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Standard Contract of Authorization in Consumer Financing Agreement

Dr. Habib Adijie

Lecturer, Faculty of Law, Narotama University, Surabaya, Indonesia

Tomo Yohanes

Post Graduate Student, Faculty of Law, Narotama University, Surabaya, Indonesia

Abstract:

The use of a standard contract of authorization for an imposition of collateral on purchased goods in installment has been prohibited by constitution No. 8 year 1999 on Consumer Protection but, in practice there are still parties who use the standard contract on the basis of effectiveness and efficiency to the company. This study focuses on two issues namely the ratio legis of prohibition of the use of a standard contract of authorization for the imposition of a guarantee of goods purchased in installment and legal status of fiduciary deeds which created by the recipient of fiduciary guarantee based on the standard contract of authorization in consumer financing agreement. This study is a normative research that refers to the legislation and conceptual approach using legal materials. Legal material can be collected through finding and collecting a primary legal materials and secondary legal materials. The collected legal material then will be classified and displayed qualitatively. This study concludes that the first is ratio legis of prohibition of the standard contract inclusion relates to the principle of equilibrium and the principle of justice. Furthermore, the second conclusion is that the legal status of a fiduciary deed which created under the authority of the consumer financing agreement will affect the fiduciary deed being invalidated by the law.

Keywords: Standard contract, authority, agreement

1. Introduction

In carrying out his position and authority, notary not only refers to the Law on Notary Position and Notary Code of Ethics, but also must pay attention to other laws in accordance with the wishes of the community in using the notary services. One of the laws that must be noticed by the notary is Law Number 8 Year 1999 on Consumer Protection (hereinafter it is mentioned as UUPK). UUPK is very important because it provides legal protection for public as consumer in establishing legal relationships with business actor. Legal protection for the consumer can be seen in the fiduciary guarantee process. Based on Regulation of the Minister of Finance of the Republic of Indonesia No. 130 / PMK.010 / 2012 on Registration of Fiduciary Collateral for Financing Companies Conducting Consumer Financing for Motor Vehicles with Fiduciary Guarantee and Law Number 42 Year 1999 About Fiduciary Guarantee (hereinafter it is mentioned as UUJF) explained that consumer financing company for motor vehicle with the imposition of fiduciary guarantee must register the fiduciary guarantee. The registration of fiduciary guarantee must be based on a fiduciary deed created before a notary public. The fiduciary deed is noted and registered on the fiduciary registration book to fulfill the publicity principle as a valid requirement of fiduciary guarantee (Witanto, 2015: 127).

Along with the increasing economy in society, the needs of goods and services by the community as consumer are also increasing, especially needs of productive objects or capital goods such as transportation. Society's needs of capital goods such as transportation force the community to own the goods even though the purchase is done in installments or with fiduciary guarantee as long as the object is controlled by the community to continue their business (Usanti & Bakarbesy, 2014: 113). By controlling the capital objects such as transportation even though it has been encumbered by imposition of fiduciary guarantee, the debtor can still earn income which partially used to repay the debt (Isnaeni, 2016: 229).

The high interest in fiduciary guarantee becomes an opportunity for financial institutions in running their business. Financial institutions swiftly utilize this fiduciary guarantee agency to serve the needs of capital goods such as transportation even though the consumer must pay the needs in installments (Isnaeni, 2016: 229). The scale of necessity of capital object such as motor vehicle becomes massively inflated and also influences on the work accumulation of the notary assigned to make the authentic deed of the fiduciary agreement (Isnaeni, 2016: 229).

Before come to the notary to create a fiduciary deed, the community has been made a consumer financing agreement as a sign of agreement which made under the names of the community as consumer with consumer finance companies as business actor. The fiduciary agreement is prepared by the consumer finance company in the form of standard contract. The use of standard contract also has the practical advantages in reducing bargaining, regulating some things, and being cost-

effective (Budiono, 2007:135). The standard contract is intended to provide the effectiveness and efficiency for the company. One of the standard contracts prepared by the company stated that the consumer authorizes the company to perform any action related to the fiduciary guarantee object. Based on the consumer's authority of the included in the underlying agreement, the company makes a fiduciary deed unilaterally before the notary public. This causes the consumer not to hold a copy of the fiduciary deed because the consumer does not participate to the notary. Furthermore, the finance company submits the fiduciary guarantee registration until the issuance of fiduciary guarantee certificate.

From the case above, the notary should understand that according to Consumer Protection Law Article 18 Paragraph (1) Letter h, states that "Business actor in offering goods and / or services intended for trading are prohibited to make or include a standard contract in every document and / or agreement if it states that the consumer authorizes the business actor to impose the mortgages, liens, or warranty rights on goods purchased by the consumer in installments ". Whereas in the case of UUJF itself, the authorization given to the company as the recipient of fiduciary guarantee to face the notary and to make the fiduciary deed is also not clearly regulated, so whether the authorization given from the fiduciary guarantor as the consumer to the recipient of fiduciary guarantee as a company affects the legal position of the fiduciary deed?

2. Research Design

2.1. Research Problems

Ratio legis of prohibition of the standard contract inclusion for granting authorization to the business actor to impose the rights of collateral on goods purchased by consumer in installments.

The legal status of a fiduciary deed created by the recipient of the fiduciary guarantee according to the standard contract of authorization in the consumer financing agreement.

2.2. Research Objectives

To analyze the ratio legis of prohibition of the standard contract inclusion for granting authorization to the business actor to impose the rights of collateral on goods purchased by consumer in installments.

To analyze the legal status of a fiduciary deed created by the recipient of the fiduciary guarantee according to the standard contract of authorization in the consumer financing agreement.

2.3. Significances of the Research

Theoretically, this study is expected to enrich the insights and as a contribution of thought in terms of notary science analysis.

Practically, this study is expected to be useful and can be used as a guide for related parties (notaries, finance companies, community, etc.) in the process of making fiduciary deed.

2.4. Research Methods

Type of the study is a normative research in which to answer the research problems, it used a legislation approach and conceptual approach. The legal materials used in this study include the primary legal materials which is a binding legal material as well as used the secondary legal materials that is a legal material that provides an explanation of the primary legal materials (Soekanto & Mamudji, 2001: 13).

3. Finding and Discussion

3.1. The Ratio Legis: Prohibition for the standard contract inclusion for granting authorization to the business actor due to impose the collateral rights on goods purchased installmently

Article 18 Paragraph (1) letter h of the Consumer Protection Law states that business actor in offering goods and / or services intended for trading are prohibited to make or include a standard contract in every document and / or agreement if it states that the consumer authorizes the business actor to impose the mortgages, liens, or warranty rights to goods purchased by consumer in installments. The prohibition of the standard contract inclusion has two meanings. First is the prohibition of the standard contract inclusion on documents or agreements that meet certain qualifications. Second is the prohibition of the standard contract inclusion which location or form is hard to see or cannot be read clearly, or in which the disclosure is difficult to understand (Soenandar, 2004: 117). Furthermore, according to Article 18 Paragraph (1) letter h of the of the Consumer Protection Law and relating to the background of this journal, ratio legis of the prohibition of the standard contract inclusion for granting authorization to business actor to impose the right of collateral on goods purchased by consumer in installments is analyzed. However, in order to achieve an accurate analytical review, the definition of the ratio legis must be understood first.

The definition of the ratio legis can be seen in the legal dictionary. Black's Law Dictionary mentions "Ratio legis, the reason or purpose for making a law" (Garner, 1999:1269). Whereas in the Law Dictionary mentions "Ratio legis: the underlying principle; reasoning; grounds; scheme; theory, doctrine or science of the law. Thus, the ratio legis of a loitering statute is to allow law enforcement to prevent crime rather than relying solely on apprehension and sentencing as deterrence"

(Gifis, 2010:439). Based on the definitions above, it can be concluded that the ratio legis is the basic principle, thought, reason, plan, theory, doctrine or legal science which become the reason for the formation of the law to achieve a certain goal. So, in the other word, the ratio legis of prohibition of the standard contract inclusion for granting authorization to the business actor to impose the rights of collateral on goods purchased by consumer in installments can be interpreted as the basic principle, thought, reason, plan, theory, doctrine or legal science.

3.1.1. Standard Contract

Standard contract of agreement is derived from the English language. Standard contract is an agreement that has been determined and has been formed in to a form. This contract has been determined unilaterally by one of the strongest economies on a weak economy (Salim, 2016:145). In contract theory, the standard agreement which is included in the doctrine of the injustice is a doctrine in contractual law science. It teaches that a contract is void and invalidated by the injured party which is caused by the contract that is unfair and incriminating one party even though both parties have signed the contract. The injustice is contained in a contract that is not expected by a normal person in the contract and the other party wants the contract (Tobing, 2007: 39). The standard agreement itself is divided into three types (Badruzaman, 1994: 49). Those are:

- Unilateral standard agreement is an agreement which contents are determined by a party who has a strong position within the agreement. The strong party here is the creditor who usually has a strong (economic) position than the debtor. Both parties are typically tied to the organization, for example on collective labor agreements;
- Standard agreement established by the government is the standard agreement which has the object of land rights in the field of agriculture. For example, the forms of the agreement as stipulated in the Minister of Home Affairs Decree dated August 6, 1977. 104 / Dja / 1977 which include the sale and purchase deed model 1156721, the mortgage deed model 1045055, and so on;
- The standard agreements specified in notary and advocate environments contain of agreements which concepts have been originally provided to meet the demands of community members who seeking the assistance of a notary or advocate concerned.

3.1.2. The Position of Business Actor and Consumer

The standard agreement tends to make the positions of the parties imbalanced and unfair. This is like an imbalanced fight between David against Goliath. The party in strong position is Goliath and the weak party is positioned as David. This causes the weak side to accept only the contents of the contract and they are forced to approve it because if they bid on the contents of the agreement then most likely the weak party will lose what is needed through the contract. So, the alternative way is take it or leave it (Hernoko, 2014: 2). In the standard agreement, the position of creditor and debtor is imbalanced. The position of the creditor monopoly has the opportunity to abuse his position. Entrepreneurs only regulate their rights, not their obligations. On the other hand, the standard agreement only contains of a number of obligations borne by the debtor (Badruzaman, 1994: 54). The imbalanced rights and obligations of the parties will certainly threaten the existence of justice. This is because there are parties whose positions are squeezed, so they have to carry out a greater obligation than to exercise their rights, and vice versa others who occupy stronger positions will claim greater rights than have to exercise their smaller rights (Fuady, 1996:337). Even the technical skill to negotiate someone will not be useful because in the end, it will be determined by a "bargaining position" of the parties. Therefore, in dealing with these conditions, it would be more objective when looking at and pay attention to the contract points, whether it is against the propriety and justice or not (Prasetya, 1997: 21).

3.1.3. Principle of Balance

The principle of balance is a continuation of the principle of equality of rights, which places the parties in equality, there is no difference and it obliges both parties to respect each other as creatures created by God. Thus, it can be seen where the position of a strong creditor is offset by the obligation to pay attention to good faith so that the position of the creditor or debtor to be balanced (Badruzaman, 1994: 43). The principle of balance has two meanings as an ethical and juridical principle. Ethically, it has the meaning that the balance which is limited by the will (which arisen by consideration or favorable circumstances), and by the belief (of the ability to) manifest the desired result or effect in order to achieve a positive meaningful balance (Budiono, 2015:305). Juridically, it is "having certain characteristics which are consistent and directed to logical and sufficiently concrete, so that it can be understood as a fair and balanced principle. Further, it can be accepted as the basis of juridical attachment within Indonesian contract law (Budiono, 2015:307).

3.1.3.1. Characteristics of the Principle of Balance

- The Objective Expectations
Imbalance in the agreement may be caused by the behavior of the parties themselves or as a consequence of the agreement which in the process of its formation one party has a subjective will to the contents of the agreement (Budiono, 2015:317). The subjective will possibly causes some disadvantages to the other party that affects to the imbalance. However, only with an objective expectation that contains of the sacrifice of one party can make the hope of

the future does not lead to the imbalance (Budiono, 2015:318).

- The Equality of Parties

In order to make an agreement to be balanced, the agreement must be judged by the subject who makes the agreement. In principle, by relying on the basic principles of contract law and the principle of balance, the decisive factor is not the equality of an achievement agreed upon, but the equality of the parties, that is if the justice of the agreement exchanges is upheld (Budiono, 2015:319).

- Principle of Balance *In Concreto*

On this characteristic, balance can occur if in the formation of an agreement, one party reminds the mistake that has been made by others. So, the fallacy in the agreement can be corrected again and the agreed agreement does not disrupt the agreement of the parties. However, if one of the parties makes a mistake in the contents of the agreed agreement secretly, it may be said that the party who is utilizing the other's fault closes the agreement unfairly and if the wrongdoer is aware of his / her fault, he can file a lawsuit against the validity of the agreement (Budiono, 2015:320).

3.1.3.2. The Prohibition for the Standard Contract Inclusion on Law of Consumer Protection as a Balancing Position between Business Actor and Consumer

The prohibition of the standard contract inclusion for granting authorization to the business actor to impose the rights of collateral on goods purchased by consumer in installments in Law of Consumer Protection is one form of government intervention in balancing the bargaining position in the legal relationship between business actor and consumer. Hernoko (2014: 78) stated, "In the contractual perspective, the principle of balance is given emphasis that on the bargaining position the parties must be balanced. The imbalance of party positions results in a disproportionate contract and opens up opportunities for ruling intervention to balance it." Hernoko (2014:81) added that "Form of intervention aims to provide a legal protection to consumer by limiting and balancing the bargaining position of the parties". Actually, the balance through legal protection for consumer has also been contained in Law Article 18 No. 1999 on Consumer Protection which regulates the prohibition for business actor to include a standard contract.

3.1.4. Principle of Justice

Based on traditional understanding, justice is divided into three, namely legal justice, distributive justice, and commutative justice (Keraf, 1998:138). Legal Justice is a justice related to the relationship between an individual or a group of people with a country in which all persons or groups of society are treated equally by the state and by the law (Keraf, 1998:138). Distributive justice is an equity that equally distributes regardless of the high-level achievement of everyone in the group of organizations (Modeong, 2013:23). According to Keraf (1998:142), distributive justice is also known as economic justice in which the economic distribution is equally distributed to all citizens. If Keraf defines distributive justice as economic justice, Bertens (2000: 89) defines the distributive justice is as divided justice in which distributive justice which in Indonesian can be said as "distributing justice", is the justice that becomes the basis for the state (government) to share everything in the same way to the members of the community, including the good or bad (Bertens, 2000:89). Then, the commutative justice is a justice that aims to share the achievement of people proportionately in the group of organizations (Modeong, 2003:23). According to Keraf (1998: 141), commutative justice is a justice related to the relationships between one citizen and the other. Commutative justice demands that in social interaction made between citizens, it cannot harm one party so that this justice demands that all people should give, respect, and guarantee the others' rights. According to Bertens (2000: 90), commutative justice in which in Indonesian can be said as "justice of exchange", is the justice that becomes the basis for each person to give others or other groups what is being their right that apply to individual and social levels. Commutative justice becomes a fundamental to the party who makes the agreement or contract. Based on the concept of justice described above, Adam Smith only accepts one concept of justice that is a commutative justice. Adam Smith argues, "Justice really has only one meaning, namely commutative justice concerning on equality, balance, and harmony of relationships between a person or party with another person or party. Justice expresses the equality and harmony of relationships among men" (Keraf,1998:146). In line with Adam Smith, Ulpianus describes a justice as "to give everybody his own" which is freely translated that means to give everyone what is being their right (Bertens, 2000:87). Based on the explanation of Article 2 of Consumer Protection Law, the principle of justice is intended to enable the participation of all people to be realized maximally and provide an opportunity for consumer and business actor to obtain their rights and perform their obligations fairly.

Related to the agreement, freedom of contract only can achieve justice if the parties have a balanced bargaining power (Sjahdeini, 1993:185). Freedom of contract itself has the potential power to bring injustice because this principle only can achieve its goal, which is to bring prosperity as optimal as possible (Sjahdeini, 1993:17). In order to make the freedom of contract to achieve justice, the law of Indonesian agreement provides the scope of contract freedoms (Sjahdeini, 1993:47). It includes:

- The freedom to make or not to make an agreement;
- The freedom to choose the party with whom person wishes to make the agreement;
- The freedom to determine or choose a contract of the agreement made;
- The freedom to determine the object of the agreement;

- The freedom to determine the form of the agreement; and
- The freedom to accept or violate the optional law provisions.

As disclosed regarding the scope of freedoms contract above, if the freedom of contract does not include any freedom mentioned above, it can be ascertained that the agreed agreement or contract may create injustice to either party. This is very contrary to the agreement or standard contract. If the more dominant parties have prepared the agreement or contract in advance, the other parties will have no opportunity to negotiate or have no freedom to decide or choose the cause of the agreement they made. The prohibition of the standard contract inclusion is also a limitation on the freedom of contract to protect people interests. The limitation on the freedom of contract is intended to ensure that the agreement made is balanced so the justice for all parties is achieved (Sjahdeini, 1993:48).

3.2. Legal Status of Fiduciary Deed Made by the Recipient of Fiduciary According to the Standard Contract of Authorization in the Consumer Financing Agreement

According to the provisions of Article 5 Paragraph (1) UUJF of object imposition with fiduciary guarantee must be made by notary deed. The provisions of that article are to make the fiduciary deed to be an authentic deed. The authenticity of a deed itself can be measured on terms as referred to Article 1868 BW, namely:

3.2.1. The deed must be made in the form prescribed by the Law

Law Article 38 on Notary Position has given the rules on the shape and the nature of an authentic deed wherein stated that each deed consists of the beginning of the deed or head of deed, deed, and the end or cover of the deed.

3.2.2. The deed must be made by or in the presence of a public official

A notarial deed made by a notary is called as deed of office or deed of minutes which contains of a description of a notary which is seen and witnessed by a notary personally at the request of the parties, in order that the actions of the parties are written on the form of notarial deed. A deed made in front of a notary is called a party deed, which contains a description of the statement or statement of the parties given or told to a notary that the parties wish the description or statement was set forth in the form of a notarial deed (Tobing, 1983:51).

3.2.3. The general official shall be authorized to make the deed

Based on Law Article 15 Paragraph (1) on Notarial Profession states that a notary shall be authorized to make an authentic deed of all acts, agreements, and stipulations required by law and / desired by interested parties to be set forth in an authentic deed, guarantee the certainty of the date of the deed made, the deed storage, give the grose, the copies, and quotations of the deeds so long as the formulation of the deed is not assigned or excluded to other officials or other persons who is prescribed by law.

Then discussing about the fiduciary deed means the legal subject also will be discussed. It is because the fiduciary deed is the deed of party which is made in front of the notary by the fiduciary guarantor and the recipient of the fiduciary guarantee as the legal subject (Abdulkadir, 2000: 27). In conducting legal actions contained in the deed of fiduciary, of course, the subject of law must have the ability and authority legally because this is directly related to the authenticity of the fiduciary deed made in front of the notary. According to Article 1330 BW stated that persons who are not competent to the law are:

- Immature people;
- People who are put under the ability; and
- The wives or those enacted in the law and in general all persons to whom the law has prohibited to make of certain agreement.

While the authority itself relates to the actions of a person to perform a legal act so that, the parties who do not have the authority to act or not authorized are persons who are not allowed performing certain legal actions (Budiono, 2007:370).

The capability and authority of the finance company to make a fiduciary deed in front of the notary based on the standard contract of giving authority from the consumer as the authorizer viewed from the point of effectiveness is not wrong, but Law Article 18 on Consumer Protection has prohibited it because it relates to balance and justice for the parties. Violations of the Law Article 18 on Consumer Protection is also followed by criminal sanctions as stipulated in Law Article 62 Paragraph (1) on Consumer Protection which states that business actor who violates the provisions referred to Article 8, Article 9, Article 10, Article 13 Paragraph (2), Article 15, Article 17 paragraph (1) letters a, b, c, e, paragraph (2), and Article 18 shall be punished with imprisonment of 5 (five) years or the maximum fine as many as Rp 2,000,000,000 (two billion rupiahs).

Article 47 of the Law on Notarial Profession has also arranged the related letter of authorization as the basis of making deed authority made under the name shall be attached to the minutes deed. According to the provisions of Law Article 47 on Notarial Profession, it can be interpreted that for granting the letter of authorization especially under the name must be made separately without attaching to the principal agreement of the fiduciary deed making.

Giving responses to the case above, the authenticity of the deed will return to the valid size of the agreement as stipulated in Article 1320 of BW:

- Agree those who are binding themselves;
- Competence to create a relation

- A particular thing;
- A lawful cause;

Under these conditions, the terms of agree and competence are subjective term as related to the subject of law which makes the contract, whereas a particular thing and a lawful cause are the objective term of an agreement (Hernoko, 2014:160). Both the subjective terms and the objective terms have its legal consequences (Hernoko, 2014:160). Violation of subjective requirements happened if a contract is made due to a defect of the will or incompetence of the parties, the contract can be canceled. Violation of the objective terms will make the contract be invalidated and void (Hernoko, 2014:161).

Based on the explanation related to the validity of the agreement, a consumer financing agreement made unilaterally by entering the standard classification of authorization to make fiduciary deed can be said invalidated and void. This is because the granting of the standard contract violates the objective requirements in contravention with Law Article 18 on Consumer Protection. The legal consequences of the financing agreement will also affect to the fiduciary deed made by the parties. A fiduciary deed is an *acco-deire* agreement rather than a consumer financing agreement that is the principal agreement of the legal relationship between the financing company and the consumer. Therefore, based on the analysis, the fiduciary deed made unilaterally by the consumer financing company in front of the notary which is based on the authority stated in the standard classification on the consumer financing agreement is invalidated and void.

4. Conclusion

Ratio legis of the provision about the prohibition of standard contract inclusion of authorization to business actor for the imposition of guarantee rights to the goods purchased by consumer in installments is related to the principle of balance and the principle of the justice: *Principle of Balance*, the principle that provides a balance to financing companies and consumer in the making process of consumer financing agreements without reference to the agreement or standard contract that has been prepared unilaterally by the financing company so that, the consumer is not only as the recipient but also having a position to do bargaining in consumer financing agreements. *Principle of Justice*, the principle that gives person what is being their rights under their agreement but, in the process, it is not only based on the freedom of contract but also the justice which imposes limitation on the freedom of contract so that, the agreement has been made is not to one-sided or imbalanced.

The legal status of a fiduciary deed made by the recipient of a fiduciary guarantee based on the standard contract of authorization in the consumer financing agreement is invalidated and void by the law. It is because the authority owned by the consumer financing company violates the objective requirements of an agreement and the authorization in the form of a standard contract in the consumer financing agreement is contradictory with Article 18 UUPK.

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