

IMPLEMENTATION OF SETTLEMENT OF FAILURE TO PAY BY CAR LOAN CUSTOMERS AT BCA FINANCE SURABAYA KLAMPIS BRANCH

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Abstract— This study aims to determine the settlement of defaults that have been made by car loans customers at PT. BCA Finance Surabaya Klampis Branch. This research uses an empirical research type and the data source is obtained from the results of interviews with Credit Marketing Officer PT. BCA Finance Surabaya Klampis Branch, literature, and laws regulations. The method of collecting data from this study was obtained by interviews, literature studies, and observation. The data analysis method used in this study is a qualitative approach, the information obtained is in the form of statements and written materials. The results of this study can be concluded that; (1) The settlement of default by car loans customers at PT. BCA Finance Surabaya Klampis Branch is conducted in a non-litigation (2) handled specifically by the ASR department which is responsible for maintaining non-performing, (3) by providing various services with the aim that customers who have defaulted continue to pay their obligations. (4) If the customer still does not fulfill his obligations, then the vehicle is forcibly withdrawn by PT. BCA Finance Surabaya Klampis Branch.

Keywords— *Default, Credit Agreement, PT. BCA Finance*

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I. INTRODUCTION

The potential to attract people today by offering installment sales is considered very suitable. Installment sales allow consumers to get the goods they want simply by paying a deposit or paying part of the price agreed upon by the buyer to the seller. Installment sales have the concept of economic law with the existence of supply and demand, where parties oversupply those who lack or need it while those who do not have capital only have the ability and persistence to work and try to be able to repay loans, for example consumers who apply for credit at finance companies. [1].

To simplify and expedite consumer financing, regulations were made based on Keputusan Menteri keuangan Nomor 448/KMK.017/2000 tentang perusahaan pembiayaan [2] which has now been revoked because finance companies have been regulated by the Financial Services Authority, the regulation has been changed to Peraturan Otoritas Jasa Keuangan Nomor 7/POJK.05/2022 Tahun 2022 tentang Penyelenggaraan Usaha Perusahaan Pembiayaan [3] which explains that financing activities for the procurement of goods based on consumer needs, it can be done using an installment payment system [4].

One of the consumer finance companies with the largest total assets falls to PT. BCA Finance is a financing institution supervised by the financial services authority. PT. BCA Finance differentiates long-term products into new car financing and used cars, where the financing period is up to 6 years. In recent years, PT. BCA Finance expands the scope of used car financing [5]. Products provided to consumers at PT. BCA Finance is included in the credit financing agreement.

The concept of credit is regulated in article Pasal 1 angka 11 Undang- Undang No. 10 Tahun 1998 tentang Perbankan which is the provision of money or bills in accordance with a loan agreement between the bank and other parties which requires the borrower to pay off the debt after a period of time by providing interest [6]. From the perspective of contract law, non-payment of a debt is a breach of contract due to one party being deemed not to have fulfilled the performance according to the agreement made by the parties. Because the credit financing process carried out at PT. BCA Finance Surabaya Klampis Branch, there are also very large risks for the finance company itself, for example default.

Obligations or achievements in the Civil Code are stated in Pasal 1234 KUHPerdara, namely "Each agreement is to give something, to do something, or not to do something". If either party fails to fulfill its obligations under the contract, it is considered to be in default.

Default is regulated Pasal 1238 KUHPerdata which is defined as non-fulfillment of performance due to errors caused by the debtor due to his negligence. Forms of default are:

- a. By not performing at all (failure to pay)
- b. Do it but it's too late (bad credit)
- c. Doing it but not according to the agreement
- d. Doing what the agreement says not to do. (loss of vehicle due to misappropriation)

Credit default is one example of default, payment default has become a well-known phenomenon, especially in finance companies. People intend to take out a credit loan for a car unit that they will only use for a short time but then forget to pay in installments and fail to pay the installments.

According to my interview with one of the employees of PT. BCA Finance Surabaya Klampis Branch, every time before going home, requests and applications for car loans are much higher than usual months and can increase by up to 20%. However, in the post-Eid period there was also a large increase in the number of bad loans and defaults. The solution used by PT. BCA Finance Surabaya Klampis Branch in handling payment failures leads to non-litigation resolution and is handled specifically by Account Solution & Recovery.

Account solution & recovery is one of the departments at PT. BCA Finance is tasked with ensuring that problem loans are maintained properly and also serves to remind, observe, analyze and collect by telephone or by direct visits to customers whose payments exceed the due date while maintaining good relations with consumers. However, if the customer cannot be invited to cooperate to make payments according to the agreement, the ASR department is tasked with taking back the car that has been credited. Menurut penulis, upaya penyelesaian non litigasi yang telah dilakukan oleh PT BCA Finance Surabaya Cabang Klampis kurang tegas dan kurang efektif. Masih banyak faktor internal dan faktor eksternal yang menjadi kendala dan penyebab gagal bayar, yang kemudian perlu diteliti lebih lanjut oleh PT. BCA Finance Surabaya Cabang Klampis.

Because it is not uncommon for car loans to be used for criminal matters which then need to be followed up and resolved through litigation. For example, the transfer of vehicle units from consumers to other parties without written approval, which can then be misused for dangerous things. This example is one of the needs for a litigation settlement of payment failures.

The reason the author chose this title is because the author wants to know more about the legal consequences if a consumer defaults on a payment to a finance company. The author

also wants to know what the obstacles and solutions are to non-payment by consumers at finance companies. Apart from that, the author also wants to know how payment default resolution can be implemented in these financing companies.

II. METHODS

This research is included in empirical research or field research. Empirical research is legal research that aims to uphold or enforce legal regulations in dealing with all legal events in society [7]. This study uses an empirical legal approach to solving the problem, the intended approach is that law is seen as a rule or *das sollein*, because the discussion of the problem in this study uses legal materials (both written and unwritten laws or both primary, secondary and tertiary legal materials. Meanwhile, the empirical approach will see law as a social, cultural, or existential reality. There are two types of data sources used in empirical legal research, namely primary data and secondary data.

The data collection method used in this research is to retrieve the required data from the actual research subjects. The data collection method is using an interview, literature Study or documentation, observation, data analysis method In this study the method (descriptive analysis) was used in data processing, meaning that the data used is an approach to primary data and secondary data. The data analysis method collected in this research uses descriptive analysis. That is, all the information described as primary data and secondary data obtained from both field research and literature research. Then compiled, described and implemented to provide answers and conclusions related to the topics raised in the author's research.

III. RESULT AND DISCUSSION

A consumer financing agreement is a contract that is not regulated separately by the Civil Code. Book III of the Civil Code adheres to an open system, so parties can make contracts that are not regulated separately by the Civil Code. This agreement is a new type of agreement that is being practiced in Indonesia, so that this form of agreement has become a legal institution that is valid and recognized by society and has become jurisprudence, even though it is not regulated in law [8].

A consumer financing agreement involves at least three parties. The parties involved in a consumer financing agreement are the party who funds it (finance company), the party who borrows funds for their needs (customer), and the party who provides the borrower's needs (supplier) [9]. The relationship between the parties in question is as follows:

- a. The relationship between the creditor (PT. BCA Finance Surabaya Klampis Branch) and the debtor (customer).
- b. The relationship between the debtor (customer) and the supplier (car showroom)
- c. Relationship between creditor provider (PT. BCA Finance Surabaya Klampis Branch) and supplier (car showroom).

Consumer financing agreements cannot be separated from legal consequences. In its implementation, if an error or negligence occurs, one must be held responsible for the negligence in connection with the agreement made. There is a guarantee that functions as a security tool for finance companies to reduce final risks or as a facility provided by creditors to debtors who experience default (negligence) or fail to fulfill payment obligations, for example BPKB.

In reality, not fulfilling obligations may mean that one of the parties to the consumer financing agreement does not do what has been agreed. In its implementation, the agreement makes it possible for it not to be implemented properly, whether due to error or coercion. However, sometimes the contracts that have been agreed upon are not always fully fulfilled, and may even not be fulfilled at all. The condition of non-fulfillment of an agreement is called default.

Default is taken from the Dutch word "wanprestatie", which means failure to carry out performance or obligations in the contract. Based on the definition of the KBBI, default is a situation where one of the parties acts negligently in fulfilling the performance of an agreement. Achievement is something that can be demanded. In a contract, one party usually expects performance from the other party.

Consumer financing agreements essentially create a mechanism where those in need want to benefit from the funds they have and those who are less well off want to purchase goods in a way that makes it possible for them. Therefore, a special form of relationship between the parties is required which is regulated in the consumer financing agreement. In accordance with Article 1234 of the Civil Code which states "Every agreement is to give something, to do something, or not to do something [10]

Default in article 1238 of the Civil Code is a condition where the debtor is declared in default by means of a warrant, or by a suitable deed, or based on the provisions of the agreement itself, namely if this agreement results in the debtor being deemed to be in default after the specified time has passed [11]. Forms of default in contract law include [12]:

- a. Not doing what was promised, or not delivering on what was promised

- b. Does what it promises, but not as good as promised
- c. Did as good as promised, but was late
- d. Doing something that cannot be done according to the terms of the agreement."

After conducting an interview with the Credit Marketing Officer at PT. BCA Finance Surabaya Klampis Branch, he said that up to now there are still several vehicles that are still missing and have not been found by PT's Recovery division. BCA Finance Surabaya Klampis Branch. Along with the loss of vehicles at PT. BCA Finance Surabaya, Klampis Branch, forced the used car showroom to enter into an agreement with the company through the Credit Marketing Officer to install GPS on vehicles that customers felt were suspicious and had the potential to fail to pay.

From a justice perspective, this is very detrimental to PT. BCA Finance Surabaya Klampis Branch, however, the solution to the loss of this vehicle was already there from the moment the customer entered into the credit agreement. The customer will insure the risk of loss through the insurance company offered. PT. BCA Finance Surabaya Klampis Branch asks customers who take out a car loan for an insurance fee when they first take out the vehicle. Thus, if at any time a loss occurs, as long as it is promised in the insurance contract and the party responsible will pay the costs incurred.

Customers should also be required to prove the loss to the company. This case cannot be brought into the realm of criminal law because in this case it is purely about obligations, agreements, and the destruction of the goods involved means it falls into the realm of civil law.

Based on the explanation above, a breach of contract is negligence by one of the parties in a valid agreement so that they cannot fulfill their obligations. According to the interview the author conducted with the Credit Marketing Officer at PT. BCA Finance Surabaya Klampis Branch, defaults often occur at PT. BCA Finance Surabaya Klampis Branch is bad credit, failure to pay, and loss of vehicle.

Also, based on the results of the interview with the Credit Marketing Officer at PT. BCA Finance Surabaya Klampis Branch, following is a number of negotiation services provided by Department Account Solution & Recovery to car credit customers who have failed to pay, so that they continue to pay in accordance with the agreement contract [13]:

1. BPKB Collection Service
2. Service Reischeiduilei Teimpo Fall Date
3. Transfer of Name and Mutation BPKB Services

4. Early Termination Process Services

5. Installment Payment Service

6. STNK Renewal Services

Settlement of defaults by car credit customers at PT. BCA Finance Surabaya Klampis Branch tends towards non-litigation, namely by negotiating ownership with customers who have taken out car loans. This negotiation is the responsibility of the Account Solution & Recovery department at PT. BCA Finance Surabaya Klampis Branch. Dispute resolution through negotiation is generally divided into two types. Namely, ownership negotiation and rights negotiation [14].

Settlement of disputes between car credit customers who fail to pay at PT. BCA Finance Surabaya Klampis Branch, is included in the ownership negotiation category. It can be said to be categorized in ownership negotiations because the parties to this agreement are PT. BCA Finance Surabaya Klampis Branch and customers who previously took out car loans do not have the same ties and rights to each other.

Negotiation itself is the responsibility of the departmental account solution & recovery at PT. BCA Finance Surabaya Klampis Branch. Settlement of the shortest number of car credit customers who have failed to pay at PT. BCA Finance Surabaya Klampis Branch, included in the interest negotiation category. You could say that they are categorized in interest negotiations because the parties to this agreement, namely PT. BCA Finance Surabaya Klampis Branch and also customers who do car loans do not have ties and mutual rights to each other.

Based on the results of the author's interview with the Credit Marketing Officer at PT. BCA Finance Surabaya Klampis Branch, the following is a summary of the stages of analyzing car loans that have experienced default, so that they continue to pay according to the contract agreement [15]:

1. Complete the documents
2. The nature of potential customers
3. Customer's health condition
4. Ability
5. Source of funds
6. Financial management assessment
7. Purpose of credit loans
8. Guarantee

9. Ownership obligations of other parties
10. Willingness of prospective customers

After an interview with one of the credit marketing officers at PT. BCA Finance Surabaya Klampis Branch, one of the efforts of PT. BCA Finance Surabaya Klampis Branch in identifying obstacles and finding solutions to car credit customer failure to pay is by disciplining and assigning credit marketing officers. Credit irregularities carried out unprofessionally by credit marketing officers can result in negative impacts and even losses for PT. BCA Finance Surabaya Klampis Branch. It is also hoped that credit marketing officers will always behave professionally in their duties so that the credit decisions taken can be maximized.

Remembering that the credit marketing officer is the key to the risk of possible default by car credit customers in the future. Credit marketing officers also play an important role in conducting surveys and analysis at the initial stage for customers who want to take out car loans at PT. BCA Finance Surabaya Klampis Branch.

BCA Finance Surabaya Klampis Branch's efforts to identify obstacles and find solutions to car credit customer defaults have six stages starting from granting credit approval or rejection; carry out tasks honestly, objectively, thoroughly; adapt credit to needs and principles; confident about the credit that will be given; credit monitoring; Account Solution & Recovery department consultation to credit customers.

IV. CONCLUSION

Default is negligence by one of the parties in a legal agreement so that it cannot fulfill its obligations. According to the interview that the author conducted with the Credit Marketing Officer at PT. BCA Finance Surabaya Klampis Branch, a default that occurred at PT. BCA Finance Surabaya Klampis Branch is bad credit, default, and loss of vehicles. Meanwhile, for the implementation of default settlement by car credit customers at PT. BCA Finance Surabaya Klampis Branch is carried out through a non-litigation route, namely by way of negotiation by department account solution & recovery, the implementation of which consists of: bpkb collection services, due date rescheduling services, over credit process services, bpkb transfer and name transfer services, processing services early termination, installment payment services, vehicle registration extension services, insurance claim processing services. Negotiation services PT. BCA Finance Surabaya Klampis Branch is included in the interest negotiation category.

Obstacles in default by car loan customers at PT. BCA Finance Surabaya Klampis Branch is caused by internal factors (company) and external factors (customers), while the solution to default by car loan customers at PT. BCA Finance Surabaya Klampis Branch is credit analysis which aims to determine the ability and feasibility of customers who want to carry out car credit. Meanwhile, the efforts of PT. BCA Finance Surabaya Klampis Branch in identifying obstacles and finding solutions to car loan customer defaults, namely having six stages starting from granting approval or refusal of credit; perform tasks honestly, objectively, thoroughly; adjusting credit to the provisions and principles; sure of the credit to be given; credit monitoring; departmental Account solution & recovery visits to credit customers.

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