

Dispute Resolution Policy On Leasing Agreements In The Context Of Legal Protection Against Customers

Syaiful Asmi Hasibuan¹⁾, M. Hary Angga Pratama Sinaga²⁾, Robiatul Adawiyah³⁾
^{1,2,3)}Program Studi Ilmu Hukum, Fakultas Sosial Sains Universitas Pembangunan Panca Budi

*Corresponding Author

Email: syaiful_asmi@dosen.pancabudi.ac.id,

Abstract

Even if the execution of objects that are the object of fiduciary guarantees can be done by the implementation of fiduciary excutorial. However, the execution carried out by using the services of debt collectors is an act that is beyond the limits of humanity and violates the ethics of the law itself. In addition to the customer is also not good and is a weakness in the status of motor vehicles that experience wansprestasi. So this is the background of the author to raise and become the topic of discussion in writing the thesis with the title of the settlement policy of the case in the leasing agreement in the framework of legal protection of customers. The type of research used is normative legal research that is descriptive analysis, by outlining the data in the form of sentences arranged in a systematic, clear and detailed which is then interpreted to obtain a conclusion will be put forward in the form of a systematic description. As a result of the default of the lessee, the lessor has the right to take back the lease object that is in the power of the lessee. If the collection of these items is not inhibited by the lessee, then there is no problem that will arise. However, problems will arise if the lessee without the right to prevent or inhibit the return of the lessor's property. In this case there are several ways that can be used in resolving disputes arising from both parties, namely : 1) peaceful, 2). District Court. 3) Alternative Dispute Resolution (ADR), there are many alternatives in dispute resolution: a. Arbitration, b. Negotiations, c. Mediation, d. Conciliation, e. The judge, f. Fact-finding.

Keywords: *Case Settlement Policy, Leasing Agreement, Legal Protection, Customer*

INTRODUCTION

A financing institution is a business entity that carries out financing activities in the form of providing funds or capital goods. The term financing institution may not be so popular yet than the term financial institution or the term banking institution. Not familiar with this term because the existence of financial institutions is relatively new when compared with conventional financial institutions in the form of banks. In general, leasing means equipment funding, which is the financing of equipment/capital goods for use in the production process of a company either directly or indirectly. Leasing also means financing a company in the form of the provision of capital goods with periodic payments by the company that uses these capital goods, and can buy or extend the term based on the residual value. In the prevailing laws and regulations in Indonesia, leasing is termed "leasehold" in Kepmenkeu No. 1169 / KMK.01/1991 on leasing activities stated that leasing is a financing activity in the form of providing capital goods for a certain period of time based on periodic payments.

Leasing activities are officially allowed to operate in Indonesia after the issuance of a joint decree between the Minister of Finance, Minister of Industry, and Minister of trade Kep number.122/MK/IV/2/1974 Number 32/M/SK/2/74 and number 30/Kbp/1 / 74 dated February 1 concerning licensing of Leasing business in Indonesia. The authority to grant this leasing business was issued by the Minister of Finance based on Decree No. 649/MK/IV/5/1974 dated May 6, 1974 which regulates the provisions of licensing procedures and leasing business activities in Indonesia. The latest Foundation is the decree of the Minister of Finance No. 1169 / KMK.01/1991 on leasing activities.

The agreement made between the lessor and the lessee is called "lease agreement", where in the agreement contains a conditional employment contract between both parties, the lessor and the lessee. The leasing agreement is not only limited to a contract or lease agreement whose object is capital goods, and the lessee has the option right at a price based on residual value, but more complex, because in leasing can arise the right to buy, and this is very close to the transaction of sale and purchase of installment assets and can also be like an ordinary lease. In general, the standard agreement contains an exoneration clause, the existence of this exoneration clause will limit the responsibility of the parties if in the future there is a lawsuit from the other party due to default. In addition to the conventional ways of financing that are commonly done through banking, leasing is responsible for bad debts and to relieve consumers of financing motor vehicle credit issues. On some facts that occur leasing companies confiscate the inability to pay on credit made by customers. Confiscation of motor vehicles carried out by debt collectors. One form of foreclosure carried out by debt collectors is in the form of seizure of motor vehicles, which directly results in losses for the consumers.

Even if the execution of objects that are the object of fiduciary guarantees can be done by means of the implementation of the fiduciary *ekskutorial*. However, the execution carried out by using the services of debt collectors is an act that is beyond the limits of humanity and violates the ethics of the law itself. In addition to the customer is also not good and is a weakness in the status of motor vehicles that experience *wansprestasi*. So this is the background of the author to raise and become the topic of discussion in writing the thesis with the title dispute resolution policy on leasing agreements in the framework of legal protection of customers.

RESEARCH METHODS

The type of research used is normative legal research conducted by researching library data. In addition, this research is descriptive analysis, with the meaning of this research seeks to raise a number of values that develop in the community, also opens the possibility to examine how the legal arrangements regarding customers in motorcycle leasing agreements, debt collector actions that carry out executions of customers in accordance with the provisions of legislation, and legal remedies that can be done by customers to obtain legal protection for executions carried out by debt collectors. In order to obtain the maximum assessment of this study, the data collected using qualitative analysis methods that will describe the data in the form of sentences that are arranged systematically, clearly and in detail which is then interpreted to obtain a conclusion will be put forward in the form of a systematic description

RESULT AND DISCUSSION

The parties to the agreement agreement, which in this case if the lessee defaults or negligent, then first the creditor (the lessor) must provide a statement of default to the debtor (lessee). As in the mandate of the Civil Code that says that said debt is negligent, if it is by a warrant or a deed has been declared negligent, or in an engagement that says it is negligent with the lapse of a specified time. The occurrence of default by the lessee who owes the principal must first be declared formally, namely by warning the debtor or lessee that the creditor or the lessor wants immediate payment or a specified short period of time. In short the debt had to be collected and the negligent had to be reprimanded with a single warning or "sommatie". In accordance with Article 1238 of the Civil Code, the obligation to give a statement of default or warning can be waived by specifying in the agreement, that a default

committed by the lessee is sufficiently proven by the delay in the payment of rent installments, or from the moment the actions prohibited by the agreement are carried out, without the need for a written statement or reprimand from the lessor. And also please note that Article 1238 of the Civil Code is regulatory (regelent recht) and is not an obligatoir (coercive) That as a result of the default of the lessee, the lessor the right to take back the lease object that is within the power of the lessee. If the collection of these items is not inhibited by the lessee, then there is no problem that will arise. However, problems will arise if the lessee without the right to prevent or inhibit the return of the lessor's property. To avoid such difficulties, it is better if the leasing agreement includes a clause stating that in the event of default by the lessee, the lessee gives irrevocable consent/permission to the lessor to enter the yard or place where the leased goods are located, and take back the goods that are the object of the leased, with or without the help of the police. Taking back the lease object is called termination or cancellation of the lease agreement unilaterally by the lessor. As it is known that the leasing agreement cannot be decided unilaterally, but in the event of default charged to the lessee gives rise to the right for the lessor to terminate the leasing agreement in question.

Even if a voidable condition has been stated in a mutual agreement, and one of the parties does not fulfill its obligations, however, the termination of a mutual agreement unilaterally must be done by a judge's decision. But it is only a matter of judgment, and it can be ruled out by the parties. Therefore, in a leasing agreement, a clause should be included that overrides the entry into force of Article 1266 of the Civil Code. In this connection it is necessary to clarify again that in practice the inclusion of such a clause will not necessarily be effective, because the judge may examine the case and reject an exception based on that clause. However, the inclusion of the clause will be useful as well, because it will at least have a psychological effect on the lessee to accept an out-of-court settlement

In this case there are several ways that can be used to resolve disputes arising from both parties, namely :

1. Peace

The lessor and the lessee enter into their own peace outside the court. The implementation of the peace depends on both parties, so there was an agreement between the two parties so that the dispute did not continue again However, it should be explained again that the peace made by both parties outside the trial, in practice only has the power as a mere agreement of both parties, which if not adhered to by one party, then the dispute must still be filed again through a process in court.

2). District Court.

If the lessor's attempt to take back his milk goods controlled by the lessee cannot be done peacefully (negotiation), then in this case the lessor can resolve this issue through the competent district court. The dispute resolution process is carried out through the court or often referred to as "litigation". Litigation is the process of resolving disputes in court, where all parties to the dispute face each other to defend their rights in court. The end result of a dispute resolution through litigation is a decision that states a win-lose solution.

3) Alternative Dispute Resolution (ADR)

As already known that to seek a pemiselaian the dispute by filing a lawsuit in court is a path that takes a very long time. In addition to many formalities that must be completed, also because the court consists of various agencies or levels of examination that the entire process will of course take quite a long time. This condition causes people to look for other alternatives, namely dispute resolution outside the formal judicial process. The resolution of disputes outside the formal judicial process is called "Alternative Dispute Resolution" or ADR. In Law No. 30 of 1999 on arbitration and Alternative Dispute Resolution, Alternative Dispute Resolution is a dispute resolution institution outside the court based on agreement of the parties to the exclusion of dispute resolution litigation in court. This can be done when the parties have

entered into an agreement in the contract/lease agreement itself alternatives in dispute resolution are many of them: a. Arbitration, b. Negotiations, c. Mediation, d. Conciliation, e. The judge, f. Fact-finding.

CONCLUSION

As a result of the default of the lessee, the lessor the right to take back the lease object that is within the power of the lessee. If the collection of these items is not inhibited by the lessee, then there is no problem that will arise. However, problems will arise if the lessee without the right to prevent or inhibit the return of the lessor's property. To avoid such difficulties, it is better if the leasing agreement includes a clause stating that in the event of default by the lessee, the lessee gives irrevocable consent/permission to the lessor to enter the yard or place where the leased goods are located, and take back the goods that are the object of the leased, with or without the help of the police. In this case there are several ways that can be used to resolve disputes arising from both parties, namely : 1) peaceful, 2). District Court. 3) Alternative Dispute Resolution (ADR), there are many alternatives in dispute resolution: a. Arbitration, b. Negotiations, c. Mediation, d. Conciliation, e. The judge, f. Fact-finding.

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