateral goods where registration of fiduciary contracts is basically to obtain legal certainty regarding the position of the object to be fiduciary as well as confidence for the parties agreeing to it.

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