

LEGAL PROTECTION FOR CONSUMERS ON WITHDRAWAL OF FIDUCIARY OBJECTIVES BY FINANCING COMPANIES DUE TO COVID 19 IN MATARAM CITY

Edi Yanto

Muhammadiyah University Of Mataram

edidinata85@gmail.com

Rena Aminwara

Muhammadiyah University Of Mataram

rena28@gmail.com

Sahrul

Muhammadiyah University Of Mataram

sahrul25@gmail.com

ABSTRACT

The purpose of this study is to obtain the first description: legal protection for consumers for the withdrawal of fiduciary guarantee objects by finance companies due to Covid 19, and second: the role of the Mataram City Consumer Dispute Resolution Agency (BPSK) in resolving consumer financing disputes in Mataram City. This type of research is a normative and empirical law that examines legal materials and data. The approach used is legislation and concepts, then analyzed with qualitative description.

Legal protection for consumers for the withdrawal of fiduciary guarantee objects by financing companies due to covid 19. The government issues a Countercyclical policy through restructuring or credit relaxation for debtors with the potential to have difficulty fulfilling their obligations; however, suppose the restructuring effort does not result in a settlement. In the case, dispute resolution is carried out based on the clauses in the agreement or credit agreement signed by the parties.

The Mataram City BPSK resolving consumer financing disputes due to Covid 19 in Mataram City, has an essential role as a quasi-judicial institution in resolving consumer disputes out of court. This institution was born as a form of equitable distribution of justice for the community, especially consumers who have not had access to dispute resolution in the judiciary.

Keywords: Protection, Law, Consumer, Guarantee, Fiduciary.

INTRODUCTION

In general, for cash loans and vehicle credit facilities, financing institutions require a guarantee for a refund from the debtor, one of which is a letter of guarantee/collateral used as an alternative for repayment when the debtor defaults/does not carry out obligations, in the form of collateral whose object is a motorized vehicle. In the legal object, a motor vehicle guarantee is one type of vehicle guarantee, namely, a Fiduciary Guarantee, which in its implementation is regulated in Law Number 42 of 1999 concerning the Fiduciary Guarantee.

In the implementation of debt receivables with Fiduciary Guarantees, there are not a few parties, especially debtors who default/do not carry out their obligations following the agreement, as creditors try to collect debts from debtors to carry out duties, but not a few debtors who do not carry out their duties which lead to security measures. /execution of the object of Fiduciary Guarantee against motorized vehicles.

The problem that arises is when consumers are in unstable economic conditions, such as the Covid 19 outbreak, especially in the city of Mataram, which has an impact both directly and indirectly in all sectors and causes most workers in the non-formal sector to experience obstacles in the income side so that it also affects the fulfilment of debt obligations such as motor vehicle loans which in the end the motorcycle was forcibly withdrawn by the financing company in the middle of the road which caused the community as consumers to be harmed.

Based on complaint handling data at BPSK Mataram City, there was an increase in the ratio of complaints after the Covid 19 outbreak compared to before the outbreak in general. The main reason was that many consumers who worked in the non-formal sector experienced layoffs so they experienced obstacles in terms of lower income impact on fulfilling debt obligations.

1. Overview of Consumer Protection

In consumer protection, there are two legal terms: consumer law and consumer protection law. Consumer law and consumer protection law are new areas of law in academics and law enforcement practice in Indonesia. But at this time, it is still unclear what is included in the material of the two and whether the two branches of law are identical.

Some scholars try to provide boundaries regarding consumer law and consumer protection law. According to Shidarta, consumer law and consumer protection law are two areas of law that are difficult to separate and delineate, considering that one of the objectives of law is to provide protection (protection) to the public. Consumer law on a broader scale includes various legal aspects with consumer interests in it, where the word legal aspects, including law are defined as principles and norms. One part of consumer law is the aspect of protection, for example, how to defend consumer rights against interference from other parties.¹

Consumer protection should receive more attention because foreign investment has become a part of Indonesia's economic development, where the economy is also related to the world economy. International competition can have negative implications for consumers.² Consumer protection is not only for low-quality goods but also for goods that endanger people's lives.

a. Definition of Consumer

The definition of a consumer according to the provisions of Article 1 Number 2 of Law Number 8 of 1999 concerning Consumer Protection is every person who uses goods and services available in the community, both for the benefit of himself, his family, other people, and other living creatures and not for trading.³

The term consumer comes from and is translated from the word consumer (English-American) or consumer/consumer (Dutch). The definition of consumer or consumer depends on which position he is in. However, the meaning of the word consumer is "(as opposed to producer) everyone who uses goods." The purpose of using the goods or services will determine which group of consumers the user belongs to. Likewise, the English-Indonesian Dictionary defines a consumer as a "user or consumer."

b. Consumer Rights

There are nine rights outlined in Article 4 of the Consumer Protection Act that need to be known, the consumer rights are as follows:⁴

¹Susilowati S Dajaan. (2016). *Hukum Perlindungan Konsumen*, Cet.2. Tangerang Selatan: Universitas Terbuka, p. 14-15.

²Zulham,. (2013). *Hukum Perlindungan Konsumen*. Jakarta: Kencana Prenadamedia Group, p. 21

³Susilowati S Dajaan, *Op., Cit.*, p. 2.3

⁴*Ibid*, p. 36

- 1) The right to comfort, security, and safety in consuming goods and services;
- 2) The right to choose goods and services and to obtain such goods and services following the exchange rate and the promised conditions and guarantees;
- 3) The right to correct, transparent and honest information regarding the conditions and guarantees of goods and services;
- 4) The right to have their opinions and complaints heard or goods and services used to obtain security;
- 5) The right to get advocacy, protection by efforts to settle consumer protection disputes properly;
- 6) The right to obtain consumer guidance and education;
- 7) The right to be needed or served correctly and honestly as well as discriminatory;
- 8) The right to receive compensation, compensation and replacement services if the goods and services received are not following the agreement or not properly;
- 9) Rights regulated by the provisions of other laws and regulations.

c. Consumer Obligations

Must also balance consumer empowerment, other than through the implementation of consumer right with the consumer's obligations. The consumer must do this as the responsible consumer.

The Law on Consumer Protection expressly stipulates the obligations of consumers, namely in Article 5 of Law Number 8 of 1999 concerning Consumer Protection, the obligations of consumers are as follows:

- 1) Read or follow information instructions and procedures for the using or utilising goods and or services for security and safety.
- 2) Good faith in making transactions for the purchase of goods and or services.
- 3) Pay according to the agreed exchange rate.
- 4) Follow consumer legal settlement efforts properly.

d. Definition of Business Actor

Business Actor is a term used by lawmakers who are generally better known as entrepreneurs. The Indonesian Bachelor of Economics Association (ISEI) mentions four major groups of economic actors, three of which belong to the group of entrepreneurs (private and public) business actors.⁵

e. Business Actors' Rights

The rights of business actors as regulated in Article 6 of the Consumer Protection Act are:⁶

- 1) The right to receive payments in accordance with the agreement regarding the conditions and exchange rates of traded goods and services;
- 2) The right to obtain legal protection from consumer actions with bad intentions;
- 3) The right to conduct proper self-defence in the legal settlement of consumer disputes;
- 4) The right to rehabilitate a reputation if it is legally proven that traded goods and services do not cause consumer losses;
- 5) Rights are regulated by the provisions of other laws and regulations.

f. Obligations of Business Actors

Based on Article 7 of Law Number 8 of 1999 concerning Consumer Protection, the following are the obligations for Business Actors:

- 1) Have good intentions in carrying out their business activities;

⁵*Ibid*,

⁶Susilowati S Dajaan, *Op., Cit.*, p.37

- 2) Provide correct, transparent and honest information regarding the condition and guarantee of goods and services, as well as explain the use, repair and maintenance;
- 3) Treat or serve consumers correctly and honestly and non-discriminatory;
- 4) Guarantee the quality of goods and services produced and traded based on the provisions of the applicable quality standards of goods and services;⁷
- 5) Provide opportunities for consumers to test, and try certain goods and services and provide guarantees and warranties for goods manufactured and traded;
- 6) Provide compensation, compensation and replacement if the goods and services are not following the agreement.

2. Overview of Fiduciary Guarantees

a) Definition of Fiduciary Guarantee

In Article 1 paragraph (1) of Law 42 of 1999 concerning Guarantees Fiduciary, Fiduciary is the transfer of ownership rights to an object based on trust provided that the object whose ownership rights are transferred in the control of the owner of the object.

A fiduciary Guarantee is a security right on movable objects, both tangible and intangible and immovable objects, especially buildings that cannot be burdened with mortgage rights as referred to in Law Number 4 of 1996 concerning Mortgage Rights which remain in the control of the Fiduciary Giver, as collateral. For the settlement of certain debts, which gives priority to the Fiduciary Recipient over other creditors.

b) Strength of Fiduciary Certificate

Article 15 (1) The Fiduciary Guarantee Certificate, as referred to in Article 14 paragraph (1), shall include the words "FOR JUSTICE BASED ON THE ALMIGHTY GOD". (2) The Fiduciary Guarantee Certificate, as referred to in paragraph (1), has the same executive power as a court decision that has obtained permanent legal force. (3) If the debtor is in breach of contract, the fiduciary recipient has the right to sell the object that is the object of the fiduciary guarantee in his power.

c) Execution of Fiduciary Guarantee

Article 29 (1) If the debtor or fiduciary provider is in breach of contract, the execution of the object that is the object of the fiduciary security can be carried out by, a. the implementation of the executorial title as referred to in Article 15 paragraph (2) by the Fiduciary Recipient. b. sale of Objects that become the object of Fiduciary Guarantee on the authority of the Fiduciary Recipient himself through a public auction and take the settlement of his receivables from the proceeds of the sale; c. underhand sales made based on an agreement between the Giver and the Fiduciary Recipient if in this way can obtain the highest price that benefits the parties.

In paragraph (2), the sale as referred to in paragraph (1) letter c shall be carried out after 1 (one) month has elapsed since being notified in writing by the Provider and Fiduciary Recipient to interested parties and announced in at least 2 (two) letters. News spread in the area concerned.

Article 30 The Fiduciary Provider is obligated to hand over the Objects that are the object of the Fiduciary Guarantee in the context of the execution of the Fiduciary Guarantee.

⁷Janus Sidabalok,. (2012). *Hukum Perlindungan Konsumen Indonesia*. Bandung: Citra Aditya Bakti, p. 38

METHOD

1. Research Type

In writing this research to meet scientific criteria and approach the truth, the types of research used are Normative Legal Research and Empirical Legal Research. Normative legal research is a process of determining a principle, and the rule of law on the legal issues faced to get an answer.⁸ This research is doctrinal because the focus of this study uses written rules and other literature from the library. Normative legal research is also called doctrinal research. In this type of law research, the law is often conceptualized as what is written in legislation (law in the book) or as a rule or norm, which is a standard of behaviour for humans considered appropriate.⁹

While empirical legal research is often conceptualized as what happens (law in action).

2. Problem Approach

In this study, the approaches used include:

a) Legislative Approach.

According to Peter Mahmud Marzuki, the statute approach is “to review all laws and regulations relating to the legal issues being handled”.¹⁰

b) Sociological Approach

A sociological approach is an approach that moves from the implementation of a rule in society. By analyzing the implementation of the rules in society so that they can see the law holistically between *Das solen* and *Das sein*

3. Types of Legal Materials and data

Types of legal materials consist of:¹¹

a) Primary Legal Materials, namely binding legal materials, consist of statutory regulations jurisprudence relating to the problem under study. As:

1) Law no. 8 of 1999 concerning Consumer Protection

2) Law no. 42 of 1999 concerning Fiduciary Guarantees.

3) Constitutional Court Decision Number 18/PUU-XXVII/2019 Concerning the Power of Execution of Fiduciary Guarantees.

b) Secondary Legal Materials, namely legal materials that provide explanations of primary legal materials, in the form of draft laws, research results, textbooks, scientific journals, newspapers and internet news.

c) Tertiary legal materials, are also legal materials that explain primary and secondary legal materials in the form of dictionaries encyclopedias.

While the type of data consists of:¹²

a) Primary data in this study is obtained mainly from empirical research results, namely research conducted directly in the field.

b) Secondary data in this study is obtained from the literature review results.

4. Techniques for Collection, Processing of Legal Materials

⁸Peter Mahmud Marzuki, *Penelitian Hukum*, Jakarta Kencana Persada Media Group, 2017. Hlm: 35

⁹Amiruddin dan Zainal Asikin, *”Pengantar Metode Penelitian Hukum”* Penerbit PT. Raja Grafindo Persada. Jakarta, 2014. Hlm: 118.

¹⁰Peter Mahmud Marzuki, *” Op.Cit*, p. 35

¹¹Mukti Fajar ND dan Yulianto Achmad. (2013). *Dualisme Penelitian Hukum Normatif Dan Empiris*. Cetakan I . Yogyakarta: Penerbit Pustaka Pelajar, p. 157-158

¹²*Ibid*, p. 156

Legal materials and data collection techniques

a) Techniques for collecting legal materials:

The technique of collecting legal materials is carried out by studying literature on legal materials, both primary, and secondary legal materials and tertiary legal materials. The search for legal materials is carried out by reading, viewing, listening or browsing the internet.

b) Data collection techniques:

The data collection technique in this study is an interview technique, where the researcher conducts questions and answers directly with the resource persons to obtain the required information.

After they are collected, the next stage is processing them by systematizing legal materials to make it easier for researchers to conduct analysis. By selecting legal material that are then classified according to their classification, they are arranged systematically and logically to get a general picture of the research results.

5. Analysis of Legal Materials and Data

Analysis of legal materials is a method of studying, reviewing and analyzing legal materials to produce a systematic description. Will analyze the legal materials obtained from literature studies and field research descriptively and qualitatively. Where is an analysis of legal materials and data that groups and selects legal materials obtained from literature and field studies according to their quality and truth, then linked with theories, principles and legal rules so that answers to the problems are formulated? After the analysis, the next step is to conclude, while the way of concluding this study is by deductive means, which is a way of concluding general things to specific things.

ANALYSIS AND DISCUSSION

Legal Protection for Consumers for Withdrawal of Fiduciary Guarantee Objects by Financing Companies Due to Covid 19.

The Covid-19 pandemic has dramatically impacted the revenue or income of the financial institution industry, both banks and non-banks in Indonesia, even though the impact is relatively different for each customer or consumer segment. The impacts that financial institutions are currently facing during the COVID-19 pandemic include the failure of debtors and other parties, such as the risk of motor vehicle non-performing loans caused by several debtors who rely on income in sectors that have a significant impact due to covid 19 pandemic.

To minimize the number of non-performing loans or bad loans, as well as to maximize the function of financial institutions, maintain a balance in the financial system, and assist economic development during the Covid-19 pandemic, the Government established policies related to economic stimulus as a countercyclical impact of the spread of Covid-19, namely Financial Services Authority Regulation No. 11/PJOK.03/2020 Regarding National Economic Stimulus as a Countercyclical Policy for the Impact of the Spread of the 2019 Coronavirus Disease. In this OJK regulation, financing institutions can carry out policies that support economic growth and stability for debtor customers affected by Covid-19, including MSME debtors. The policies include:

- a. Asset quality determination, and
- b. Restructuring/relaxing credit or financing.

Financial institutions must have a basis or guideline to maximize the implementation of this policy in determining the criteria for debtors and MSME debtors affected by Covid-19. In the guidelines, at least there is material regarding the criteria for debtors affected by

Covid-19 and sectors affected by Covid-19. Credit restructuring is one of the efforts provided by creditors to debtors affected by Covid-19. Credit restructuring is a step in credit activities for debtors as an improvement effort made by creditors in dealing with difficulties experienced by debtors to fulfil their obligations, namely making repayments of their loans to creditors. So, credit restructuring for debtors affected by Covid-19 is undoubtedly an effort to minimize the credit risk.

Credit restructuring that creditors can carry out to debtors can be done by lowering the interest rate and extending the loan term, reducing the amount of interest and principal arrears, increasing loan facilities and converting loans into temporary equity participation.

Provisions for granting credit restructuring or financing for debtors as stated in OJK Regulation No. 11/PJOK.03/2020, among others:

- a. Since the restructuring, the quality of the restructured credit/financing has been smooth.
- b. Can carry out credit/financing restructuring on loans before or after debtors are affected by the spread of Covid-19, including MSME debtors.
- c. Loans for restructured BPR/financing for BPRS are excluded from the credit/financing restructuring accounting treatment.

The process of restructuring credit, it must be analyzed by looking at the debtor's business opportunities and the debtor's ability to pay according to the estimated cash flow. In addition, financing institutions can also carry out credit restructuring in the form of Temporary Equity Participation. Financing institutions applies to loans of questionable quality, substandard, or non-performing.

The need for state being present in this context is in line with role of the state or government as the holder of sovereignty. For this reason, the legal protection provided by the state or government to its citizens can be seen in the legal instruments and policies issued by the government.

Legal protection for consumers in a weak position against the power of a strong entrepreneur must definitively be regulated through statutory regulatory instruments. Legal protection is all efforts that guarantee legal certainty to protect consumers. The sentence "all efforts to ensure legal certainty" is expected as a bulwark to eliminate arbitrary actions that harm business actors only for consumer protection.

The formulation of the definition of consumer protection contained in Article 1 Number (1) of Law Number 8 of 1999 concerning Consumer Protection is sufficient. The sentence "all efforts to ensure legal certainty" is expected as a bulwark to eliminate arbitrary actions that harm business actors only for consumer protection.

The objectives to be achieved by consumer protection can generally be divided into three main parts, namely:¹³

- a. Empowering consumers in choosing, determining the goods and or services they need, and claiming their rights (article 3 letter c);
- b. Creating a consumer protection system that contains elements of legal certainty, information disclosure, and access to obtain that information (article 3 letter d);
- c. Growing awareness of business actors regarding the importance of consumer protection so that an honest and responsible attitude grows (article 3 letter e).

Credit relaxation policy or instalment payment relief for debtors affected by Covid-19. This policy applies if the debtor and finance company have complied with the OJK requirements written in POJK No. 48/POJK.03/2020 amendments to POJK No. 11/POJK.03/2020 and OJK

¹³Ahmadi Miru dan Sutarman Yodo. (2011). *Hukum Perlindungan Konsumen*, Cetakan Ketujuh. Jakarta: PT. RajaGrafindo Persada, p. 1-2

Letter No. S-9/D.05/2020. All finance companies under the Indonesian Financial Services Association (APPI) organization have the right to restructure credit.

With the issuance of POJK 48/POJK.03/2020, this stimulus policy will be in effect until March 31, 2022. Credit relaxation itself is an effort to improve credit activities for debtors who have the potential to have difficulty fulfilling their obligations.

Before a finance company provides credit concessions to its debtors, several factors must be considered, namely:

1. Debtors directly affected by Covid-19 with financing values below IDR 10 billion;
2. Debtors are informal sector workers and MSME entrepreneurs;
3. The debtor has no arrears before March 2, 2020, when the Government of Indonesia announced the corona virus;
4. The debtor is the holder of the vehicle/guarantee unit.

Credit restructuring policies must also be interpreted as legal protection that provides legal certainty. When conducting credit restructuring, there is a rescheduling of instalment payments agreed upon by both parties, namely the company as the creditor and the consumer as the debtor. Credit restructuring is, of course, very important given the condition of the Covid-19 pandemic, which has hit various sectors, and low purchasing power during a difficult situation. With these requirements, it is hoped that debtors who have problems paying off arrears due to Covid-19 will be able to fulfil their obligations.

Handling non-performing loans is done firstly by carrying out credit rescue through restructuring. Then if restructuring does not result in an optimal settlement, it is carried out by carrying out credit settlements through amicable settlements or settlements through legal channels carried out by the court,

Saving credit through restructuring is considered more benefit the creditor when compared to settlement patterns in other forms. Restructuring will be able to make the collectibility of credit better, and that means it will reduce the percentage of NPL (Non-Performing Loans). Through having to charge a special reserve fee which is formed in the form of PPAP (Providing Allowance for Earning Assets) to anticipate the potential loss of the leasing company and when the NPL (Non-performing Loan) turns into a credit with better collectibility, the PPAP cost is reduced. The profit of the leasing company to increase.

Credit restructuring based on OJK directives for finance companies, including through:

1. Reduction in loan interest rates;
2. Extension of credit period;
3. Reduction of loan interest arrears;
4. Reduction of principal loan arrears
5. Addition of credit facilities; and
6. Credit conversion into Temporary Equity Participation.

However, even though the restructuring policy has been given, in reality, some debtors still default. Default or called a breach of contract, is a situation that occurs because one of the parties does not perform its obligations or allows a situation to take place in such a way (non-performance) that the other party is unfairly harmed because they cannot enjoy their rights based on a mutually agreed contract.

Let's look closely at the substance of the vehicle rental agreement through a financing institution. The main agreement is a debt receivable accompanied by an additional agreement in the form of imposition of collateral through a fiduciary guarantee. Fiduciary guarantees are security rights over movable objects, both tangible and intangible and immovable objects,

especially buildings that cannot be burdened with mortgage rights as referred to in Law Number 4 of 1996 concerning Mortgage Rights which remain in the control of the fiduciary giver, as collateral for repayment of certain debts, which gives priority to the fiduciary recipient over other creditors.

Following provisions of Article 1131 the Civil Code, if debtor fails repay the debt obtained from his creditors, the proceeds from sale of all debtor's assets, without exception, a source of settlement for debt. This provision is protect a creditor; if there is no such provision, it is difficult to imagine a creditor willing to give debt to a debtor. The provisions of Article 1131 the Civil Code are already universal principle found in the legal system of every country.¹⁴

The position of creditors as providers of Fiduciary Guarantees is based on Law Number 42 of 1999 concerning Fiduciary Guarantees.

“Where all debtor's work, both in the form of movable objects and immovable objects that already exist or new ones that will exist, are constrained. But it becomes a guarantee or budget for all parties, so with the provisions in the Fiduciary Guarantee Act, the position of the receiving creditor is in a preliminary position (preferred) if the debtor is in default. The creditor has the right to sell the object that is the object of the fiduciary guarantee. The executive to secure the goods that are the object of the fiduciary guarantee and can sell them to pay off the debtor's losses.”

The execution of the fiduciary guarantee before the Constitutional Court's decision is carried out if the debtor or fiduciary giver commits a breach of contract or default. The debtor is in a state of default or default, meaning that the debtor cannot fulfil the obligations stipulated in the engagement or agreement. Failure to fulfil its obligations is due to two things: the debtor's fault, whether intentional or due to negligence, and the due to forced circumstances (Overmacht/Forcemajeur).

The fiduciary guarantee certificate has the same executorial power as a court decision with permanent legal force. So the fiduciary guarantee aims to protect the creditor's interest as a fiduciary recipient.

Furthermore, Article 15 Paragraph (3) states that if the debtor is in breach of contract, the fiduciary recipient has the right to sell the object that is the object of the Fiduciary guarantee in his power. The fiduciary recipient can separate execution by selling the object of the fiduciary guarantee on its power unilaterally without first compromising with the debtor who is in breach of contract.¹⁵

However, in its development, the Constitutional Court its Decision Number 18/PUU-XVII/2019, relates to the main issues in Article 15, Paragraph (2) and Paragraph (3) of Law Number 42 of 1999 concerning Fiduciary Guarantees. Considering that the interpretation of the “executory title” of the fiduciary certificate and “equalizing it with a court decision that has permanent legal force” in Article 15 Paragraph (2) of Law Number 42 of 1999 concerning Fiduciary Guarantees can cause an imbalance of legal rights between creditors and debtors because the execute authority is given to the creditor on his power without having to go through a civil lawsuit in court or ask for assistance from the state apparatus authorized for that purpose, such as in the execution of court decisions. Fiduciary Guarantees is contrary to the principle of balance in achieving legal justice. Justice is interpreted as granting a right to everyone by considering individual merits based on balance.¹⁶

The decision of the Constitutional Court Number 18/PUU-XVII/2019, states that Article 15 Paragraph (2) of Law Number 42 Year 1999 concerning Fiduciary Security insofar as

¹⁴Undang-Undang Nomor 42 Tahun 1999 Tentang Jaminan Fidusia.

¹⁵Salim HS. (2004). *Perkembangan Hukum Jaminan di Indonesia*. Jakarta: Raja Grafindo Persada, p. 47

¹⁶Lukman Santoso Az dan Yahyanto. (2016). *Pengantar Ilmu Hukum*. Malang.: Setara Press, p. 78.

the phrase “Executorial Power” and the phrase “Equal to a Court Decision with Permanent Legal Force” contradicts the 1945 Constitution of the Republic of Indonesia and has no binding legal force it is not interpreted “Against Fiduciary Guarantees with No Agreement on Default (Default) and Debtors Object to Voluntary Submission of Objects As Fiduciary Guarantees” so that all legal mechanisms and procedures in the execution of the Fiduciary Guarantee Certificate must be carried out and apply the same with the execution of court decisions that have permanent legal force.

Thus, the execution of the fiduciary guarantee carried out by the financing institution on the object of the guarantee cannot be carried out immediately following the provisions of Article 15 Paragraph (2) of Law Number 42 of 1999 concerning Fiduciary Guarantees if the debtor does not acknowledge breach of contract (default) and the debtor objected to voluntarily surrendering the object that became the fiduciary guarantee but had to submit a lawsuit to the District Court which would then be used as the basis for the execution of the object of the guarantee by law enforcement officials following the provisions of Perkap No. 8 of 2011 concerning Securing the Execution of Fiduciary Guarantees.

Can implement security of the object of fiduciary security with the following conditions:

- a. There is a request from the applicant;
- b. Have a fiduciary guarantee deed;
- c. The fiduciary guarantee is registered at the fiduciary registration office;
- d. Have a fiduciary guarantee certificate; and
- e. Fiduciary guarantees are in the territory of the Republic of Indonesia.

Application for the security of execution is submitted by attaching:

- a. A copy of the fiduciary guarantee deed;
- b. Copy of fiduciary guarantee certificate;
- c. A warning letter to the debtor to fulfil his obligations;
- d. The identity of the executor of the execution; and
- e. Execution assignment letter.

Based on the description above, can conclude that legal protection for consumers for the withdrawal of fiduciary objects by financing companies due to Covid-19 is the government providing stimulus policies for debtors that have a direct or indirect impact on the Covid-19 pandemic through policies regulated in several regulations. Financial Services Authority Regarding National Economic Stimulus as a Countercyclical Policy Impact of the Spread of Coronavirus Disease 2019 through Credit Relaxation to improve credit activities for debtors who have the potential to experience difficulties in fulfilling their obligations. In implementing the policy, several factors must be considered, including; Debtors directly affected by Covid-19 with financing values below IDR 10 billion; Debtors are informal sector workers and MSME entrepreneurs; The debtor has no arrears before March 2, 2020, when the Government of Indonesia announced the corona virus and the debtor was the holder of the vehicle/guarantee unit. The handling of non-performing loans is carried out first by carrying out credit rescue through restructuring ,and then, if restructuring does not result in a settlement. The dispute resolution process is carried out based on the clauses in the agreement or credit contract signed by the parties, including in the case of the execution of goods that are the object of collateral for further auctioned off and compensated against the debtor’s obligations.

The role of the Mataram City Consumer Dispute Resolution Agency (BPSK) in resolving consumer financing disputes due to Covid 19 in Mataram City.

The Covid-19 pandemic has had a massive impact on global economic conditions, especially on income for the community, especially workers in the informal sector, which in turn will also affect people's purchasing power. The government issued various policies to maintain economic recovery in the financing sector for both Banks and Non-Banks include restructuring policies.

One of the areas that have a direct impact as a result of Covid 19 in the NTB Province. Mataram City is one of the industrial and trade areas; of course, the pandemic has had such a significant impact on the community's economy, including many people as debtors who experience wrong vehicle loans. In the end the vehicle is confiscated and executed by a finance company which will harm the interests of the consumer.

From the provisions of paragraph IV of the Preamble to the 1945 Constitution, it contains at least four primary obligations of the state, namely:¹⁷

1. In protection function, the state protects all of Indonesia's bloodshed.
2. In welfare function, the state is obliged to realize welfare for all people
3. In educational function, the state has the obligation to educate the nation's life
4. In peacefulness function state is obliged to create peace in the life state and society, both within and outside the country.

Following Article 45 paragraph (1) of Law No. 8 of 1999 concerning Consumer Protection, it is determined that any harmed consumer can sue business actors through institutions tasked with resolving disputes between consumers and business actors or through courts within the general court environment. Based on Article 45 paragraph (2) of Law No. 8 of 1999 concerning Consumer Protection, can reach the settlement of consumer disputes through court or out of court based on the voluntary choice of the disputing parties.

In Mataram City, the local government has established the Consumer Dispute Settlement Agency (BPSK) to resolve consumer disputes out of court. BPSK is an agency handling and resolving disputes between business actors and consumers. BPSK is a particular institution established and regulated in the Consumer Protection Act, whose main task is to resolve disputes or disputes between consumers and business actors.¹⁸

BPSK is expected to facilitate, accelerate and provide a guarantee of legal certainty for consumers to claim their civil rights to business actors who are not true. In addition, it can also provide access to information and guarantee the same legal protection for consumers and business actors.

The duties and authorities of BPSK based on Article 52 of Law Number 8 of 1999 concerning Consumer Protection include:

- a. Carry out handling and settlement of consumer disputes though conciliation, mediation and arbitration.
- b. Provide consumer protection consultation
- c. Supervise the inclusion of standard clauses.

¹⁷Lalu Husni. (2010). *Hukum Penempatan dan Perlindungan TKI*. Malang: Program Pasca Sarjana Universitas Brawijaya, p. 38

¹⁸Yusuf Shofie. (2002). *Penyelesaian Sengketa Konsumen Menurut Undang-Undang Perlindungan Konsumen (UUPK), Teori dan Praktek Penegakan Hukum*. Bandung: Citra Aditya Bakti, p. 39

- d. Report to public investigators if there is a violation of the provisions in Law Number 8 of 1999 concerning Consumer Protection.
- e. Receive written and unwritten complaints from consumers regarding violations of consumer protection.
- f. Conduct research and examination of consumer protection disputes.
- g. They are calling business actors suspected of having violated consumer protection.
- h. Summon and present witnesses, expert witnesses and/or anyone deemed to know the violation of Law number 8 of 1999 concerning Consumer Protection.
- i. Requesting assistance from investigators to present business actors, witnesses, expert witnesses or any person. As referred to in letter g and letter, who are not willing to comply with the summons of the Consumer Dispute Settlement Agency
- j. Obtain, examine and evaluate letters, documents or other evidence for investigation and examination
- k. Decide and determine whether or not there is a loss on the part of the consumer.
- l. Notify the decision of business actors who violate consumer protection.
- m. Imposing administrative sanctions on business actors who violate the provisions of Law Number 8 of 1999 concerning Consumer Protection.

Meanwhile, the duties of the Consumer Dispute Settlement Agency (BPSK) are to provide consumer protection consultations (Article 52 point b of Law Number 8 of 1999) can be seen as an effort to socialize the Consumer Protection Act, both for consumers and businesses actors. If consultation is given, if a consumer dispute application has been registered at the secretariat of the Consumer Dispute Settlement Agency, the consultation provided by BPSK is, of course, in the context of resolving consumer disputes, either by conciliation, mediation, or arbitration.

From this description, it can be seen that BPSK is not only tasked with resolving consumer disputes out of court but also carrying out activities in the form of providing consumer protection consultations and supervising the inclusion of standard clauses.¹⁹

BPSK is an independent state institution or a complementary institution (state auxiliary organ) with enforcement authority in the field of consumer protection law. BPSK is a supporting institution in the quasi-judicial field where the tasks and authorities are actually the judicial institutions' duties. BPSK was formed to simplify consumer disputes, which would take a long time to use the court route.

The role of the Mataram City BPSK Mataram City in resolving consumer financing disputes due to Covid 19 in Mataram City has been running optimally, based on interview with the Deputy Chair of the Mataram City BPSK.²⁰

“That the impact of the Covid 19 pandemic in NTB in general and especially in the city of Mataram greatly affects the economic income of the middle to lower economic community, especially in the financial institution sector, both banks and non-banks such as financial institutions, because based on the number of complaints submitted to BPSK from several the previous year experienced an increase starting from the beginning of 2020 until april 2022 several 74 (seventy-four) complaints and in general it was dominated by complaints related to financing institutions (finance)”

¹⁹Akhmadi Miru dan Sutarman Yodo. (2008). *Hukum Perlindungan Konsumen*,. Jakarta, Rajawali Pers, p. 247

²⁰Wawancara dengan Ibu Haerani, SH, MH selaku Wakil Ketua BPSK Kota Mataram, pada tanggal 22 April 2022 di Kantor BPSK Kota Mataram.

Regarding the implementation of duties and authorities, they are carried out following the provisions of the applicable laws, including Law Number 8 of 1999 concerning Consumer Protection and Decree of the Minister of Industry and Trade Number 350/MPP/12/2001 concerning the Implementation of the Duties and Authorities of BPSK.

In carrying out the tasks of the BPSK, in general, the Mataram City BPSK is more dominant in resolving consumer disputes, either by conciliation, mediation or arbitration . Approximately 95% are resolved through mediation with the result reached an agreement. Meanwhile, the authority that cannot be implemented by BPSK, such as the authority to impose administrative sanctions on business actors and the supervision of the inclusion of standard clauses, has not been very effective because the guidelines and procedures for its implementation have not been regulated.²¹

Based on the description above, can conclude that the role of the Mataram City Consumer Dispute Resolution Agency (BPSK) in resolving consumer financing disputes due to Covid 19 in Mataram City has an essential role as a quasi-judicial institution that helps accelerate the process of consumer dispute resolution outside the court either by way of conciliation. , mediation and arbitration that do not charge court fees or are free of charge. This institution was born based on the mandate of the consumer protection law as a form of equitable distribution of justice for the community, especially consumers who have so far lacked access to dispute resolution in formal judicial institutions due to several factors, including; relatively expensive court fees; the processing time is quite long, and it is too formally legal, so it is not comparable to the object of the disputed case.

CONCLUSION

Based on the description above, it can be concluded as follows:

1. Legal protection for consumers for the withdrawal of fiduciary guarantee objects by finance companies due to covid 19, basically the government provides stimulus policies for debtors that have an impact on the Covid-19 pandemic through the Financial Services Authority Regulation policy on National Economic Stimulus as a Countercyclical Policy for the Impact of the Spread of Coronavirus Disease 2019 through restructuring or credit relaxation as an effort to improve credit activities for debtors who have the potential to experience difficulties in fulfilling their obligations. However, suppose the restructuring effort does not result in a settlement. In that case, the dispute resolution process is carried out based on the clauses in the agreement or credit agreement signed by the parties.
2. The role of the Mataram City BPSK in resolving consumer financing disputes due to Covid 19 in Mataram City has an essential role as a quasi-judicial institution that helps resolve consumer disputes outside the court that does not charge court fees. This institution was born based on the mandate of the consumer protection law as a form of equitable distribution of justice for the community, especially consumers who have so far lacked access to dispute resolution in formal judicial institutions due to several factors, including; relatively expensive court fees; relatively long processing time so it is not worth the disputed losses.

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