

# Settlement of credit disputes in credit agreements with fiduciary guarantees (study at PT. Mandiri Tunas Finance Surabaya City Branch)

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## ABSTRACT

This study examines the role of financing institutions in providing investment financing through agreements between creditors and debtors, particularly those involving fiduciary guarantees. Fiduciary guarantees ensure legal certainty, reduce the risk of default, and facilitate the resolution of non-performing loans through execution mechanisms. The research focuses on investment financing using leasing and instalment purchase methods, which have different implications for ownership and risk. A qualitative descriptive approach is employed, with empirical/juridical sociological analysis with studies at PT Mandiri Tunas Finance, Corporate Fleet Division, Surabaya, based on legal cases and literature reviews. The findings reveal that the principle of freedom of contract encompasses the rights and obligations outlined in the agreement clauses. Disputes may arise from negligence or default, indicating legal loopholes in contractual obligations. To enhance legal certainty, the Constitutional Court mandates the reformulation of clauses and the establishment of fair and clear execution mechanisms in alignment with legal norms. Preventive and repressive legal protections, as well as dispute resolution prior to execution, are necessary to minimise disputes and losses, supporting the sustainability of investment financing in the corporate sector.

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## 1. INTRODUCTION

Economic development is an integral part of national development based on the 1945 which Constitution of the Republic of Pancasila aims to improve the national economy which is the responsibility of the government. Namely by protecting the Indonesian nation, advancing the general welfare, educating the nation's life, and participating in realising a world order based on independence, lasting peace and social justice. Both in social or individual life or welfare through economic development that is driven by individual or group efforts in legal entities. entity The legal referred to as the subject is a trading company (perseroan) (Dendy Sugono, 2008).

The development of the company as a legal entity, essentially follows the needs of both assets and capital, which require assistance or help from debt and credit granting institutions. Creditors are

regulated in Law Number 21 of concerning the 2011 Financial Services Authority (OJK) and OJK (POJK) No. 35 / POJK.05 / 2018 Regulation concerning the implementation of the business of finance companies or creditors (OJK, 2018). The activities of creditors as legal entities are regulated in Article 1 point (9) of of concerning the Law Number 21 2011 Financial Services Authority (OJK Law) regarding the management of business entities that carry out credit/financing activities in the form of providing funds or capital . institutions goodsCredit granting have several categories, namely bank institutions, financing non-bank financing institutions, and institutions other (OJK, 2018).

The important role of non-bank financial institutions (institutionsin providing access to capital through credit agreements between creditors financing ) and debtors (individuals / entitieslegal ). access to With easier capital, challenges arise in terms of credit repayment, especially when defaults occur. In the end, the lender will take forced action against the assets provided as collateral in accordance with the terms of the credit agreement.

The will credit agreement determine how the debtor will fulfil its repayment obligations either with a fiduciary guarantee. The collateral in question is also part of the credit prerequisites and can provide legal certainty of the agreement for creditors and debtors, as well as solving problems in debts and receivables. Debts and and receivables are not only based on trust, but are binding legal documents between the creditor debtor, which can cause losses to either party.

The loss in question is specifically for the creditor to recover the value of the debt. If the debtor as the recipient of the financing is in default or breach of promise, the creditor can have a choice of facilities provided with fiduciary guarantees in lending. So that the creditor has a stronger position than a power of attorney holder against the guarantee or financing object. So that in financing/credit disputes there are differences in settlement with fiduciary guarantees.

Based on the implementation of non-bank financing institutions described in POJK Number 35/POJK.05/2018, in running a business includes provisions based on the type of business activity and method of lending (OJK, 2018). Includes investment credit activities, capitalworking , multipurpose and other business activities upon approval from the authority institution (OJK). Each business activity includes a way of distributing credit based on the purpose of the debtor. credit can be also accompanied by collateral, in accordance with the bond (OJK, 2018).

Based on the POJK, are also financing institutions required to carry out credit distribution by managing risk and credit quality. The risks in question include defaults from debtors by carrying out credit settlement by execution. The implementation of credit execution in form of thecollection or settlement of non-performing loans is different from credit with collateral. Where in channelling credit in investment credit, .the execution can be carried out with related fiduciary guarantees

## 2. METHOD

### 2.1 Research Type

The type of research used in this thesis is is empirical / juridical sociological law legal which the implementation of normative provisions (laws and regulations) in every certain legal event that occurs in society. The character of this research is that there must be an event/occurrence/real action that appears or occurs in people's lives. Based on unwritten law (custom) that occurs and is carried out by the community. and Implementation of law in society (Jonaedi Efendi and Johnny Ibrahim, 2020).

### 2.2 Research Approach

This research uses a legal sociology approach, which is that an approach uses an empirical approach that analyses or studies the reciprocal relationship between law and social symptoms. Through a structural approach, it is an assessment of the harmony of all components that make up the overall structure by establishing a relationship between the components so that it becomes a meaningful whole. As well as the uses *Socio Legal Approach*, is a legal research approach that the help of social sciences by applying a social scientific perspective to legal studies.

Research approach by reviewing Credit Contracts or Agreements, Civil Code, Law Number 42 of 1999 concerning Fiduciary Guarantees (Fitri Pratiwi & Lis Sutinah, 2014). Financial Services Authority Regulation (POJK) Number 35/POJK.05/2018 concerning the Implementation of the Financing Company Business (OJK, 2018). In addition to court decisions, it also analyses agreements/contracts and clauses with the principles of agreements/contracts regarding the settlement of fiduciary guarantee disputes with a Mandiri Tunas Finace with the division study at PT *corporate finance* in Surabaya City.

### 2.3 Data Source

Data sources in empirical legal research are obtained from secondary data sources and primary data. Primary data sources come from interviews with related parties at PT Mandiri Tunas Finance II Surabaya City. Secondary data sources obtained from literature or reference materials in accordance with the object of research (Peter Mahmud Marzuki, 2010), as follows:

- a) Primary data sources are data sources obtained directly from parties directly related to the problem under study. In this study, primary data sources were obtained by interviewing Mr Shone Hidayat as the branch head and along with the supervisor in charge of the credit financing company, namely PT Mandiri Tunas Finance corporate fleet Surabaya branch.
- b) Secondary data sources are obtained from data facts that are not obtained directly. This data source is obtained from books, laws and regulations, documents, archives and the results of other research related to research problems. The data obtained, namely: Civil Code; Law Number 42 of 1999 concerning Fiduciary Guarantees. And Financial Services Authority Regulation (POJK) Number 35 / POJK.05 / 2018 concerning the Implementation of the Financing Company Business

### 2.4 Location and Time of Research

The research was conducted in Surabaya City at a finance company, namely, PT Mandiri Tunas Finance II located in Kendangsari, Tenggiling Mejoyo District. Where in obtaining the data needed during the research, interviews were conducted directly with the manager of the company's legal and business documents at PT Mandiri Tunas Finance II Surabaya City. This research time began in October 2024 until the completion of the research report.

### 2.5 Respondents

The researcher conducted an interview with Mr Shone Hidayat as the head of the branch and along with the authorised supervisor at the credit financing company at PT Mandiri Tunas Finance with the Corporate Fleet Division Surabaya.

### 2.6 Data collection and processing procedures

Data in Collection and Processing Methods this research refer to the study of interviews, documents and legal literature (Peter Mahmud Marzuki, 2010) as follows

- a) Literature Study, data collection method in *library research*. This research uses the Civil Code; Law Number 42 of 1999 concerning Fiduciary Guarantees; and Financial Services Authority Regulation (POJK) Number 35/POJK.05/2018 concerning the Implementation of the Financing Company Business, and the Indonesian Constitutional Court Decision Number 2/PUU-XIX/2021.
- b) Interviews, in this research to the Branch Manager, Operations Manager, and Head of Credit Operations.
- c) Document Study, this research uses credit agreements, Company Decree letters, appointment letters, subpoena letters, lawsuit filing documents, and other internal documents provided and allowed access by PT Mandiri Tunas Finance Surabaya .branch

### 2.7 Data Analysis

Analysis is an activity in research in form of thea study of the results of data management supported by theories or opinions of certain discipline experts that have been obtained previously. results of Thethe study can be obtained from criticising, rejecting, supporting or can also provide a comment and suggestion, after which withdrawing Empirical legal research / juridical sociological can be analysed using qualitative descriptive analysis or quantitative descriptive. Qualitative descriptive analysis is to analyse by describing and summarising various conditions, situations from a conclusion from the research results in accordance with the researcher'. (Mukti Fajar & Yulianto Achmad, 2013, p. 183)s opinion using the theoretical basis that has been used.

## 3. RESULTS AND DISCUSSION

### 3.1 Company profile of PT Mandiri Tunas Finance

Based on the publication document of the 2023 Annual Report (Mandiri Tunas Finance, 2023), the following is general information and corporate identity. PT Mandiri Tunas Finance was established on 17 May 1989 under the name PT Tunas Financindo Corporation, by Deed No. 262 dated 17 May 1989 of Notary Misahardi Wilamarta, S.H., Notary in Jakarta, and was approved by the Minister of Justice in Decree No. C2-4868.HT.01.01.TH.89 dated 1 June 1989 and announced in the State Gazette of the Republic of Indonesia No. 57, Supplement No. 1369 dated 18 July 1989.

The following is the background of the company's acquisition process, namely on 6 February 2009, PT Bank Mandiri (Persero) Tbk officially acquired 51% of the shares of PT Tunas Financindo Sarana. The shares acquired by PT Bank Mandiri (Persero) Tbk were owned by PT Tunas Ridean Tbk (26%) and PT Tunas Mobilindo Parama (25%). PT Tunas Financindo Sarana was originally established in 1989 under the name PT Tunas Financindo Corporation, but later changed its name to PT Tunas Financindo Sarana in 2000 under the brand Tunas Finance. After the acquisition of shares by PT Bank Mandiri (Persero) Tbk, the name PT Tunas Financindo Sarana, changed its official legal name to PT Mandiri Tunas Finance.

Since 2009 until now, PT Mandiri Tunas Finance is owned by PT Bank Mandiri (Persero) Tbk by 51% and PT Tunas Ridean Tbk by 49%. In 2023 published data has a total number of employees reaching 3,328 people, by operating 124 branch offices and 9 representative offices (KSKC). The company has a capital value of Rp. 1 Trillion with issued capital of Rp. 250 Billion, and is listed on the Indonesia Stock Exchange as a Bond Issuing Company with code TUF1.

Until the end of 2019, PT Mandiri Tunas Finance provides simple, innovative and competitive credit solutions for consumers to own cars (new and used), motorbikes (special for certain regions) and commercial vehicles for individuals and corporations. PT Mandiri Tunas Finance has branches in Sumatra, Java, Kalimantan, Sulawesi, Bali, West Nusa Tenggara and Papua. The line of business as well as products and services offered to consumers based on the way of doing credit are investment credit, capital credit, multipurpose credit, and other credit business activities based on authority approval. PT Mandiri Tunas Finance has a variety of credit products offered and registered with the Financial Services Authority, which is in accordance with the focus of research related to the process of handling credit disputes with fiduciary guarantees.

### **3.2 Implementation of Credit Agreement and Bad Debt Handling at PT Mandiri Tunas Finance**

#### **3.2.1 Credit agreement of PT Mandiri Tunas Finance**

Based on data obtained on credit application documents, administrative skills, and agreement documents. Explain that the credit agreement at PT Mandiri Tunas Finance contains the following provisions:

- a) In the the title/head, is listed the credit agreement with agreement number at the bottom of the title.
- b) In the comparison section contains the identity and position of the parties who signed the agreement, namely the identity of PT Mandiri Tunas Finance as the creditor and the identity of the debtor.
- c) Next, the premise section contains the intent and purpose of the parties to the agreement.
- d) In the contents of the agreement there are two articles, namely Article 1 regarding the on credit clause, in Article 2 regarding the the clause Basic Conditions of the Credit Facility.

Article 1 of the credit agreement of PT Mandiri Tunas Finance explains the creditor's business activities and the type of credit facility provided. Then Article 2 paragraph (1) explains the main terms of the credit facility which contains a description of the collateral object, credit value, debtor's account, interest rate, , term instalments, fines fiduciary , notary, and administrative fees, collection fees fees , instalment payment in cash through the creditor's cashier, and BPKB . Article 2 storage fees creditor paragraph (2) of the credit agreement confirms that to guarantee the debtor' payment to the creditor, the debtor pledges the collateral to be charged with fiduciary security. Paragraph (3) states that the debtor agrees to the blocking of BPKB by the authorities based on the creditor's request. Paragraph (4) contains the guarantor's statement, and (5), (6), and (7) paragraphs are closing provisions. In addition to the credit agreement, there is also an attachment to the agreement which is an integral part of the credit agreement. The annex stipulates the following provisions: General, Provisions Definitions, Terms Conditions and , Disbursement of Credit Facilities Facilities, Payment of Credit, Guarantee of the Guarantor's Ability Cancellation of Credit Facilities, Accelerated Repayment, Insurance, Event of Event Default and Rights and its Legal Effects, Transfer of Obligations, Debtor's Self-Binding in the of More than One Credit Agreement Agreement, Validity of Conditions, Force Majeure , Notification, Dispute and Legal Domicile, , Debtor's Statement and Guarantee and other miscellaneous . provisions

#### **3.2.2 Credit Agreement Analysis**

The , the credit agreement agreement of PT Mandiri Tunas Finance Surabaya Branch if analysed according to the theory of Mariam Darus Badruzaman results of the content analysis review show that the credit agreement agreement at PT Mandiri Tunas Finance is an in the field of property. This

can be seen from the contents of the agreement and the , namely the object of the agreement vehicle which is the debtor'. s propertyThe debtor who has obtained the right to own and control the vehicle with the provision of pledging the vehicle becomes the object of fiduciary security.

Credit agreements can be reviewed on the basis of the implementation of of POJK No. 35/POJK.05/2018 concerning the Implementation the Financing Company Business. The . As well as Civil Code Perdata(Kitab Undang-Undang Hukum ), especially Article 1320 regarding the legal requirements of an agreementconsidering Law No. 42 of 1999 concerning Fiduciary Guarantees for agreements involving fiduciary guarantees.

Then in the discussion of the credit agreement, the . When the debtor is obliged to pay instalments to the creditordebtor cannot carry out the obligations as stipulated in the agreement or does not pay instalments to the creditor, the debtor has committed default or breach of promise, and this default action has legal consequences that must be accepted by the debtor.

The credit agreement explicitly explains the rights and obligations of the parties. PT Mandiri Tunas Finance has the right to performance, namely the right to receive payment from the debtor for his receivables and the debtor is obliged to pay debts to PT Mandiri Tunas Finance in accordance with the agreed agreement. When the debtor is unable to fulfil these achievements or defaults, he must be prepared for all legal consequences in accordance with the law and as regulated in the agreed agreements.

### 3.2.3 Analysis of Bad Debt on Credit Agreement with Fiduciary Guarantee at PT Mandiri Tunas Finance

Based on the results of the review of the letter of submission of evidence in the case of a civil lawsuit against the law and and regarding the duplicates in in the the convention replication counterclaim submitted by PT Mandiri Tunas Finance to the Surabaya District on 10 Court December 2020. Researchers will describe the process of bad credit and the execution of fiduciary guarantees both in theory and implementation in the field. In terms of theoretical analysis, there are 4 conditions for someone to be said to in default, among others be(R. Subekti, 1998): not doing dowhat he promised to he ; doing doing what what promisedhe promised he , but not as promised; but late; doing something that according to the agreement should not do.

Based on the act of default, the financing institution can categorise the as debtor or fiduciary guarantor committing a breach of promise or default. Debtor in a state of breach of promise or default means that the debtor cannot fulfil the obligations as stipulated in the engagement or agreement. The failure to fulfil its obligations is caused by two things, firstly due to the debtor's fault, either intentionally or due to due to negligence, secondly force majeure (*Overmacht / Forcemajeur*).

The . of the Credit Agreement between PT Mandiri Tunas Finance and the debtor contains all obligations between the debtor and the creditorOneclauses regarding defaults (broken promises) made such as the debtor no longer paying credit instalments as agreed. So based on the credit credit agreement, . the is auctioned off, then the proceeds from the sale of the auction are half returned to the creditorThis is in accordance with Law Number 4 of 1996 concerning Mortgage Rights.

Referring to POJK Number 35/POJK.05/2018 concerning the Implementation of the Financing Company Business, finance companies are allowed to cooperate with third parties in the context of collection. What is meant by collection is all efforts made by the Company Financing to obtain its rights to the debtor's obligation to pay instalments, including executing collateral in the event of debtor default. So that PT Mandiri Tunas Finance still uses the services of a third person (*debtcollector*) to carry out collection if the debtor defaults. The process of implementing bad credit handling at PT Mandiri Tunas Finance is as follows:

- a) PT Mandiri Tunas Finance before executing fiduciary collateral, namely motorised vehicles, first gives a warning letter to the debtor. This warning letter is given to the creditor 3 (three) times. This is done so that the debtor knows that the debtor has matured in the payment of motor vehicle loans so that the debtor must immediately pay off with the time given in the Warning Letter.
- b) PT Mandiri Tunas Finance also gave a final summons after three attempts to give a warning letter to the debtor. This final summons (SPT) is expected to summon the debtor for deliberations to seek consensus between the two parties, in this case PT Mandiri Tunas Finance and the debtor, in order to resolve the issue of late instalments in a persuasive manner.
- c) PT Mandiri Tunas Finance takes into account the reasons for the delay in installments, if the delay in installments is due to disaster factors, the company will provide tolerance by giving additional grace period to the debtor to carry out his obligations to pay installments and the collateral object

in this case remains under the control of the debtor or the company does not detain the collateral object in granting grace time from the results of the agreement between the company and the debtor mentioned above.

The following are the provisions in the process of executing the Fiduciary Guarantee in the form of a motorised vehicle at PT Mandiri Tunas Finance:

- a) The Debtor has agreed to fiduciary guarantee the financed vehicle/goods in accordance with Law Number 42 Year 1999 on Fiduciary Guarantee and if the Debtor is unable to attend the Notary, the Debtor grants a power of attorney made separately to MTF in terms of signing the fiduciary guarantee deed.
- b) If the debtor is said to be in default (cidera janji), namely if the debtor is following circumstances: the debtor does not pay the overdue credit / instalment debt in accordance with the agreement; the statement, guarantee or document provided by the debtor is incorrect; the object of fiduciary guarantee is stripped, confiscated, , , placed under the supervision of a curator, sold/leased, transferred without the consent of the creditor.
- c) If the debtor defaults, MTF gives a warning letter 3 (three) times to the Debtor.

### 3.3 Chronology of Credit Agreement Dispute with Fiduciary Guarantee

Dispute chronology is the sequence of events or events that occur in a legal case or dispute. The chronology of the case is assembled on the review of the letter of submission of evidence in the case of a civil lawsuit against the law and a letter regarding the duplicates in the convention and replication in the counterclaim filed by PT Mandiri Tunas Finance to the Surabaya District Court on 10 December 2020. Researchers will describe the chronology of the perception of filing a civil lawsuit from PT Mandiri Tunas Finance with No. 782/PDT.G/2020/PN.SBY, there are several things as follows:

- a) Letter of assignment, which explains the existence of internal Company who members of the act for and on behalf of and legally represent the Company. The assignment consists of the litigation section, *Account Receivable* (AR), and the section of the representative business section.
- b) Letter of assignment, acting for and on behalf of and legally representing the Company, by giving full power of attorney with the right of substitution for handling legal relations and judicial organisations.
- c) The lawsuit was received and registered at the Surabaya District Court Registrar Register 782/PDT.G/2020/PN.SBY through the Company's in September 2020, attorney with Number
- d) Letter of summons to the defendant in case No. 782/PDT.G/2020/PN.SBY, in September 2020
- e) Letter regarding duplicates in convention and replications in counterclaim for the filing of civil lawsuit No. 782/PDT.G/2020/PN.SBY, on the defendant' refutation of the material arguments submitted on the plaintiff' right of reply
- f) The list of evidence submitted by the to the plaintiff Surabaya District Court included the consumer credit agreement, receipts for to the defendant'. Where the s down payment the to the the dealer, receipts for the defendant's repayment dealer, power of attorney for encumbrance of *print out of the s statement of account* the copy of the fiduciary guarantee, fiduciary deed, , fiduciary guarantee certificate plaintiff' against the defendant evidence presented was based on .each of the credit agreements with fiduciary guarantees with a total of 7 (seven) units of vehicles being sued
- g) Submission of additional evidence on related lawsuit No. 201/Pdt.G/2021/PN.Sby, on consumer credit agreement and amendment of credit agreement for *rescheduling*, warning letter to the defendant, and final warning letter to the defendant.
- h) The .registration letter for case No. 201/Pdt.G/2021/PN.Sby at the Surabaya District , which Court describes PT Mandiri Tunas Finance as the defendant

Based on lawsuit No. 201/Pdt.G/2021/PN.Sby at the Surabaya District Court, where PT Mandiri Tunas Finance is the defendant. The material things that explain the default dispute and the execution process carried out by the defendant can be explained as follows:

- a) The Plaintiff has a business in the Field of Wholesale and Retail Trade, Repair and Maintenance of Cars and Motorcycles as well as in the Field of Transportation and Warehousing including Land Transportation and Transportation through Expeditionary Freight Channels.) Pipe Services and Transport.
- b) At the beginning of the legal relationship between the Plaintiff and the Defendant was based on trust, where the Defendant as a Business Actor had a bona fide company for Consumer Financing Institutions based on a Consumer Credit Agreement (Lease Agreement) with 7 (Seven) units in

Contract Agreements, among others, Police Numbers: L- 9690-UM, L-9691-UM, L-9697-UM, L-9518-UM, L-9519-UM, L-9674-UM and L-9676-UM, where payments from the Plaintiff at that time were smooth and there were no obstacles.

- c) The Plaintiff has sent orally and in writing to the Defendant to propose a *Reschedule*, which in essence the Plaintiff in good faith seeks to deposit the contract instalments that are in arrears and not in arrears with 2 or 3 months installments to the Defendant, but apparently the Defendant adds interest and fines and pays off the principal installments, considering that the debtor is experiencing a shock from the decline in business and receivables are experiencing a delayed maturity due to the Covid-19 pandemic, but the Defendant refuses and must settle all arrears in full with principal, interest and penalties *Reschedule* and not through procedures.
- d) The business actor in this case is the Defendant who will withdraw the object of the dispute in the form of 7 (Seven) units of vehicles that become ("Collateral Goods") with respect to non-payment of both principal and penalties and interest.
- e) The plaintiff filed a lawsuit again for the execution process carried out by the defendant for the losses incurred, and explained the aquo status of the disputed object, and demanded to *reschedule* and write off the interest costs and arrears penalties that became a credit delay on the consumer credit agreement.

### 3.4 Settlement of Credit Disputes Through the Courts

Explanation of the process of suing and the material of the lawsuit with case 782/PDT.G/2020/PN.SBY which was carried out by PT Mandiri Tunas Finance. As well as responding to the process of lawsuit letter No. 201/Pdt.G/2021/PN.Sby, where the defendant is PT Mandiri Tunas Finance. The opponent of the civil lawsuit from PT Mandiri Tunas Finance has used the Credit Facility to purchase a vehicle unit in instalments (consumption credit) with a total of 7 (seven) disputed legal objects.

Based on the decision document No. 111/Pdt.Sus-PKPU/2023/PN Surabaya state, which is represented in the Joint decision of other financing institutions against credit disputes. Showing the case of the PKPU application as of October 2024, and has been registered at Kepenitran Commercial Court. It has been decided by the Panel of Judges as of February 2024, with the following material ruling:

- a) Stating that the PKPU respondent has been properly and legally summoned but was not present. Grant the request for postponement of debt (PKPU payment obligations temporary).
- b) Determining the respondent to be in a state of temporary PKPU for 45 days from the date of the decision
- c) Suspend the fees on the PKPU application until the debt payment obligation settlement (PKPU) is finalised.
- d) Has considered the recommendation letter from the Supervisory Judge, the management's report and heard the creditors who basically requested that the postponement of debt payment obligations.
- e) Appointment of the respondent's bankruptcy Curator Team (in ) to manage and administer the estate in the debtor proceedings

Based on the results of the decision, PT Mandiri Tunas Finance made an effort to carry out the process of executing the disputed legal object in the credit agreement with with fiduciary guarantee together other financing institutions that litigated with the defendant.

### 3.5 Fiduciary Guarantee Execution Mechanism as an Effort to Settle Bad Credit Disputes

Based on the chronology in case No. 782/PDT.G/2020/PN.SBY at the Surabaya District , it Court shows that PT Mandiri Tunas Finance through the task letter that has been issued has involved the carry out the internal part of the company to collection function, and the litigation section. In accordance with the review of debtor categories in the collection process for bad debts from Law No. 7 of concerning 1992 Banking which has been amended by Law No. 10 of 1998 (R. Subekti, 1998), and Financial Services Authority (OJK) No. regulation 35/POJK.05/2018 (OJK, 2018). Debtors have been categorised as debtors with bad credit, and credit quality reporting has been carried out in accordance with the provisions of the reporting of financing institutions to the authority.

The mediation process has been previously passed by PT Mandiri Tunas Finance to Debtors, but there are obstacles in resolving bad debts, both through sending letters and appointing internal (teams litigation and AR). These are obstacles finally passed through filing a lawsuit or by court proceedings.

The subsequent withdrawal process of PT Mandiri Tunas Finance appointed an external executor in handling fiduciary guarantees in the in the credit agreement form of 7 (seven) units of vehicles. As a form of implementation of Law No. 4 of on 1996 on Mortgage Rights and Law No. 37 of 2004 Bankruptcy and Suspension of Payment Obligations, : execution can be carried out in two ways voluntary execution (the carries out debtor its obligations independently) and forced execution (involving the executing agency or legal apparatus to carry out the decision). That the process coincides with the process of delivering a warning letter from PT Mandiri Tunas Finance, and filing a lawsuit against the debtor.

Based on the follow-up process in lawsuit No. 201/Pdt.G/2021/PN.Sby at the Surabaya District , Courtit explains that there is an objection from the debtor to the use of executors in carrying out the function of handling fiduciary guarantees. Where the Debtor refers to the results of the Constitutional Court Number 18 / PUU-XVII / 2019, as well as other explanations leading to the implementation of executions that must have a legal basis or decision. Based on the theoretical review explained by Yahya Harhap, execution is a legal action carried out by the court against the losing party in a case. Execution in this case is based on a request from the party declared victorious by the Judge'. s DecisionThe Chairman of the District Court gives a preliminary warning to the losing party (Yahya Harahap, 2009).

Based on the chronology there is a counterclaim from the debtor for the handling of fiduciary guarantees, which reviews Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (Iswi Hariyani, 2017). As well as other legal elements based on Article 1365 the Criminal Code, of tort arises as a result of a person's actions that harm others. The injured party immediately has the right to claim compensation whenever a Wrongful Act occurs.

On this basis, there was a dispute over over the the credit agreement with fiduciary guarantee, and confusion events that took place with the legal basis could not be decided. The case was then filed in court, in accordance with the internal procedures of PT Mandiri Tunas Finance. Where in the explanation related to the process of handling fiduciary collateral that is constrained by obstacles that can occur, which can then be continued simultaneously The action of external handling of executors or peace proposals from debtors, or submission of judicial settlements.

So that the execution is reviewed on the implementation process, namely voluntary execution and forced execution. Explanation of voluntary execution can be a consideration to be explained and understood in the completeness section of the credit agreement. Reviewing Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (Iswi Hariyani, 2017). Explanation of voluntary execution can be considered to be explained and understood in the completeness section of the credit agreement. So that the debtor is bound by the credit agreement to be able to prioritise the settlement of bad debts through voluntary execution and understand the process of bad debts. As well as the settlement of bad debts through voluntary and court executions.

Based on the lawsuit filed by the debtor against the creditor in the credit dispute resolution process, PT Mandiri Tunas Finance can reform the procedure for executing the execution based on the Constitutional Court Decision Number 18/PUU-XVII/2019, which is strengthened by the Constitutional Court Decision Number 2/PUU-XIX/2021, (1), in this decision, the Panel of Judges judicial the of concerning Constitutional Court partially granted the review of Article 15 paragraph paragraph (2), and paragraph (3) of Law Number 42 1999 Fiduciary Guarantees related to Fiduciary which has executorial power. The decision of the Constitutional Court is final, so it is binding for the parties only but must be also obeyed by anyone.

The Constitutional Court decision requires the parties to rely on the court's decision first, which the court may interpret differently. The parties need to agree on a clause that legally authorises the creditor to determine the existence of a breach of promise and a clause where the legal consequences of a breach of promise can be directly enforced in advance based on reasonable preliminary evidence according to the creditor. This clause gives the creditor the right based on the agreement (Article 1339 of the CodeCivil ) not to be declared unlawful if he takes security measures and withdraws the collateral object in advance despite the objection of the debtor and the .absence of a court decision

The clause can strengthen the agreement of the debtor regarding dispute resolution, in accordance with the principle of agreement Every contract (agreement) made by the parties must be basically made voluntarily or in good faith. Two types of dispute resolution patterns are alternative dispute resolution and settlement through the courts. Another legal review is Non-Bank . The process

that based on the rules of the financial services authority based on No. 1/POJK.07/2014 concerning Settlement of Consumer Disputes in the in Institutions Financial Services Sector Financial refers to the process dispute resolution that PT Mandiri Tunas Finance also goes through is mediation between the debtor and creditor, or using the authority by s intermediary reporting to OJK if the non-bank financial institution does not fulfil its obligations or if the consumer feels the decision reached is unfair.

The debtor' agreement sis a condition desired in the Constitutional Court Decision which is then required, confirmed, and agreed by the parties in at the full in advance beginning of the agreement, so that it is binding. The . agreement at the beginning already contains a clear agreement in the event of default Some of the researchers' analyses for important aspects included in the agreement in order to accommodate the risks and legal loopholes that can occur, namely:

- a) A that breach of promise can be determined based on conditions that are more certain and difficult to interpret otherwise. For example, immediately after the receipt of a warning letter 3 (three) times after the debtor has actually committed a breach of promise, based on a general assessment that is appropriate and reasonable, it . applies by itself In accordance with Article 1238 of Code, the Civil it basically states that a breach of promise occurs immediately after the debtor is given a warning letter or automatically based on the strength of the agreement itself after the passage of time time from the specified .
- b) If the agreement clearly contains the terms and conditions when the debtor is in default the beginning, it is clear what the parties intended and intended at . In the event that the debtor is in fact in breach breach of of promise, the creditor has the right to declare a promise as a form of implementation of the agreement itself which is legally binding. The inclusion of this clause is in accordance with the legal aspects of the agreement.
- c) The purpose of the establishment of a firm, definite, and uninterpretable rule default clause is to minimise the problem of possible debates debtors between creditors and that lead to legal uncertainty regarding the presence or absence of not default as a legal basis, which then makes the parties have to wait for a court decision and does out the possibility that the court can interpret otherwise.
- d) Contains the granting of authority to creditors to determine defaults and executions properly and in accordance with legal provisions. The parties agree that the creditor has the authority to determine the default and can first implement the legal consequences of the default, including the security and/or execution of the collateral object. This is the key to the making of the parties' clause, because with the authority to determine the default and execution in advance, the creditor cannot be blamed or sued for committing an unlawful act, or even if there is an objection from the debtor.
- e) Determination of default and execution are agreed to be carried out in advance regardless of any objection. The that the debtor has agreed from the outset determination of default and the actions necessary for execution can be determined by the creditor in advance, without the need to see objections from any party or wait for further judgements decisions or . This arrangement, however, does not rule out the possibility that if the court states otherwise, the debtor and creditor will comply with the judgement issued and its legal consequences.
- f) Determination of a breach of promise, if the debtor changes address, lies, means that the debtor agrees that later the creditor can directly execute the fiduciary security item. This is used so that there is no arbitrariness committed by irresponsible debtors.
- g) Clauses related to the auction process of fiduciary collateral related to the application for a fiduciary execution auction must be accompanied by a statement letter from the seller (creditor) that the goods to be auctioned are in the possession of the seller because they have been voluntarily submitted. And the debtor has agreed to default and there is no objection from the debtor.

The clause is a form of implementation of a firm agreement between the parties as required by the Constitutional Court Decision. Thus, based on the principle of freedom of contract, it is a principle that gives freedom to the parties to make or not make an agreement, enter into an agreement with anyone, determine the contents of the agreement, its implementation, and terms and determine the form of the agreement. According to this principle, the agreement of the parties is as binding as the law as the parties who make it.

Therefore, if the Debtor has agreed and signed and read the agreement made by PT Mandiri Tunas Finance, both parties have agreed to the contents of the agreement made. Then all legal consequences must be subject to the agreement, especially related to default. If the debtor defaults, the debtor must voluntarily surrender the Fiduciary Guarantee Object, namely a motorised vehicle. This makes it easier for creditors to execute fiduciary collateral goods because they do not need to go through the court because there is already an agreement between the two parties. Thus, the execution of the Fiduciary Guarantee Object carried out by PT Mandiri Tunas Finance against the defaulting debtor is in accordance with the Decision of the Constitutional Court of the Republic of Indonesia Number 2/PUU-XIX/2021. Where if there is an agreement regarding a breach of promise, the creditor can execute the fiduciary guarantee.

### **3.6 Legal Protection for PT Mandiri Tunas Finance as a Fiduciary Creditor in the Execution of Fiduciary Guarantee**

PT Mandiri Tunas Finance experiences obstacles in executing the Fiduciary Guarantee, namely the existence of irresponsible debtors, causing difficulties in withdrawing vehicles when the debtor defaults. As well as experiencing a lawsuit from the debtor in the collection process and resolving bad debts through execution. Based on the Constitutional Court Decision Number 2/PUU-XIX/2021, there are differences in interpretation regarding the use of third persons (*debtcollectors*). The Constitutional Court Decision Number 2/PUU-XIX/2021 has an impact on finance companies that are kind to their debtors and use third persons (certified are affected only because of one irresponsible company. Not *debtcollectors*) allowed to use third person (this complicates the process of executing the vehicle from the debtor. *debtcollector*)

The lawsuit filed by the debtor explains that it is possible to review the implementation of the Administrative and Technical Guidelines for General Civil and Special Civil Courts, Book II. 2007 Edition, Supreme Court of the Republic of Indonesia, Jakarta, 2008, pages 93-94 on Procedures and Procedures for the Execution of Fiduciary Guarantees because the Business Actor, in this case the Defendant, had taken/withdrawn the vehicle unit ("Collateral") for the Credit Facility provided by the Defendant to the Plaintiff using internal personnel and *debt collectors*.

However, after the Constitutional Court Decisions Number 18/PUU-XVII/2019 and Number 2/PUUXIX/2021 related to breach of promise or default can no longer be determined like that, the circumstances of default must be agreed upon in advance by both parties. This situation makes it difficult for creditors to obtain their rights when collecting obligations that must be fulfilled by the debtor, because when executing fiduciary collateral, irresponsible debtors will avoid it by taking refuge behind the Constitutional Court Decision Number 2/PUUXIX/2021. This provides difficulties for creditors because execution takes time, where in the execution process the decision of PT Mandiri Tunas Finance is taken through a court decision.

PT Mandiri Tunas Finance has implemented the mandate of the Constitutional Court Decision by stating it in the agreement clause so that it can no longer be interpreted differently. However, it is enough to reduce differences in interpretation between creditors and debtors, even though this method has not fully made debtors obedient in fulfilling their obligations, as well as understanding the obligations and execution actions that can occur in the event of default. As an alternative to reduce the potential for Creditor losses and counterclaims, several efforts can be made in accordance with the decision of the Constitutional Court Number 2/PUU-XIX/2021, including the following:

a) Preventive Legal Protection .

By changing the contents of the fiduciary agreement to at least contain additional clauses, namely by including clauses that explain the conditions or criteria for default / default by the debtor explicitly to avoid multiple interpretations between the creditor and the debtor, in addition, adding an agreement on the existence of a breach of promise if the debtor cannot fulfil his performance / default as agreed upon conditions regarding the concept of breach of promise / default, the debtor voluntarily or with full awareness to be able to submit the property guarantee to the Creditor for execution.

b) Repressive Legal Protection .

If no agreement has been reached between the debtor and creditor, an application for execution of the fiduciary security object can be made to the District Court. Execution requests will often be made by creditors to debtors who do not recognise their default or refuse to voluntarily submit fiduciary object collateral. One of the consequences that will be accepted by the Creditor in filing

the application is the cost of case fees, costs that must be incurred during the trial process, legal fees if using legal counsel services, and the trial process which requires a long time and complicated process.

PT Mandiri Tunas Finance has carried out the legal protection process by filing a lawsuit on the object of the credit agreement where the debtor's default occurred, and the execution process. These actions are also carried out in the implementation of an efficient judicial process with the principles of simple, fast, and low cost by differentiating the value of objects and lawsuits. Improvements need to be made for legal certainty and protection both internally carried out by the parties when conducting a credit agreement between the debtor and the creditor. The credit application process until the receipt of the vehicle, with an agreement followed by a fiduciary agreement that fulfils the mandate of the applicable legal reform.

#### 4. CONCLUSION

Based on the discussion that has been carried out in the previous chapter, it can be concluded as follows: An agreement is essentially a legal relationship between two parties who agree. In an agreement, this only occurs after the parties take legal action, such as recognising the performance or default of one party against the other. So if you refer to the principle of freedom of contract stipulated in Article 1338 paragraph 1 of the Civil Code, which is usually included in the procurement of contracts between creditor finance companies and debtors. If an agreement has been reached, then there will be rights and obligations for the parties described in the agreement clause. Disputes between the parties to the agreement can occur due to negligence or intent that results in harm to the other party. In connection with the lawsuit document No. 782/PDT.G/2020/PN.SBY where the plaintiff is PT Mandiri Tunas Finance, and there is a lawsuit No. 201/Pdt.G/2021/PN.Sby where PT Mandiri Tunas Finance is the defendant. This condition is possible that there is a legal gap in the engagement, so that it can be null and void or disputed. For the non-fulfilment of the element of legal renewal of the binding clause that can occur either in a state of achievement or default. Ensuring legal certainty and protection, based on Constitutional Court No. 18/PUU-XVII/2019, which was Decision strengthened by Constitutional Court No. 2/PUU-XIX/2021. Therefore, Decision adjustments are needed in the formulation of the agreement clause. The agreement between the parties can be subject to Article 1238 of the Civil Code and should include 1) criteria for the on debtor's breach of promise which is dependent more certain circumstances and cannot be interpreted otherwise, 2) affirmation of the authority given to the creditor that the creditor can determine the breach of promise and execution in advance regardless of any objections at the beginning, and 3) contain an agreement regarding the collection mechanism and proper execution of collateral according to law in explicit and detailed manner. The implementation of the Execution of Fiduciary Guarantee Objects carried out by PT Mandiri Tunas Finance against debtors in default can adjust the norms of the Constitutional Court Decision, where if there is a breach of promise, the creditor can execute the fiduciary guarantee. Regarding defaults, it must be agreed to reduce the potential for Creditor losses and there is a legal loophole. So that in fulfilling legal reform, several efforts can be made through preventive legal legal protection and repressive protection. As well as filing a lawsuit process on the object of the agreement before carrying out the execution.

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