

SETTLEMENT OF DEFAULT IN THE CAR RENTAL AGREEMENT AT PT. SURYADITA 88 TRANSPORT IN BADUNG REGENCY

I Gusti Ngurah Made Siwa Mertayasa^{1*}, Dewa Gede Pradnyana Yustiawan²

^{1,2} Faculty of Law, Universitas Udayana

E-mail: ¹⁾ siwamertayasa00@gmail.com, ²⁾ Pradnyana_yustiawan@gmail.com

Abstract

Car rental businesses are now relatively accessible in Badung Regency. Because Badung Regency is a popular tourist destination, numerous individuals have opened car rental services. In Badung Regency, PT Suryadita 88 Transport offers car rental services. In its operation, PT Suryadita 88 Transport is not exempt from issues involving default-causing factors and efforts to resolve defaults. This study aims to uncover the causes of default in the car rental agreement at PT. Suryadita 88 Transport and potential solutions. This study employs the Empirical Law research technique, which correlates the legal aspects of existing issues with their practical application in society. The applicable legal basis is Article 1548 of the Civil Code, pertaining to Leasing. The results revealed that disputes shall be resolved through litigation if they cannot be resolved through alternative means.

Keywords: Agreement, Default, Lease

1. INTRODUCTION

Along with the development of the era, the existence of transportation is very important in facilitating all activities, including the business that is being carried out. As a destination for local and foreign tourists, the important role of transportation is also a special concern for the Province of Bali. Badung is a tourism destination city because it has many beautiful tourist objects and is an attraction for tourists. Of course, not all of these tourists bring private vehicles from their hometowns, especially foreign tourists. Therefore, it is very easy to find a place to rent a car in Badung Regency. Popularity as a tourism area makes many tourists interested in renting a car. Therefore, many residents of the Badung area offer car rental services with varying rental prices.

When renting a car, the rental agreement will be made in writing by the lessee and the lessor. If both parties have agreed to bind each other, then the rental agreement must be signed so that the leasing process can run. An agreement is defined as an event where one party makes a promise to another party to carry out an agreement (Subekti, 2010).

PT. Suryadita 88 Transport which is located on Jalan Raya Darmasaba No. 88 Br. Peninjoan Darmasaba Village, Abiansema Badung District is one of the business entities that rents cars in the Badung Regency area. In its business, there are stages or procedures set by the company. Before finally being rented out, tenants need to carry out several stages that have been determined by PT. Suryadita 88 Transport, including checking the eligibility of the car to be rented and agreeing to a written agreement that contains the duration of the rental and criteria for the party that will rent it. Then, the car will be handed over after the car rental fee has been fully paid. The agreement between the two parties is an important thing in an agreement. However, this does not mean that the ownership

rights will be transferred to the party that will rent the car because the party will only obtain the usage rights with reference to the mutually agreed cost of using the goods.

Wirjono Prodjodikoro defines an agreement as a legally recognized relationship related to wealth belonging to 2 parties where one party agrees to do something, while the other party demands that the promise be fulfilled (Prodjodikoro, 1989). Article 1548 of the Civil Code explains that "leasing is an agreement, with which one party binds himself to provide the enjoyment of an item to another party for a certain time in exchange for the payment of a price that the latter party can afford". Leased goods can be either fixed or movable (Suharnoko, 2015).

As a form of consensual agreement, the existence of this rental agreement is because both parties have agreed to bind each other so that this agreement has legal force based on the Civil Code (Civil Code, article 1338). The existence of achievement is the hope of both parties towards an agreement, but sometimes there are parties who are negligent so that the achievement fails to be achieved which is better known as default. Default is defined as poor performance in Dutch. The existence of a default is caused by a party that does not carry out its obligations through negligence or other negligence (Sudarsono, 2007).

According to the explanation from Mr. I Gusti Ngurah Suardita, S.E., as the director of PT. Suryadita 88 Transport explained that there were several factors that led to defaults in PT. Suryadita 88 Transport, including:

- 1) Failure to carry out agreed obligations such as no notification regarding the return of the car or rental that wants to be extended to PT. Suryadita 88 Transport in 2 hours before the end of the rental period.
- 2) The car's return time wasn't exactly as scheduled.
- 3) The negligence of the car renter resulted in minor and major damage to the vehicle.
- 4) Violating collective agreements such as car rental rights that are handed over to other people who are not in the agreement and using the car as collateral for other things.

Referring to the description above, the purpose of this study is to find out how the implementation of the car rental agreement and find out how to resolve defaults that occur in the agreement between PT. Suryadita 88 Transport with the tenant.

2. RESEARCH METHODS

Empirical legal research was used in this study. Empirical legal research examines legal provisions such as codification, laws or contracts that were directly enforced at certain legal events that occur in society with an emphasis on implementing normative requirements at certain legal events (Muhammad, 2004). The empirical method was applied in this study by taking an approach to the issues that occurred and by conducting interviews and observations of informants as the main source. Literature research was also applied in this study by searching, collecting all that was obtained and then understanding and analyzing related books in order to obtain more data.

Primary and secondary data were applied in this study. The researcher obtained primary data through interviews with respondents or interested parties who could provide

information about the implementation of the car rental agreement and solutions to possible defaults by the party renting the car. Data was then collected by directly observing the events that occurred at the research location related to the study issues and applying interview techniques to respondents and informants.

3. RESULTS AND DISCUSSION

3.1. Factors Causing Default in the Car Rental Agreement at PT. Suryadita 88 Transport in Badung Regency

Car rental in Badung Regency is commonly used as a means of meeting personal needs for companies. There are several stages that must be passed before there is an agreement in the rental agreement. The agreement certainly contains several criteria that have been agreed by both parties. However, if one party disagrees, the agreement is considered invalid and cannot be continued.

PT. Suryadita 88 Transport has a predetermined car rental procedure. According to I Gusti Ayu Sintya Dewi, as the manager of PT. Suryadita 88 Transport tenants must meet the requirements to rent a car. These conditions include:

- 1) Tenants must have a valid SIM A (driver license)
- 2) The tenant has a valid Bali ID card
- 3) The tenant has a Family Card (KK)
- 4) Tenants are willing to be surveyed where they live
- 5) Tenants must leave the motorbike along with the motorcycle registration certificate as collateral
- 6) The tenant must have two people in charge
- 7) The tenant must pay the rent payments
- 8) Tenants must sign a car rental agreement.

In carrying out the leasing procedure, default is not spared. Defaults have often occurred in the world of car rental business (Maheswari et al., 2021). Yahya Harahap explained that default is defined as untimely execution of an agreement or discrepancy in implementing an agreement or even none of it is implemented (Harahap, 1986).

Article 1238 of the Civil Code stipulates that “the debtor is negligent, if by order or for the sake of his own agreement, that is if it stipulates that the debtor is considered negligent after the specified time has passed”. In this study, what this explanation refers to is negligence in carrying out the agreement entered into by the debtor (the party who rents) with the creditor (the party who gives the lease).

There are several reasons behind the default on PT. Suryadita 88 Transport including:

- a. ID card is not owned by the party who will rent the car. Not having an ID card, especially those who live in Badung, will have an impact on default because the party giving the rental will have difficulty finding out where the party who will rent the car lives.
- b. The car was not returned on time. PT. Suryadita 88 Transport often faces things like this. This delay will subject the renter to a fine of 10% of the rental price each day.
- c. Negligence on the part of the tenant while driving the car. Such negligence can be in the form of traffic violations or even accidents that result in car damage.

- d. Leasing a rental car to other parties not listed in the agreement with PT. Suryadita 88 Transport.
- e. There are criminal acts committed by the party who rents such as embezzling a car or making the car a drug buying and selling transaction.
- f. There is no guarantee in the form of a motorcycle and motorcycle registration certificate for the lessee. However, this is rarely used as a condition because both parties already know each other.

Even though they know there are risks in running a business, the party giving the lease basically does not expect a default to occur. If the prospective lessee is unable to submit his ID card (KTP) or vehicle as collateral, then the agreement should not be approved because there are indications of a criminal act. Debtors and creditors certainly do not want a default that can harm all parties to the agreement. The loss felt by the debtor is the obligation to compensate for all forms of damage or violation of the collective agreement. Meanwhile, default for creditors is an opportunity to ask for compensation and reach an agreement (Sudharma, 2018).

3.2. Settlement Efforts from the Occurrence of Default in the Car Rental Agreement at PT. Suryadita 88 Transport in Badung Regency

3.2.1. The legal consequences of a default in a car rental agreement on PT. Suryadita 88 Transport in Badung Regency

The debtor who does not succeed in carrying out his obligations or acts outside his rights as a tenant will make the contents of the agreement that has been made fail to be implemented so that it has an impact on rights that cannot be fully obtained by the debtor.

Defaults committed by the debtor will receive legal sanctions where the implementation has been contained in the Civil Code as a formal regulation that discusses in detail the juridical aspects of an agreement (Suryodiningrat, 1996). This legal sanction is given because of the obligatoir principle in an agreement, namely the reciprocal relationship between rights and obligations in a legal relationship. Achmad Ichsana defines the principle of obligatoir as the sides in an agreement, so according to him the agreement has 2 (two) sides, namely the passive side in the form of obligations and the active side in the form of rights (Lisdiyono, 2019).

Regarding the legal basis for determining default for the debtor, it is after the debtor concerned is declared negligent or does not fulfill his achievements, even though he has been reprimanded or given a subpoena (Fadilah & Heriyani, 2020; Novianta et al., 2015). Article 1243 of the Criminal Code also explains that compensation costs along with interest can only be paid by debtors who have been declared negligent in complying with the contents of the agreed agreement. If a debtor has been warned for the fulfillment of his achievements and if the debtor is negligent in fulfilling his achievements, juridical sanctions can be given as a result of the default that the debtor has committed. Sanctions for default by debtors in Article 1243 of the Civil Code are formulated that:

“compensation for costs, losses and interest due to non-fulfillment of an agreement, only begins to be required if the debtor has been declared negligent in fulfilling the agreement, continues to be negligent in fulfilling the agreement, or if something that must be given or done can only be given within a time that exceeds the specified time”.

According to Purwahid Patrik, due to legal consequences for defaults that occur in an agreement, the debtor is required to:

- 1) Pay compensation;
- 2) The responsibility for the object used in the agreement is handed over to the debtor;
- 3) The creditor terminates the agreement if the bond is a reciprocal agreement (Patrick, 1994).

Based on the results of an interview with Mr. I Gusti Ngurah Suardita, SE who is the director of PT. Suryadita 88 Transport explained that there are several consequences that must be borne by the debtor when a default occurs, including:

- 1) There is an obligation to make payments for all losses caused by violations of the agreements that have been made;
- 2) There is an obligation to bear the risk of the car being rented;
- 3) There is an obligation to pay off court costs if this default is brought to court;
- 4) There is a necessity in reaching the points of the agreement after the existence of the default has been proven.

3.2.2. Efforts to Settle for Defaults Made by the Lessee in the Car Rental Agreement on PT. Suryadita 88 Transport in Badung Regency

Obstacles and negligence on the part of the debtor have certainly been experienced by parties carrying out car rental agreements both in Badung Regency and in other Regencies/Cities. These impediments can also be pressured conditions or *overmacht* in the car rental agreement. PT. Suryadita88 Transport explained that defaults that often occur are delays in returning the car after the rental period ends and the car being rented is used as collateral for mortgage.

Disputes can be resolved by everyone who is facing legal or other problems (Artawan & Priyanto, 2016; Pendit et al., 2019). Arrangements regarding disputes are contained in RI Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution which was previously announced on August 12, 1999. Judging from the elaboration of Article 1 Point 10 and Paragraph 9 of the General Explanation of RI Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, it can be concluded that there are several events such as consultation, negotiation, mediation, conciliation or expert judgment.

Institutional solutions in overcoming disputes formulated in Law no. 30 of 1999 is specifically explained in verses in Article 6 such as:

- 1) Negotiations carried out by the parties as stipulated in paragraph (1).
- 2) Mediation controlled by a neutral third party is contained in paragraphs (3), (4) and (5).
- 3) Arbitration as discussed in paragraph (9).

The good solution is needed by disputes in lease agreements that can take place at any time. There are 2 solutions that can be chosen to resolve disputes including:

- 1) In court (litigation), disputes are resolved through the judiciary.
- 2) Out of court (non litigation), disputes are resolved out of court by way of negotiation, mediation and arbitration.

PT. Suryadita 88 Transport usually resolves disputes that occur in default by the lessee by means of non-litigation, unless the default is classified as "serious" such as pawning a car rented by a third party by the lessee, which will be immediately resolved

through litigation. Deliberations that are familial in nature are more often applied by PT. Suryadita 88 Transport to resolve disputes out of court.

PT. Suryadita88 Transport describes a number of things that happen if there is a default along with the solutions taken, including:

1) Non litigation

Cars that are late to return are also a default that is often carried out by tenants at PT. Suryadita88 Transport. Tolerance for various reasons uttered by the lessee cannot be given because the agreement calculates every hour of the delay and the lessee is required to compensate as much as 10% of the car rental price.

2) Litigation

In the event that a dispute is brought to court, it is usually due to default committed by the lessee, which is classified as a serious violation, such as pawning a rental car to a third party without the knowledge of the rental party. Pawning a rented car by the lessee is classified as embezzlement because it justifies several elements of embezzlement contained in Article 372 of the Criminal Code, namely:

a) Whoever

That this element has been fulfilled, namely the subject (renter) who rents a car and then pawns it to a third party;

b) Intentionally and against the right

In this element, the lessee deliberately pretends to be the person who owns the goods and acts outside the rights he should have obtained by way of pawning the car to a third party without the consent of the rent car party and reaping profits from the violation.

c) Items belong to other people

The car that is under the use of the lessee belongs to the rent car, not the lessee, so the lessee is prohibited from doing things outside of the rights he gets.

d) Not for a crime

In this case the car that is pawned by the lessee is not the result of a crime, but the right to use it is obtained through a legal leasing process.

In cases where the car is mortgaged by the lessee, this dispute is no longer subject to a non-litigation process, the default dispute report will be given directly by the rent car to the authorities and brought to court.

4. CONCLUSION

4.1. Conclusion

Judging from the presentation of the study results, there are several solutions that can be obtained to overcome the problems discussed, including: the negligence of the lessee when driving the car, renting the rental car to other parties not listed in the agreement with PT. Suryadita 88 Transport, there was a criminal act committed by the party who rented it, and there was no guarantee in the form of a motorcycle and motorcycle registration certificate for the lessee.

Efforts to settle defaults made at PT. Suryadita 88 Transport namely through non-litigation settlements and out-of-court settlements. Negotiation and mediation are 2 possible solutions. Negotiation is defined as communication between two parties who have the same or different interests in order to reach a mutual agreement, while mediation is defined as a type of negotiation between disputing parties by involving a third party as

a mediator in resolving existing disputes. Settlement of disputes through the courts will be pursued if the non-litigation solution does not reach an agreement or does not work peacefully. The legal consequences of this default can be in the form of fines that are adjusted to the mistakes made by the lessee.

4.2. Suggestion

Based on the above, as a form of prevention from the risk of default by lessees, it is recommended that when making a car rental agreement, a rental agreement is made in a rental agreement that lists the rights and obligations of both the lessor and the lessee. It is also hoped that the parties will comply with and comply with what has been agreed upon and mutually agreed upon. In addition, it is recommended that there be consistency between the lessee and the rent car in fulfilling the contents of the agreement made, this is suggested so that later there will be no misunderstanding between the two parties, and if a default occurs it can be resolved properly in accordance with applicable law.

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