

Juridical Analysis Of The Settlement Of Defaulted Debtors With Fiduciary Guarantees At PT Mitra Gadai Kepri In Batam City

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Juridical Analysis Of The Settlement Of Defaulted Debtors With Fiduciary Guarantees At PT Mitra Gadai Kepri In Batam City

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Abstract, PT Mitra Gadai Kepri is one of the Private Pawnshops in Batam City which is licensed by OJK to provide financing products. However, the business of financing activities carried out often occurs Default, especially with Fiduciary Guarantees. Based on the description in this thesis, the problems to be studied are: 1)How is the Legal Arrangement Related to the Settlement of Default Debtors with Fiduciary Guarantees at PT Mitra Gadai Kepri in Batam City. 2)How is the Implementation Related to the Settlement of Debtor Default with Fiduciary Guarantee at PT Mitra Gadai Kepri Partner in Batam City. 3)What Factors are the Obstacles / Constraints and Solutions Related to the Settlement of Default Debtors with Fiduciary Guarantees at PT Mitra Gadai Kepri in Batam City. The method in this research is Normative Legal research supported by empirical research. Therefore, the Legislation and Conceptual approach will be carried out. Used in data collection in this research with Interviews and Literature Studie. The results of the study concluded that consumers who default with fiduciary guarantees due to low understanding of financial literacy. As well as not knowing the existence of regulations governing the protection of consumers and the public in the Financial Services Sector in resolving defaults with fiduciary guarantees. Suggestions in this study are that the OJK and Financial Services Business Actors must increase Financial Literacy and Inclusion in the wider community and include the government in eradicating illegal financial services. Financial Services Business Actors must analyze the ability to pay prospective customers in order to minimize defaults, especially with fiduciary guarantees and must resolve defaults in accordance with applicable regulations. And an appeal to the public to be wiser and more selective in choosing financial service products and institutions that provide these services.

Keywords: Settlement of Debtor Default, Fiduciary Guarantee, PT Mitra Gadai Kepri

1. INTRODUCTION

Economic development, as part of national development, is one of the efforts to achieve a just and prosperous society based on Pancasila and the 1945 Constitution. In order to maintain and continue sustainable development, development actors, both government and society, both individuals and legal entities, require large funds. Along with the increase in development activities, the need for funding also increases, most of the funds needed to meet these needs are obtained through credit lending activities. The increasing need of the community for the role of financial services institutions in business and trade activities simultaneously has triggered the birth of non-bank institutions (LKNB) that provide financing facilities (services) for the community through an installment or credit payment system. This shows that the level of community need for consumption of goods and services continues or is increasing, this condition is certainly a promising opportunity for business actors to be able to make a profit by opening business opportunities in the field of financing and financial services facilities (finance).

The Role of Banking in the Economic Development of a nation is vital like a heart in the human body.² Banking acts as a channel of funds for developing business activities, which are expected to strengthen the economy of a country and support National Development. This role has the consequence that National banking is required to always be able to provide the greatest possible benefits so that national stability is created leading to increased welfare of the people. In order to actualize the role, related to the existence of guarantees with credit transactions between creditors and debtors, a guarantee institution is needed. One of the guarantee institutions used is the fiduciary guarantee institution. Fiduciary guarantees have been used in Indonesia since the Dutch colonial era as a form of guarantee born from jurisprudence. This form of guarantee is widely used in lending and borrowing transactions because the burdening process is considered simple, easy and fast, although in some cases it is considered less guaranteeing legal certainty.

The transfer of ownership rights through trust in fiduciary is also commonly called the transfer of *Constitutum Possessorium* (transfer with continued control). "Fiduciary Construction is the transfer of ownership rights over the debtor's goods to the creditor while physical control over the goods remains with the debtor (*Constitutum Possessorium*) on the condition that when the debtor pays off his debt, the creditor must return ownership rights over the goods to the debtor. Bank changes as stipulated by the provisions of the law above, it can be seen that banks as fund distributors play a role in serving the needs of the community in their business activities in the form of providing loans (credit). As before the bank lends its funds to the debtor, there will be an agreement which is usually called a credit agreement. The credit agreement gives rise to a debt relationship, where the debtor is obliged to repay the loan given by the creditor, based on the terms and conditions agreed upon by the parties.

Chapter III of the Civil Code does not contain any provisions that specifically regulate credit agreements. However, based on the principle of freedom of contract, the parties are free to determine the contents of the credit agreement as long as it does not conflict with the law, public order, morality and propriety. The credit agreement is agreed and signed by the parties, then from that moment the agreement is born and binds the parties who make it into law. Banks as business entities that provide credit to debtors are required to make security efforts so that the credit can be paid off by the debtor, either in whole or in part, will be a loss for the bank. Losses that show a relatively large amount will affect the health level of the bank and the sustainability of the bank. Pawnshops make it easy for people to provide loans and provide loans. Pawnshops have the advantage of a fast pawnshop process, excellent pawnshop services,

many types of goods that can be pawned, and can pawn vehicle registration certificates and other movable assets.

The community and business actors try to respond to this by submitting a form of credit that can bridge government policies to create a conducive business climate and the widest possible business opportunities. One form of credit offered by pawnshops is the Fiduciary System Installment Credit. Creation is a credit application pattern, where credit is given to business actors for a certain period of time using a fiduciary credit guarantee construction for the purposes of developing their business, while the goods used as collateral remain in their control so that they can still be used by business actors (debtors). Fiduciary Guarantee. Borrowing money from a bank is more difficult because of the many documents that must be fulfilled, but at a pawnshop it is so easy to do. People just come to the pawnshop bringing certain collateral, then the money will be received in a short time, the collateral is also quite simple. Another advantage of pawnshops is that the pawnshop does not question what the money is used for and in contrast to banks which must be made as detailed as possible about the use of the money.

Based on the background description above, the author raises several problems that will be discussed further. The problems are as follows:

1. How are the Legal Arrangements Related to the Settlement of Defaulting Debtors with Fiduciary Guarantees at PT Mitra Gadai Kepri in Batam City?
2. How is the Implementation Related to the Settlement of Defaulting Debtors with Fiduciary Guarantees at Mitra Gadai Kepri in Batam City?
3. What Factors Become Obstacles/Constraints and Solutions Related to the Settlement of Defaulting Debtors with Fiduciary Guarantees at PT Mitra Gadai Kepri in Batam City?

Based on the formulation of the problem stated above, it can be seen that the objectives of this research are:

1. To find out the legal regulations related to the settlement of defaulting debtors with fiduciary guarantees at PT Mitra Gadai Kepri in Batam City.
2. To find out the implementation related to the settlement of defaulting debtors with fiduciary guarantees at PT Mitra Gadai Kepri in Batam City.
3. To find out what factors are obstacles/constraints and solutions related to the settlement of defaulting debtors with fiduciary guarantees at PT Mitra Gadai Kepri in Batam City.

2. LITERATURE REVIEW

According to Komaruddin, the definition of analysis is the activity of thinking to break down a whole into small components so that one can recognize the signs of the components, the relationship of each component, and the function of each component in an integrated whole. Juridical is something that is recognized by law, based on law and something that forms order and has an effect on its violation, juridical is a rule that is considered law or in the eyes of the law is justified in its validity, whether in the form of regulations, customs, ethics, even morals that are the basis for its assessment.

Settlement is a process carried out to achieve a goal. Terminologically, the definition of a debtor is a person or business entity that is obliged to return a certain amount of funds to another party, with or without interest. Therefore, basically the definition of a debtor is not limited to borrowers of funds, but also people with payment arrears to others. In business transactions, debtors are obliged to pay according to the amount of their bill. If there is arrears or failure to pay, usually the debtor will be subject to a fine and can even experience asset confiscation.

Default is a term taken from the Dutch wanprestatie meaning failure to fulfill performance or obligations in an agreement. Based on the meaning in KBBI, default is a condition where one party (usually an agreement) performs poorly due to negligence. In law, default means failure to fulfill performance that has been set. Performance is something that can be demanded. In an agreement, generally there is one party who demands performance from the other party. As previously mentioned, failure to fulfill performance is called default. Then, the provisions or legal basis for default are contained in the Civil Code. An agreement is a term or statement of an abstract nature, which refers to a legal relationship in the field of property between two or more people, where this legal relationship gives rise to obligations for one of the parties involved in the legal relationship.

The term guarantee comes from Dutch, namely Zekerheid or cauti. The definition of a guarantee in simple terms is something given to a creditor to create confidence that the debtor will fulfill an obligation that can be valued in money arising from an agreement.¹⁷ In addition, according to the provisions of Article 2 paragraph (1) of the Decree of the Board of Directors of Bank Indonesia No. 23/69/KEP/DIR dated February 28, 1991 concerning Credit Guarantees, what is meant by a guarantee is a bank's belief in the debtor's ability to repay the credit in accordance with what was agreed. So it can be concluded that a guarantee is one of the efforts that can be made by Financial Services Business Actors in mitigating the risk of debt payments

by debtors.

The regulation regarding collateral has been regulated in the legislation, namely Article 1331 of the Civil Code (KUHPer), which reads, "All objects of the debtor, both movable and immovable, both existing and new ones that will exist in the future, become collateral for all individual obligations Article 1331 of the Civil Code stipulates that the assets of a debtor by law become collateral (general collateral) for obligations in the form of paying his debt to the creditor who owes him (based on a credit agreement or money lending agreement), but also become collateral for all other obligations arising from other obligations, both those arising from laws and agreements.

The birth of a guarantee can be caused by law and also by agreement. A guarantee that arises because of law is a guarantee whose existence is designated by law, without any agreement from the parties, as regulated in article 1131 of the Civil Code. Examples of guarantees that arise because of law are general guarantees, privilege rights and retention rights. In addition, there are also guarantees that arise because of agreements. Examples of guarantees that arise from agreements are Pawns, Fiduciaries, Mortgages, and Mortgages.

Fiduciary Guarantee has its own history. Fiduciary, according to the origin of the word comes from the word 'fi'des' which means trust. This is in accordance with the principle in Fiduciary Guarantee where the legal relationship between creditors and debtors is based on trust. The creditor or fiduciary recipient has confidence that the debtor or fiduciary giver is able to pay off his debt and does not misuse the collateral, for example by transferring it to a third party. On the other hand, the debtor or fiduciary giver believes that the creditor or fiduciary recipient will submit proof of ownership of the collateral after the debtor has paid off his debt. The use of Fiduciary Guarantees began in Roman times. There are two forms of Fiduciary Guarantees, namely fiduciary cum creditore and fiduciary cum amino contracta which arise from an agreement called *pacium fiduciae* which is then followed by the transfer of rights or in iure cession.

Fiduciary Regulation in Indonesia was initially only based on the jurisprudence of existing court decisions. However, in 1999, fiduciary was specifically regulated in the Fiduciary Guarantee Law after the utilization of Fiduciary Guarantees regulated in Law Number 16 of 1985 concerning Apartments caused many problems due to the lack of legal certainty, both from the fiduciary provider and the fiduciary recipient. In principle, Fiduciary Guarantee is a material guarantee (*zakelijke zekerheid*, security right in rem) which gives priority to the Fiduciary Recipient. The transfer of ownership rights to the object that is the object of the Fiduciary Guarantee is carried out by means of *constitutum possessorium*

(verklaring van houderschap. Which means the transfer of ownership rights to an object by continuing control of the object which results in the fiduciary provider continuing to control the object in question for the benefit of the Fiduciary Guarantee recipient.

3. RESEARCH METHOD

This type of research is normative legal research supported by empirical research. Normative legal research is also called library research. It is called library research because this research is only aimed at written regulations so that this research requires secondary data. So, the empirical legal approach in this study means that in analyzing the problem, it is done by combining legal materials (which are secondary data) with primary data obtained from the Batam Private Pawnshop.

The population in this study is the Private Pawnshop Office. The determination of the sample in this study uses a sample method in the form of purposive sampling, namely sampling in determining and taking sample members based on considerations of the intent and purpose of the study. So based on the determination of the population above, the sample that will be used as respondents is the Head of the Private Pawnshop and Customers.

4. RESULTS AND DISCUSSION

1. Legal Regulations Regarding Settlement of Defaulting Debtors with Fiduciary Guarantees

Normatively, the business activities of Pawnshop Companies are permitted by the Financial Services Authority (OJK) with the distribution of loan money with collateral based on fiduciary. As regulated in the Financial Services Authority (OJK) Regulation Number 31/POJK.05/2016 Article 13 Paragraph (1) letter b which contains regarding the Distribution of Loan Money with Collateral Based on Fiduciary. In the Financial Services Authority (OJK) Regulation Number 31/POJK.05/2016 Article 15 which contains regarding Pawnshop Companies that carry out business activities of distributing Loan Money with collateral based on fiduciary as referred to in Article 13 paragraph (1) letter b are required to carry out risk mitigation.

Considering the importance of Pawnshops to register fiduciary guarantees for goods that are collateral for business activities, namely in the form of a Fiduciary Guarantee Certificate. Law Number 42 of 1999 Article 15 paragraph (2) which states, The Fiduciary Guarantee Certificate as referred to in paragraph (1) has the same executorial power as a court decision that has obtained permanent legal force. Law Number 42 of 1999 Article 15 paragraph

(3) which states, If the debtor defaults, the fiduciary recipient has the right to sell the object that is the object of the Fiduciary Guarantee at his own power. And Law Number 42 of 1999 Article 15 paragraph (4) which states, In this provision, what is meant by executorial power is that it can be implemented directly without going through a court and is final and binding on the parties to implement the decision.

Considering that the enactment of Law Number 4 of 2023 concerning the Development and Strengthening of the Financial Sector has strengthened the authority of the Financial Services Authority (OJK) in regulating and supervising consumer and community protection in the financial services sector to improve a reliable consumer protection system, increase consumer and community empowerment, and raise awareness of financial service business actors, so that the Financial Services Authority Regulation Number 22 of 2023 concerning Consumer and Community Protection in the Financial Services Sector (POJK Number 22 of 2023 PKM SJK) was decided.

Article 6 of POJK PKM SJK which states that PUJK has the right to receive legal protection from Consumer actions that are in bad faith. Examples of bad faith from Consumers include Consumers submitting collateral that originates from criminal acts, and Consumers providing information and/or documents that are unclear, inaccurate, incorrect, and misleading. Article 60 paragraph (1) of POJK PKM SJK which states that in the event that PUJK collects from Consumers who are in default in the use of credit or financing products, PUJK is required to provide a warning letter in accordance with the time period in the agreement.

Article 61 paragraph (1) of POJK PKM SJK regulates that PUJK can cooperate with other parties to carry out credit collection or financing functions for Consumers. In Article 61 paragraph (2) of POJK PKM SJK, PUJK is required to state cooperation with other parties at least in the form of a written agreement with sufficient stamp duty. And in Article 61 paragraph (3) of POJK PKM SJK, it is regulated that PUJK can cooperate with other parties in carrying out credit collection or financing for Consumers but must fulfill the provisions.

2. Implementation related to Settlement of Defaulting Debtors with Fiduciary Guarantee at

PT. Mitra Gadai Kepri in Batam City

From the results of an interview with the Head of PT Mitra Gadai Kepri in Batam City named Daniel, the company has a mechanism and stages carried out for defaulting debtors and some of them have certainly referred to OJK Regulation Number 31 of 2016 concerning Pawn Business and Number 22 of 2023 concerning Consumer and Community Protection in the Financial Services Sector. The following are the mechanisms and stages carried out by PT

Mitra Gadai Kepri in Batam City against one of the Defaulting Debtors:

a. Contacting Customers or Defaulting Debtors

Customers are contacted by the company through the Admin Collection division via telephone or WhatsApp, to remind them that they have passed the due date for payment of their obligations and to ask them to immediately make payments according to the agreement that has been made. And to negotiate to ease the burden on customers.

b. Sending a Warning Letter to Defaulting Debtors

However, the customer still ignored it so that the company made a Warning Letter to be sent to the Debtor's address a total of three times. The Warning Letter contains information on the due date according to the agreement, the number of days late in paying the obligation, the outstanding principal owed, and the fine owed. This mechanism has referred to POJK Number 22 of 2023 Article 60

c. Evaluation of Legal Compliance

The Company conducts an examination of legal documents related to Fiduciary Guarantees and the authority to demand payment.

d. Execution

With the Warning Letter addressed by the Company to the Defaulting Debtor but no results and the debtor ignored the Warning Letter a total of no times. Therefore, the company will take further action by executing the vehicle by showing the Fiduciary Guarantee Certificate through a Collection Officer who has a professional certificate from an institution appointed by the Indonesian Financing Company Association (APPI) and is a legal entity.

e. Grace Period

The vehicle towing procedure by the company does not stop at the towing stage. After the towing attempt, the company provides a grace period of 2 weeks or 14 days from the date of towing for the debtor to redeem the vehicle. The amount to be redeemed will be adjusted to the remaining installment arrears along with fines and interest to be paid.

f. Vehicle Sales

However, after more than the given period, the Debtor in question still cannot redeem it, so the company will sell the vehicle. If the proceeds from the sale still have a remainder after covering all the Debtor's obligations and fines, then the remainder will be returned to the Debtor in question. If the proceeds from the sale cannot cover all the Debtor's obligations and fines, then it will be entirely the Company's risk.

3. Obstacles and Solutions Related to Settlement of Defaulting Debtors with Fiduciary Guarantees

Several Obstacle Factors experienced by PT Mitra Gadai Kepri in Batam City, include:

- a. Difficulty contacting and communicating with defaulting debtors
- b. Debtors who try to hide vehicles that have been pledged
- c. Debtors who are no longer able to pay at all due to personal problems
- d. Lack of understanding by debtors or the public regarding Financial Sector Services so that they cannot distinguish between PUJKs that are registered and supervised by OJK or those that are not registered and supervised by OJK
- e. Customers take advantage of personal relationships with law enforcement officers or other authorities to argue in the legal field in the field during the execution process.
- f. Negligence of the internal team in handling default cases in the field.
- g. Operational risks such as administrative errors or implementation by less careful operational staff can result in problems in resolving defaults

Some solutions implemented by PT Mitra Gadai Kepri to the obstacles experienced include:

- a. Trying to renegotiate debt payment terms that are more lenient to suit the debtor's capabilities. Up to offering a Win-Win Solution.
- b. Tracking the Debtor's location via mobile number
- c. Collaborating with experienced Legal Experts to provide guidance and support in handling complex cases.
- d. Involving third parties or mediators who can help reach an agreement between creditors and debtors.
- e. Regular training for internal teams in resolving defaults to ensure they understand the applicable legal provisions well and can implement them appropriately.

5. CONCLUSION AND SUGGESTION

1. CONCLUSION

Based on the discussion in the previous chapter, the following conclusions can be drawn:

- a. Legal regulations related to the settlement of defaulting debtors with fiduciary guarantees at PT Mitra Gadai Kepri in Batam City in this study which have been described in the previous chapter, the author concludes that in encouraging the growth of the private pawn industry, the Financial Services Authority (OJK) issued POJK

Number 31 of 2016 concerning Pawn Business. However, due to the existence of financing products with fiduciary guarantees carried out by private pawnshops, financing activities with fiduciary guarantees are still guided by Law Number 42 of 1999 concerning Fiduciary Guarantees. There is also a settlement of defaults that has been regulated in POJK Number 22 of 2023 concerning Consumer and Community Protection in the Financial Services Sector.

- b. The implementation of the law related to the settlement of defaulting debtors with fiduciary guarantees at PT Mitra Gadai Kepri in Batam City in this study can be concluded that the implementation of loan distribution with fiduciary guarantees carried out by private pawnshops, especially at PT Mitra Gadai Kepri, has been in accordance with applicable regulations. PT Mitra Gadai Kepri as a private pawnshop in resolving defaults has implemented the stages well. However, the efforts made by PT Mitra Gadai Kepri still experience several problems in the field which are factors that hinder the settlement. However, several solutions and efforts made are still guided by the applicable Laws and OJK Regulations.
- c. Obstacles and solutions related to the settlement of defaulting debtors with fiduciary guarantees at PT Mitra Gadai Kepri in Batam City include the low level of public understanding of financial literacy, resulting in people easily making decisions without considering their ability to pay and the products chosen. And do not really understand the consequences that will be received if a default occurs at some point in the future. Therefore, the solution carried out by PUJK and OJK is to increase financial literacy and inclusion to the wider community.

2. SUGGESTION

From this conclusion, the author can provide several suggestions, namely:

- a. There are several suggestions for PUJK (Financial Services Business Actors), namely PUJK must continue to be guided by the applicable OJK Regulations in providing financial services, especially Fiduciary products or Loans with Fiduciary Guarantees. PUJK is certain to comply with the Fiduciary Law stipulated in Law Number 42 of 1999 concerning Fiduciary Guarantees. PUJK is required to follow the provisions of OJK Regulation Number 22 of 2023 PKM SJK Articles 60, 61, 62, 63, 64, 65 in the process of resolving defaults. There are also suggestions for the Financial Services Authority (OJK), namely to continue to carry out strict supervision of PUJK and conduct training, especially in resolving defaults. As well as suggestions for the wider

community and prospective consumers to be more selective in choosing Financial Services. Ensure that it has been registered and supervised by OJK because of the rampant illegal PUJK and is not registered with OJK.

- b. The author would like to give some suggestions to PUJK (Financial Services Business Actors) regarding this discussion, namely, they must be careful in validating all data and documents as well as information on prospective consumers who will take out loans with Fiduciary Guarantees, must convey product information clearly and consider and analyze the payment ability of prospective consumers, remain consistent in implementing internal procedures and policies related to the settlement of defaults. Ensure that there is a mechanism to track and check each stage of the process so that it can be accounted for, must carry out related to the Protection of Debtor Rights, even in the position of fiduciary creditor, still adhere to the principle of protecting the rights of debtors. Ensure that debtors are given a fair opportunity to complete their obligations before taking legal steps to resolve defaults, and always apply the principle of justice. And ensure that every step taken in resolving defaults is based on the principle of justice and compliance with applicable regulations
- c. In this problem formulation, the author would like to give advice to PUJK (Financial Services Business Actors), namely PUJK must conduct HR Training and Development. Ensure that the team involved in handling the settlement of defaults understands the legal provisions and procedures that must be followed. Regular training can help ensure that all personnel are up to date with the latest legal changes and best practices in handling fiduciary guarantees. As well as understanding the applicable legal provisions and being able to implement them appropriately so that a good Internal Control System can be implemented. As well as implementing a strong internal control system to monitor and evaluate the default resolution process effectively, PUJK must routinely conduct Internal Audits and Evaluations. Conduct routine audits of the default resolution process to evaluate compliance with procedures and their effectiveness. The results of this audit can be used to improve the process and identify areas that need improvement. And PUJK is advised to contribute to improving Financial Literacy and Inclusion. There is also a suggestion from the author to the government, namely OJK must continue to improve Financial Literacy and Inclusion in the wider community, both through various free events and seminars. In order to increase public awareness of the importance of financial inclusion. And OJK is advised to form a Task Force to eradicate illegal PUJK and not registered and supervised by OJK. Advice for the

Community or Prospective Debtor Customers is to clarify the procedures and conditions that apply before applying for a loan with fiduciary collateral to a pawnshop or other PUJK. And ensure the product is in accordance with their capabilities. The community or prospective consumers must be aware of the importance of Financial Literacy (knowledge, skills and beliefs that influence attitudes and behavior to improve the quality of decision making and financial management to achieve community financial welfare).

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