



Reconstruction of law protection of consumers in the authorized vehicle credit agreement in Indonesia based on justice value

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Abstract

The implementation of legal protection for consumers in motor vehicle loan agreements is regulated in Law No. 8 of 1999 concerning Consumer Protection (UUPK). While on Institutions Funding arranged Finance Minister Regulation No. 130 / PMK.010 / 2012 concerning the Registration Fiduciary For Financing Company, and in accordance with the rules mentioned above, the person / company obliged register fiduciary form of vehicle motor in line in accordance with the Regulation of the Minister of Law and the Rights of the Rights of Man of the Republic of Indonesia Number 10 Year 2013 About regulation on registration of Collateral Fiduciary in Electronics and Regulation of the Government of the Republic of Indonesia No. 21 of 2015 concerning Procedures for Registration of Fiduciary Guarantees and Costs for Making Fiduciary Deed Guarantees , which aims to improve public services that require legal services in the fiduciary guarantee field.

In the implementation of legal protection for consumers in the motor vehicle loan financing agreement has not been based on justice , because there is still the implementation of a standard clause in the consumer financing agreement. The application of standard clauses in consumer financing agreements under Law No. 8 Year 1999 On Protection of Consumer is one of the development of the various agreements in outside Code Civil. Form of Agreement financing consumers in general, be made in the form of concrete clause. Where consumers are not able to determine the substance of the agreement of financing that the agreement, so that the Law of Protection of Consumers are not able to provide protection that is effective against the consumer, as well as a lack of understanding of the consumer , the perpetrator businesses and apparatus enforcement of law on the protection of consumers resulting in a violation of the rights of consumers. In addition it also institute funding often does not register the guarantee of fiduciary such as electronically to the office of the register of fiduciary.

Keywords: protection law, protection of consumers, fiduciary

Introduction

The current condition of the community has undergone many planned changes whose effects are very broad both in the economic and social fields. So with that economic growth should aim to increase public revenue and tackle all forms of inequalities in economics, and social ^[1].

In social life is inseparable from various needs, because in general in society a person is not able to meet all his own needs, he needs a hand or help from other parties to do any activity or do any work. So in these circumstances it is not uncommon to carry out debt receivables just for additional funds to make ends meet. Debt receivable is an act that is not foreign anymore for the people we are in that time. Receivable Bond is not only done by those economies is weak, but it is also done by people who are economically capable.

Growth of economies in Indonesia when it was very much influenced by sector financing Community when it is also increasingly consumptive. Level needs of society will be vehicle motor is getting higher due to the increasingly high level of crime on vehicles general vehicle motor increasingly be in demand, especially vehicle wheeled two for rather more practical and efficient.

In the use and purchase many once sprung institutions

financing which provides credit with interest low even not a little with no interest. They are vying to be able to provide the credit that is easy and practical. Many financial institutions now use a guarantee system where if the debtor can not pay on time the motorbike or car that is being repaid will be taken back. Perhaps there are among us or friend us who 've experienced hardship economy that is not able to pay the installment motorcycle / car.

Institutions financing is an agency business which activities provide financing either funds or goods of capital, while leasing is a one of a kind of institution financing are generally conducted among companies. The lessor (leasing company) will lease company equipment such as machinery to the lessee (tenant within a certain period) ^[2]. Leasing is a way for companies to obtain assets or ownership without having to go through a prolonged process. Everything has been arranged by a leasing company in a company. Leasing is also one of the high risk avoidance measures which is now realized by existing entrepreneurs. When viewed from the prospect of development needs, leasing businesses can clearly develop rapidly and play an active role as a new financial institution, specifically engaged in the supply of capital goods, as an alternative source of financing for a business company and have the hope of meeting its broad

¹Sunaryo, *Hukum Lembaga Pembiayaan*, (Jakarta: Sinar Grafika, 2007), p. 99

²Subekti R, 1989, "*Jaminan-jaminan untuk Pemberian Kredit Menurut Hukum Indonesia*", Bandung : PT. Citra Aditya; p: 16

market needs. The data used are primary and secondary data. The secondary data that have been obtained are then analyzed qualitatively, as much as possible using existing materials that are based on the principles, understanding and sources of existing law and drawing conclusions from the existing materials. In this study, the debtor's rights and obligations are basically stated in the contents of the agreement agreed by both parties. However, what needs to be stressed is that between creditors and debtors must have good faith in carrying out the contents of the agreement. Leasing is a legal institution that is "hated". On the one hand he looks like a lease, but on the other hand leasing contains an element of sale and purchase. There is even an element of a loan agreement. Because of that some aspects of the realization of leasing in practice still seem effeminate and doubtful [3].

Objectives who want to achieve in the research of this are: first , to analyze the implementation of the protection of the law against consumers in agreement financing credit vehicle motor when this; secondly , to analyze the implementation of legal protection for consumers in motor vehicle loan financing agreements not based on fair value; third , to analyze the reconstruction of legal protection against consumers in a fair value -based motor vehicle loan financing agreement.

Method of research

Research besifat descriptive analytical , which is giving out the picture are clear about the provisions of regulation legislation that regulate the problem of reconstruction the protection of the law against consumers in agreement financing credit motor based on the value of justice.

The approach that is used in this research are juridical sociology, namely describing, describing, analyzing and explaining analytically the problem raised. This research was conducted by library research. The research material was obtained thru juridical approach normative is an approach to the problem by looking at the terms of the legislation in force, literature, scientific papers and other experts opinion set forth. Soerjono Soekanto said that normative legal research is legal research conducted by examining mere literature or secondary data. Normative legal research includes studies on the systematics of law, a study of the level of synchronization vertical and horizontal, comparative law and legal history [4].

Research results and discussion

1. Implementation of legal protection for consumers in the motor vehicle credit financing agreement in the justice fair

The law gives freedom to the parties to determine the contents of the agreement, the hope is that the parties agree on each other as best and as complete as possible. The agreement is not only binding for matters that are expressly stated therein, but also for everything according to the nature of the agreement required by propriety, customs, or law, as contained in Article 1339 of the Civil Code which states that "an agreement is not only is binding for matters expressly stated therein, but also for anything that according to the nature of the agreement, is required by propriety,

custom, or law. "

Regarding the substance of the contract, the contract law literature divides it into several elements, namely [5]

1. *Essensialia* Elements ,
2. The *Naturalia* element ,
3. Element of *Accidentalialia* ,

Establishment of commercial agreements (contracts) at finance companies absolutely must be present. This is based on the proportional exchange of rights and obligations of the parties which will result in a fair contract. Therefore the proportionality of the exchange of rights and obligations can be observed from the substance of the contract clauses agreed by the parties. An assessment of the proportionality of the exchange of rights and obligations should depart from objective reasoning, not one party's suspicion and subjectivity towards the other party. The proportionality level should be assessed in the whole process of exchanging the rights and obligations of the parties.

Two-wheeled motor vehicle financing agreements, made in the form of standard (standard) agreements, of course, unilateral determination by product producers / distributors (sellers), are no longer just a matter of price, but include more detailed terms. Sutan Remi Sjahdeni interprets the standard agreement as an agreement that almost all of the clauses are standardized by the user and the other party basically has no chance to negotiate or ask for changes. As for what has not been standardized are only a few things, for example those concerning Janis, price, quantity, color, place, time, and some specific things of the promised object. Furthermore, Sjahdeni emphasized that what was standardized was not the agreement form, but the clauses [6]. Actually standard agreements must be made based on the principle of proportionality so as to produce agreements that are not heavy. Based on Article 1 Number (10) UUPK defines the standard clauses are any rules or conditions and conditions prepared and determined in advance unilaterally by business actors as outlined in a document and / or a binding agreement and must be fulfilled by consumers. In Article 18 Paragraph (1) Letter (a) of the UUPK states: (1) Business actors in offering goods and / or services intended for trading are prohibited from making and / or agreements if: Stating the transfer of business actor's responsibility that the business actor has the right to refuse to submit returning goods purchased by the consumer, stating that the business actor has the right to refuse the return of money paid for the goods and / or services purchased by the consumer, expressing the power of attorney from the consumer to the business actor, directly or indirectly, to carry out all unilateral actions related to the goods which is bought by consumers on credit.

Concerning the prohibition of including a standard clause which states that the business actor has the right to refuse to return the goods purchased by consumers as mentioned in Article 18 letter b, there should be a reasonable time limit. This is a pair of standard prohibition clauses which state that business operators have the right to refuse to return the money paid for goods (motorbikes) purchased by consumers (letter c). The prohibition in letter d of Article 18 Paragraph

³Munir Fuady, Hukum Tentang Pembiayaan Dalam Teory dan Praktek, (Bandung : Penerbit PT. Citra Aditya Bakti, 1999), p5.

⁴Soerjono Soekanto dan Sri Mamudji, Penelitian Hukum Normatif, (Jakarta: Rajawali Press, 1995) p. 13

⁵ Salim H.S., *Hukum Kontrak Teori dan Teknik Penyusunan Kontrak*, (Jakarta: Sinar Grafika, 2003) P. 34

⁶Sutan Remy Sjahdeni, *Kebebasan Berkontrak dan Perlindungan yang Seimbang Bagi Para Pihak Dalam Perjanjian Kredit Bank Di Indonesia*, (Jakarta: Institusi Bankir Indonesia, 1993), p. 27

(1) is correct. The standard clause that contains the granting power of attorney from consumers to business actors (finance companies) to carry out all unilateral actions relating to goods purchased in installments is unfair. Besides that it can be qualified as an abuse of the state of the consumer.

Furthermore, it is also emphasized that business actors are prohibited from including standard clauses whose location or form is difficult to see or cannot be read clearly or that expresses them is difficult to understand, and if business actors include standard clauses such as the above prohibition, then declared null and void. Almost every transaction of goods and or services in installments contains standard clauses. Including consumer financing agreements, there are several things found in this study that are not in accordance with what has been promised by consumers with consumer finance institutions [7].

The number of standard clauses listed in the consumer financing agreement does not provide protection to consumers, because in this agreement places parties who do not participate in making clauses in this agreement as parties either directly or indirectly disadvantaged. Unfair clauses are very burdensome for consumers. Moreover, in consumer financing agreements which are standard agreements, it is possible for creditors to freely include exoneration clauses, which is meant by Rijken's exoneration clauses, it is said that exoneration clauses are clauses included in an agreement with which one the party avoids fulfilling its obligations to pay all or limited damages incurred due to broken promises or violating the law. This exoneration clause is a clause that is very detrimental to consumers who generally have a weak position compared to producers / creditors, because the burden that should be borne by producers in the presence of this clause becomes a burden on consumers [8].

According to Article 1 of the Minister of Finance Regulation No. 130 / PMK.010 / 2012, the Financing Company that carries out consumer financing for motor vehicles with the imposition of fiduciary guarantees must register the fiduciary guarantee referred to the Fiduciary Registration Office, in accordance with the law governing fiduciary guarantees [9]. The obligation to register fiduciary guarantees also applies to finance companies that carry out [10].

1. Consumer financing for motor vehicles based on sharia principles; and / or;
2. Consumer financing for motor vehicles whose financing comes from *channeling* or *joint financing*.

If the Financing Company does not yet have a Fiduciary Guarantee Certificate (as a result of the registration of the fiduciary guarantee), then according to Article 3 of the Minister of Finance Regulation No. 130 / PMK.010 / 2012, the Financing Company is prohibited from withdrawing fiduciary collateral objects in the form of such motorized vehicles. This is in line with Government Regulation of the

Republic of Indonesia No. 21 Year 2015 on Procedures for the Registration of Security Fiduciary and Fee Creation Deed of Guarantee of Fidusia. The nature practice when this, because now the entire Financing Company shall register the collateral fiduciary, then in practice any " *crash* " or pile. So in practice, the new Fiduciary Guarantee Certificate will be issued after 1.5 months from the date of registration. This of course makes it difficult for Financing Companies to withdraw Motor Vehicles from customers who have started to jam and cannot pay installments. Because it means that the Financing Company must wait a long time to withdraw. A violating *consumer finance* company will be subject to administrative sanctions in the form of Article 4 of Minister of Finance Regulation No. 130 / PMK.010 / 2012 [11].

1. warning;
2. Suspension of business; or
3. revocation of business license.

Consumers who are generally unfamiliar with the contents of the agreement were only obedient to directly give a signature, because they also felt the need for the desired vehicle to be purchased. And they also did not pay too much attention to or pay attention to their rights that have not been included in the standard clauses of the agreement that have been prepared by the consumer finance parties long ago [12].

2. Weaknesses in the implementation of legal protection against consumers in the motor vehicle credit financing agreement in a justice perspective.

The implementation of consumer protection in Indonesia, especially in the *leasing* business, has not yet demonstrated conditions that provide legal certainty in the field of consumer protection,

- a) Facts on the ground show, financial institutions in entering into financing agreements include words guaranteed in fiduciary terms. But ironically it was not made in a notarial deed and was not registered at the Fiduciary Registration Office to get a certificate. Such a deed can be called a fiduciary deed under the hand.
- b) Fiduciary guarantees must be made in the presence of a notary public while financial institutions enter into agreements and fiduciary transactions in the field in a relatively fast time. At present many financial institutions carry out executions on objects of goods subject to fiduciary collateral that are not registered. Can be named *remedial* , *rof coll* , or *remove*. So far, finance companies feel their actions are safe and smooth, because of the weak bargaining power of customers to creditors as the owner of the funds. Plus the community's legal knowledge is still low. This weakness has been exploited by financial industry business people, especially the financial institutions and banks who carry out the practice of fiduciary guarantees with a deed under their hands. It will be feared that there will be allegations of fraud in non-tax state revenues in accordance with Law no. 20 of 1997 concerning Non-Tax State Revenues, because millions of financing (consumption, manufacturing and industry) with fiduciary guarantees are not registered and have a

⁷Shidarta, *Hukum Perlindungan Konsumen Indonesia*, (Jakarta: PT. Gramedia Widiasarana Indonesia, 2004), p. 49

⁸Abdul Kadir Muhammad, *Perjanjian Baku Dalam Praktek Perusahaan Perdagangan*, (Bandung: PT. Citra Aditya Bakti, 1992), p. 53

⁹Peraturan Menteri Keuangan Nomor 130/PMK.010/2012 tentang *Pendaftaran Jaminan Fidusia bagi Perusahaan Pembiayaan yang melakukan Pembiayaan Konsumen untuk Kendaraan Bermotor dengan Pembebanan Jaminan Fidusia*, Pasal 1 ayat (1)

¹⁰*Ibid.*, Pasal 1 ayat (2)

¹¹*Ibid.*, Pasal 4

¹²Janus Sidabalok, *Hukum Perlindungan Konsumen di Indonesia*, (Bandung: Citra Aditya Bakti, 2014), p. 61

- great potential to financially harm state revenues.
- c) In the process of executing objects that are subject to fiduciary collateral, the parties must pay attention to the debtor's rights attached to the object that is the collateral for the loan, because the debtor has made his achievement by paying several installments, so that the objects that are the object of fiduciary collateral have some of the rights held by the object debtors, some others belong to creditors. If the execution is carried out by force through *debt collector* services, then this violates the law and the violation is categorized as an unlawful act regulated in Article 1365 of the Civil Code Act, so that the debtor can sue for compensation through the court of the creditor's actions^[13].
 - d) Theoretical and empirical studies have proven that the legal culture has a strategic value to distinguish the Indonesian legal system from the legal system of other countries. Various problems of the current Indonesian legal culture can be broadly divided into basic and fundamental problems. The main problems of the legal culture include the following matters^[14].
 - e)
 1. The emergence of a degradation of legal culture in society marked by an increase in apathy culture in line with the increasing level of public appreciation of the legal substance and the existing legal structure. Decreased awareness of legal rights and obligations in society;
 2. The law has not been enforced firmly, fairly, and is not discriminatory, and is in favor of the ordinary people;
 3. The legal decision has not been felt by the community as a fair and impartial decision through a transparent process.

The basic problems that demand special and urgent attention to be overcome in relation to legal culture are as follows^[15].

1. The weak character of the nation;
2. Not yet developed humanitarian nationalism and political and economic democracy;
3. Not yet embodied the main values of nationalism and the undeveloped system that enables society to adopt and interpret contemporary values wisely;
4. The uncertainty in facing the future and the vulnerability of the development system, government and state in dealing with change.

Justice is the main target of law, so legal reform must be directed to achieve justice both as individuals, as well as justice for society or social justice. Not only formal justice, but also substantial justice and even social justice. The role of judges becomes important in law enforcement efforts in this country, to pay attention to what is called *the living law* as one of the social facts that must be considered to decide cases that fulfill the sense of justice of the community. *The living law* can be regarded as a *social pressure* that can be

considered by the judge in deciding a case^[16].

3. Reconstruction Protection Law Against Consumers In Agreement Financing Credit Motor Vehicle Based on Values Justice.

1) Construction of Values and Norms

Give the value of obedience to the institution financing the consumer to do the registration guarantees fiduciary especially for vehicle wheels two even though the value of the agreement credit is relatively small which is based on the value of justice. While the norm serves as a scheme of interpretation, by because it was the norm as something that should exist and should happen, so that the law can be said as a system of norms, in which a norm is made according to the norm which is high, and the norm of the more high it was made according to the norms that more high again and so forth until there we stopped at a norm which the highest are not made by the norm again, but set up in advance of its existence by the community or the people.

2) Legal Construction.

Weakness

Inconsistencies in Law Number 42 Year 1999 concerning Fiduciary Guarantees Article 11 paragraph (1) with Article 12 paragraph (1) Fiduciary Guarantees. In Article 11 paragraph (1) states that, "The thing that is burdened with Collateral Fiduciary shall be registered." While Article 12 paragraph (1) states that, registration guarantees fiduciary as referred to in Article 11 paragraph (1) conducted at the Office of the Register of Fiduciary. " from the provisions of this raises the question, whether the registered " Fiduciary object or collateral ?

After Reconstruction.

1. Article 11 paragraph of Law Number 42 of 1999 concerning Fiduciary Guarantees is proposed to add one paragraph which reads, " If a fiduciary guarantee deed is not registered at the Fiduciary Registration Office, then the deed is deemed to have no legal force and the fiduciary guarantee agreement is null and void by law." Article are expected to not only provide protection laws to the debtor will be, but also be able to provide protection to creditors.
2. Addition Article, namely Article 36 (a) which reads, " The receiver fiduciary who do not comply with the provisions of the Act is to be given sanctions in the form of closure to place their business." The provisions of this was intended to be the Company of financing can be orderly in the run of his company by giving financing to the public.
3. Addition Article, namely Article 36 (b), which reads, " Notary who is not registered Deed of Guarantee Fiduciary were made in the Office of the Register of Fiduciary may be subject to sanctions in accordance with the Act which set about a Notary namely Law Position Notary." The provisions of this is that the Notary to carry out its duties are always guided by the regulatory legislation which applies.

From a theoretical / conceptual point of view that the renewal of the National Fiduciary Security Law System is a

¹³Muhammad Hilmi Akhsin, dan Anis Mashdurohaturun, "Akibat Hukum Jaminan Fidusia Yang Tidak Didaftarkan Menurut UU Nomor 42 Tahun 1999", artikel dalam *Jurnal Akta* Vol. 4 No. 3 September 2017, p. 496-497

¹⁴Yusriadi, *Tebaran Pemikiran Kritis Hukum dan Masyarakat*, (Malang: Surya Pena Gemilang, 2009), p. 40

¹⁵*Ibid*

¹⁶Suteki, *Urgensi Sociological Jurisprudence Dalam Pencarian Keadilan Substansial di Era Globalisasi*, Orasi Ilmiah, Dies Natalis - 53 Fakultas Hukum UNDIP, p. 22

series of unity of the National Fiduciary Security Law sub-system into the substance of the Fiduciary Security Law, fiduciary guarantee legal structure, and the culture of fiduciary guarantee law. The National Legal System that will be built requires a foundation of values / ideas as a guideline that is in accordance with the outlook on life and ideology of the Indonesian people so that the law can apply nationally. From the results of doing the assessment as presented then a few things can be concluded as follows :

Implementation of Legal Protection for Consumers in the Motor Vehicle Credit Financing Agreement in the Perspective of Justice.

(1) The development of financial institutions, especially consumer financing, is indeed not yet supported by adequate legal instruments, so that it is necessary to have legal instruments in the form of a law so that there is a guarantee of legal certainty related to the operation of consumer finance. in carrying out its activities in the economic field, including in the field of financing activities.

(2) binding of collateral objects by using a fiduciary guarantee institution is an *accessory* agreement, where the credit agreement is first implemented as the principal agreement ^[17].

(3) The purpose of fiduciary motorized vehicles that have been submitted to consumers is to secure creditors for the agreement that has been made from the risk of loss of installments or transfer of motorized vehicles that have been bound with the fiduciary guarantee.

(4) then if there is a risk that the consumer is unable to repay installments or the consumer transfers the goods (motorized vehicles) that have become the object of the fiduciary guarantee, the finance company as a creditor can execute the goods (motorized vehicles) because they are still the ownership rights ^[18].

(5) registered it at the regional office of the Department of Justice and Human Rights, so that a fiduciary certificate appears.

(6) the recipient of fiduciary does not bear the consequence on actions in violation of the law of the grantor fiduciary of the object guarantees the fiduciary such. If it turns out later the object of guarantee of fiduciary that is given by the giver of fiduciary obtained by violating the provisions of the law of criminal then the recipient of fiduciary does not come to bear as a result , if the object guarantees the fiduciary of the seized / confiscated by the State, in accordance with Article 24 UUJF No. 42 Year 1999 states that , " Recipients of fiduciary does not assume the obligation on due to the actions or negligence of fiduciary well that arise from the relationship contractual or which arise from actions in violation of law in connection with the use and transfer of objects that become the object guarantee fiduciary ".

(7) Regarding the application of clause standard in agreement financing consumer according to Law Number 8 Year 1999 On Protection of Consumers , to note that the Agreement Financing consumers is one of the development of the various agreements in outside Code Civil. Companies Financing is an institution that did finance the procurement of goods for the needs of the consumer with the system of payment in installments or periodically. Form of the

agreement financing the consumer in general, be made in the form of a clause on Raw , where consumers are not able to determine the substance of the agreement of financing that the approval. So BFL not be able to provide protection that is effective against the consumer. Lack of understanding of consumers , business actors and law enforcement officials towards consumer protection resulting in violations of consumer rights still occur frequently.

b. Weaknesses of Legal Protection for Consumers in the Agreement on Motorized Vehicle Financing in the perspective of justice.

(1) Seeing from the side of the legal function is that the legislation concerning Fiduciary has a dual function (*dual function*). On the one hand the legislation seeks to portray itself as a means of " *social control* ", namely to strengthen the development of law in society that has been practiced in jurisprudence, but on the other hand it also tries to encourage the community especially those concerned (conducting *social engineering*) to uphold honesty through legal certainty, among others through the Fiduciary Guarantee Registration procedure, not only prioritizing lending and borrowing transactions in a process that is considered simple, easy and fast ^[19].

(2) According to Article 1 of the Minister of Finance Regulation No. 130 / PMK.010 / 2012, the Financing Company that carries out consumer financing for motor vehicles with the imposition of fiduciary guarantees must register the fiduciary guarantee referred to the Fiduciary Registration Office. Registration of fiduciary guarantees is given 30 days to register at the Fiduciary office from the date of the financing agreement. But in practice, because now all Financing Companies are required to register their fiduciary guarantee, in practice there is a " *crash*" or pile of files.

(3) Warning sanctions are given in writing at most 3 (three) times in a row with a validity period of 60 (sixty) calendar days each. If it turns out that before the expiration of the warning period the Financing Company has fulfilled the provisions, the Minister of Finance can revoke the warning sanction. Meanwhile, if the third warning period expires and the Financing Company still does not meet the provisions, the Minister of Finance may impose a suspension of business activities, but this cannot be realized in accordance with the regulations, because there are still many financial institutions that execute goods without having a fiduciary certificate.

(4) The practice of consumer financing carried out around us between *consumer finance* and consumers, there are still many that violate the Regulation of the Minister of Finance Number 130 / PMK.010 / 2012. This can be seen from the agreement that the researchers obtained, the contents of which were still not implemented from the Minister of Finance Regulation.

c. Reconstruction of Protection of Law Against Consumers In Agreement Financing Credit Vehicle Motorcycle Based on Values Justice.

(1) The Reconstruction of Value is: In order that the legal relations between legal subjects run harmoniously, in a balanced and fair manner, in the sense that each legal

¹⁷Gunawan Widjaja & Ahmad Yani, *Jaminan Fidusia*, (Jakarta: Raja Grafindo Persada, 2000), p. 104

¹⁸Mukhtar Djaman, *Perusahaan Pembiayaan dan Perjanjian Sewa Beli*, (Surabaya: Mitra Ilmu, 2009), p.10

¹⁹ Ahmad Muladi, *Hukum Lembaga Pembiayaan*, (Jakarta: Akademia Permata, 2013), p. 3

subject gets what is his right and performs the obligations imposed on him, then the law appears as a rule of play in regulating the legal relationship. Law was created as a means or instrument to regulate the rights and obligations of legal subjects ^[20]. In addition, law also functions as an instrument of protection for legal subjects. According to Sudikno Mertokusumo, law functions as protection of human interests. For human interests to be protected, laws must be implemented. Law enforcement can take place normally, peacefully but can also occur due to violations of the law ^[21]. Violation of the law occurs when certain legal subjects do not carry out the obligations that should be carried out or because they violate the rights of other legal subjects. Legal subjects whose rights have been violated must have legal protection.

(2) The Reconstruction of Norms is: Legal norms contained in Law Number 42 of 1999 must be a unit consisting of elements in sub-systems that interact with each other harmoniously in order to achieve what is the purpose of the said law. Fiduciary security unity as a material security sub-system must be applied to a set of juridical elements such as fiduciary security law regulations, legal principles and legal understanding ^[22]. In the renewal of national law especially fiduciary guarantee law, philosophical values / ideas (legal philosophy) Pancasila need to be explored to generate critical thoughts about the nature of fiduciary guarantee law by looking at coherence, correspondence and function in the implementation of banking credit with fiduciary guarantees so that their validity provides legal certainty, the value of expediency and social justice with pillars of Pancasila values, so that the inconsistency of norms in the Fiduciary Security Act (Law No.42 of 1999) and its implementation do not cause legal problems.

Conclusion

Based on the results of the discussion above, the legal reconstruction is;

- a) Article 11 paragraph of Law Number 42 of 1999 concerning Fiduciary Guarantees is proposed to add one paragraph which reads, " If a fiduciary guarantee deed is not registered at the Fiduciary Registration Office, then the deed is deemed to have no legal force and the fiduciary guarantee agreement is null and void by law." Article are expected to not only provide protection laws to the debtor will be, but also be able to provide protection to creditors.
- b) Addition Article, namely Article 36 (a) which reads, " The receiver fiduciary who do not comply with the provisions of the Act is to be given sanctions in the form of closure to place their business." The provisions of this was intended to be the Company of financing can be orderly in running his business provides financing to public.
- c) Addition Article, namely Article 36 (b), which reads, " Notary who is not registered Deed of Guarantee Fiduciary were made in the Office of the Register of Fiduciary may be subject to sanctions in accordance with the Act which set about a Notary namely Law Position Notary." The provisions of this is that the

Notary to carry out its duties are always guided by the regulatory legislation which applies.

Suggestion

- a. Needed her the role of the Government in the men socialize right of fiduciary guarantee registration, both to businesses and to consumers.
- b. The proposal to DPR-RI and the Government concerning the revision of the Law Guarantee Fiduciary No. 42 year 1999, especially change in the content of Article 11 paragraph (1) and the need for the addition of Article 36 (a), associated with the sanctions against the recipient of fiduciary who do not mematuhi provisions in Act, and (b) sanctions against Notaries who do not register the deed of guarantee of fiduciary that is organized in accordance with the Act Position Notary.
- c. The Consumer Dispute Settlement Agency (BPSK) is expected to play an active role in resolving disputes between consumers and business actors as well as supervising the inclusion of prohibited standard clauses, so that business actors violating Article 18 of the Consumer Protection Act may be subject to strict sanctions.
- d. A good guarantee legal system is a guarantee law that regulates non-overlapping principles and legal norms. The principle of Fiduciary guarantee law must run in harmony with the principle of law in the field of other material security guarantees. The asynchronous regulation of fiduciary guarantee legal principles with other material guarantees, will make it difficult for law enforcement guarantees, so that a *judicial review* of the fiduciary legal system needs to be done in an effort to reform the national law that is pillared with Pancasila to realize certainty and justice for economic actors who utilize fiduciary guarantees.

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²⁰Ridwan HR, *Hukum Administrasi Negara*, (Yogyakarta: UII Press), p. 210

²¹Sudikno Mertokusumo, *Mengenal Hukum, Suatu Pengantar*, (Yogyakarta: Liberty, 1996), p. 140

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