

A Review of Islamic Law on Overmacht Settlement (Case Study of Ijarah Practice on Car Rental Campus)

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ABSTRACT

The purpose of this study was to determine the settlement of the overmacht cases on car rental practices and to analyze them of Islamic legal views. This study uses a type of field research with qualitative descriptive methods to find field data in words and pictures. This research was conducted by conducting interviews with two customers as the tenant and one person as the owner of the rental car. The purpose of this interviews is to obtain detailed information and a direct description of the *ijarah* object. The findings of this study indicate that the settlement of overmacht cases that occur in the practice of *ijarah* car rental is very contrary to Islamic law because there are many differences are found in the settlements applied by the car rental owner. The results showed that the implementation of the car rental *ijarah* contract on Campus Car Rental has weaknesses in the form of unclear warranties related to overmacht. According to Islam, this research also shows that in the context of an overmacht (accidental accident), it is a risk that must be borne by the car rental owner. The renter is not responsible for this if the renter is proven not to cause damage but in a compelling situation. This study suggests car rental parties to provide clarity of evidence of accidental injury and to cooperate with insurance companies to minimize losses.

Keywords: *Overmacht, Ijarah, Car rental, Islamic legal view*

ABSTRAK

Tujuan penelitian ini adalah untuk mengetahui penyelesaian kasus *overmacht* pada praktek sewa mobil dan menganalisisnya dalam pandangan hukum Islam. Penelitian ini menggunakan jenis penelitian lapangan dengan metode deskriptif kualitatif untuk mencari data-data lapangan berupa kata-kata maupun gambar. Penelitian ini dilakukan dengan melakukan wawancara terhadap dua orang *customer* sebagai pihak penyewa dan satu orang sebagai pemilik sewa rental mobil. Tujuan dari wawancara tersebut adalah untuk memperoleh informasi dan gambaran dari objek *ijarah* secara terperinci. Temuan dari penelitian ini menunjukkan bahwa penyelesaian kasus *overmacht* yang terjadi dalam praktek *ijarah* rental mobil sangat bertentangan dengan hukum Islam karena banyak ditemukan perbedaan pada penyelesaian yang diterapkan oleh pemilik sewa rental mobil. Praktek *ijarah* pada Campus Rental Mobil memiliki kelemahan dalam bentuk ketidakjelasan akad yang berkaitan dengan *overmacht*. Penelitian ini juga menunjukkan bahwa *overmacht* (kecelakaan yang tidak disengaja) menurut Islam merupakan resiko yang harus ditanggung pemilik sewa mobil, sehingga pihak penyewa tidak bertanggung jawab akan hal tersebut jika terbukti tidak menyebabkan kerusakan melainkan atas keadaan memaksa. Penelitian ini menyarankan

para pemilik rental mobil untuk menyediakan kejelasan bukti kerusakan tidak disengaja dan bekerjasama dengan pihak asuransi untuk meminimalisir kerugian.

Kata Kunci: Overmacht, Ijarah, Rental mobil, Tinjauan hukum Islam

INTRODUCTION

Economic activities carried out by the community include buying and selling, renting goods and services. At this time car rental is quite popular among the public and students who need a vehicle as a means of traveling long distances to their destination. Because the cost of buying transportation is not cheap, therefore car rental is a solution for people who need a means of transportation which in Islamic principles is a transfer of the benefits of goods from one person to another called *ijarah*. However, several problems were found in the practice of *ijarah* car rental around the Muhammadiyah Surakarta University campus that abused the principle of *ijarah* (Aruni, 2013).

Sale and purchase contracts and leases (*ijarah*) are *muamalah* contracts that are often carried out by everyone to fulfill their daily needs, both through business and trade. Because buying and selling and renting contracts are easy strategies to get profits in business. The two *muamalah* contracts have the same substance as buying and selling, because both the lease and sale contracts have the same goal of transferring ownership. The difference between the two contracts lies in the object of ownership. If in a sale and purchase contract, the object of ownership is the substance of the goods as well as the benefits without being limited by time, while in the lease contract (*ijarah*), the object of ownership is the benefit of the goods which are limited in time (Harun, 2017).

Basically, *ijarah* has terms and conditions. In addition, the pillars of *ijarah* itself have an object and will be disabled if there is no object. If reviewed, the *ijarah* lease includes many things in the form of objects that are rented according to what is desired. Then the maintenance fee is deferred to the owner of the lease, but there is legal uncertainty about the goods being rented in the event of an accident beyond the control of the tenant (*overmacht*).

This study aims to determine the settlement of *overmacht* in car rental cases and the view of Islamic law on *overmacht* cases. This research is expected to serve as reference information for entrepreneurs and the public to be more aware of the procedures in car rental in the Islamic view of the *overmacht* case.

LITERATURE REVIEW

Rental Overview (Ijarah)

In Islam the lease is called *al-ijarah*. Etymologically, *ijarah* means "wages" or "replacements" or "rewards". Meanwhile, in terminology, it is taking the benefits of an object by replacing it (Prof. Dr. H. Idri, 2008).

According to Karim, the goods to be rented must be optimally prepared by the renting party so that they can be used by the tenants. For example, the battery is weak in the car so that it can't be used, then the rental party must replace it first. If the lessor is unable to repair it, the tenant has the option to cancel the contract or receive the damaged benefits. If this is the case, the renter can reduce the rental price in advance with the cost of repairing the damage.

The end of the *ijarah* (*intiha al-ijarah*) as explained by Burhanuddin (2009) in addition to the fact that the goal was achieved was also due to the cancellation of:

- 1) If the purpose of the contract has been achieved, then the *ijarah* will end automatically. If the purpose of the *ijarah* contract has been achieved, it means that the lessee (*musta'jir*) has benefited (*ma'jur*) from the object being leased. And conversely, the party who rents out (*mu'jir*) has received compensation in the form of compensation (*ujrah*).
- 2) According to Hanafiyah scholars, if one of the parties to the contract dies, the *ijarah* can end. Because according to this opinion the heirs do not have the right to continue it. However, according to the majority of scholars, the *ijarah* contract is not canceled because of the death of one of the parties, because of the inheritance of the right.
- 3) Damaged *ijarah* objects, so that their benefits cannot be taken. However, there are opinions of several scholars who state that if the damage to the rental property can still be replaced, it will not cause the *ijarah* contract to expire.

Definition of Overmacht

In a state of neglect, there are 2 factors that encourage a person to make mistakes. The first factor is not possible to avoid or beyond their capabilities (*overmacht*) such as natural disasters, theft, or accidents. While the second factor is due to lack of professionalism in doing work which makes mistakes made so that one party suffers a loss.

Overmacht is an urgent situation beyond the ability of the debtor which can prevent the debtor from fulfilling his achievements. This is regulated in book 3 of the Civil Code concerning engagements (Zulkarnain, 2015). *Overmacht* or in Dutch is called *force majeure* which means a state of compulsion. It can also be interpreted as a situation in which the debtor defaults to the creditor after the contract occurs, where the debtor cannot be blamed and does not bear the risk and cannot predict when the contract was made due to events that are beyond the limits of his ability (Hardianto, 2010). In general, *overmacht* regulations are contained in the *Bagian Umum Buku III KUHPerdata* (Miru, Ahmadi, 2008):

- 1) Pasal 1244 KUHPerdata: If there is a reason for that, the debtor must compensate for costs, losses, or interest if he cannot prove that it was not or not at the time the engagement was carried out, due to an unexpected thing, he cannot be held responsible, all of which, too, is not bad faith. is on his side.
- 2) Pasal 1245 KUHPerdata: It is not necessary to replace costs, losses, or interest if due to forced circumstances or accidental events the debtor is unable to provide or do something that is required, or because of the same things a prohibited act is carried out.
- 3) Pasal 1444 KUHPerdata: If certain goods become contracted goods, are destroyed, can be traded again, or are lost in such a way that it is not at all known whether the goods are still there, then the agreement is terminated, provided that the goods are destroyed or lost beyond the fault of the debtor and neglect to deliver them.

METHODS

This type of research uses field research with qualitative descriptive methods. The author conducts research in detail and is formed with field data in the form of words and pictures (Moleong, 2018). In this study, researchers look for data that has occurred in car rentals at the Car Rental Campus which is located east of Pabelan field (Pabelan gas station to the north 50 meters) precisely at Pabelan Ruko Complex, St. Pabelan 1, Kartasura.

This study uses interviews as one of the methods used to obtain information directly from an object that is examined in detail, starting from how to borrow, loan collateral, car rental payments, and other provisions. Interview activities in this study were conducted on

three respondents, namely one car rental owner and two students as customers of the tenant who had experienced overmacht cases as the author is currently researching.

In addition, this study documents what is in the Car Rental Campus in the form of notes, documents, and photos as authentic evidence in obtaining the results of the research. The data analysis used in this qualitative research is deductive or deductive. This data analysis is used in the process of finding the real problem, then building hypotheses and conducting field observations by testing the actual data (Moleong, 2018).

RESULTS

In this study, the author will analyze overmacht in car rental, cases that have occurred, and efforts to resolve overmacht. In this study, there are two problems for the overmacht case, in the first and second cases, which resulted in accidental damage to the car or commonly known as overmacht which caused the lessee to be responsible for the negligence.

The DSN fatwa NO: 09/DSNMUI/IV/2000 discusses the financing of *ijarah*. It is stated that if the leased item is damaged not because of the permissible violation of the tenant nor because of the tenant's negligence in maintaining it, then he is not responsible for the limit of the damage. Based on the fatwa above, the lessee is not obliged to bear the loss for damage to the rental property if it is proven that he has committed an overmacht (unintentional accident) because it is beyond his capacity.

This is related to Pasal 1564 KUHPperdata which reads: "The tenant is responsible for all damage issued to the leased property during the rental period, unless he proves that the damage occurred beyond his fault". In this case, the tenant must be able to prove that the damage to the car he rented occurred outside of his negligence.

According to Ahmad Miru in the book of Contract Law and Contract Design, not all overmachts are free from the responsibility of the lessee, therefore it is necessary to investigate whether the incident was truly an overmacht or an artificial or engineered thing. If there is true damage or loss, then the problem is seen first whether there is an element of negligence or intentional or not.

DISCUSSION

Overmacht Cases

Based on the results of research and field surveys with car rental parties, they found many complaints related to overmacht cases (unintentional accidents). They stated that the rental party did not respond to cases of overmacht incidents even though there was evidence or witnesses involved. The following are the results of the author's interview with the tenants:

- 1) There was a car paint beret that happened to a tenant. According to interviews, the tenant said that the paint beret occurred because of irresponsible people. The chronology of the incident occurred during the return journey from Jepara to Solo, where in the middle of the trip there was a road project asking for donations, but the tenant just drove and did not respond to the person. When arriving in Solo, without the knowledge of the tenant, there were long paint scratches on the right side of the car as if it was rubbed with a hard object, but when returning the car, the rental party asked for compensation of Rp. 600,000, but the tenant objected and asked for a reduction in the price to Rp. .300,000.
- 2) The case that happened to one of the car tenants. The incident occurred when he was about to return a rental car during a Solo-Jogja trip. There was a woman who was a motorcycle rider who suddenly came out of the alley into the middle of the road, because

to avoid the mother the renter stopped the car and turned the steering wheel to the right of the road and the tire hit the pavement causing damage to the ass, rims, tires and some dented car body. Then the tenant reports the incident to the rental party, then the rental party picks up the car with a tow truck service. After the car was inspected, the rental party also charged the renter with damages of up to Rp. 30,000,000.

Overmacht Case Resolution On Campus Rental Mobil

Based on the results of the author's interview with the owner of the Campus Rental Car rental car, the rental contract agreed at the beginning is a legal basis for the responsibility of the tenant. The lease agreement contract is actually a mutually beneficial contract for both parties, so they do not pay close attention if there is an Overmacht issue, even though this Overmacht event can happen anytime and anywhere because it does not know the time. The things that cause Overmacht are not human engineering but events that come suddenly and can happen at any time.

For proof by the Campus Rental Car, if it is true that the Overmacht incident occurred, the rental party will take into account first and conduct a crime scene directly with the car rental owner. And there are several provisions in the event of an Overmacht accident which has two solutions, namely in the following way:

The first way:

1. Pay an insurance claim of IDR 300,000 and a maximum of IDR 500,000
2. Pay compensation of 50% of the car rental price during the car repair period
3. The maximum amount of compensation is calculated within a period of 5 months.

The second way:

1. Bring the damaged car to the repair shop (workshop) according to the tenant's wishes.
2. 100% loss is charged to the tenant
3. Do not pay compensation (only pay rent during usage)

Meanwhile, if the tenant is unable to pay directly the amount of the loss, it can be repaid in installments on condition that the guarantee is held until the compensation is paid off. And if the tenant uses the driver service provided by the tenant, then it is free from the burden of accident responsibility. The campus car rental party only waives fees if there is damage to a consumable car component such as the campus rental car's negligence in checking the clutch, brake, radiator water, car battery, etc. which are exhausted because they have been used for a long time and require replacement. Any damage other than that is borne by the lessee.

Case Analysis of Overmacht

Based on the results of research conducted by the author on the cases that occurred to the two tenants, both of them experienced overmacht due to circumstances that could not be avoided by both of them when driving the car which they rented. For settlement efforts made by the Campus Rental Car, if an overmacht event occurs, the loss is borne by the tenant in accordance with the applicable provisions above. So, when viewed in this case, of course, the obligation to compensate for the damage to the rented car is very detrimental to the tenant.

Related to the function of the goods is the tenant's mandate and must be maintained as well as possible. Damage caused by negligence is the responsibility of the tenant. Meanwhile, in the context of overmacht (unintentional accident) is the risk of the car rental

owner, the lessee is not responsible for this. Regarding compensation/risk here, which is charged to the lessee, it is one of the parties who feels disadvantaged in terms of material.

If there is an *overmacht*, the lessee must really experience damage to the agreed object and there is no element of fraud. If one of the parties is proven to have engineered, then the party who carried out the engineering is obliged to compensate for the loss of the goods. According to Pasal 1244 KUHPerdata in a state of coercion there must be elements of *overmacht* as follows:

1. There is an event that prevents the tenant's obligations
2. There is no element of wrongdoing on the tenants for the occurrence of the obstruction event.
3. Can't predict beforehand.

Next, on Pasal 1245 KUHPerdata states that "There will be no reimbursement of costs, losses, and interest if it is caused by compelling circumstances or due to things that happen unintentionally". From the Pasal 1244 and 1245 KUH Perdata, it can be concluded that the two articles discuss the same thing, namely releasing or not being charged with compensation for someone who experiences something that is unintentional or beyond his ability.

However, in an *ijarah* lease, the party doing the *overmacht* is required to prove the occurrence of an unforeseen event that causes the lessee to be unable to fulfill an obligation on the lease or can be said to have violated the terms of the lease by something unintentional. By submitting a self-defense, the lessee can show that he is not guilty of unintentional events and things that occur beyond his control that led to an event arising from the situation. This provision provides relief to the lessee not to reimburse the cost and compensation for damage to the goods he borrowed for circumstances that occurred beyond his fault and were unexpected.

The purpose of proof is to strengthen the truth of the arguments about the facts at hand. A very important issue in the law of proof is part of the burden of proof. In the distribution of the burden of proof, it can be seen who can bear the burden of proof. The distribution of the burden must be done as fairly as possible and not one-sided. But on the Pasal 1244 and 1245 KUHPerdata as explained above, this article provides an exemption on the burden of damages if the tenant can prove the occurrence of the event due to a compelling circumstance or an unintentional event (*overmacht*).

If the *overmacht* is proven to be fabricated or engineered, it indicates that one of the parties intentionally made a mistake. In contract law it is said that one of the cancellations of the agreement is a fraud that is listed in the pasal 1328 KUHPerdata or due to negligence, then the other party can claim their rights legally.

Overmacht is one of the risks in leasing which in the agreement is generally the obligation to be responsible for losses caused by events that occur to one of the parties due to unintentional accidents. The risk of renting that is regulated in the Pasal 1553 KUHPerdata it is stated that if the goods occur outside the fault of one of the parties, then the lease agreement is null and void by law. Likewise in the rental business, if an event occurs beyond the limits of ability and the party has proven that he is not guilty of this, the landlord is not entitled to ask for compensation because the lessee is not obliged to pay for the loss, but it is a risk that must be taken. borne by the owner of the lease as a businessman.

In the *sharia* provisions, the *fiqh* rules regarding *ijarah* or leasing are contradictory in terms of carrying out excessive responsibilities. Basically, Islamic law has a concept of justice where no one in any business guarantees a profit, so that if there is an accidental consequence

that is unintentional in the real sense, the party who rents it should dare to take action according to the concept of *ijarah* car rental according to the provisions in Islam.

The provisions of the contract at the beginning are something that is justified in Islam. These provisions are made in writing and accepted by both parties (the pleasure of both parties) in order to maintain the vigilance of the owner of the lease on the assets owned from anything that harms him. Basically, contracts are made for mutual benefit and not to harm or harm the other party. However, if an *overmacht* event occurs and the lessee can prove that the incident was not a negligence or fault of his or her, then the renting party should bear all the risks because the situation is beyond the control of the lessee. Such case cannot be solved by a straightforward '*urf* theory (Athief, 2019).

CONCLUSION

From the research above, it can be concluded that the implementation of the *ijarah* contract for renting a car at the Campus Rental Car has weaknesses in contracts related to *overmacht* so that many agreements are still unclear in making compensation decisions. Whereas in Islamic law it has different characteristics of *overmacht* with renting a Campus Rental Car.

The unilateral decision given by the Campus Rental Car owner in the implementation of compensation resulted in the renter under any circumstances having to replace the rented car and in the event of accidental damage (*overmacht*) the rental party did not want to be involved because according to the tenant, every car is a productive asset that every day rented at a price or money.

In Islamic law, the function of goods is a mandate in the hands of the lessee and must be maintained as well as possible. If there is damage due to negligence is the responsibility of the tenant. Meanwhile, according to the Islamic view, the context of *overmacht* (unintentional accident) is a risk that must be borne by the car rental owner, so that the renter does not need to be responsible for this if the renter is proven not to have caused damage but to a forced situation. The matter of compensation here is very contrary to Islamic law. The Campus Rental Car charges the renter for the loss which causes the tenant to feel more disadvantaged in terms of material even though *overmacht* is a risk from the rental owner.

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