

The Validity of Determining The Value of Fines In Motor Vehicle Loan Agreements That Exceeds Limitations In the law

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ABSTRACT

The high price of motor vehicles results in not everyone being able to buy cash, non-cash motor vehicle purchases obtained through consumer finance with the lease financing agreement procedure, even though de facto consumers control the goods, BPKB and STNK, but de yure on goods financing contracts whose credit is financed as debt collateral, which means that ownership is on the part of the financial institution. The purpose of this article is: 1) Describe the determination of the value of fines in the credit agreement. 2) Describe the Validity of the determination of penalty value in motor vehicle credit agreements that exceed the limitation in the law. This research is a qualitative normative juridical. The approach used is the statute approach. From the results of the discussion it was concluded: 1) Determination of the value of the fines in the financing credit agreement following LKPP Regulation No. 14/2012. Article 120 Perpres No. 54/2010 Jo. Perpres No. 35/2011 Jo. Perpres No. 70/2012 is 1/1000 or 0.5% of the contract value for each day of delay. 2) Inclusion of Fines in the Raw Clause is based on Article 15 (1) of the Financial Services Authority Regulation No./POJK.05/2014 Jo. Article 38 (1) 35/POJK.05/2018 as a default (negligent/alpha). While the Determination of the value of fines in the motor vehicle credit agreement that Exceeds the Limitation is legal by law as Article 1239 of the Civil Code is strengthened Article 1338, 1339 of the Civil Code.

Keywords: the value of fines, credit agreements, motor vehicles, laws

1. INTRODUCTION

Motorized vehicles have an important meaning for the community as a means of transportation that makes it easier to travel shorter distances and time and become a personal necessity for daily activities. The relatively high price of motor vehicles result in not everyone being able to buy in cash, so that today many financing businesses that serve to finance the purchase of motor vehicles without having to have cash.¹

Non-cash purchases of motor vehicles are generally obtained through consumer finance institutions or consumer finance² with the lease financing agreement procedure because the absolute ownership right is immediately transferred to the lessee in the end. But in general the community is very familiar with the term leasing in the motor credit process.³

¹Hartanto, Surya Sanji. *Jaminan dan Pembiayaan Konsumen Studi tentang Perlindungan Hukum bagi Pemberi Jaminan (Debitur) dalam Perjanjian Pembiayaan Konsumen Kendaraan Bermotor (Studi Kasus di PT. FIF Surakarta)*. Diss. Universitas muhammadiyah surakarta, 2011, hal. 2

²Wijaya, Happy Trizna. *Op Cit*, hal. 77

³Aditya Arta and Mohammad Hamsal. "Analisis Penetapan Strategi Bisnis Dan Posisi Persaingan PT. WOM Finance Jakarta." *Journal of Business Strategy and Execution* 8.1 2018., hal. 100

The phenomenon of the development of Leasing institutions in Indonesia is very rapid,⁴ along with the rapid development in the economy and trade which is followed by high business transactions, the public demands service with a fast, efficient and effective agreement.⁵ So that the consumer finance business is an area of business procurement of goods for consumer needs with an installment system or periodically become a trend. The increasing consumer demand for motor vehicle loans has led to rapid growth in the consumer finance business sector. This business opportunity has led to the emergence of new companies in the field of consumer finance, especially for motor vehicles (Yustianti & Roesli, 2018). The ease and ease of permits granted by the government is a supporting factor for the emergence of similar companies.⁶ At least today there are 200 finance companies, 120 banks that also provide financing facilities, and other institutions that provide similar services, such as cooperatives and microfinance institutions.⁷

Various promos and price discounts, cashback, free insurance and others become a magnet for potential buyers. Each finance company claims to offer the most "friendly" credit for the pockets of prospective customers. For vehicle loans, a maximum installment of 35 percent of total income per month. Meanwhile, the portion of 35 percent is also included with other installments. In addition, consumers are directed to take credit with a maximum tenor of 3 years. That is because maintenance costs, taxes and so on are getting bigger. From these offers, consumers must also be sure that in the next three years, their career or income will increase significantly. If not, then the chance of failure to pay or the car will be withdrawn is very large at least the amount of the penalty to be incurred.⁸

As it is known that the granting of loans/credit offered by financial institutions, consumers/customers must pay in installments every month, even if they de facto control the goods they have bought from motor vehicle dealers, even written in Proof of Ownership of Motorized Vehicles (BPKB) or Vehicle Number Certificates (STNK) is the name of the consumer/customer as the buyer, if viewed in terms of propriety or eligibility can be considered as the owner, but legally (de jure) that is grounded in an agreement or consumer financing contract which usually includes the provision that "during the payment of credit installments, goods that are the loan will be financed as collateral for the debt, which means that the ownership of the item is on the part of

⁴Marhaeni Ria Siombo, *Lembaga Pembiayaan dalam Perspektif Hukum*. Penerbit Unika Atma Jaya, Jakarta, 2019, hal. 40

⁵Munir Fuady, *Hukum Kontrak (Dari Sudut Pandang Hukum Bisnis)*, Citra Aditya Bakti, Bandung, 2003, hal. 76

⁶Rahaju, ML Endang Edi, and H. Sumarlan. "Minat Masyarakat dalam Menggunakan Jasa Pembiayaan (Leasing) Kendaraan Bermotor." *Ekomaks Volume 2 Nomor 1 Maret 2013*, hal. 2

⁷Suwardi Luis and J. B. Soesetiyono. *Execution winners: menyingkap rahasia sukses 12 perusahaan dalam eksekusi strategi dan memenangi persaingan bisnis*. PT Gramedia Pustaka Utama, Jakarta, 2013., hal. 73

⁸Ringkang Gumiwang, "Menghindari Jebakan Skema Kredit Kendaraan". <https://tirto.id/menghindari-jebakan-skema-kredit-kendaraan-cJjb> diunduh tanggal 13 Maret 2020.

the financial institution.⁹

Leasing contracts as innominate contracts are technically regulated in the Minister of Finance Decree, Industry, and Trade No: Kep-122/MK/IV/2/1974, No: 32/M/SK/2/1974, and Number: 30/KPB/I/1974 concerning Leasing Business Licensing, still applies as a guideline in leasing business activities, in addition to Presidential Regulation No. 9 of 2009. Although the leasing agreement is an innocent form of agreement, the form of the nameless agreement that is not regulated in the Civil Code but matters relating to the terms of the agreement still refer to the Civil Code. In a leasing agreement the parties are free to determine the form of the agreement between them. At present for the sake of efficiency, the lease agreement or contract is already in the form of a standardized agreement with a standard format, which is made by the leasing company, with the lessee (debtor) having the choice to choose the conditions proposed "take it" or "leave it".¹⁰ Standard clauses of the agreement tend to benefit the leasing party and make it difficult/deter even harming consumers (debtors).¹¹

Obligations of debtors according to Article 1763 of the Civil Code states that "those who receive a loan are required to return it in the same amount and condition, and at the specified time." Furthermore Article 1764 of the Indonesian Criminal Code states: "if he is unable to fulfill this obligation, then he is obliged to pay the price of the items he borrows, in which case the time and place where the goods must be returned, according to the agreement, must be returned and if the time and place have not been determined, the repayment must be made according to the price of the loan at the time and place where the loan occurred."¹²

For negligence or negligence, several sanctions or penalties are threatened including: paying compensation; cancellation of agreement or agreement breaking; risk transition; pay the case fee, if it is brought before the judge. "Late installment payments incur a fine of Rp." Installment fees x 5/1000. " (five thousandths) or 0.5% (zero point five percent)¹³ per day is calculated based on late installments."¹⁴

The problem of determining the value of fines is always included in the Motor Vehicle Credit Agreement. As for the contents of the standard agreement that is contrary to the provisions of the legislation usually about the Terms of the Financing Agreement, for example, the contents of

⁹*Ibid*, hal. 71

¹⁰Marhaeni Ria Siombo. *Lembaga Pembiayaan dalam Perspektif Hukum*. Penerbit Unika Atma Jaya. Jakarta, 2019.

¹¹Noor, Erma Zahro. "Perlindungan Hukum terhadap Debitur yang Memperoleh Fasilitas Kredit Sepeda Motor dengan Perjanjian Fidusia." *Jurnal Panorama Hukum* 2.1 2017, hal. 70

¹²*Ibid*, hal. 74

¹³Siti Rahayu. *Ketentuan Hukum Penetapan Denda Atas Keterlambatan Nasabah Membayar Angsuran pada Perkreditan Motor Ditinjau dari Kompilasi Hukum Ekonomi Syariah dan Fatwa DSN MUI (Studi Kasus di PT. Mega Central Finance Bandar Jaya Kecamatan Terbanggi Besar Kabupaten Lampung Tengah)*. Diss. IAIN Metro, 2017., hal. 4

¹⁴Noor, Erma Zahro. *Op Cit*, hal. 76

the article are "Debtor must pay installments, costs including but not limited to the administration fee installments anywhere by any means as well as other costs incurred arise in connection with this agreement, or compulsory fines (if any) in a timely and full manner in accordance with this agreement. If the installment payment is only partial, the payment is deemed not made until the debtor pays in full according to the installment value specified in this agreement. If the payment date falls on a holiday, the Debtor is required to make installment payments on the last business day before the holiday."¹⁵

The existence of the contents of the standard agreement as above, the debtor is not only required to pay installments, but the debtor is also charged with Administrative Costs for Receiving Installments and other costs incurred in connection with this agreement, or fines that are required in a timely and full manner.¹⁶ The problem that arises is when consumers do not pay installments within a certain time or do not pay it off, the finance company will double the penalty or with other costs.

On this basis the authors are interested in conducting further research with the title of the study: "The Legitimacy of Determination of Penalty Rates in Motor Vehicle Credit Agreements that Exceed Limits in the laws".

The purpose of this article is:

1. Analyzing the Determination of the value of fines in the credit agreement
2. Reviewing, analyzing the legal consequences of the Legitimacy of Determining the Value of Fines in a Motor Vehicle Credit Agreement that Exceeds Limits in the law.

2. RESEARCH METHODS

This research is normative juridical¹⁷ does not contain data and analytic models¹⁸ namely, reviewing and analyzing legal materials and legal issues related to the problem under study¹⁹. "This research aims to solve the questions that arise, while the results to be achieved are in the form of prescriptions for what they need to do to resolve the issue. In academic work, the prescription is provided in the form of a recommendation or recommendation"²⁰. From this description, it is also included in qualitative research.²¹

The approach used in normative research will enable a researcher to utilize the findings of

¹⁵Marafwansyah, Muhammad, Sanusi Bintang, and Darmawan Darmawan. "Perjanjian Baku dalam Perjanjian Sewa Beli Kendaraan Bermotor pada Perusahaan Pembiayaan di Kota Banda Aceh." *Kanun: Jurnal Ilmu Hukum* 20.2 (2018): 219-236, hal. 225

¹⁶*Ibid*, hal. 225

¹⁷H. Purwosusilo. *Aspek Hukum Pengadaan Barang dan Jasa*. Prenada Media, Jakarta, 2017. hal. 56

¹⁸Süleyman Uyar. *Contemporary Approaches in Businesses*. Ijopec Publication, Mar 15, 2019. hal. 60

¹⁹Supianto, *Hukum Jaminan Fidusia: Prinsip Publisitas pada Jaminan Fidusia*. Penerbit Garudhawaca, Jakarta. 2015. hal. 22

²⁰Supianto. *Op cit*. hal. 22

²¹H. Purwosusilo. *Op cit*. hal. 56

empirical law and other sciences for the benefit and analysis and explanation of the law, without changing the character of law as a normative science²². The approach used in this study is the Statute approach. The statutory approach is done by reviewing all the laws and regulations that relate to the issues at hand - the Validation of Penalties in the Motor Vehicle Credit Limit Agreement.

In the context of collecting primary legal materials, to facilitate discussion of problems, primary legal materials are arranged or systematically identified by:

1. The gathering is based on the hierarchy of statutory regulations by starting to look for norms at the constitutional level of the law, implementing regulations such as government regulations and local government regulations and others relating to central issues and research issues. Searches like this are often called searches with the snowball system, meaning that they keep rolling from the highest rule to the lowest rule²³.
2. It is important to note whether the rules still apply as positive law or not. This is intended so that researchers do not use rules that are no longer valid, especially in research that uses the statute approach. If this happens, it will clearly illustrate the negligence or negligence of the researcher and at the same time will be used as a powerful factor to refute the accuracy of the researcher's argument²⁴.
3. Legal indication also needs to be broken down into laws that fall under the *lex specialis* or special law and those that are general or general law. The same is true of *lex priori* or old law and *lex posteriori* or new law, *lex superior* or higher law and inferior *lex* or lower law governing the same. This ruling is useful in the future to apply the legality of legal remedies, in order to ascertain which laws have the force of the two laws of the same nature but in conflict situations²⁵.
4. In addition to collecting laws and regulations on the central issue, it is also necessary to collect laws and regulations relating to the central issue itself²⁶.

Secondary Legal Material Collection Namely materials that are closely related to primary legal materials and can help analyze and understand primary legal materials such as books, research results, scientific journals, legal journals, legal magazines, scientific articles, SEMA, PERMA, and papers seminar results related to research material²⁷.

Primary legal materials and secondary legal materials are processed by sorting materials that

²²*Ibid.* hal. 130

²³I. Made Pasek Diantha. *Metodologi penelitian hukum normatif dalam justifikasi teori hukum*. Prenada Media, Jakarta, 2016. hal. 150

²⁴*Ibid.* hal. 150

²⁵*Ibid.* hal. 150

²⁶*Ibid.* hal. 150

²⁷Hono Sejati. *Rekonstruksi Pemeriksaan Perkara di Pengadilan Hubungan Industrial Berbasis Nilai Cepat, Adil, dan Murah*. Citra Aditya Bakti, Yogyakarta, 2018. hal. 65

have relevance to the issues discussed. Then the materials are selected, analyzed, and grouped according to the sub-sections that are directed to describe the answers to the problems that are the object of this study.²⁸

The steps taken include: (a) Legal material inventory; (b). Legal material identification; c. Systematizing legal materials; (d). Legal material analysis; (e). Design and writing²⁹.

The series of stages begins with an inventory and identification of relevant sources of legal materials (primary and secondary). The next step is to systematize all existing legal materials. This systematization process is also applied to the principles of law, theories, concepts, doctrines, and other reference materials. The series of stages is intended to facilitate the assessment of research problems. Through this series of stages it is expected to be able to provide recommendations that support the need for reinterpretation and reorientation of understanding of the principles of contract law that reflect equality for the parties³⁰.

The legal material analysis method used is a qualitative juridical analysis that is by collecting and gathering materials, then arranged in a particular framework, then analyzed according to the means of analysis by interpreting the law, legal construction, and legal arguments³¹.

While the analysis of secondary legal materials, in the form of theories about the law in general, including legal materials derived from encyclopedias and public dictionaries and legal dictionaries will be combined with the results of the analysis of primary legal materials earlier, so that a description which contains the answer to the formulation of the problem raised in this paper.

3. DISCUSSION

1. Determination of the value of fines in the credit agreement

The principle in contractual relations is that there is a guarantee of certainty in the implementation of the contract. When a contract is not carried out, the rule of law requires payment of a penalty, without regard to major or minor failures.³² The emphasis of contract implementation is the principle of balancing all the burden of obligations contained in contractual relationships. So that conflicts of interest between the rights and obligations of the parties do not occur. If there is no balance in the implementation of rights and obligations in contractual relations, then a violation of the interests or rights of one of the parties will arise, if this happens then a legal event will arise

²⁸Kalimatul Jumroh dan Ade Kosasih. *Pengembalian Aset Negara Dari Pelaku Tindak Pidana Korupsi (Studi Undang-Undang tentang Pemberantasan Korupsi dan United Nation Convention Against Corruption 2003)*. CV. Zigie Utama, Bengkulu. 2019. hal. 38

²⁹Agus Yudha Hernoko. *Hukum Perjanjian*. Prenada Media, Jakarta, 2019. hal. 43

³⁰*Ibid.* hal. 43

³¹Kalimatul Jumroh dan Ade Kosasih. *Op Cit.* hal. 39

³²Prof. Dr. Agus Yudha Hernoko, S.H., M.H. *Hukum Perjanjian*, Prenada Media, Jakarta, 2019, hal. 30

called "default".³³

The inclusion of "interest clauses, provisions, and late payment penalties" is basically a reasonable business practice. Therefore, the imposition of interest, provisions and even penalty penalties in the event of a delay is a binding instrument so that debtor customers keep their contractual obligations as well as possible. By fulfilling obligations in a good and timely manner, it not only benefits the bank but can be used as an indicator of the debtor's business success.³⁴

Negligence or negligence, are threatened with several sanctions or penalties which include: paying compensation; cancellation of agreement or agreement breaking; risk transition; pay the case fee, if it is brought before the judge. "Late installment payments incur a fine of Rp." Installment fees x 5/1000. " (five thousandths) or 0.5% (zero point five percent)³⁵ per day is calculated based on late installments."³⁶

Determination of the above fines is a financial sanctions imposed on providers of goods/services to the government based on LKPP Regulation No. 14/2012. Article 120 Perpres No. 54/2010 Jo. Perpres No. 35/2011 Jo. Perpres No. 70/2012 says that a Goods/Service Provider who is late in completing work within the period specified in the Contract due to an error of the Goods/Service Provider is subject to a late penalty of 1/1000 (one-thousandth) of the Contract value or the value of the Contract portion for each day of delay.

Then what is meant by the contract part is the work part listed in the contract terms contained in the draft contract and contract documents. Completion of each work listed in the contract part does not depend on each other and has different functions, where the functions of each part of the contract are not related to each other in achieving job performance.

Furthermore, based on LKPP Regulation No. 14/2012 the amount of the fines to the Provider for the delay is as follows:

1. 1/1000 (one-thousandth) of the price of the part of the Contract listed in the Contract and not yet done, if the said part of work has been carried out and can function; or
2. 1/1000 (one-thousandth) of the price of the Contract, if part of the goods that have been implemented are not functioning yet.

After the enactment of Perpres No. 70/2012, the provision regarding a maximum fine of 5% as stipulated in Article 120 of Presidential Regulation No. 54/2010 has been changed. In essence after the issuance of Perpres No. 70/2012 the provisions regarding a maximum fine of 5% have not been regulated anymore. The inclusion of fines in clauses such as these used by financial institutions is to reinforce the rights of banks or financial institutions to charge both the amount and

³³Dr. Yahman, S.H., M.H. *Karakteristik Wanprestasi & Tindak Pidana Penipuan*. Prenada Media, Jakarta, 2017, hal. 79

³⁴Prof. Dr. Agus Yudha Hernoko, S.H., M.H. *Op Cit*, hal. 201-202

³⁵Siti Rahayu. *Loc Cit*, hal. 4

³⁶Noor, Erma Zahro. *Loc Cit*, hal. 76

condition.³⁷

2. The validity of determining the value of fines in motor vehicle loan agreements that exceed limits in the law.

Inclusion of Fines in the Standard Clause is based on Article 15 (1) of the Financial Services Authority Regulation Number/POJK.05/2014 concerning the Operation of a Financing Company, stating that the Financing Agreement as referred to in Article 14 at least contains: a. type of business activity and method of financing; b. number and date of agreement; c. identity of the parties; d. financing goods or services; e. value of financing goods or services; f. the amount of receivables and the value of the installment financing; g. time period and financing interest rates; h. collateral object (if any); i. details of costs associated with financing provided that at least contain: 1. survey costs; 2. insurance/guarantee/fiduciary costs; 3. provision fees; 4. notary fees; j. clause of clear fiduciary loading, if the object of financing is burdened with fiduciary collateral; k. clause regarding the dispute resolution mechanism; l. clause regarding the rights and obligations of the parties; and M. fine.

Whereas Article 38 (1) of the Financing Company must explain the illustration of the calculation of the principal of the financing and interest receivables during the financing period as well as the illustration of the imposition of fines and collateral execution fees in the case of a defaulting Debtor to the Debtor prior to the signing of the financing agreement. Regulation of the Financial Services Authority Number 35/POJK.05/2018 concerning the Operation of a Financing Company.

Default (negligence/negligence) as stipulated in the OJK regulations above is a debtor can be in the form of: a. Not doing what he is promised will do. b. Carry out what was promised, but not as promised. c. Doing what he promised but too late. d. Doing something according to the agreement can't be done. if not previously agreed upon in such an agreement, then beforehand we need to listen to the provisions of Article 1239 of the Civil Code ("Civil Code") which has provided the arrangements: "Each engagement to do something, or not to do something, if the debtor does not fulfill his obligations, gets his settlement in the obligation to provide reimbursement of costs, losses, and interest."

The provisions of Article 1338 of the Civil Code, the parties in an agreement are given a freedom of contract to determine what matters or clauses to be promised in the agreement, including to determine interest or penalties in an agreement. However, the agreement must still be made and implemented in good faith and heeded the compliance, customs and the Law (Vide: Article 1338 paragraph 3 and 1339 Civil Code)

³⁷Rahmad Nauli Siregar. "Perbandingan Perjanjian Kredit dalam Prespektif Perjanjian Syariah Islam dan Kitab Undang-undang Hukum Perdata." *Premise Law Journal* 1.2 (2013): 160463, hal. 9

Regarding interest, if interest is not regulated in an agreement, then the law contained in State Gazette No. 22 of 1948 has determined the interest of a negligence/negligence (interest moratoire) that can be sued by creditors from the debtor is 6 (six)% per year. If we refer to the provisions of Article 1250 of the Civil Code, the interest demanded by the creditor may not exceed the maximum interest rate of 6 (six)% per year, as stipulated in the Act.

Regarding fines (in practice called penalties), the legal consequences of default under Article 1239 of the Civil Code are costs (cost), losses (schaden) and interest (interessen). In practice, it is indeed not easy to distinguish between the qualifications and consequences of Defaults and Unlawful Acts regulated in Article 1365 of the Civil Code.

4. CONCLUSION

1. Determination of the value of the fines in the financing loan agreement following LKPP Regulation No. 14/2012. Article 120 Perpres No. 54/2010 Jo. Perpres No. 35/2011 Jo. Perpres No. 70/2012 that the Goods/Services Provider who is late in completing work within the period specified in the Contract due to an error of the Goods/Services Provider is subject to a late penalty of 1/1000 (one-thousandth) of the Contract value or the part value of the Contract for each day of delay or 0, 5% (zero point five percent) per day is calculated based on late installments. Law published in State Gazette No. 22 of 1948 set the interest of a negligence/negligence (interest moratoire) that can be sued by creditors from the debtor is 6 (six)% per year. The provisions of Article 1250 of the Civil Code, the interest demanded by the creditor may not exceed the maximum limit of interest of 6 (six)% per year, as stipulated in the Act.
2. Inclusion of Fines in the Raw Clause is based on Article 15 (1) of the Financial Services Authority Regulation No./POJK.05/2014 Jo. Article 38 (1) 35/POJK.05/2018 concerning the operation of the Financing Company Business as a default (negligent/alpha). Whereas the Determination of a Large Penalty Value in a Motor Vehicle Credit Agreement that Exceeds Limitation is not legal as Article 1250 of the Civil Code ("Civil Code") which provides the arrangement: "The interest demanded by the Creditor may not exceed the maximum interest limit of 6 (six)% per year. " This is reinforced by Article 1338 of the Civil Code, the parties in an agreement are given a freedom of contract to determine what matters or clauses to be promised in the agreement, including to determine interest or penalties in an agreement. However, the agreement must still be made and implemented in good faith and heeded the compliance, customs and the Law (Vide: Article 1338 paragraph 3 and 1339 Civil Code)

SUGGESTION

To avoid legal actions from both the creditor and the debtor, it is better for the creditor not to

impose late fees to the debtor by exceeding the penalty limits stipulated in the Civil Code. As for the Debtor, it is better to read carefully the contents of the Credit Agreement provided by the creditor before giving the signature of approval.

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