

**CAR RENTAL COMPENSATION PERSPECTIVE MUI FATWA NUMBER
43/DSN-MUI/VIII/2004 (CASE STUDY OF NADIA RENT CAR MEDAN)**

Daulat Baginda Putra Daulay¹, Fauziah Lubis²
^{1,2} State Islamic University of North Sumatra, Medan

¹ Email: gindadaulay12@gmail.com

² Email: fauziahlubis@uinsu.ac.id

ABSTRACT

The purpose of this research is to find out the steps for settlement of compensation in the practice of renting a car based on the perspective of the MUI Fatwa Number 43/DSN-MUI/VIII/2004. The formulation of the problem used is how to settle compensation for parties who default (consumers) on verbal agreements made by rental owners (manufacturers) based on MUI Fatwa Number 43/DSN-MUI/VIII/2004. This research includes qualitative research using juridical research methods that use two sources, namely primary and secondary. As well as conducting interviews with several car rental users in Medan City, Medan Marelan District. The results of this study show that several car rental users make verbal agreements between consumers and producers. Regardless of the consequences of the agreement made verbally which will be accepted if one of the agreements is forgotten or not pronounced at the time of the contract, then it will be detrimental to one of the parties. If the consumer commits a default that does not comply with the verbal agreement at the outset, then the consumer will compensate for the loss determined by the producer. According to the perspective of the MUI Fatwa Number 43/DSN-MUI/VIII/2004 general provision number 4, namely the amount of compensation (ta'widh) is in accordance with the value of real compensation (real loss) that must be experienced (fixed cost) in the transaction and not a loss expected to occur (potential loss) due to missed opportunities (opportunity loss or al-furshah al-dhai'ah). Where is the compensation that must be completed according to the agreement made at the beginning by the producer at the beginning, even if it was done verbally.

Keyword: Rent, Compensation, MUI Fatwa Number 43/DSN-MUI/VIII/2004.



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INTRODUCTION

The relationship between humans with one another in this modern era is very important, especially in order to meet their needs. Humans to fulfill their life needs must hold social interactions between one human being and another human being. The form of this interaction can be in the form of a legal act, which in principle the law regulates the relationship between one person and another. Every relationship in society cannot be separated from the law. Legal relationship is a relationship between two or more legal subjects. In this legal relationship, the rights and obligations of one party deal with the rights and obligations of the other party. Legal relations can occur between legal subjects and between legal subjects and objects (Soeroso, 2005).

A legal act is a relationship governed by law in which rights and obligations are associated with that relationship and failure to comply with those rights and obligations may result in legal sanctions. Society in everyday life will not be separated from carrying out a

legal action, one of which is by entering into an agreement in which each party is able to be accountable and one example of an agreement is a lease agreement. An agreement according to Article 1313 of the Civil Code is an act in which one or more people bind themselves to one or more people (Patrik, 1994).

The activity of renting a vehicle is often carried out among the community, whether it's renting an item or even a vehicle. Where the goods that are rented out have benefits that can be used either by the tenant of the goods. Rentals that are often carried out among the community are renting motorized vehicles, be it two-wheeled or four-wheeled, because not everyone can afford to buy these vehicles to travel long distances. Leasing is an agreement that is consensual and has legal force, namely when the lease takes place and when the contract takes place, the lessee (mua'jjir) is obliged to deliver the goods (ma'jur) to the lessee (Pasaribuan and Lubis, 1994).

The problem that often occurs in the implementation of agreements is default. Default is a condition where the debtor (one of the parties) does not comply as he should or according to what is appropriate, including being late for achievement and committing acts that are not permitted according to the agreement (Khairandy, 2013).

In leasing can not be separated from the name of compensation. Compensation is something that is done by the lessee of the goods he rented. Compensation will only be charged by the debtor if the creditor is harmed by the debtor as a result of not carrying out the responsibilities or fulfilling the promise. Compensation is an obligation that must be completed by the debtor, because if it is not resolved it will harm the creditor.

Compensation is often broken down into three elements, namely costs, losses and interest. what is meant by costs are all expenses or expenses that have been incurred by one party. Loss is a loss due to damage to goods or capital belonging to the creditor caused by the negligence of the debtor. Meanwhile, interest is a loss in the form of lost profits that have been calculated or imagined by creditors (Subekti, 2010) .

Problems related to violations of rental agreements (defaults) that often occur in car rentals are of course common. Violations of the rental agreement include damage to goods rented by consumers and actions not to return goods rented by consumers. In addition, there are delays that exceed the return time according to the agreement. If this condition is not anticipated, it will cause losses.

Compensation violations are carried out by the tenant or from the lessor, which becomes a problem here when the fines or compensation imposed are unreasonable, this is also a concern in Islamic law. Not a few of the rentals in the field do this unreasonable

compensation. As happened with car rental in Medan. This study will discuss compensation for car rentals on the basis of the MUI Fatwa as the legal basis, because the MUI Fatwa is one of the qibla which is used as a source of law relating to Islamic law in Indonesia.

RESEARCH METHODS

This type of research is a type of field research (field research). The nature of the research is analytical descriptive and the research approach is to use a conceptual approach. Then the source of the data is directly obtained from consumers and with the help of books related to the title. The sample is consumers from users of rental services Nadia Car Rent Medan who are used as respondents. While data collection techniques and through observation, and documentation. Data processing is done by examining data, data reconstruction and data systematics. Data analysis used qualitative analysis with a deductive thinking approach. Source of data comes from primary data and secondary data. And in this research, the form of primary data sources is by studying several documentation related to laws and regulations or several articles that are in line with the research being conducted. While secondary data is supporting data as a reference in the form of books, photographs, records, as well as archives and reports.

RESULTS AND DISCUSSION

1. Lease

Having a car rental for tour purposes is important for tourists. This is also used as an opportunity by some people who have the capital to open a car rental service as a tourist need. Car rental carried out by car rental services, has its own terms and conditions. The existence of these conditions is to maintain good relations with each other, between the tenant and the service party who rents out.

Ijarah is a contract made on the basis of a benefit in return for services. According to Islamic jurisprudence, it means giving something for rent and according to Sayyid Sabiq, Ijarah is a type of contract to take benefits by way of compensation. So essentially ijarah is the sale of benefits. Benefits sometimes take the form of in-kind benefits, such as a house to live in or a car to ride (drive). Sometimes it takes the form of work such as the work of an engineer, construction worker, weaver, dyer and tailor. Sometimes the benefits are various personal work of someone who devotes energy. The owner who rents out the benefits is called Mu'ajir, the other party who gives the lease is called Musta'jir and something that is contracted for benefits is called Ma'jur (rent). While the services provided in return for

benefits are called *Ajran* or *Ujah* (wages). When the lease agreement has taken place, the tenant has the right to take advantage. Meanwhile, people who rent out have the right to take wages because this contract is a *mu'awadhah* (substitute) (Qardhawi, 1997).

In the fatwa of the National Syari'ah Council (DSN), *ijarah* is a contract for the transfer of usufructuary rights (benefits) for an item or service for a certain time through payment of rent or wages without being followed by the transfer of ownership of the item itself. Meanwhile, according to Bank Indonesia terms, *ijarah* is leasing for the benefit of an item or service between the owner of the leased object and the lessee in order to obtain compensation in the form of rent or wages for the owner of the object of lease (Djamil, 2012).

In the case of leasing a car, there is an agreement made between the lessee and the lessor, the two parties bind themselves to achieve achievements as stated in article 1548 of the Civil Code. An agreement entered into by the lessee with the lessor must comply with the provisions of the procedure, so that the agreement can be carried out smoothly and carried out according to the provisions applied by the lessor's regulations so that in the event of a lease being legal in accordance with the law in Article 1320 of the Civil Code concerning the terms of the validity of the agreement and nothing that is unwanted by both parties will not happen in the future.

In a car rental agreement, the most important thing is an agreement made by both parties consciously and without any pressure from anywhere. According to the agreement, both parties must submit and comply with the contents of the agreement. If one of the two parties does not fulfill an agreement or violates the agreement or enters into an agreement but is not perfect, then the violating party is subject to sanctions in accordance with the agreement. According to the contents of the agreement, if consensus deliberation can be carried out, then existing disputes can be resolved peacefully and without interference from third parties. However, if one of the parties does not want deliberation to reach a consensus due to a large loss, this can be resolved through a trial at the local District Court or what has been agreed beforehand.

Arrangements regarding *ijarah* in the compilation of sharia economic law are contained in chapter X (Articles 251-290). The scope of the discussion includes: first, discussing the pillars of *ijarah* consisting of; a) the lessor; b) the lessor; c) *ijara* objects; and d) *shighah* contract *ijarah* contract must use clear sentences. *Ijarah* contract can be done orally, in writing and or by gesture. The *ijarah* contract can be changed, extended and or canceled based on the agreement. The *ijarah* contract can be enforced in the future.

Second, explaining the terms of implementation and settlement of ijarah. To complete an ijarah contract process, the parties to the contract must have the ability to carry out legal actions. Ijarah contracts can be done face-to-face or remotely. The party who leases the object must be the owner, representative or guardian. The use of ijarah objects must be stated in the ijarah contract. If the use of ijarah objects is not stated with certainty in the contract, then the ijarah objects are used based on general rules and habits. If one of the conditions in the ijarah contract does not exist, the contract is cancelled. The ijarah money does not have to be paid if the ijarah contract is cancelled. The reasonable ijarah price/*ujrah al-mithl* is the ijarah price determined by an experienced and honest expert (articles 257-262).

Third, explain about the ijarah money and how to pay it. Rental services can be in the form of money, securities and or other objects based on an agreement. Rental services can be paid with or without a down payment, prior payment, payment after the ijarah object has been used, or payable based on an agreement. Ijarah advances that have been paid cannot be returned unless otherwise specified in the contract. The down payment for the ijarah must be returned by the lessor if the cancellation of the ijarah is made by the lessor. The down payment for the ijarah does not have to be returned by the lessor if the cancellation of the ijarah is made by the party who will rent it (articles 263-264).

Fourth, tells about the use of ijarah objects. The lessee can use the ijarah object freely if the ijarah contract is carried out absolutely. The tenant can only use the ijarah object in a certain way if the ijarah contract is carried out on a limited basis. Lessees are prohibited from renting and lending ijarah objects to other parties except with the permission of the lessor. Ijarah money must be paid by the lessee even if the ijarah object is not used (articles 265-267).

Fifth, mentioning the maintenance of the ijarah object, responsibility for damage and the value and period of the ijarah. Maintenance of the ijarah object is the responsibility of the lessee unless otherwise specified in the contract. Damage to the ijarah object due to the negligence of the lessee is the responsibility of the lessee, unless otherwise specified in the contract. If the ijarah object is damaged during the contract period which is not due to the lessee's negligence, the lessee is obliged to replace it. If the ijarah contract does not stipulate the party responsible for damage to the ijarah object, then the customary law that applies among them is made law. The lessee is obliged to pay for the damaged ijarah object based on the time that has been used and the amount of the ijarah is determined through deliberation (articles 268-270).

Sixth, explaining the price and term of the ijarah. The value or price of ijarah, among others, is determined based on the unit of time. The units of time in question are minutes, hours, days, months and or years. The initial ijarah time is determined in the contract or on the basis of custom. The ijarah time can be changed based on the agreement of the parties. Excess time in ijarah carried out by the lessee must be paid based on agreement or custom (articles 271-273).

Seventh, discussing the types of goods to be ijara and the return of ijara objects. The object of ijarah must be halal or permissible. Ijarah objects must be used for things that are justified according to the Shari'a. Any object that can be used as an object of sale and purchase can be used as an object of ijarah. The object that is ijara may be the whole or part of it that is stipulated in the contract. The additional rights of the lessee relating to the ijara object are stipulated in the ijarah contract. If the tenant's additional rights are not stipulated in the contract, the additional rights are determined based on custom (articles 274-275).

Eighth, discussing the return of ijarah objects. Ijarah ends with the completion of the ijarah time specified in the contract. The way to return the ijarah object is based on the provisions contained in the contract. If the way to return the ijarah object is not specified in the contract, then the return of the ijarah object is carried out according to custom (articles 276-277).

Ninth, explained about ijarah Muntiyah bi al-tamlik. The pillars and conditions in ijarah can be applied in the implementation of ijarah Muntiyah bi al-tamlik. In an ijarah Muntiyah bi al-tamlik an object between the mu'jir/the party who rents it out and the musta'jir/the lessee party ends with the purchase of ma'jur/the ijarah object by the musta'jir/the lessee party. Ijarah Mutahiyah bi al-tamlik must be stated explicitly in the contract. The transfer of ownership contract can only be carried out after the ijarah Muntiyah bi al-tamlik period ends. Musta'jir/lessee in an ijarah Muntiyah bi al-tamlik contract is prohibited from renting and/or selling the rented ma'jur/object. The ijarah price in the ijarah Muntiyah bi al-tamlik contract is included in the payment of objects in installments.

Tenth, tells about sunduq hifzi ida'/safe deposit box. The use of sunduq hifzi ida'/safe deposit box can be done with an ijarah contract. The use of sunduq hifzi ida'/safe deposit box is subject to the provisions referred to in the pillars and conditions of ijarah. Items that can be stored in a sunduq hifzi ida'/safe deposit box are valuable objects that are not prohibited or prohibited by the state. The amount of the ijarah sunduq hifzi ida'/safe deposit box fee is determined based on the agreement in the contract. The rights and obligations of

the lessor and the lessee are determined by agreement as long as they do not conflict with the terms and conditions of the ijarah (articles 286-290).

The existence of an agreement that is made in detail and structured provides benefits that can be felt by both parties. The agreement provides security for both parties because they protect each other's rights and obligations. If an agreement is not held, it is likely that many unwanted things will occur. In general, if there is no binding agreement, it will result in arbitrariness of one of the parties, in car rental, if it is not regulated, the object of the agreement can be recognized by the lessee as his own object (Nindito & Hartono, 2021).

In renting a car in this case, the lessor provides several options in providing the car rental. They provide car rental with drivers and only provide car rental or also known as key off. There are several conditions for renting a car, namely:

- a. Register with the car rental company
- b. Make an order according to the wishes of the tenant
- c. Submit several files determined by the lessor for the lessee's guarantee in carrying out the car rental
- d. Inform the rules that have been set in writing and not in writing by the lessor and the fines that will be paid if they break the rules
- e. Then make transactions between tenants and lessees, whether it's a down payment or DP or in cash.
- f. And finally, giving the key along with the vehicle to be rented

2. Compensation

Responsibility is the obligation to bear everything if anything happens you can be prosecuted, blamed, and sued. In legal language, responsibility is an individual's obligation to carry out something that has been entrusted to him (Hamzah, 2005). Responsibility according to the legal sense is a sense of belonging to someone regarding the nature or morals of carrying out an action (Notoatmojo, 2014). Ta'wid in language is compensation, compensation. In terms of the definition of ta'wid put forward by the contemporary scholar Wahbah al-Zuhaili, Ta'wid (compensation) is covering losses incurred due to violations and mistakes (Al-Zuhaili, 1998).

According to Syamsul Anwar, this concept in Islam focuses more on the rights and obligations between the debtor and the creditor and according to compensation in Islam it is only burdened by the debtor if the creditor is harmed by the debtor as a result of not carrying out responsibilities or breaking a promise. Compensation is only imposed on the debtor who breaks his promise if the loss experienced by the creditor has a causal relationship with the

broken promise and broken contract with the debtor. The definition of loss according to R. Setiawan is a real loss that occurs due to default. The amount of loss is determined by comparing the state of wealth after default with the situation if there is no default (Setiawan, 1997).

The compensation includes replacement compensation and complementary compensation. Compensation compensation is compensation resulting from non-performance that should be the right of the lease, covering all losses suffered as a result of the lessee's default. Meanwhile, complementary compensation is compensation as appropriate (Hernoko, 2010).

In terms of compensation, this has been stipulated in Article 1234 of the Civil Code which explains that the other party is obliged to pay for the loss of the injured party, namely costs, losses and interest. The compensation has been adjusted according to the rules made by the rental car, some of which have been written in the agreement and there is also verbal notification. Regarding the rental car that makes an verbal agreement in terms of overtime, usually if it is past the deadline, the rental car will contact the lessee reminding them to return the car or sometimes come directly to the tenant's place of stay.

Compensation in the form of fines is given by the lessor to the lessee, because the lessee violates the terms of the contract intentionally and causes losses to the lessor because the lessee has defaulted. Lessees who default will be given sanctions in the form of a fine of an amount of money, the amount of which is determined on the basis of the agreement and is made when the contract is to be signed. Based on the Fatwa of the National Sharia Council Number 43/DSN-MUI/VIII/2004 Concerning Compensation (Ta'widh), there are several points that become specific provisions in compensation (ta'widh), namely:

- a. Compensation received in transactions at LKS can be recognized as a right (income) for the party receiving it;
- b. The amount of compensation must remain in accordance with the real loss and the method of payment depends on the agreement of the parties;
- c. Whereas Islamic shari'ah protects the interests of all parties in a transaction, both customers and LKS, so that no party's rights may be harmed;
- d. That the losses actually experienced in real terms by the parties to the transaction must be reimbursed by the party that caused the loss;
- e. Compensation (ta` widh) may only be imposed on a party who intentionally or negligently does something that deviates from the terms of the contract and causes harm to the other party.

- f. The party whose promise is broken is responsible for the costs of the case and other costs incurred as a result of the settlement process

3. Settlement Legal Remedies

In overcoming the obstacles mentioned above, both parties can take 2 ways, namely through litigation and non-litigation. Litigation is a dispute resolution system through the judiciary. Disputes that occur and are examined through litigation channels will be examined and decided by a judge. Settlement through litigation is regulated in Law Number 48 of 2009 concerning Judicial Power. The lawsuit in this leasing case was caused because one of the parties was harmed in the leasing. Settlement can be done by submitting to court with the form of default made by the lessee, for example in the case of repeating the lease. With a lawsuit in court, there must be a petitum requested by the plaintiff, including:

- a. Requesting the tenant or the defendant to complete the leasing process;
- b. Asking for compensation made by the tenant. If later, after undergoing trial and a decision has been made by the judge and the contents of the decision approve the petitum of the defendant, the plaintiff can carry out the contents of the decision on condition that the decision made has permanent legal force.

This non-litigation settlement is carried out by negotiating between the tenant and the lessor to do so and get a fair outcome. If one of the parties still does not want to make an agreement, another non-litigation method is to use mediation and negotiation. Mediation is an effort to resolve conflicts by involving a neutral third party, who does not have decision-making authority that helps the disputing parties reach a settlement that is acceptable to both parties. Negotiation is a form of social interaction when the parties involved seek to resolve different and conflicting goals. Negotiation is a process in which two parties reach an agreement that satisfies all interested parties with the elements of cooperation and competence.

In the case under study, that one of the parties suffered a loss that was not in accordance with the verbal agreement at the beginning. The lessee (consumer) feels disadvantaged as a result of compensation made by the lessor (manufacturer). Because the lessor does not enter into a contract that is not in accordance with the compensation specified.

In this case, the lessee made a default where the lessee did not return the car on time due to conditions on the way that made it possible for the lessee to return home at the appointed time. In the contract before using the rented car, the owner and the lessee make an agreement where the owner says that if you are late in returning it, you will be fined 40 thousand per hour. The owner did not explain if it was past 00.00 WIB that the calculation

would be different, no longer subject to an hourly fine, but calculated as a full day's rent. Obviously the lessee feels disadvantaged, because it is not in accordance with the verbal agreement at the beginning of the contract.

So in this case, the lessor made a mistake against the lessee in carrying out compensation fines resulting from an oral agreement, because the initial contract was not in accordance with the fine given to the lessee. The lessor should explain in detail before entering into a contract with the lessee so that there is no misunderstanding between one another and so that the contract being executed is clear in accordance with existing regulations and does not harm any party.

In resolving this case, both parties agreed to resolve this case using non-litigation legal remedies. Where both parties resolve it in a peaceful and amicable way and do not proceed to litigation. From the lessee (consumer) provide half of the compensation determined by the lessor (manufacturer)

CONCLUSION

The conclusion in this study is that there was a default by the producer. As a result of an unwritten or oral agreement made by both parties, one party feels disadvantaged because the agreement is not valid enough to prove. The legal remedies taken by both parties were using non-litigation legal remedies, which were resolved amicably. Where the consumer provides compensation for half of the compensation price given by the producer, and is carried out by mutual agreement.

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