Default Dispute Settlement Through Somasi (Somatie Or Legal Notice) Based On Law 1238 Of The Civil Code

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Abstract.
This study aims to find out and analyze the settlement of default disputes through subpoena (somatie or legal notice) and analyze the legal protection of debtors' defaults. This research is a type of normative research. So that it can be seen that legal protection against debtor default is divided into two, namely preventive legal protection (prevention) and repressive (settlement). Apart from that, there is also rescheduling, reconditioning and restructuring. In addition, settlement of default disputes through subpoena (somatie or legal notice) is legal. However, subpoena does not have the nature of execution, because only as a warning, therefore it can be resolved by means of litigation and non-litigation.

Keywords :*Default, subpoena and Civil Code.*

I. INTRODUCTION

The agreement is part of the main legal basis for consumer financing from a civil perspective. Meanwhile, legislation becomes part of the priority legal basis for consumer financing with a public view.According to Agus Yudha Hernoko (Hernoko, 2011: 1), an agreement generally starts from differences in interests that try to reconcile through contracts so that with contracts, these differences are regulated by legal instruments so that they are binding on the parties.According to Van Dunne, he presents an opinion regarding the agreement having a meaning, namely "A legal relationship between two or more parties based on an agreement to cause legal consequences" (Salim, et al, 2014: 247).Whereas Article 1313 of the Civil Code gives the understanding that "An agreement is an act in which one or more people bind themselves to one or more other people". The definition of Consumer Financing is a financing activity for funds for the procurement of goods based on the needs of the community as consumers with a payment system that has a term (installments) by consumers (Sunaryo, 2009:2).In making a consumer financing agreement as the main legal document legally made and regulated by the conditions based on articles 1320 and 1338 of the Civil Code and has a term as the principle of freedom of contract. The principle of freedom of contract classifies parties that contain the rights and obligations of consumer finance companies referred to as providers of funds and consumers referred to as users of funds (Sunaryo, 2009, p. 99).

In Consumer Financing Agreements, agreements or contracts are made unilaterally by parties who have more economic power, namely creditors (Fund Providers) which are often referred to as standard contracts or standard clauses.Thus, the debtor or consumer cannot bargain with the creditor to determine matters relating to the agreement and the contents of the agreement itself, which will result in an imbalance between the debtor in the agreement.Problems that arise in the principle of balance between creditors and debtors can be seen from the good faith of both parties.By referring to the Consumer Protection Act (UUPK) there are several parts of article 18 paragraph 1 which regulate standard clauses, it is likely that the creditor is not in good faith to heed the UUPK in the Consumer Financing Agreement so that the debtor's rights contained in The Consumer Financing Agreement is partially reduced.This resulted in unequal rights between creditors and debtors in the Consumer Financing Agreement which has become a default dispute.Default is the non-fulfillment of achievements or failure to realize the obligation as determined and agreed between the parties in the form of a written document in the form of an agreement (Matompo, et al,

2017: 124).Munir Fuady (Fuady, 2014:207) argues that in English law, the term default is called "default", or "non-fulfillment" or "breach of contract."
The understanding of default contained in the contract law is understood as an oversight and/or denial of achievement. The various forms of default are classified as not making achievements at all, carrying out an achievement that has expired, carrying out achievements partially, carrying out achievements but not as they should (Thalib, et al 2017: 261).An achievement in an agreement can be interpreted as the implementation of things that have been agreed upon or that have been written in an agreement by both parties who have committed themselves to it (Fuady, 2014: 207).

In accordance with the Civil Code regulations contained in article 1234, the performance of an agreement consists of:

a. Give something
b. Do something.
c. Don't do anything.

Default has a strong relationship to summons. The new debtor can be said to be in default after the debtor receives a summons from the creditor or bailiff.At least three subpoenas have been given by creditors or bailiffs. If the subpoena is not carried out, then the creditor has the authority to resolve the issue through litigation (court).So that the court decides whether the debtor is in default or not (Salim, et al,2014:259).

If the debtor is in a position to default, then, as a result of default, the debtor must (Patrik, 1994:11):

1. Compensate for losses.
2. Objects that are made the object of the engagement from the moment the obligations are not fulfilled are the responsibility of the debtor.
3. If the engagement arises from a reciprocal agreement, the creditor may request cancellation.

Arrangements regarding negligence and summons have been regulated in "Article 1238 of the Civil Code and Article 1243 of the Civil Code". Negligence is a condition when one party does not carry out its achievements.Summons is a warning from the creditor to the debtor, with the intention that the debtor can fulfill the achievements in accordance with the contents of the agreement agreed between the two (Salim, et al, 2014: 257).This understanding of summons is used as a legal instrument that aims to encourage debtors to fulfill their achievements. If the achievement is deliberately not carried out, then of course achievement cannot be expected.The condition for this subpoena is if the achievement is not carried out at the time agreed between the creditor and the debtor (Salim, et al, 2014: 258).The contents of the agreement agreed upon by the parties do not fulfill one of the principles of the agreement, namely the principle of balance. This is influenced by the domination of business actors and less understanding of financing agreements from debtors.So that creditors can make standard clauses that are profitable for creditors only. A new debtor is said to be in default if the debtor has been given summons by the creditor or bailiff at least three times, which is given once every 30 days or has been determined in advance in the agreement itself regarding matters governing default.If the subpoena is not heeded or one of the parties has fulfilled a breach of contract based on their agreement, the creditor has the right to bring the dispute to court.This is done in order to provide legal protection for creditors for the losses they experience

II. METHODS

The research method used in this research is normative legal research method. Normative legal research is legal research conducted by examining literature or secondary data (Soerjono Soekanto, et al. 2003: 13).According to Peter Mahmud Marzuki (Peter Mahmud Marzuki, 2010: 35), normative legal research is a process to find a rule of law, legal principles, and legal doctrines to answer the legal issues at hand.In this type of legal research, law is often conceptualized as what is written in laws and regulations or law is conceptualized as rules or norms which are benchmarks for human behavior that are considered appropriate (Amiruddin, et al. 2006: 118).

III. RESULTS AND DISCUSSION

a. Legal Protection Against Debtor's Default Based on Book III of the Civil Code

In implementing agreements, such as the Consumer Financing Agreement, it does not go well. There are disputes and obstacles that occur between creditors and debtors.Disputes that occur can be in the form of Default, this is because default can occur if there has been a bond in the form of an agreement beforehand. If there is a default, then one party will get a loss. With this it is very necessary to provide legal protection for the aggrieved party.Legal protection is divided into two, namely preventive legal protection (prevention) and repressive (settlement).In problems that occur due to default, the right type of legal protection is repressive legal protection. This is because there has been a dispute which has led to the need for a process of compensation for the aggrieved party.To prevent disputes from occurring, there are several legal protection measures taken by the creditor with the aim of obtaining compensation from the debtor's default..

Even though we know there are ways to resolve disputes with credit administration, such as:

1. Rescheduling, namely changes to credit or financing terms concerning payment schedules and the grace period of financing or credit. This rescheduling aims to provide an opportunity for debtors to arrange payments to parties other than the bank.
2. Reconditioning, namely changing the terms of credit or financing that are considered important without changing the maximum value of the principal installment. This return requirement is intended so that the debtor has the opportunity to pay the creditor under affordable conditions without reducing the rights of the creditor.
3. Restructuring, namely changing loan terms related to credit funds so that the amount can be increased, converting arrears of interest, both some and/or all of them into new credit principals, some and/or all of the results of the conversion from credit to equity in the company.

Based on these three efforts, the settlement of disputes from installment payments as above is very inefficient for the parties to the dispute.Repressive protection (settlement) for a dispute that has occurred can be done in two ways. This method is often referred to as legal remedies.Based on Surizki Febrianto's opinion that contract settlement efforts are an important instrument in the review of contracts and there are two ways that can be taken to resolve contract disputes, namely through litigation dispute resolution and through non-litigation dispute resolution (Febrianto, 2015: 136).This non-litigation legal effort is a dispute resolution that is carried out outside the court. Meanwhile, litigation is a dispute resolution through court (Muryanti, et al, 2011: 50).Efforts to resolve disputes with non-litigation can be carried out in several ways, namely: Negotiation, Mediation, Conciliation, and Arbitration (Nurjanah, et al. 2018: 52).Settlement of this dispute using the win win solution method, meaning that the parties to the dispute are resolved by bringing together the two conditions for mutual benefit.Settlement of litigation disputes can be done through courts, both national and international.

b. Default Dispute Resolution Through Subpoena (Somatie or Legal Notice)

An agreement is a civil law act regulated in Article 1313 of the Indonesian Civil Code which is defined as follows:

"An agreement is an act by which one person or more binds himself to one or more people."

Regarding the issue being asked that the contractor did not complete his obligations, then in civil terms what can be done first is to submit a subpoena (reprimand) as stipulated in Article 1238 of the Civil Code.Summons related to default. A subpoena is a warning or reprimand so that the party that promises can excel at a time specified in the subpoena.After the subpoena you can file a default lawsuit. Where an agreement can only be made if the debtor has been given a warning that he has neglected his obligations, but then he continues to neglect it.This warning is made in writing, which we then know as subpoena. Summons are related to the existence of an agreement between two parties, each of which has rights and obligations that must be fulfilled. If one party does not fulfill its obligations as agreed, then the other party can sue on the basis of default (default).Summons have been carried out at least three times by. If the summons is not heeded, then you have the right to take the matter to court. And it is the court that will decide whether the contractor is in default or not.

This subpoena is regulated in Article 1238 of the Civil Code and Article 1243 of the Civil Code. The legal consequences of debtors who have defaulted are penalties or sanctions in the form of:

1. Pay for losses suffered by creditors (compensation);
2. Agreement cancellation;
3. Risk transfer. The object promised by the object of the agreement from the moment the obligation is not fulfilled becomes the responsibility of the debtor;
4. Paying court costs, if it comes before a judge.

As a result of default there are five possible things that could happen as follows (Article 1276 of the Civil Code):

1. Fulfilling/implementing the agreement;
2. Fulfilling the agreement accompanied by the obligation to pay compensation;
3. Pay compensation;
4. Cancel the agreement; and
5. Cancel the agreement accompanied by compensation.

Compensation that can be claimed: payment to pay compensation, after being declared negligent he still does not fulfill that achievement ". (Article 1243 of the Civil Code). "Compensation consists of costs, losses and interest" (Articles 1244 to 1246 of the Civil Code).However, it should be noted that compensation must have a direct relationship (causal relationship) with broken promises" (Article 1248 of the Civil Code) and losses can be suspected or should have been suspected at the time the agreement was made.

1. There is a possibility that the breach of promise (default) occurs not only because of the debtor's mistake (negligence or on purpose), but also occurs due to coercive circumstances.
2. Intentional action is known and willed.
3. Negligence is an act in which the creator knows the possibility of adverse consequences for others.

IV. CONCLUSIONS AND RECOMMENDATIONS

Conclusion

Based on the explanation above, it can be concluded that legal protection for debtor default is divided into two, namely preventive (prevention) and repressive (settlement) legal protection. Apart from that, there is also rescheduling, reconditioning and restructuring.In addition, settlement of default disputes through subpoena (somatie or legal notice) is legal. However, the subpoena does not have the nature of execution, because it is only a warning. Therefore it can be resolved by means of litigation and non-litigation.

Suggestion

Legal protection obtained by creditors takes a long time. This is also an obstacle for creditors' business activities as well as large costs incurred.The debtor should voluntarily surrender the object of financing as the object of fiduciary guarantees to the creditor if he is unable to pay off the principal installment fee which is his obligation.Other steps can also be taken by creditors or financial institutions to avoid disputes of this kind more thoroughly to assess and select prospective debtors to avoid unwanted disputes.

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