

**CONSUMER PROTECTION FOR VEHICLE WITHDRAWAL BY
DEBT COLLECTOR IN LEASING AGREEMENTS IN WHICH
CONSUMERS DEFAULT BASED ON BPSK AUTHORITY**

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ABSTRACT

In Indonesia, there are various forms of financial institutions, which one is leasing. In the practice of lease agreements, there are risks that can become obstacles in the implementation of the lease agreement, which are generally caused by default on the part of the lessee. The existence of a leasing agreement originates from the principle of freedom of contract which is regulated in Article 1338 of the Civil Code which states that all agreements made legally are valid as laws for those who make them. In writing this research, the researcher examines the consumer protection in an agreement made in standard, which then in its implementation creates default from one of the parties. The problem is, whether the default arising from the implementation of the agreement is a consumer violation. Consumer violations as regulated in Article 4 of Law Number 8 of 1999 concerning Consumer Protection which do not include true, clear and honest information regarding the provisions and guarantees of goods and/or services in the agreement, whether they can qualify as default, as intended in Article 52 Law Number 8 of 1999 concerning Consumer Protection regarding the duties of BPSK. The problem in this study is how to protect consumers from vehicle withdrawals by debt collectors in leasing agreements where consumers default on the authority of BPSK and what legal remedies can be taken by the consumer due to the withdrawal of vehicles by the dept collector in the leasing agreement. This study uses a normative juridical approach, data sources are obtained from statutory regulations, and literature related to the problem. In this case, consumers must be more critical and thorough in reading and understanding standard clauses such as the rights and obligations of the parties, the time the agreement is due, and the legal consequences if they cannot fulfill their obligations (default), and know that the financing agreement has already been reached. in accordance with the applicable rules.

Keywords: Legal Protection, Consumers, Forced Retrieval

INTRODUCTION

The Unitary State of the Republic of Indonesia was formed based on its Constitution, namely the 1945 Constitution stating the purpose of the State. The purpose of the Indonesian state is to protect the entire Indonesian nation and the entire homeland of Indonesia, promote public welfare, educate the nation's life and participate in carrying out world order based on independence, eternal peace and social justice. The 1945 Constitution of the Republic of Indonesia. Its implementation is in the form of various laws and regulations as immovable laws which in the form of law move into the Rule of Law (government based on law) or which in continental countries is called Rechtsstaat.

One of the government administrations is the enforcement of consumer protection principles. The UN Guidelines for Consumer Protection which were unanimously accepted by the General Assembly of the United Nations (UN) through UN Resolution Number A/RES/39/248 dated April 16, 1985 concerning Consumer Protection, contain a general and broad understanding of consumer protection tools that are human rights and fairness. One thing that the guidelines strive for is the structure of independent consumer groups, which is stated in the first paragraph that the governments of various countries agree to facilitate/support the development of consumer groups (guideline 1e). This is a very significant advance in the field of consumer protection.

Consumer disputes are usually resolved through general courts, both civil and criminal lawsuits (Yusuf Shofie, 2003). The Law on Consumer Protection provides an alternative settlement through a body outside the judicial system called the Consumer Dispute Settlement Agency (BPSK) other than through the District Court whose jurisdiction covers the domicile of the consumer. This out-of-court settlement agency, which is implemented through the Consumer Dispute Settlement Agency (BPSK), is specifically for individual consumers who have disputes with business actors. The nature of fast (and cheap?) dispute resolution, which is really needed by consumers, especially individual consumers, seems to have been adequately accommodated in the Law on Consumer Protection.

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Settlement Agency (BPSK), other than through the District Court whose jurisdiction covers the domicile of the consumer. This out-of-court settlement agency, which is implemented through the Consumer Dispute Settlement Agency (BPSK), is specifically for individual consumers who have disputes with business actors. The nature of fast (and cheap?) dispute resolution, which is really needed by consumers, especially individual consumers, seems to have been adequately accommodated in the Law on Consumer Protection.

In Article 54 paragraph (3) of the Law on Consumer Protection it is said that the decision handed down by the assembly (BPSK) is final and binding. However, the parties who do not agree with the decision can file an objection to the District Court for a decision.

The researcher in this paper examines consumer protection in a standardized leasing agreement (there is a standard clause), which then in its implementation causes a default from one of the parties. The problem is whether the default arising from the implementation of the leasing agreement is a consumer violation. Consumer violations as regulated in Article 4 of Law Number 8 of 1999 concerning Consumer Protection that does not include correct, clear and honest information regarding the conditions and guarantees of goods and/or services in the agreement, can be qualified as a default, as intended by Article 52 Law Number 8 of 1999 concerning Consumer Protection regarding the duties of BPSK.

Based on the results of a literature search, several previous studies were found that examined consumer protection in motor vehicle financing agreements. One of the studies in question is Demy Amelia Amanda Manalip's research (2017) with the title "Legal Protection of Consumers in Motor Vehicle Withdrawals carried out by the Company. Another study conducted by Mardiana Shanaza (2018) with the title "Legal Legality of Motor Vehicle Withdrawals conducted by Leasing Parties in terms of Minister of Finance Regulation No. 130/PMK.010/2012".

RESEARCH METHODS

This research is included in the form of normative juridical research, namely research that emphasizes the use of legal norms in writing and is supported by the results of interviews with sources and informants. This

research is descriptive in nature because it describes the applicable laws and regulations and is associated with legal theories in their implementation practices related to problems, as well as describes/describes the facts that actually occur as a reflection of the implementation of the applicable laws and regulations. in this case is the implementation of the BPSK decision in Decision Number 29/Pdt.Sus-BPSK/2017/PN-Tjb.

The type of data is secondary data obtained directly through literature searches or from official documents, namely consumer protection law books. It is important for the author to sort out and then analyze the regulations/statutory provisions. This secondary data consists of three legal materials, namely primary legal materials, secondary legal materials and tertiary legal materials supported by interviews from resource persons.

The types of legal materials are Primary Legal Materials, Secondary Legal Materials, and Tertiary Legal Materials. Meanwhile, there are two kinds of data collection tools which include Library Research and Interviews. In an effort to be able to answer or solve the problems raised in this study, qualitative data analysis methods were used, because the data obtained were of quality not quantity. After data collection, analysis is then carried out so that conclusions can be drawn that can be scientifically justified.

RESULTS AND DISCUSSION

Overview About Consumers

Consumer protection law is the entirety of principles and rules that regulate and protect consumers in the relationship and issues of supply and use of consumer products between providers and their use in society.

Menurut Prof. Dr. Mochtar Kusumaatmadja, consumer law is the whole of the principles and rules that govern the relationship and problems of the supply and use of goods and/or services, between providers and their use, in social life. While the next limitation is the limitation of consumer protection law, as a special part of consumer law, and with the description of the problem that has been given above, is "all the principles and rules that regulate and protect consumers in the relationship and the problem of providing and using consumer products between consumers and consumers. providers and their use, in social life".

Overview of the Leasing Agreement

The term agreement is often referred to as an agreement, but it is different with an engagement. According to Subekti "An agreement is also called an agreement because both parties agree to do something, it can be said that the two words (agreement and agreement) have the same meaning"⁴. Article 1320 of the Civil Code explains the conditions for the validity of an agreement, which are as follows:

1. Agree to bind each other in an agreement
2. Able to make an agreement.
3. hiti a certain thing, which is the object in an agreement must be clear
4. Halal clause, does not conflict with the law or decency

*Leahsing*di Indonesia is better known as leasing, which is a company engaged in financing for the needs of capital goods desired by customers. The word leasing comes from English, namely the word lease which means to rent out.

The general definition of Leasing is an agreement between LESSOR (Leasing company) and LESSEE (customer) in which the lessor provides goods with the right of use by the lessee in exchange for rental payments for a certain period of time, while the definition of Leasing is in accordance with the Decree of the Minister of Finance No.1169/KMK 01/1991 is "Financing activities in the form of providing capital goods, either on a finance lease or operating lease to be used by the lessee for a certain period of time based on periodic payments. Furthermore, what is meant by a finance lease is a lease activity where the lessee at the end of the contract has the option right to purchase the leased object based on the agreed residual value.

It can be concluded that the definition of Leasing is a form of financing activity for equipment or capital goods in the form of option rights or without option rights which are used for customers within a certain period of time, where payments are made in installments or installments. In practice Leasing, which is often the object of Leasing is a motorcycle without any option rights from the user of the goods.

The law on leasing in Indonesia has not yet been regulated in law. Meanwhile, the agreements made between those with an interest still use the agreement and lease guidelines stated in the Civil Code and are regulated in:

- 1) Pasal 1313 of the Civil Code, regulates agreements. That an agreement is an act by which one or more persons bind themselves to one or more other persons.
- 2) Article 1548 of the Civil Code concerning leasing is an agreement, whereby one party binds himself to give the other party the enjoyment of an item, for a certain period of time and with the payment of a price, which the party has later agreed to pay.
- 3) Joint Decree of the Minister of Finance, Minister of Industry and Trade of the Republic of Indonesia No. Kep/122/MK/IV/2/1974, No.32/M/SK/2/74 and No.30/Kpb/1/71 dated February 7, 1974 concerning Leasing business licensing in Indonesia.⁸ That Leasing is any activity financing in the form of providing capital goods to be used by a certain company, based on periodic payments accompanied by the right to choose (optie) for the company to purchase the capital goods in question or extend the Leasing period based on a mutually agreed residual value.

In a Leasing transaction, there are 3 parties involved, namely:

- 1) *Lessoris* a leasing company that has ownership rights to capital goods.
- 2) *Lesseeis* the party using or renting the capital that has the right of choice at the end of the contract.
- 3) *Supplier* there is It is the seller of the capital goods that will later be rented out.

Overview About BPSK

The Consumer Dispute Settlement Agency (BPSK) is a non-structural institution that has a function as an "institution that resolves consumer problems outside the court cheaply, quickly and simply". This agency is very important needed in regions and cities throughout Indonesia. Its members consist of representatives of government officials, consumers and business actors. Consumers who have problems with the products they consume will be able to obtain their rights more easily and efficiently through the role of BPSK. In addition, it can also be an access to obtain information and guarantee equal legal protection for both consumers and business actors.

In dealing with and regulating consumer problems, BPSK has the authority to examine the veracity of reports and information from the disputing parties. Bills, lab test results and other evidence by consumers and employers with binding final settlement.

The main tasks of BPSK:

1. handlei consumer issues through mediation, conciliation or arbitration;
2. Consumer consultation in terms of consumer protection;
3. Controlley addition of standardized parts;
4. Membeprovide administrative sanctions against entrepreneurs who violate the rules.

DISCUSSION

Consumer Protection for Vehicle Withdrawal by Debt Collector in Leasing Agreements Where Consumers Default Based on BPSK Authority

Based on Law Number 8 of 1999 concerning Consumer Protection Article 45 states "Every consumer who is harmed can sue business actors through the institution tasked with resolving disputes between consumers and business actors or through the general court". The institution in charge of resolving consumer disputes out of court is the Consumer Dispute Settlement Agency (BPSK). The existence of this agency is a mandate from Law No. 8 of the year which was later confirmed by Presidential Decree No. 90 2001 concerning the establishment of BPSK in 10 (ten) regencies/cities namely Medan, Palembang, Central Jakarta, West Jakarta, Bandung, Semarang, Yogyakarta, Malang and Makassar. in conjunction with Presidential Decree Number 5 of 2012 concerning the Establishment of Consumer Dispute Settlement Agencies in Central Lampung Regency, Paser Regency, Purwakarta Regency, North Tapanuli Regency, Barru Regency, and Cirebon Regency, as well as Bandar Lampung City, and Tanjung Balai City.

Based on Article 2 of Presidential Decree Number 5 of 2012 "Every consumer who is harmed or his heirs can sue business actors through BPSK at the consumer's domicile or at the nearest BPSK". The purpose of consumer dispute resolution outside the judiciary is to achieve a legal process that is fast, easy, simple and efficient. Legal Protection for

Consumers is all efforts that guarantee legal certainty to provide protection to consumers. The protection in question is protection for consumers against arbitrary actions by business actors.

Consumers according to Law Number 8 of 1999 Article 1 paragraph (2) are every user of goods and/or services available in the community, both for the benefit of themselves, other living creatures and not for trading.

Meanwhile, the definition of business actor according to Article 1 paragraph (3) is:

“A business actor is every individual or business entity, whether in the form of a legal entity or not a legal entity that is established and domiciled or carries out activities within the jurisdiction of the Republic of Indonesia, either alone or jointly through an agreement to carry out business activities in various economic fields. ”.

The basic understanding of consumers and business actors is used as a benchmark for law enforcement officials in classifying disputes submitted by consumers, whether the case can be processed or not. Settlement of consumer disputes in Law Number 8 of 1999 is regulated in Article 45 which contains:

- 1) Every consumer who is harmed can sue business actors through an institution tasked with resolving disputes between consumers and business actors or through a court within the general judiciary.
- 2) Settlement of consumer disputes can be reached through the courts or out of court based on the voluntary choice of the disputing parties.
- 3) The settlement of disputes outside the court as referred to in paragraph (2) does not eliminate criminal responsibility as regulated by law.
- 4) If a consumer dispute settlement has been chosen out of court, a lawsuit through the court can only be taken if the effort is declared unsuccessful by one of the parties or by the disputing parties.

Through the provisions of Article 45 paragraph (1) it can be seen that to resolve disputes can be done with two options, namely through the institution in charge of resolving disputes between consumers and business

actors, or through a court that is in the general court environment.

Out of court dispute resolution referred to is the Consumer Dispute Settlement Agency (BPSK) in Law Number 8 of 1999 as indicated in Article 47 which reads:

"Consumer dispute resolution outside the court is held to reach an agreement regarding the form and amount of compensation and/or regarding certain actions to ensure that actions that have harmed consumers will not happen again".

Furthermore, the technical implementation of consumer legal protection by the Consumer Dispute Settlement Agency (BPSK) is regulated separately by the Minister of Industry and Trade which is contained in the Decree of the Minister of Industry and Trade Number 350/MPP/Kep/12/2001 concerning the Duties and Authorities of the Consumer Dispute Resolution Agency. Based on the provisions of Article 49 paragraph 1 of Law Number 8 of 1999 jo. Article 2 of the Decree of the Minister of Industry and Trade Number 350/MPP/Kep/12/2001 regulates the function of BPSK which handles and resolves consumer disputes outside the Court.

Article 52 letter a of Law Number 8 of 1999, the duties and authorities of the consumer dispute settlement agency include: carrying out the handling and settlement of consumer disputes by means of mediation or arbitration or conciliation jo. Article 3 SK Menperindag Number 350/MPP/Kep/12/2001 "In carrying out the functions as referred to in Article 2, BPSK has the duties and authorities: to carry out the handling and settlement of consumer disputes by means of Conciliation, Mediation or Arbitration, but the procedures for handling them are regulated separately. detailed in the provisions of Article 4 paragraphs (1) and (2) SK Menperindag Number 350/MPP/Kep/12/2001; In the provisions of article 4 paragraph 1 (one) Decree of the Minister of Industry and Trade Number 350/MPP/Kep/12/2001 "settlement of Consumer Disputes by BPSK through Conciliation or Mediation or Arbitration is carried out on the basis of the choice and approval of the parties concerned". Furthermore, in the provisions of Article 52 of Law no. 8 of 1999 concerning Consumer Protection in conjunction with Article 3 of the Decree of the Minister of Industry and Trade of the Republic of Indonesia Number

350/MPP/Kep/12/2001, contains a legal rule that BPSK is not authorized to adjudicate civil disputes regarding Default (broken promises) due to civil disputes relating to Default is not included in the scope of duties and authority of BPSK to resolve it.

Based on the description above, in the implementation of the leasing agreement, if the consumer defaults or breaks his promise, the consumer cannot submit dispute resolution efforts through the BPSK arbitration institution.

Consumer Legal Remedies for Vehicle Withdrawal by Debt Collector in Leasing Agreement

Legal protection for consumers on vehicle withdrawals by the Debt Collector is divided into two forms, namely preventive protection and repressive legal protection. Preventive legal protection is carried out by fulfilling the rights as consumers and fulfilling the obligations of business actors as regulated in Articles 4 and 5 of Law Number 8 of 1999 concerning Consumer Protection. Repressive legal protection is a form of protection that aims to resolve disputes and provide sanctions.

The legal basis for consumers to settle disputes is in Article 45 paragraph 1 of Law Number 8 of 1999. Civil sanctions are regulated in Article 60, criminal sanctions are regulated in Article 61, additional criminal sanctions are regulated in Article 63. If consumers are harmed, it is regulated in Article 19 of the Law. Number 8 of 1999. If the consumer user suffers a loss that is not caused by the consumer's fault, the obligation of business actors to fulfill consumer rights is regulated in Article 7 of Law Number 8 of 1999. Leasing business actors must provide compensation to consumers who are harmed as a result of withdrawal of motorized vehicles by the Debt Collector.

Consumers can also take legal action against vehicle withdrawals by debt collectors on the basis of unlawful acts, namely:

- 1) Contrary to the Regulation of the Head of the National Police of the Republic of Indonesia (PERKAPOLRI) Number: 8 of 2011 concerning Securing the Execution of Fiduciary Guarantees, Due to Business Actors in Taking/Withdrawing Vehicle Units that become ("Security Goods") for the financing facilitation that has been provided by

Business Actors to consumers by only using personnel from Internal and Debt Collectors who should use the Indonesian National Police.

- 2) Contrary to Part V of HIR starting from Article 195 concerning Executing Decisions or Part IV RBG starting from Article 200 concerning Executing Decisions because Business Actors have taken/withdrawn Vehicle Units that have become ("Security Goods") for the financing facilitation that has been provided by Business Actors to Consumers by only using personnel from Internal and Debt Collectors which should be implemented through the intermediary of the District Court, namely by filing a civil lawsuit and then following up with a Request for Implementation of a Court Decision (Execution).
- 3) Contrary to Administrative and Technical Guidelines for General Civil Court and Special Civil Courts, Book II, 2007 Edition, Supreme Court of the Republic of Indonesia, Jakarta, 2008, pages 93-94 Regarding Procedures and Procedures for Execution of Fiduciary Guarantees Due to Business Actors who have made Unit Withdrawal/withdrawal Vehicles that become ("Security Goods") for the financing facilitation that has been provided by Business Actor to Consumers by only using personnel from Internal and Debt Collectors which should be carried out in accordance with the Procedure.

Contrary to Article 32 of Law Number: 42 of 1999 concerning Fiduciary Guarantee which states: "Any promise to carry out the execution of objects that are objects of Fiduciary Security in a way that is contrary to the provisions as referred to in Article 29 and Article 31 is VOID BY LAW"

CONCLUSION

Based on the results of the research analysis, several conclusions can be drawn:

1. That if the consumer defaults, then the consumer cannot file a dispute resolution through BPSK. This is in accordance with and reinforced by the Jurisprudence of the Supreme Court Number 42K/Pdt.Sus/2013, the Supreme Court's Decision No: 94K/Pdt.Sus/2014 and the Supreme Court's Decision Number 208K/Pdt.Sus/2012 which contains the legal rules that BPSK is not authorized to adjudicate civil disputes regarding

Default (broken promises) because civil disputes related to default are not included in the scope of duties and authorities of BPSK.

2. Whereas legal protection for consumers on vehicle withdrawals by the Debt Collector is divided into two forms, namely preventive protection and repressive legal protection as regulated in Articles 4 and 5 of Law number 8 of 1999 concerning Consumer Protection.

So the researchers suggest that consumers must be more critical and careful in reading and understanding standard clauses such as the rights and obligations of the parties, the time the agreement is due, and the legal consequences if they cannot fulfill their obligations (default), and know that the leasing financing agreement is in accordance with the regulations. applicable rules. Business actors in leasing financing agreements must provide information by explaining clearly, precisely and correctly to consumers through agreed financing agreements and applying the principle of amicable settlement if the consumer defaults.

BIBLIOGRAPHY

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

Kurniawan. 2011. *Hukum Perlindungan Konsumen: Problematika Kedudukan dan Kekuatan Putusan Badan Penyelesaian Sengketa Konsumen (BPSK)*. Malang: Universitas Brawijaya Press.

Manalip, Demy Amelia Amanda. (2017). *Perlindungan Hukum terhadap Konsumen dalam Konsumen dalam Penarikan Kendaraan Bermotor yang dilakukan oleh Perusahaan*. Skripsi. Universitas Sam Ratulangi.

Nugroho, Adi Sucipto. (2008). *Proses Penyelesaian Sengketa Konsumen ditinjau dari Hukum Acara serta Kendala Implementasinya*. Jakarta: Kencana.

Shanaza, Mardiana. (2018). *Legalitas Hukum atas Penarikan Kendaraan Bermotor yang dilakukan oleh Pihak Leasing ditinjau dari PMK No.130/PMK.010/2012*

Subekti. 1987. *Hukum Perjanjian*. Jakarta: Intermassa

Undang-Undang Dasar Negara Republik Indonesia Tahun 1945

Undang-Undang Nomor 8 Tahun 1999 tentang Perlindungan Konsumen

Yani, Ahmad dan Gunawan Widjaja. (2003). *Hukum Tentang Perlindungan Konsumen*. Jakarta: PT Gramedia Pustaka Utama.

Suseno, Franz Magnis. (2001). *Etika Politik*. Jakarta: Gramedia Pustaka Utama.