

DISPUTE ON LEASE FINANCING AGREEMENT: IS IT SUBJECT TO CONSUMER PROTECTION OR CIVIL LAW?

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ABSTRACT

Disputes arising between the financing company and the debtor in implementing the lease financing agreement often occur as the debtor is negligent in completing the installments contained therein. Consequently, the financing company withdraws the object of financing encumbered with security, generally with a fiduciary, from the debtor's possession. Upon this action, the debtor filed a lawsuit against the financing company to the BPSK since the debtor considered themselves as consumers in the lease financing agreement, so in some cases, BPSK won the debtor's lawsuit. However, both the district court and the Supreme Court of the Republic of Indonesia, in their decisions, emphasized that this is not a consumer dispute but a civil dispute in the form of a breach of contract. The research in this article will answer whether the dispute between the financing company and the debtor regarding the lease financing agreement will be subject to the consumer protection law or civil law and which judicial bodies have the authority to settle this issue. The research method used in this research is normative juridical with analytical descriptive research specifications. The data used in this study are secondary and tertiary data that have been prepared and analyzed according to the topic of discussion in this article. The main finding in this study is the agreement in the financing agreement because there is a breach of a contract subject to civil law, and the court that adjudicates it is the district court and not the BPSK.

ABSTRAK

Perselisihan yang timbul antara perusahaan pembiayaan dengan debitur sehubungan dengan pelaksanaan perjanjian pembiayaan seringkali diakibatkan karena debitur lalai dalam menyelesaikan angsuran sebagaimana diperjanjikan dalam perjanjian tersebut. Oleh karena itu, perusahaan pembiayaan menarik objek pembiayaan yang dibebankan jaminan kebendaan, umumnya dengan fidusia, dari

penguasaan debitur. Atas tindakan tersebut, debitur mengajukan gugatan kepada BPSK karena debitur menganggap bahwa mereka adalah konsumen dalam perjanjian pembiayaan sehingga dalam beberapa kasus BPSK memenangkan gugatan debitur. Namun, pengadilan negeri maupun Mahkamah Agung dalam putusannya menegaskan bahwa perselisihan ini bukan merupakan sengketa konsumen, melainkan sengketa keperdataan berupa cidera janji. Penelitian dalam artikel ini akan menjawab mengenai apakah perselisihan antara perusahaan pembiayaan dan debitur dalam perjanjian pembiayaan tunduk pada hukum perlindungan konsumen atau hukum perdata serta badan peradilan mana yang berwenang menyelesaikan perselisihan ini. Metode penelitian yang digunakan dalam penelitian ini adalah yuridis normative dengan spesifikasi penelitian deskriptis analitis. Data yang digunakan dalam penelitian ini merupakan data sekunder dan data tersier yang telah disiapkan dan dianalisis sesuai dengan topik diskusi dalam artikel ini. Temuan utama dalam penelitian ini adalah perselisihan dalam perjanjian pembiayaan dikarenakan adanya peristiwa cidera janji tunduk pada hukum perdata serta badan peradilan yang berwenang mengadiliinya adalah pengadilan negeri dan bukan BPSK.

Keywords: Lease Financing, Lease Financing Agreement, Lease Financing Dispute, Consumer Protection Law, Lease Financing Fiduciary.

Introduction

In line with the increasing economy in the Republic of Indonesia, the public demands capital in the financing, both for productive activities as needed by business actors and for non-productive activities as needed by individual consumers. From business actors' perspectives, capital is one of the main factors for their business activities' sustainability, development, and growth.¹ It is no secret that business actors and individual consumers cannot finance their needs (i.e., for productive and non-productive activities) with their capital. Therefore, business actors and consumers seek financing from financial service institutions like banks and financing companies. However, the financing provided by banks is considered inadequate to settle these problems due

¹ Sri Redjeki Hartono, *Kapita Selekta Hukum Perusahaan* (Bandung: Mandar Maju, 2000), p. 1.

to limited credit coverage, limited sources of funds, and tight regulations in providing credit facilities.²

Rather than banks, financing companies or *perusahaan pembiayaan* could be the alternative solution for business actors and consumers to obtain financing to meet their financing needs.³ Financing companies generally provide financing to business actors and consumers based on the financing provided, such as investment financing, working capital financing, multipurpose financing, and so on. Business actors and individual consumers who have obtained financing facilities are expected to be able to take advantage of the financing according to its designation and complete the financing installments to the financing company following the nominal and time period agreed in the lease financing agreement.

During the implementation of the lease financing agreement, it is customary to meet the condition where the business actors and consumers fail to fulfill their obligations in paying installments as construed in the lease financing agreement. The condition where the debtor fails to pay the installment according to the agreed amount and/or schedule may lead to the declaration of a non-performing loan (NPL) towards such financing.⁴ As such, the financing companies as the creditor withdraw the object of financing from the said business actors or consumers as the debtor, for example, motor vehicles.⁵ Towards any actions of the financing company withdrawing the financing objects unilaterally or other actions, it is common for the business actors and/or individual consumers to file a lawsuit to the Indonesian Consumer Dispute Settlement Agency or *Badan Penyelesaian Sengketa Konsumen Indonesia* (hereinafter referred to as “BPSK”).

In several cases, for instance, BPSK Award Number: 49/BPSK-SLK/PTS/M/VIII-2014 dated 18 August 2014 (Jekki Saputra as the

² Munir Fuady, *Hukum Tentang Pembiayaan (Dalam Teori dan Praktek)* (Bandung: PT. Citra Aditya Bakti, 1999), p. 2.

³ D.Y. Witanto, *Hukum Jaminan Fidusia Dalam Perjanjian Pembiayaan Konsumen (Aspek Perikatan, Pendaftaran, dan Eksekusi)* (Bandung: CV Mandar Maju, Bandung), p. 1.

⁴ Siti Salmiah, “Penyelesaian Sengketa Pembiayaan Macet di PT. Bank Mega Syariah Melalui Pengadilan Agama (Studi Kasus Putusan No. 142/Pdt.G/2015/PA.Mdn), *Jurnal Hukum dan Kemasyarakatan Al-Hikmah*, Vol. 2, No. 1 (2021), p. 38.

⁵ Widaningsih, “Analisis Yuridis Peraturan Menteri Keuangan (PMK) No. 130/PMK. 130/ PMK. 010/2012 Tentang Pendaftaran Fidusia Bagi Perusahaan Pembiayaan”, *Jurnal Panorama Hukum*, Vol. 1, No. 1 (2016), p. 89.

plaintiff vs. PT. Adira Dinamika Multi Finance Tbk, branch of Solok as the defendant), BPSK Award Number: 18/G/VIII/2020/BPSK.BDG dated 11 August 2020 (Siti Solihat as the plaintiff vs. PT. Federal Internasional Finance as the defendant), and BPSK Award Number: 23/BPSK-PDG/PTS/ARBT/XI/2019 dated 8 November 2019 (Haryanto as the plaintiff vs. PT Oto Multiartha, branch of Padang as the defendant), BPSK is in favor of the business actors' and/or consumer's lawsuit, although such settlement agency unfolds the fact that the business actors' and/or consumer's failed to fulfill its obligation under the lease financing agreement (i.e., paying the financing installment according to the agreement). Against such award, the financing companies submit an objection to the relevant district court so that it will be further examined and ruled by a court panel of judges. In several cases, the district courts revoke the BPSK's award with the argumentation that BPSK has no authority to examine and render the award of financing dispute. Therefore, the district court awards are in favor of financing companies.

The research uses the normative judicial research method as the research methodology in the article, covering analyzing the principles and norms of law as well as the prevailing laws and regulations that have a connection to the discussion herein. Descriptive analysis will be the research specification, meaning research seeking to illustrate and describe the problems related to disputes on lease financing agreements between the financing companies and the debtor, in particular related to the implementation of the Indonesian Civil Code or *Kitab Undang-Undang Hukum Perdata* (hereinafter referred to as "Civil Code"), Law of the Republic of Indonesia Number 8 of 1999 on Consumer Protection Law (hereinafter referred to as "Consumer Protection Law"), the relevant laws and regulations of the Republic of Indonesia within financing sector, and the court decision.

Based on the above introduction, this article will explain the issue related to dispute on lease financing agreement between the financing companies and the debtors, specifically on the topic of whether lease financing agreement will be subject to Consumer Protection Law or Civil Law and who has the authority to examine and issue a decision for lease financing dispute between the financing companies and the debtors related to the implementation of the lease financing agreement.

Related-Aspects of Financing Activities

General overview of financing activities

In supplying their financing products, financing companies provide their financing by providing financial assistance to finance certain products. Financial assistance in question is defined as credit, where the financing companies do not provide the assistance in the form of cash but in the form of goods that are used as financing objects as agreed in the lease financing agreement.⁶

Financing activities, at least, involve the following parties:⁷

- a. financing companies as the creditor (hereinafter referred to as “financing companies” and/or “creditor”);
- b. business actors and/or individuals utilizing financing services provided by the financing companies (hereinafter referred to as “lessee” and/or “debtors”); and
- c. supplier.

In addition to the above, the parties in the implementation of financing activities can be understood under the following perspectives:

- a. financing companies as the owner or the lessor of the goods;
- b. debtors as the user or the lessee of the goods; and;
- c. supplier as the seller of the goods.⁸

In regard to the above, the related parties of financing parties will be further described in this section. Based on Article 1 (1) of Financial Services Authority of the Republic of Indonesia or *Otoritas Jasa Keuangan Republik Indonesia* (hereinafter referred to as “OJK”) Number 35/POJK.05/2018 of 2018 on the Organization of the Business Activities of Financing Companies (hereinafter referred to as “OJK Reg. 35/2018”), financing companies are defined as business entities that finance the procurement of goods and/or services. The business activities of the financing company, according to Article 2 (1) of OJK Reg. 35/2018 in connection with Article 1 (2), (3), and (4) of OJK Reg. 35/2018, include:

⁶ Munir Fuady, *Hukum Tentang Pembiayaan Konsumen* (Bandung: PT Citra Aditya Bakti, 2002), p. 205.

⁷ Muhammad Chidir, *Pengertian-Pengertian Elementer Hukum Perjanjian Perdata* (Bandung: Mandar Maju, 1993), p. 166.

⁸ Marco I. Ratumbanua, “Penyelesaian Sengketa Perjanjian Leasing Dalam Hal Terjadinya Ingkar Janji (Wanprestasi)”, *Lex Privatum*, Vol. 5., No. 1. (2017), p. 155.

- a. Investment financing, a financing service of the capital goods required for the business/investment activity, rehabilitation, modernization, expansion, and relocation of business/investment site, shall be provided for the debtor.
- b. Working capital financing is a financing service intended for the fulfillment of non-recurring business expenses which the debtor must spend off.
- c. Multipurpose financing is a financing service for procuring goods and/or services required by the debtor for consumption instead of business or any other productive activities within the agreed financing period.
- d. Other financing business activities are based on the approval of the OJK.

Furthermore, a debtor is a person or a company that owes money, goods, or services from another person or company.⁹ Under OJK Reg. 35/2018, the debtor shall be a business entity or legal person who obtains the financing service for the procurement of goods and services from the financing companies, as regulated under Article 1 (19) of OJK Reg. 35/2018. Meanwhile, suppliers can be interpreted as parties who provide capital goods that become financing objects, where financing companies pay for the goods to suppliers for the benefit of debtors.¹⁰

In short, the legal connection between the financing company, debtor, and supplier is as follows: the financing company provides financing services for the financing objects in cash to suppliers. The supplier delivers the financing objects to the debtor. Furthermore, once the debtor obtains goods from the supplier, the debtor shall pay the agreed installments to the financing company.¹¹

Legal relationship based on the Lease financing agreement

In connection with the legal relationship between financing company, debtor, and supplier above, such relationship will be drawn

⁹ Rogel Bel Air, *Cara Meminjam Uang dari Bank*, (Solo: PT. Dabara Bengawan, 1988), p. 3.

¹⁰ Munir Fuady, *Hukum tentang Pembiayaan* (Bandung: Citra Aditya Bakti, 2006), p. 8.

¹¹ Sammy F Kambey, "Perlindungan Hukum Terhadap Perusahaan Pembiayaan Dalam Perjanjian Leasing", *Jurnal Ilmu Hukum Legal Opinion*, Vol. 3, No. 3 (2015), p. 2.

in writing in the form of a lease financing agreement as a legal document that forms the basis for legal certainty for the parties therein. Principally, a lease financing agreement is based on the principle of freedom of contract as referred to in Article 1338 of the Civil Code.¹² In addition to the said, a lease financing agreement must also fulfill the conditions for the validity of the agreement as stipulated in Article 1320 of the Civil Code, amongst others:

- a. there must be a consent of the individuals who are bound thereby;
- b. there must be a capacity to conclude an agreement;
- c. there must be a specific subject; and
- d. there must be an admissible cause.

In spite of the fact that the basis of a lease financing agreement is the freedom of contract principles as discussed above, practically speaking, the financing companies have prepared their lease financing agreement in the form of a standard agreement or standard contract to their prospective debtors regarding the clauses, terms, and conditions of the relevant financing services which will be provided by the financing companies, as stipulated unilaterally by them.¹³

Sutan Remy Sjahdeini, an Indonesian business law expert, describes a standard agreement as an agreement whereby part or all of the clauses of such agreement have been unilaterally standardized by one or certain parties. Therefore, the counterparty has no chance to negotiate further the terms therein.¹⁴ Simply put, the standard agreement will favor the stronger party, in this case, the financing companies, which only list and highlight the rights owned by the party. At the same time, the counterparty is forced to accept the situation due to its weaker

¹² Fahreza Surya Sumantri, Hendro Saptono, Marjo, “Penyelesaian Sengketa Antara PT. Astra Credit Companies Dengan Konsumen Dalam Perjanjian Leasing”, *Diponegoro Law Review*, Vol. 1, No. 2, p. 2.

¹³ Agustine Azizah, “Kajian Yuridis Putusan Mahkamah Agung Dalam Penyelesaian Sengketa Pada Perusahaan Leasing Dengan Badan Penyelesaian Sengketa Konsumen (Studi Kasus Putusan Mahkamah Agung Nomor 210K/Pdt.Sus-BPSK/2015)”, *Jurnal Panorama Hukum*, Vol. 6, No. 1 (2021), p. 3.

¹⁴ Sutan Remi Sjahdeni, *Asas Kebebasan Berkontrak dan Perlindungan yang Seimbang Bagi Para Pihak Dalam Perjanjian Kredit Bank di Indonesia*, (Jakarta: Institut Bankir Indonesia, 1993), p. 66.

position.¹⁵ In general, the elements of a standard contract are as follows:¹⁶

- a. made in written form;
- b. the format is standardized;
- c. the terms and conditions therein have been stipulated by the entrepreneur or the stronger party;
- d. the counterparty or the weaker party can only accept or reject the contract, and
- e. its terms and conditions always benefit the entrepreneur or the stronger party.

While there are many pros and cons among scholars on the validity of a standard agreement, this article elucidates that the agreement thereof does not violate the requirements of the validity of an agreement as regulated under Article 1320 of the Civil Code and the freedom of contract principles as regulated under Article 1338 of Civil Code. Second, it is worth noting that the contractual relationship between the parties of an agreement shall be based on mutual consensus to achieve the objective outlined in an agreement.¹⁷

Towards the provided lease financing agreement, whereby the said is made in the form of a standard agreement, debtors often question the validity of standard clause(s) contained in the lease financing agreement once the dispute between the financing companies and debtors has occurred. In this sense, the debtors believe they are the "consumer" in the lease financing agreement. Therefore, the standard clauses of the agreement thereof violate Article 18 letter (a), (d), and (h) of Consumer Protection Law as follows:

- a. it stated the transfer of business actor's responsibility;
- b. it stated the granting of power from the consumer to business actor both directly and indirectly to carry out any unilateral

¹⁵ Hasannudin Rahman, *Legal Drafting: Seri Keterampilan Mahasiswa Fakultas Hukum Dalam Merancang Kontrak Perorangan/Bisnis*, (Bandung: Citra Aditya Bakti, 2000), p. 134.

¹⁶ M. Syamsudin and Fera Aditias Ramadani, "Perlindungan Hukum Konsumen Atas Penerapan Klausul Baku", *Jurnal Yudisial*, Vol. 11, No. 1 (2018), p. 91.

¹⁷ Jefferson Hakim, "Exoneration Clause on Law of Consumer Protection: Effects and Legal Efforts," *Jurnal Hukum dan Peradilan*, Vol. 2 (2019), p. 302.

action concerning the goods purchased by a consumer in installment;¹⁸ and

- c. it stated that the consumer grants the power to the business actor to impose mortgage, pledge, or security rights over the purchased goods purchased by the consumers in installments.

Upon such provisions, the debtors who fail to pay the installment in accordance with the agreed amount and/or schedule and consequently feel disadvantaged due to the actions of the financing companies unilaterally withdrawing the financing object under the possession of the debtors and auction it publicly. Accordingly, the debtor who argues himself as the “consumer” in a lease financing agreement frequently disputes the existence of standard clauses construed in the lease financing agreement before the BPSK since it is considered a violation against the provisions of Consumer Protection Law.

Concluding the above, the lease financing agreement executed in the form of a standard agreement (including the standard clauses therein), which the financing companies have determined, must be deemed as the implementation of freedom of contract principles and not a violation of Consumer Protection Law. This is because the legal relationship between the financing companies and the debtors shall not be deemed as a business actor – consumer, instead, it is based on creditor (i.e., financing companies) and debtor (i.e., the lessee). The aforementioned is based on the following legal basis:

- a. Based on Article 1 (2) of OJK Regulation Number 1/POJK.07/2013 of 2013 on the Consumer Protection Within Financial Services Sector (hereinafter referred to as “OJK Reg. 1/2013”), consumers are defined as parties who place their funds and/or take advantage of services available at Financial Services Institutions, including customers in banking, investors in the Capital Market, policyholders in insurance, and participants in Pension Funds, based on regulations legislation in the financial services sector.

¹⁸ Agus Satory, “Perjanjian Baku dan Perlindungan Konsumen dalam Transaksi Bisnis Sektor Jasa Keuangan: Penerapan dan Implementasinya di Indonesia”, *Jurnal Ilmu Hukum*, Vol. 2 (2015), p. 273.

Therefore, it should be noted that the debtor in a lease financing agreement is not deemed a "consumer" under OJK Reg. 1/2013.

- b. Based on OJK Reg. 35/2018, such regulation does not recognize the term "consumer", instead, it uses the term "debtor" as defined as a business entity or legal person who obtains the financing service for the procurement of goods and services from the financing company according to Article 1 (19) of OJK Reg. 35/2018.
- c. Indonesian Supreme Court Jurisprudence Number 1/Yur/Perkons/2018 rules that any dispute arising from a financing agreement, either secured with a mortgage or fiduciary, shall not be subject to Consumer Law. As such, BPSK has no authority over it.

Financing companies' mandatory mitigation

As the financing activities provided by the financing company to its debtor, then such company, in appropriate manner and calculation, shall minimize any risks that may arise towards the financing thereof.¹⁹ In distributing its financing to the debtor, financing companies shall be obligated to perform any mitigation of the financing risks as regulated under Article 26 (1) of OJK Reg. 35/2018. According to Article 26 (2) of OJK Reg. 35/2018, the mitigation as mentioned earlier can be completed by:

- a. risk transfer mechanisms of financing through credit insurance or credit insurance in accordance with the provisions of the legislation;
- b. transferred the risk on collateral from financing activities through insurance mechanism; and/or
- c. encumber fiduciary, mortgage, or hypothetic on the collateral financing activities.

Concerning Article 26 (2) letter an of OJK Reg. 35/2018, Article 27 of OJK Reg. 35/2018 mandates the financing companies must use

¹⁹ Ni Luh Ayu Regita Cahyani, I Nyoman Putu Budiarta, Ni Made Puspasutari Ujjanti, "Perlindungan Hukum Bagi Perusahaan Leasing Terhadap Debitur Wanprestasi", *Jurnal Preferensi Hukum*, Vol. 2 No. 2 (2021), p. 257.

an insurance company or a guarantor who meets the following conditions:

- a. Have obtained an operating license from the OJK; and
- b. are not currently being imposed with administrative sanctions such as restrictions on business activities or suspension of business activity from the OJK.

Regarding the mitigation risk, as stated in Article 26 (2) letter b above, the financing companies shall use the insurance companies that meet the following conditions:

- a. have obtained an operating license from the OJK; and
- b. not in the imposition of administrative sanctions such as restrictions on business activities of the OJK.

With respect to Article 26 (2) letter c of OJK Reg. 35/2018, Article 30, 31, and 32 of OJK Reg. 35/2018 obliges the financing companies to comply with the provisions related to fiduciary as regulated under Law Number 42 of 1999 on Fiduciary (hereinafter referred to as “Fiduciary Law”), mortgage as regulated under Law Number 4 of 1996 on Mortgage Over Land and Land-Related Objects (hereinafter referred to as “Mortgage Law”), and hypothec as regulated under the Civil Code.

However, to short the discussion herein, this section of this article shall only discuss the mitigation of financing risks by encumbering fiduciary. As mentioned above, fiduciary security is regulated under Fiduciary Law. Based on Article 1 (1) of Fiduciary Law, Fiduciary is defined as a transfer of ownership of an object on trust with the provision that transferred ownership of the object remains in the control of the object's owner. Fiduciary security is the right of moving objects, both tangible and intangible and immovable objects, in particular buildings that cannot be burdened with mortgages referred to in Mortgage Law which remain in control of the giver of the fiduciary, as the security for the repayment of certain debt, which gives priority to the fiduciary giver against other creditors in accordance with Article 1 (2) of Fiduciary Law. Furthermore, the debt itself is defined as an obligation expressed or expressed as an amount of money in the currency of Indonesia or any other currencies, either directly or contingently, as defined under Article 1 (7) of the Fiduciary Law.

Under the Fiduciary Law, the object that can be encumbered under this law is anything that can be owned or transferred, both tangible and

intangible, registered or not registered, moveable or immovable, which cannot be burdened with a mortgage and hypothetic, as defined under Article 1 (4) of Fiduciary Law. Furthermore, the subjects of fiduciary shall be:

- a. fiduciary giver, which is defined as an individual or corporation as the owner of the objects subject to the fiduciary security; and
- b. A fiduciary recipient is defined as an individual or corporation as the owner with receivables for which the fiduciary security secures payment.

In line with the above, it should be noted that Fiduciary is a secondary agreement to a principal agreement (i.e., the lease financing agreement) that creates any obligation for the parties to perform based on Article 4 of Fiduciary Law. As such, the Fiduciary Law rules imposing fiduciary security over objects must be made in the form of a notarial deed in the Indonesian language and be a fiduciary deed regulated under Article 5 of Fiduciary Law. Other than that, the objects encumbered with fiduciary securities must be registered in compliance with Article 11 (1) of Fiduciary Law.

Briefly, the above registration mandatory shall be done electronically to the Minister of Law and Human Rights (hereinafter referred to “MOLHR”) by the applicants as regulated under Article 10 of Minister of Law and Human Rights Regulation Number 25 of 2021 on the Procedures of Registration, Amendment, and Revocation Towards Fiduciary Security (hereinafter referred to as “MOLHR Reg. 25/2021”). In short, Article 3 of the applicants thereof shall be:

- a. notary;
- b. corporations, including bank institutions, non-bank financial institutions, or
- c. corporations with other business activities.

As discussed above, in providing its financing to the prospective debtors, the financing companies require the financing object to be encumbered under certain securities, one of which is fiduciary security, to protect its interest.²⁰ The primary purpose of encumbering fiduciary upon the financing object is eligibility of the financing companies as the creditor to execute the financing object provided the debtor fails to pay

²⁰ Setianto Trimulyo, “Pelaksanaan Perjanjian Pembiayaan Konsumen dan Implikasi Wanprestasi Terhadap Objek Jaminan (Studi Kasus Di PT Oto Multiartha Cabang Mataram), *Jurnal Ius*, Vol. 5, No. 1 (2017), p. 95.

the installment or fails to comply with other provisions stated in the lease financing agreement.²¹

Fiduciary in the lease financing agreement can be reflected in the following construction:

- a. the debtor is the fiduciary giver;
- b. the financing company is the fiduciary recipient;
- c. the financing object is the fiduciary object;
- d. the financing object is physically under the possession of the debtor; and
- e. the right of ownership of the financing object is transferred to the financing companies as the fiduciary recipient.

Respecting the above, fiduciary has precedence over other creditors, meaning that the financing company as the fiduciary recipient has the right to settle its claims against the proceeds of execution of the fiduciary object as regulated under Article 27 of Fiduciary Law. According to Article 29 of Fiduciary Law, the execution of fiduciary object can be done by the following means:

- a. implementation of executorial title referred to in Article 15 (2) of Fiduciary Law by the fiduciary recipient;
- b. sale of the fiduciary object at the power of the fiduciary recipient through a public auction and deduction of payment of its claim from the sale proceeds;
- c. direct sale with the agreement of both fiduciary recipient and fiduciary giver if the highest price is obtainable to the benefit of the parties.

In line with the execution of fiduciary object, this article will provide evidence on the following issuance of Constitutional Court of the Republic of Indonesia Decision Number: 2/PUU-XIX/2021 and Constitutional Court of the Republic of Indonesia Decision Number: 18/PUU-XVII/2019. According to these 2 (two) Constitutional Court decisions, it can be understood as the assumption that the debtor disagrees with the fact that the breach of contract has occurred and he refuses to deliver the object of the fiduciary to the creditor voluntarily, the creditor may submit a petition to the district court to execute such

²¹ Achmad Yusuf Sutarjo and Djuwityastuti, “Akibat Hukum Debitur Wanprestasi Pada Perjanjian Pembiayaan Konsumen Dengan Obyek Jaminan Fidusia Yang Disita Pihak Ketiga (Studi Kasus: Putusan Mahkamah Agung Nomor 3089 K/ Pdt/ 2015), *Private Law*, Vol. 6 (2018), p. 96.

fiduciary. However, supposing that the debtor and creditor have agreed on the condition of breach of contract, the creditor is allowed to execute the fiduciary object immediately.

Dispute on Lease Financing Agreement

Breach of contract towards lease financing agreement

In a legal, contractual relationship, each party has the rights and obligations, and their position is reciprocal. One party has the right to claim something against the other party, and the other party is obliged to fulfill that demand.²² In contract law, the execution of things written in an agreement by the parties who bind themselves in it is referred to as performance in accordance with the terms and conditions that apply.²³

If the agreement has been made by the parties who have bound themselves in it and has fulfilled the legal requirements of the agreement as stipulated in Article 1320 of the Civil Code, then the agreement shall apply as law for them as referred to in Article 1338 (1) of the Civil Code as referred to in Article 1338 (1) of the Civil Code. This is known as the principle of *pacta sunt servanda*. Given one of the parties does not perform in accordance with what was agreed upon, then this will be referred to as a breach of contract.²⁴ In Indonesian legal literature, breach of contract is referred to as *wanprestasi*, which means poor performance.²⁵

Theoretically, there are four conditions that are categorized as breach of the contract, namely not fulfilling the performance, being late in fulfilling the achievement, fulfilling the achievement but not complying with it, and/or doing something that according to the

²² Saray H. Karianga, “Kedudukan Hukum Kreditur dan Debitur Dalam Perjanjian Jual Beli Tanah”, *Lex et Societatis*, Vol. 4, No. 2 (2016), p. 147.

²³ Munir Fuady, *Hukum Kontrak (dari sudut pandang hukum bisnis)* (Bandung: Citra Aditya Bakti, 1999), p. 87.

²⁴ Niru Anita and Nurlely Darwis, “Wanprestasi dan Akibatnya Dalam Pelaksanaan Perjanjian”, *Jurnal Mitra Manajemen*, Vol. 7, No. 2 (2015), p. 51.

²⁵ Lukman Santoso Az, *Hukum Perikatan (Teori Hukum dan Teknis Pembuatan Kontrak, Kerja Sama, dan Bisnis)* (Malang: Setara Press, 2016), p. 75.

agreement is not allowed to be done.²⁶ According to Yahya Harahap, an Indonesian civil law expert, breach of contract can be understood as the implementation of obligations that are not carried out in a timely manner or carried out inappropriately.²⁷

Breach of contract occurs granted that one of the parties does not fulfill its obligations as stipulated in the commitment, both commitment that arise due to an agreement or by law. Breach of contract can occur either intentionally or unintentionally. In the defaulting party's perspective, this breach of contract can occur because they are not able to fulfill these achievements or are also forced not to make these achievements.²⁸

Towards any action from the defaulting party leading to breach of contract, Article 1243 of Civil Code regulates that the aggrieved party shall be entitled for compensation in the form of costs, damages and interests. However, to enjoy this provision, the defaulting party must be declared to be in default by the aggrieved party, and after such declaration, the defaulting party remains in default. This declaration is known as reprimand or *somasi*.

In general, the non-performance of any kind of agreement, in this case is lease financing agreement, may result in breach of contract.²⁹ Furthermore, the events that can result in breach of contract in a lease financing agreement are:

- a. financing companies do not hand over the object of financing to the debtor in accordance with the provisions contained in the lease financing agreement;
- b. the debtor is late in paying installments or does not make installment payments as stipulated in the financing agreement;
- c. debtors do not pay fines for late installment payments;
- d. financing companies and/or debtors violate the provisions stipulated in the financing agreement.

²⁶ Djaja S. Meliala, *Perkembangan Hukum Perdata Tentang Benda dan Hukum Perikatan* (Bandung: Nuansa Aulia, 2007), p. 99-100.

²⁷ M. Yahya Harahap, *Segi-Segi Hukum Perjanjian* (Bandung: Alumni, 1983), p. 60.

²⁸ Ahmad Miru, *Hukum Kontrak dan Perancangan Kontrak*, (Jakarta: PT. Raja Grafindo Persada, 2007), p. 74.

²⁹ Rianda Dirkareshza, Taupiqurrahman, Davilla Prawidya Azaria, "Optimalisasi Hukum Terhadap Lessee Yang Melakukan Wanprestasi Dalam Perjanjian Leasing", *Jurnal Ilmiah Pengajaran Hukum*, Vol. 8, No. 2 (2021), p. 163.

In consumer financing, debtors, as parties who feel disadvantaged by the actions of financing companies, tend to choose to settle financing disputes through non-litigation or out of court dispute settlements due to lower costs and relatively faster settlement periods.³⁰

The authorized jurisdiction to examine and render an award against lease financing dispute

In practice, in the event of a dispute over a lease financing agreement between a debtor and a financing company, there are often situations where the debtor files a lawsuit to the BPSK. This is because the perspective of the debtor itself considers that they are consumers in the lease financing agreement and as such, they file a lawsuit through BPSK in compliance with Article 45 (1) in connection with Article 47 of Consumer Protection Law.

Basically, BPSK is an agency that is responsible for handling and settling disputes between business actors and consumers as defined under Article 1 (11) of Consumer Protection Law. In implementing its duties and authorities, BPSK shall be required to issue a decision by no later than 21 (twenty-one) business days after the lawsuit is received as described under Article 55 of Consumer Protection Law. In this sense, if BPSK's decision is not in the favor of the business actor and/or consumer, the business actor and/or consumer may file an objection to the district court by no later than 4 (four) business days after receiving said decision notification. Should the decision thereof is not in the favor of the business actor and the business actor do not file an objection within the period above, it shall be deemed to have accepted the decision rendered by the BPSK. Therefore, the business actor shall implement the BPSK's decision within a maximum period of 7 (seven) business days after receiving such decision as mentioned under Article 56 of Consumer Protection Law.

For example, in 2013, Izwal Farizal (the debtor) entered into 2 (two) lease financing agreements with PT Toyota Astra Financial Services's Padang branch office (the financing company), in which Lease Financing Agreement No. 922601-13 dated 31 August 2013 and Lease

³⁰ Afrizal Mukti Wibowo, Sukarmi, Siti Hamidah, "Analisis Yuridis Kewenangan Penyelesaian Sengketa Pembiayaan Konsumen di Indonesia", *Legality*, Vol. 27, No. 1 (2019), p. 42.

Financing Agreement No. 922602-13 dated 30 September 2013 with the respective object of the agreement is a Toyota Dyna Wu 42 HT3S Dump. Shortly, the debtor failed to pay the 9th installment onwards according to the agreed period, therefore, the financing company executed the lease financing object fiduciary.³¹

Against the financing company's execution, the debtor filed a lawsuit to the BPSK of Padang, where such dispute settlement agency rendered a decision which in the favor of the debtor's lawsuit. BPSK ordered the financing company to return one of the vehicle units of the case in question provided that all the installment between consumers and business actor are completed as reflected under BPSK Decision Number: 010/PTS-BPSK-PDG/ARBT/III/2015. Dissatisfied with the BPSK's decision, the financing company filed an objection to Padang District Court, however, the District Court thereof rejected the objection submitted by the financing company as reflected under Padang Court Decision Number: 55/Pdt.Sus-BPSK/2015/PENGADILAN NEGERI. pdg.

Furthermore, the financing company submitted cassation to the Supreme Court of the Republic of Indonesia. As contained under Supreme Court Decision Number 481K/Pdt.Sus/BPSK/2015, the Supreme Court granted a decision where it overruled the previous BPSK and Padang District Court decision. Thus, such decision is in the favor of the financing company. In the said supreme court decision, the Supreme Court is of the view that the main dispute is breach of contract and not consumer dispute, therefore, BPSK of Padang shall not be authorized to examine and render a decision to the dispute thereof.

From 2006 to 2012, there was a confusion in determining whether the lease financing agreement dispute was classified as consumer dispute so that BPSK was authorized to examine and adjudicate the case. On the other hand, whether the financing agreement dispute was regarded as civil dispute in the form of a breach of contract, so that the district court has the authority to examine and adjudicate it. Adapting from the opinion of the Supreme Court, there were at least 2 (two) views prevailing at that time.

³¹ Takenia Tifany, "Perlindungan Konsumen Dalam Penerapan Batas Kewenangan Badan Penyelesaian Sengketa Konsumen Menyelesaikan Perkara Konsumen (Studi Putusan No. 481K/ Pdt.Sus-BPSK/2015), *Jurnal Hukum Adigama*, Vol. 1 (2018), p.9.

The first view is that the legal relationship on the lease financing agreement dispute is included as a consumer dispute so that BPSK has the authority to examine and adjudicate the case. In respect to the first view, there are 3 (three) Supreme Court decisions following this view, including Supreme Court Decision Number: 063 K/ Pdt.Sus/2007 dated November 2007 (PT. Adira Dinamika Multifinance vs. Agustri Admodjo), Supreme Court Decision Number: 267 K/Pdt.Sus/2012 dated 25 July 2012 (Novan Ferdiano vs. PT U Finance Indonesia), Supreme Court Decision Number 335 K/Pdt.Sus/2012 dated 6 September 2012 (PT Mandiri Tunas Finance vs. Sunardi) and Supreme Court Decision Number 589 K/Pdt.Sus/2012 dated 22 November 2012 (Sinarmas Multifinance vs. ESS).

However, judge H. Syamsul Ma'rif, S.H., LL.M., Ph.D argues that the BPSK (in BPSK Decision Number 24/Abs/BPSK-Yk/X/2011 dated 6 October 2011) is not authorized to examine and render an award as the dispute between Sunardi as the plaintiff and PT. Mandiri Tunas Finance as the defendant shall be deemed as the consequence of implementing the contract (contractual case), as noted on Supreme Court Decision Number 335 K/Pdt.Sus/2012 dated 6 September 2012 (PT Mandiri Tunas Finance vs. Sunardi). As detailed on such court decision, in short, such case is not related to the impact of the use or quality of the car as an object of financing, instead, it is related to the debtor's (plaintiff) negligent so the financing company (defendant) withdrawn the financing object and as such, the said case shall not be subject to Consumer Protection Law.

On the other hand, the second view states that disputes arising from financing agreements are included as breach of contract, so they are not included in the scope of disputes that can be adjudicated by BPSK, in other words, this is the authority of the district court. This view was followed by Supreme Court Decision Number 447 K/Pdt.Sus/2011 dated 25 August 2011 (Haasri v. PT Astra Sedaya Finance) and Supreme Court Decision Number 566 K/Pdt.Sus/2012 dated 14 November 2012.

As of 2013, the first view has been abandoned by the Supreme Court. According to Supreme Court Decision Number 27 K/ Pdt. Sus/2013 dated 23 March 2013 (Yusma v. PT Adira Dinamika Multifinance Tbk.), such decision firmly declares the legal relationship between the plaintiff (Yusma as the debtor) and the defendant (PT

Adira Dinamika Multifinance Tbk as the financing company) was based on a lease financing agreement along with fiduciary transfer of ownership, which applies civil law relationships and does not include consumer disputes as referred to in the Consumer Protection Law. Therefore, BPSK shall not be authorized to examine and adjudicate this dispute.

In addition to the Supreme Court decision above, Supreme Court Decision Number 306 K/Pdt.Sus/2013 dated 26 August 2013 (Zuraidah v. PT. Adira Dinamika Multifinance Tbk.) provides that the Tebing Tinggi District Court and the BPSK of Tebing Tinggi have misapplied due to a dispute in the lease financing company between the debtor and the financing company based on a breach of contract. Therefore, the lawsuit should be filed through the district court. Furthermore, Supreme Court Decision Number: 933 K/Pdt.Sus-BPSK/2017 dated 19 October 2017 (Badal Gultom v. PT CIMB Niaga Auto Finance) furnishes that the main point of the case stems from the lease financing agreement and breach of contract, therefore it is true that the Regency BPSK of Batu Bara regency is not authorized to examine and adjudicate disputes in question.

Based on the abovementioned, this view has been followed by several supreme court decisions, such as Supreme Court Decision Number: 933 K/Pdt.Sus-BPSK/2017, Supreme Court Decision Number: 188 K/Pdt.Sus-BPSK/2016, Supreme Court Decision Number: 513 K/Pdt.Sus-BPSK/2017, Supreme Court Decision Number: 78 K/Pdt.Sus-BPSK/2018, Supreme Court Decision Number: 159 K/Pdt.Sus-BPSK/2016, and so on.

To strengthen this view, the Supreme Court of the Republic of Indonesia issued Jurisprudence Number 1/Yur/Perkons/2018 stating that disputes arising from lease financing agreements with both mortgage and fiduciary rights are not subject to the Consumer Protection Law and are therefore not within the authority of the BPSK. According to the jurisprudence thereof, it is safe to say that any dispute arising from lease financing agreements related to breach of contract, the lawsuit must be submitted to the district court as the authorized jurisdiction.

Conclusion

As the financing company and the debtor have entered into a lease financing agreement, the terms and conditions set therein must be implemented and fulfilled in appropriate manners. Prior to discussing whether any dispute arising from lease financing agreement will be subject to Consumer Protection Law or Civil Code, we have to understand that the contractual relationship between the financing company and the debtor must be regarded as creditor-debtor relationship and not business actor-consumer relationship as well described on the discussion section of this article. Therefore, any dispute arising from lease financing agreement due to breach of contract shall be subject to Civil Code.

Regarding which settlement agency has the authority to examine and rule the cases related to lease financing agreement dispute due to breach of contract, it is certain that it will be examined and ruled by the district court as firmly stated Supreme Court of the Republic of Indonesia issued Jurisprudence Number 1/Yur/Perkons/2018 and the abovementioned Supreme Court of the Republic of Indonesia decisions.

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