LEGALITY: JURNAL ILMIAH HUKUM

Journal homepage: http://www.ejournal.umm.ac.id/index.php/legality

Consumer Protection in Financial Institutions

Suwinto Johan[1*], Ariawan[2]

[1] Faculty of Business, President University, Jababeka, Cikarang, Bekasi, Jawa Barat, Indonesia
[2] Faculty of Law, Tarumanagara University, Jakarta, Indonesia
[*] Corresponding author: suwintojohan@gmail.com

Article

Keywords:
Financial Services; Consumer Protection; Finance Company

Article History
Received: Apr 24, 2021;
Reviewed: Apr 26, 2021;
Accepted: May 31, 2021;
Published: Jun 15, 2021

Abstract

The relationship between financial institutions and customers is like two sides of a coin. On one hand, it is-mutually beneficial, but on the other hand, this relationship can lead to mutual harm. Customers of financial institutions have a medium for long-term relationship. Consumers of financial institutions generally have an average relationship of 24 months. Consumers make loan payments according to the agreed time. Customers will be able to get the right to the collateral if the loan has been paid. Conversely, if customers are unable to pay the installments on time, financial institutions will repose the collateral. From the inception of the loan to repayment of the loan, the relationship between customers and financial institutions experiences several conditions. This research uses a normative judicial method, aiming to analyze consumer protection of non-bank financial institutions based on the existing laws and regulations. This research will focus on consumer protection from the start of the standard agreement, the fees or expenses charged, to the loan repayment mechanism. This research concludes that the protection of consumers of non-bank finance companies, especially finance companies, is still very weak. Consumer protection for finance companies, especially non-banks, has not been fully accommodated in the existing Consumer Protection Law. Therefore, the authority needs to issue a regulation in protecting consumer in financial industry

©2021; This is an Open Acces Research distributed under the term of the Creative Commons Attribution Licencee (https://Creativecommons.org/licences/by/4.0), which permits unrestricted use, distribution, and reproduction in any medium, provided the original works is properly cited.

INTRODUCTION

The relationship between consumers and financial institutions has a period of more than 24 months (Maulana, 2016). A leasing or finance company is categorized as a non-bank finance company. Consumers in finance companies are called customers.

This unique relationship between financial institutions and consumers is not limited to single financial product only. Finance companies can provide various types

of funding to consumers. Good consumers will be given other financial products such as motor vehicle financing added with vehicle insurance, life insurance, accident insurance, credit cards, personal loan and others. This relationship can also develop to business financing through working capital financing, investment financing or multipurpose financing. In addition, the relationship between finance companies can also extend to the consumer's family, such as education loan financing for consumers' children. If a customer has more than 1 products, it will be called as an additional order (A/O) customer. However, if a customer is a repeating customer, it will be called as repeat order customer (R/O).

The relationship between finance companies and consumers is a long-term relationship. If this relationship is not good enough, consumers' reputation can be at risk. Every finance company must report consumer conditions to Financial Services Authority (hereinafter OJK) through the Financial Information Service System (hereinafter SLIK). Consumer performances will be stored and shared to all financial institutions and have a long period of time. Each financial institution has to do SLIK checking before disbursing a loan to consumer. Meanwhile, financial institutions are aware that customer relationship management is one of the keys to doing business. Besides, a consumer also could spread the word of mouth to other consumers on a financial institution's reputation. Therefore, it is important for both parties to maintain the relationship (Anggraeny & Al-Fatih, 2020).

Finance companies provide funds to customers for the purchase of goods in installments. Customers who pay in accordance with the provisions will receive the ownership of the goods at the end of the installment period (Kairupan, 2017). If a customer has a difficulty paying the installment, the finance company will take over the goods submitted as securities. The finance institution asks for collateral in the form of the debtor's assets (Fauzi, 2017). The finance company will sell the collateral to cover its installment payment obligations.

During the pandemic, finance companies provide relaxation in accordance with the appeal of the Indonesian OJK. This relaxation can take the form of adjusting the ability to pay the installments to delaying the payment of the installments (grace period). However, there are finance companies that still execute vehicle takeover if the customer is in default (CNN Indonesia, 2020). Debt collectors who force to take over the vehicles can be subject to 12 years' imprisonment based on the Article 368 in conjunction with the Article 365 of the Indonesian Criminal Code (Maliana, 2020). This can be applied if a debt collector or a finance company seizes the guaranteed goods.

Finance companies may take over vehicles on the streets in accordance with the Indonesian Financial Services Authority Regulation (POJK) and the Indonesian Fiduciary Guarantee Law (UU JF) (Kusuma Hendra, 2020). In accordance with the Decree of the Indonesian Constitutional Court Number 18/PUU-XVII/2019 dated January 6 2020, it has been decided that vehicle takeover must take place in compliance with a court decision. A finance company can still take over the guaranteed vehicle if the customer admits there has been a default and voluntarily gives up the vehicle as a

security (Ramadhan Ardito, 2020). The police have also emphasized that the people can submit a report if their vehicles are forcibly confiscated by a finance company (Umasugi, 2020).

In relation with the conditions of the COVID-19 pandemic, Indonesian Financial Services Authority has prohibited debt collectors from taking over the collateral, in the case of customer vehicle financing. Indonesian Financial Services Authority hopes that debtors and finance companies can reach an agreement on debt restructuring (Wareza, 2020).

This research is unique because it links the protection of consumers to non-bank financial institutions, namely finance companies, with laws and regulations related to consumer protection as a whole. Research that comprehensively links with laws and regulations on consumer protection is still very rare. Consumer protection includes standard clauses, imposition of fees, and takeover of guarantees. Many researches are associated with fiduciary laws, financial service authority regulations, and criminal code with a separate analysis pattern. The research question is how to protect consumer finance based on the existing laws and regulations.

This research is expected to contribute to the development of financial technology industry which is growing rapidly recently. The relationship between financial technology (fintech) firms also experiences many obstacles with consumers. Forced data retrieval from mobile phone, billing by rude debt collectors, charging excessive fees, charging high interest rates are the current issues in financial technology industries. Research can provide input into fintech development policies for OJK.

The agreement between the consumer and the finance company reflects a weak position in the position of the consumer and a stronger position in the finance company. Consumers are not free to determine what they want or desire. The standard clause is regulated in the Article 18 of the Indonesian Consumer Protection Law (PK Law) (Shelyn & Anggrani, 2019). The inclusion of standard clauses with contents that are detrimental to consumers in vehicle financing agreements through financial institutions has been strictly prohibited. Criminal sanctions for businesses have also been regulated under the Indonesian Consumer Protection Law (Triwanto, 2019).

A financing agreement with a registered fiduciary guarantee agreement will make it easier for the finance company to carry out the execution of the guarantee (Yudistika & Putrawan, 2018). Legal protection for default customers in a financing agreement, including the right to comfort, security, and consumer safety is a main priority. Consumers must obtain legal protection (Nuriyah, 2019).

The takeover of a vehicle through a third party with a fiduciary object is illegal because the execution is carried out unilaterally, this action is categorized as an illegal act (PMH) in accordance with the Article 1365 of the Indonesian Civil Code (Liono et al., 2021). On the contrary, the finance company has followed the applicable rules in dealing with embezzlement of collateral objects (Yulianti, 2019). This research explains that the standard operating procedure of a finance company has been implemented correctly.

Takeover of collateral objects must be registered in a fiduciary manner. If it is not done in such manner, then forced retrieval is invalid, because the material rights of the fiduciary agreement have not yet been stipulated, so the finance company as the creditor cannot refer to the provisions in the Article 29 of the Indonesian Fiduciary Guarantee Law (Prayutiz et al., 2020) (Khariati, 2020). The exoneration clause is very detrimental to consumers. The lease agreement that binds the two parties is not based on the *pacta sunt servanda* principle (Rahman, 2020). The inclusion of standard clauses is strictly prohibited. In the Consumer Protection Law, there is a criminal sanction (Arisandy, 2019). Financial institutions allowed standard agreements to be used as long as the agreement has been submitted to the OJK. If the OJK does not provide recommendations for changes, then this agreement can be used. This is in accordance with POJK No. 35/2018. Standard agreement must not be burdensome to either party.

Financial institutions are part of the functions, duties, and authorities of the OJK to regulate and supervise them based on the Law of the Republic of Indonesia Number 21 of 2011 on the Financial Services Authority (Walukow, 2019). Violations by finance companies will be monitored by the OJK.

This research will discuss overall consumer protection in the relationship between consumers and non-bank finance companies, namely finance companies. The discussion includes standard clauses, imposition of both costs that are written and determined later, and collateral takeover. This research discusses comprehensively the relationship between consumers and non-bank financial institutions. A takeover will be thoroughly discussed, including the fees charged to pay off the loan.

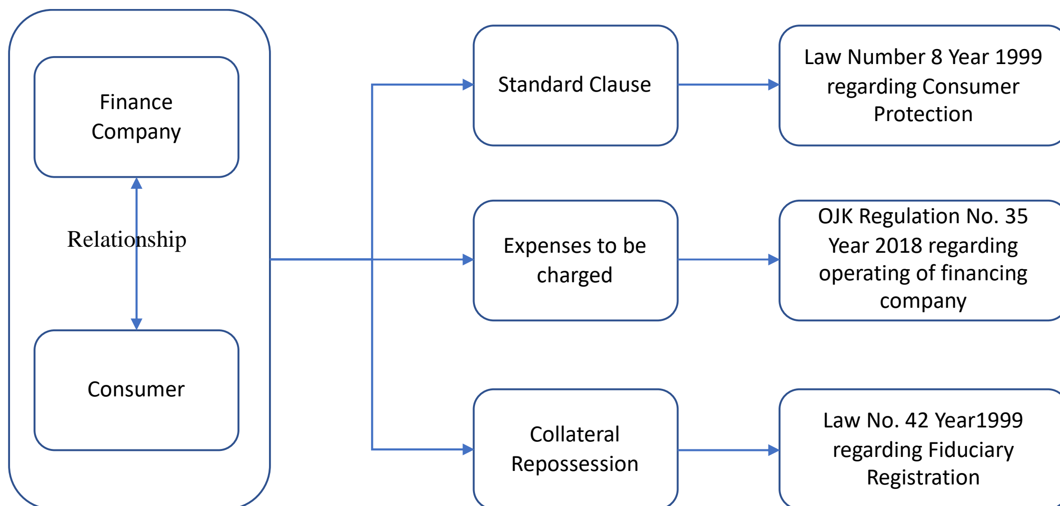

Figure 1 Research Framework, Source: research results

The research framework is presented in Figure 1. This research will focus on 3 main issues, namely how to protect consumers from 3 things, standard agreements,

imposition of obscure fees, and collateral takeover. Each discussion is based on legal basis.

Standard agreements or standard clauses will be linked to the Consumer Protection Act. The Consumer Protection Law does not specifically regulate financial institution customers. Financial Services Authority regulations regulate the protection of consumers of financial institutions. The imposition of fees will be linked to the Indonesian Financial Services Authority Regulation in relation to the operation of a finance company. The takeover or execution of guarantees is linked to the Indonesian Fiduciary Guarantee Law. The discussion in this research is also related to the practice in financing industry.

The research will focus on developing consumer protection in dealing with financial institutions. There is rare discussion specifically regarding the relationship between consumer protection and the financial industry. The research also discusses various aspects of consumer relations with the financial industry such as standard agreements, imposition of obscure fees, and collateral takeover.

METHOD

Based on the background, problem formulation, and previous researches, the research method used is normative legal research method or literature-based law research, involving secondary materials. This research studies ~~on~~ legal principles and norms, legal systematics, and the level of synchronization between statutory regulations, comparative law, and legal history, especially those related to consumer protection. In normative law, this research uses a statutory approach (statute approach), conducting a review of all related laws and regulations (Peter Mahmud Marzuki, 2017). The statutory regulation approach is an approach using regulations and legislation. With this method, research analyzed regulations, adjusted, and identified them with related regulations.

Normative legal research materials involved primary legal materials, secondary legal materials, and supporting legal materials. The primary legal materials used in this research included the 1945 Constitution of the Republic of Indonesia, laws, and other related regulations. Secondary legal materials included literature in the form of legal journals, legal theories, scientific books related to research titles, symposium/seminar results, and scientific articles. Tertiary legal materials explain primary and secondary legal materials (Johan & Ariawan, 2021) .

RESULTS AND DISCUSSION

In accordance with the research background above, there are several things in the relationship between finance companies and customers described as follows:

Standard Clause

A standard agreement involves both a financing or leasing company and a customer or consumer. In the financing agreement, the leasing company has prepared an existing standard agreement, while Consumers or customers just follow and sign it. Consumers cannot negotiate or change the content of this agreement, but they only follow what has been set forth therein.

Finance companies clearly record the content of the agreement in a transparent manner to consumers based on Article 33 - Article 36 of the Indonesian Financial Services Authority Regulation Number 35 of 2018. This arrangement is part of the obligation of a finance company to consumers. This is different from the standard clause in Article 18 of the Indonesian Consumer Protection Law (PK Law). Standard clauses are prohibited by the Indonesian Consumer Protection Law. Business actors are prohibited from including standard clauses whose location or shape is difficult to see or cannot be read clearly, or whose disclosures are difficult to understand. Based on the Indonesian Financial Services Authority Regulation, the financing agreement must be written and contain several matters in accordance with Article 34 of the Indonesian Financial Services Authority Regulation Number 35 of 2018.

In addition, a finance company is required to provide an example of a financing agreement to the OJK at the time of its establishment in accordance with Article 5 of the Indonesian Financial Services Authority Regulation Number 35 of 2018. In addition to the sample agreement, the company is required to attach the products to be marketed and the financing mechanism is carried out. The OJK will give approval for the documents as intended within a maximum period of 20 working days.Indonesian Financial Services Authority needs to determine the types of standard clauses that are permitted and must explain to consumers at the time of signing them. This is in accordance with the Consumer Protection Law and transparency in corporate governance.

Imposition of Fees

Consumers who apply for financing to a finance company are subject to several types of fees. Costs that generally apply are collateral insurance fees, survey or data validation fees, guarantee fees, collateral charging fees, provision fees, notary fees, and other fees as regulated in Article 34 of the Indonesian Financial Services Authority Regulation Number 35 of 2018. In addition to the initial fee, finance companies can also charge other fees, such as interest costs and fines, if they delay the payment in accordance with the Article 37 and Article 38 of the Indonesian Financial Services Authority Regulation Number 35 of 2018.

The interest fee charged to consumers by a finance company is different from the interest charged in general. The calculation of the interest of the finance company at the time of the advertisement is flat or fixed without considering the reduction in installment payments. Effective interest or interest in general is the interest charged in line with decreasing debt balances through installment payments. This results in the wrong perception of consumers in taking financing. Financial institutions provide car financing with 3.99% interest for a 2-year tenure. If we don't realize it, we will have the perception that the interest rate is 3.99% compared to deposit rate which is 5% per year, then financing is cheaper. If we convert the 3.99% tenure of 2 years into the

effective deposit rate, the effective interest will be around 8% per year (Hutauruk, 2021).

In addition to initial fees and late fees, consumers may be charged a takeover fee for the guarantee made by the finance company. This takeover fee is a large fee that depends on the takeover conditions. This fee is a cost that is difficult to determine at the beginning of the financial agreement.

The fee arrangement has been determined, but the amount of the fee has not been determined by the Indonesian Financial Services Authority. Indonesian Financial Services Authority needs to determine the amount of fees that can be charged as well as regulating down payments and the amount of insurance premium that can be given a discount. In addition, the OJK must also determine the types of fees that can be charged from the initial takeover to the completion of the relationship between the consumer and the finance company. The end of this relationship is to end normally or to end in a forced manner. If it ends up being forced, it is necessary to determine the amount of fines, early repayment fees, the cost of taking over collateral, and other costs, including the method of calculating interest.

Takeover of Collateral

Consumers who experience default will have their collateral taken over by finance companies. The consumer has an obligation to repay the loan. The obligation of consumers to make payments is stipulated in the Article 5 of the Consumer Protection Law. Finance companies will take the collateral to cover the consumer's payment obligations. It usually involves the third party to assist with the takeover when it faces hurdles of repossession. The third party will charge fees associated with the execution of this guarantee. The explanation of the takeover process is in Figure 1.

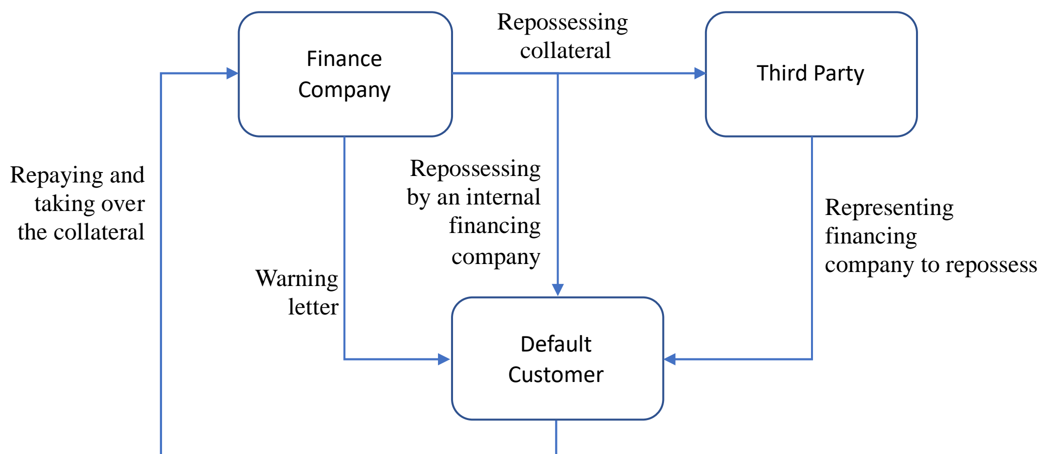

Figure 2 Stages of Takeover of Collateral Items, Source: research results

After the takeover of the collateral, the consumers or customers are given 14 days to make redemption in accordance with the agreement signed between the a customer and a finance company. If a consumer is to redeem collateral by making early repayments, the finance company charges several fees for this early repayment.

The early repayment fees account for around 5% of the total outstanding balance, collateral takeover fees, current interest costs, late fees in case of defaults, and other fees. These costs cause problems for consumers since consumers do not know about these costs in advance, especially the cost of collateral takeover. Consumers also do not know about the interest calculation methods referred to by finance companies.

When consumers intend to pay off or terminate the loan, they will be surprised at the fees charged by finance companies. This has resulted in disagreements over these costs. It will create an unnecessary argument due to unclear arrangement at the beginning.

Takeover of collateral also faces various obstacles. Finance companies must show a registered fiduciary certificate. Finance companies are also required to provide power of attorney to the party that will take over the guarantee. This party is obliged to follow the billing certification.

In accordance with the Decree of the Constitutional Court Number 18/PUU-XVII/2019, the takeover of the guarantee must be based on the court decision or must be performed when the consumer acknowledges that default has occurred. If the consumer does not acknowledge any default, then the collateral must be processed based on a court decision. Finance companies are also subject to a subpoena before submitting the collateral execution to court.

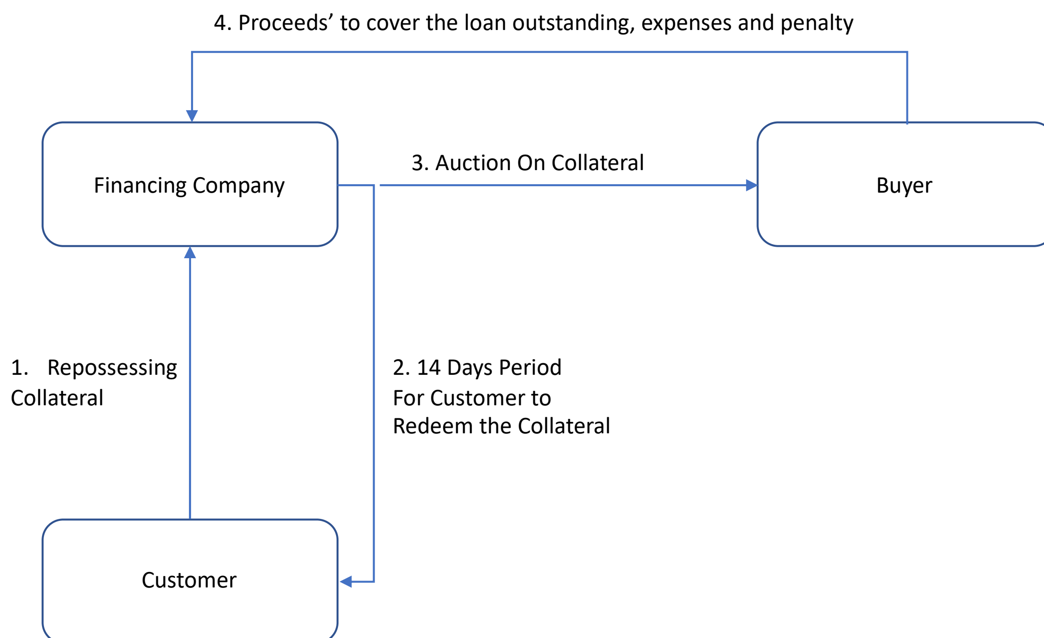

Figure 3 Collateral Sales Closing Process, Source: research results

The authorities need to arrange the process of taking over collateral and redemption of collateral that has been taken over by the finance company. Authority must stand in the middle between finance companies and consumers. Industry needs to grow to support national development; however, the principle of legal certainty for consumers must also be upheld.

Finance companies take over collateral from consumers. Collateral can be in the form of vehicles, electronic goods, or household appliances. Under the existing agreement, the finance company will give 14 days to consumers to make redemption. If within 14 days, a consumer does not make redemption, the finance company will auction off the collateral. Consumers are only aware of these 14 days to redeem because of the standard clause. Proceeds from sales through this auction will be used to cover consumer obligations. Consumer liabilities include loan principal amount, current interest, late fees, and other costs.

At this stage, consumers only know about the procedures for calculating installments, such as the use of an effective interest rate and not a low interest rate as advertised. Late fees and early repayment fines have only recently been realized by consumers due to the use of existing standard clauses. What concerns consumers is the process of selling collateral either through an auction center or by selling according to the internal mechanism of the finance company. Consumers do not know about the sales process, the process of determining the minimum price, or the process of determining the winner.

The process of selling collateral is very important for consumers. The proceeds from this sale are used to cover liabilities. If consumers are unable to cover their shortcomings, consumers will still have obligations to their finance companies. This sales process is very important for consumers whose collateral is taken over. However, consumers do not know this when it occurs, but consumers have an obligation to this sales process.

CONCLUSION

The relationship between consumers and finance companies is a medium for long-term relationship. The consumer's relationship with a finance company is not a short-term transaction and convenient relationship. This relationship is different from the relationship between buying and selling transactions and other service transactions as stipulated in the Law of the Republic of Indonesia Number 8 of 1999 on Consumer Protection. The Consumer Protection Law has yet to regulate the relationship between consumers and financial institutions, especially finance companies. The relationship between the customer and the finance company begins with the existence of a standard agreement/standard clause, fees charged from the beginning to the settlement, and the process of taking over collateral. Regulators have not fully regulated the process from the beginning to the end. Thus, consumer protection is very weak. The authorities need to regulate the procedures for handling consumers regarding standard operation procedures to the standards set for calculating interest such as the highest interest to the highest allowable processing fee. This research is still focused on the financing industry. Other research can be developed by looking at consumer relations in other non-bank financial industries, such as insurance, capital markets, and other investments. In addition, future research could focus on an empirical research on customer relationship management especially between a repeat customer or additional order customer.

ACKNOWLEDGMENTS

Thanks are addressed to the chief editor, reviewers and editor of Legality: Jurnal Ilmu Hukum. To all my lecturers in Faculty of Law, Universitas Tarumanagara, I would like to express my gratitude for their knowledge and support in preparing this article.

REFERENCES

Anggraeny, I., & Al-Fatih, S. (2020). Kata Sepakat Dalam Perjanjian Dan Relevansinya Sebagai Upaya Pencegahan Wanprestasi. *De Lega Lata: Jurnal Ilmu Hukum*, *5*(1), 57–66. https://doi.org/10.30596/dll.v5i1.3446

Arisandy, D. P. (2019). Praksis Hukum Pidana Dalam Perlindungan Konsumen (Studi Kasus Putusan MA No. 1490K/Pid.Sus/2015). *Legalite: Jurnal Perundang Undangan Dan Hukum Pidana Islam*, *4*(1), 142–165.

CNN Indonesia. (2020). Leasing Tetap Bisa Tarik Kendaraan Jika Nasabah Wanprestasi. *CNN Indonesia*.

Fauzi, A. (2017). Benda Bergerak Sebagai Jaminan Hutang Dalam Praktek Leasing. *Jurnal Notarius*, *3*(2), 15–28.

Hutauruk, D. M. (2021). *BCA tawarkan bunga KPR mulai 3,88% dan bunga KKB 2,99% di Expoversary*. Kontan.Com.

Johan, S., & Ariawan, A. (2021). Keterbukaan Informasi Uu Pasar Modal Menciptakan Asymmetric Information Dan Semi Strong Form. *Masalah-Masalah Hukum*, *50*(1), 106–118. https://doi.org/10.14710/mmh.50.1.2021.106-118

Kairupan, A. G. (2017). Tinjauan Yuridis Terhadap Manfaat Lembaga Pembiayaan Sewa Guna Usaha (Leasing) pada Bisnis Modern pada Era Global. *Lex et Societatis*, *5*(3), 125–132.

Khariati, N. D. (2020). Perlindungan Hukum Konsumen Bagi Penarikan Paksa Kendaraan Oleh Debt Collector. *Perspektif Hukum*, *20*(2), 180–202.

Kusuma Hendra. (2020). Leasing Boleh Tarik Kendaraan di Pinggir Jalan, Ini Syaratnya. *Detik.Com*.

Liono, C. E. F., Tooy, C., & Suwikrono, S. (2021). Tinjauan Yuridis Terhadap Penarikan Barang Jaminan Fidusia Secara Paksa Oleh Leasing Melalui Debt Collector yang Ditinjau Berdasarkan Undang Undang Nomor 42 Tahun 1999 Tentang Jaminan Fidusia. *Lex Privatum*, *9*(1), 71–78.

Maliana. (2020). Kredit Macet Saat Pandemi, Debt Collector Ambil Paksa Kendaraan Bisa Terancam 12 Tahun Penjara. *Tribunnews.Com*.

Maulana, A. (2016). *Berapa Tahun Biasanya Orang Kredit Mobil?* Kompas.

Nuriyah, R. (2019). Peranan Kepolisian Dalam Memberikan Perlindungan Terhadap Debitur Dalam Perjanjian Leasing Kendaraan Bermotor. *Dinamika Jurnal Ilmiah Ilmu Hukum*, *25*(15), 1–6.

Peter Mahmud Marzuki. (2017). *Penelitian Hukum: Edisi Revisi* (Cetakan ke). Kencana. https://books.google.co.id/books?id=CKZADwAAQBAJ&printsec=frontcover&dq=Marzuki,+Peter+Mahmud,+(2014),+Penelitian+Hukum,+Cetakan+ke-9,+Jakarta:+Kencana+Media+Group.&hl=id&sa=X&ved=0ahUKEwiNlIjqlbTpAhXWWisKHWktCXAQ6AEIMjAB#v=onepage&q&f=false

Prayutiz, Y., Yulianti, R., & Yutika, I. (2020). Perlindungan Hukum Dalam Sengketa Antara Konsume Kendaraan Bermotor Dengan Lembaga Pembiayaan

Dihubungkan Dengan Undang Undang Nomor 8 Tahun 1999 Tentang Perlindungan Konsumen. *Pakuan Justice Journal of Law*, *01*(01), 75–90.

Rahman, A. A. (2020). Perlindungan Hukum Bagi Konsumen Dengan Adanya Klausul Eksenerasi Dalam Perjanjian Baku Sewa Guna Usaha (Leasing). *Alhurriyah: Jurnal Hukum Islam*, *05*(01), 96–114.

Ramadhan Ardito. (2020). Putusan MK: Leasing Tak Boleh Lakukan Penarikan Sepihak, Harus lewat Pengadilan. *Kompas.Com*.

Shelyn, M. N., & Anggrani, T. A. M. (2019). Perlindungan Konsumen Pengguna Jasa Keuangan Non Bank Dalam Perjanjian Pembiayaan (Contoh Kasus: Perusahaan Pembiayaan PT. Adira Finance vs Konsumen). *Jurnal Hukum Adigama*, *2*(2), 1–24.

Triwanto. (2019). Perlindungan Hukum Konsumen Leasing Terhadap Pencantuman Klausula Baku Dalam Perjanjian Kredit. *Research Fair Unisri*, *3*(1), 355–364.

Umasugi, R. A. (2020). Polisi Minta Masyarakat yang Kendaraannya Dirampas Paksa Pihak Leasing untuk Melapor. *Kompas.Com*.

Walukow, S. N. (2019). Perjanjian Pembiayaan Kendaraan Bermotor Menurut Hukum Perlindungan Konsumen. *Lex et Societatis*, *7*(1), 5–12.

Wareza, M. (2020). Debt Collector Dilarang Tarik Kendaraan, Begini Menyikapinya. *CNBC Indonesia*.

Yudistika, B. C., & Putrawan, S. (2018). Kajian Hukum Mengenai Eksekusi Jaminan Fidusia oleh Pihak Leasing secara Sepihak. *Kertha Semaya: Jurnal Ilmu Hukum*, *6*(7), 1–15.

Yulianti, C. E. (2019). Perlindungan Hukum Perusahaan Leasing Terhadap Terjadinya Penggelapan Objek Jaminan Fidusia. *Dinamika Jurnal Ilmiah Ilmu Hukum*, *25*(1), 1–8.