



## Legal Protection for Consumers who Experience Motorcycles in Secure Parking by PT. Securindo Packtama Indonesia (Study of Supreme Court Decision Number 2078/K/PDT/2009)

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### ABSTRACT

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This research aims to find out the legal protection for consumers due to the loss of motorcycles in secure parking and to find out the legal considerations of judges in deciding Supreme Court Case Number 2078/K/Pdt/2009. The research method used by the author is normative juridical research conducted using a statutory approach and a conceptual approach. The results showed that consumer legal protection is provided through Article 18 of Law Number 8 of 1999 concerning Consumer Protection which provides a prohibition on making standard clauses for business actors. Regarding the legal considerations of the judges in deciding Supreme Court Case No. 2078/K/Pdt/2009, it is an appropriate decision because the concept of parking is included in the agreement of entrusting goods and in accordance with Article 1469 of the Civil Code, business actors are obliged to provide compensation to consumers. There are two legal protections for consumers, namely internal and external legal protection. In addition, the existence of DKI Jakarta Regional Regulation Number 5 of 2012 concerning Parking has brought significant changes to the parking system in the DKI Jakarta area.

### KEYWORDS:

Agreement,  
Responsibility,  
Internal, External

### 1. INTRODUCTION

The parking business in the regions is generally a business that gets special attention, especially for local governments because the income from this parking business can be one of the sources of regional income that has a lot of value. This can be seen from the existence of local governments that issue or make special regulations regarding parking in an area. Thus, the parking business is a business that can be said to be quite promising in terms of income, especially in big cities, the parking management business can be a business that is often found.

Standard agreements cannot be separated from the existence of additional clauses, in addition to the main clauses contained in the agreement. An additional clause is an exoneration clause. What is meant by an exoneration clause

is a clause that contains conditions that limit or even completely eliminate the legal responsibility that should be imposed on the manufacturer / product distributor (seller) (Shidarta, 2000).

The standard clause in the parking management business that is often found is the transfer of responsibility made in the form of an agreement between the parking manager and consumers which then proves the imbalance of legal protection for consumers. This agreement is usually contained in the parking ticket, where the parking ticket contains a clause regarding goods or vehicles that are lost or damaged are not the responsibility of the parking manager.

One example of a case that has occurred was experienced by Sumito Y. Viansyah who lost his motorcycle in the parking lot of Fatmawati Hospital, South Jakarta, which is managed by PT Securindo Packtama Indonesia. Sumito Y. Viansyah's motorcycle was lost on October 09, 2006. After the motorcycle belonging to Sumito Y. Viansyah was lost, Sumito Y. Viansyah wrote a letter to PT Securindo Packtama Indonesia to be asked for compensation. However, PT Securindo Packtama Indonesia as the parking manager cannot provide liability based on Article 36 paragraph (2) of DKI Jakarta Regional Regulation Number 5 Year 1999 stipulates that loss is the responsibility of the parking lot user.

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Before the consumer filed a lawsuit against the parking manager to the Court, the consumer as the plaintiff had complained to PT Securindo Packtama Indonesia as the defendant about this incident at BPSK (Consumer Dispute Resolution Agency), and the defendant was only willing to provide compensation of Rp. 7,000,000, - (seven million rupiah). However, Sumito Y. Viansyah as the plaintiff rejected the offer made by the defendant because the value proposed was far below the losses suffered by the plaintiff. So that the mediation conducted at BPSK failed and the process was terminated.

After mediation with BPSK (Consumer Dispute Resolution Agency) failed, the plaintiff filed a lawsuit with the Central Jakarta District Court with Case Number 345/PDT.G/2007/PN.JKT.PST. After the decision of the Central Jakarta District Court was issued, the Defendant filed an appeal and the decision of the District Court was overturned by the DKI Jakarta High Court with decision No. 513/Pdt/2008/PT.DKI.JKT on December 22, 2008. After the final decision was received by the plaintiff and the defendant, the plaintiff and the defendant each filed a cassation application. However, on November 5, 2010 there was a decision from the Supreme Court which rejected the cassation petition from both the Petitioner of Cassation I, namely PT Securindo Packtama Indonesia and the Petitioner Cassation II, namely Sumito Y. Viansyah.

Consumers demand responsibility from the parking manager regarding the loss of vehicles that have been entrusted to the parking manager. Meanwhile, the parking service manager does not want to take the risk of losing the vehicle experienced by consumers. The parking manager argues that lost or damaged goods or vehicles are not the responsibility of the parking manager, but the responsibility of the vehicle owner. Where the reason is already listed in the ticket given by the parking officer to the vehicle owner. Therefore, consumers are the party who most often feel the loss in a cooperation contract between the parking manager as a business actor and the vehicle owner as a consumer.

In Indonesia, there are regulations regarding the relationship between consumers and business actors. These regulations are contained in the Law of the Republic of Indonesia Number 8 of 1999 concerning Consumer Protection. In Article 1 paragraph (1) of the Consumer Protection Law, it has been explained that consumers are parties or people who use goods / services that already exist both for their own benefit and for the benefit of others with a note that it is not enforced by sale and purchase. Therefore, the form of protection given to consumers must cover all matters that aim to prevent consumers from feeling harmed.

Based on the description above, the author is interested in discussing the problems that arise in a scientific work in the form of a thesis with the title Legal Protection of Consumers Who Experience Motorcycle Loss in Secure

Parking by PT Securindo Packtama Indonesia (Study of Supreme Court Decision Number 2078/K/Pdt/2009)?

## **II. MATERIALS AND METHODS**

The type of research used by the author is juridical normative research, namely legal research conducted by examining library materials or secondary data. (Soerjono Soekanto dan Sri Mamuji, 2013). The approach used in legal research is the Legislative Approach and Conceptual Approach. (Peter Mahmud Marzuki, 2021)

## **III. RESULTS AND DISCUSSION**

### **A. Forms of Legal Protection for Consumers Who Experience Motorcycle Loss in Secure Parking**

Legal protection according to M. Isnaeni is the theory of civil legal protection. According to him, legal protection when viewed from its legal source is divided into two, the first is internal legal protection and also external legal protection.

According to M. Isnaeni, what is meant by internal legal protection is legal protection that is structured on the making of an agreement by the parties, where at the time of drafting the contract clause, then the parties have a goal for their interests to load on the basis of an agreement. In this way, all kinds of risks are attempted to be overcome through the contract clauses that have been mutually agreed upon. Meanwhile, what is meant by external legal protection is a legal protection provided by the authorities for weaker interests based on statutory regulations by not taking sides with one party, and must provide equal legal protection to other parties. External legal protection is made as an effort to prevent injustice, arbitrariness against other parties and also avoid harm to other parties. (Dwi Armelia, 2021).

PT Securindo Packtama Indonesia is a business entity that has a license from the government to carry out business activities, namely electronic parking management services located in buildings, hospitals, malls, or offices. Having permission from the government makes the business entity legal in entering into an agreement because it has fulfilled one of the requirements, namely being competent. Then the legal relationship arising from this event is an agreement, more specifically, the goods storage agreement between PT Securindo Packtama Indonesia as a Business Actor and Sumito Y. Viansyah as a consumer, where the consumer entrusts the motorcycle in a place that has been managed by PT Securindo Packtama Indonesia and the consumer has agreed to all agreements contained in the parking ticket.

In essence, the parking management business is a business to secure vehicles entrusted by the owner or driver, where the services of the parking manager will be rewarded with the tariff fees listed on the parking ticket according to the length of time the vehicle is entrusted. Therefore, the

parking manager should hold the mandate and responsibility related to the business that has been managed in the area.

The legal construction of the agreement between the parking manager and the vehicle owner is still unclear whether this parking management practice is included in a custody agreement or a lease agreement. An agreement is an agreement, an agreement between two or more people to carry out an action (R. Subekti dan R. Tjitrosue, 2005).

In the rental concept, the owner of the places who rents out is considered to have no responsibility for the loss of goods or vehicles placed on the leased land. Leaseholding is regulated in Article 1548 of the Civil Code which states that leasing is an agreement in which one party binds himself to give the enjoyment of an item to the other party for a certain time, with the payment of a price which the latter agrees to pay. Thus, the property rights of the goods remain with the renting party.

When viewed from the mechanism, parking management practices can also be categorized as entrusting goods. This is because the parking users intend to entrust goods to someone who provides parking services with the intention that the vehicle used is safe and guarded by the parking service manager. In Article 1694 of the Civil Code, there are obligations of the trustee as a party in the entrustment of goods agreement, namely storing the entrusted goods, maintaining the entrusted goods, and then returning the entrusted goods. The obligation to maintain entrusted goods is calculated from the commencement of an agreement and delivery of goods. Maintenance must be carried out by providing certainty over the safety of the goods, in accordance with the nature of the contents of the agreement coupled with an attitude of good faith (Yahya Harahap, 1982).

This parking practice is a custody agreement, then in accordance with Article 1367 of the Civil Code which states that a person is not only responsible for losses caused by his own actions, but also for the actions of his dependents or goods under his supervision. The provisions in the clause explain that the obligation of the trustee is to maintain and care for the goods that have been entrusted to him.

Parking passes or tickets are proof of a legal relationship between business actors and consumers, so that if there is damage or even loss of motorized vehicles that have been deposited, the business actor as a parking manager is obliged to be responsible to consumers according to the agreed nominal (Dhira Yudini, 2008). Based on Articles 1706 and 1714 of the Civil Code that any damage or loss of vehicles in the parking area is the responsibility of the parking manager, therefore the responsibility of the parking manager to consumers is to return the consumer's vehicle to its original condition.

In practice, many businesses actors transfer their responsibilities to parking customers, where the transfer of responsibility is stated in the banner or has been stated on the

parking ticket unilaterally. This is part of the standard clause which contains the transfer of responsibility or avoidance of the payment of compensation in whole or in part either due to acts of default or an act against the law (Ida Bagus Prakosa). Article 18 paragraph (1) of the Consumer Protection Law explains that business actors are prohibited from making or including standard clauses in every agreement. The impact of the presence of the exculpatory clause is very detrimental to the position of consumers because business actors have no legal responsibility at all.

DKI Jakarta Regional Regulation Number 5 of 2012 on Parking is a form of external protection. The updating of this regional regulation aims to improve the quality of parking in the Jakarta area and the presence of this new regulation can also be used to resolve a dispute or problem.

#### **B. Judges' Legal Considerations in Deciding Supreme Court Case Number 2078/K/PDT/2009**

The judge's consideration is the reason used by the judge as a legal consideration to be the basis for deciding a case which is the judge's decision which is caused by the material facts (L.P.M. Ranuhandoko, 2003). In the Supreme Court Decision Number 2078/K/Pdt/2009, there is a different interpretation from the decisions of the District Court and High Court.

In the case experienced by Sumito Y. Viansyah as the owner of a motor vehicle who lost the vehicle when leaving the vehicle to the parking business at a Fatmawati Hospital in the south Jakarta area where the place was managed by PT Securindo Packtama Indonesia. His Honda Tiger motorcycle was lost when he left it with the parking lot manager. As a result of the incident Sumito Y. Viansyah as the owner of the motorcycle as well as consumers in the parking lot demanded compensation from PT Securindo Packtama Indonesia as the business actor and had also reported it to the authorities, namely the Police.

However, PT Securindo Packtama Indonesia refused on the pretext that the loss of the motorbike in the place he managed was not the negligence of the officers who were on guard and not their obligation to compensate in accordance with what Sumito Y. Viansyah wanted. This was further stated in the argument that the incident was an incident that occurred due to unavoidable coercion from outside the cassation applicant.

Sumito Y. Viansyah who suffered a loss then complained about this incident to BPSK (Consumer Dispute Resolution Agency) and then mediation was carried out between the consumer and the business actor, but PT Securindo Packtama Indonesia only wanted to make compensation in the amount of Rp. 7,000,000, - (seven million rupiah), far from what Sumito Y. Viansyah requested, which was Rp. 20,000,000, - (twenty million rupiah), so with this there was a failure in the mediation stage between the business actor and the consumer at BPSK. Then Sumito Y. Viansyah filed a lawsuit to the Central Jakarta District Court

and demanded the business actor to make compensation, but PT Securindo Packtama Indonesia rejected the lawsuit and appealed to the Jakarta High Court. After the first level appeal decision was decided by the Jakarta High Court, PT Securindo Packtama Indonesia then filed a lawsuit to the Supreme Court for Cassation.

Judges of the Supreme Court (MA) in issuing their decisions make various considerations. The Court of Appeal's decision overturning the District Court's decision basically agreed with the District Court's considerations except regarding the amount of compensation and the 4th ruling which reads "Punishing the Defendant to no longer include a standard clause transferring responsibility on parking tickets that contains : "Insurance of the vehicle and its contents and all risks for all damages and losses to the parked vehicle and its contents are the responsibility of the vehicle owner (no reimbursement of any kind from the parking provider)" as there is no direct link to the issue of loss, it must be rejected. That then based on Jurisprudence that the legal relationship between vehicle owners and parking entrepreneurs is a "Custody Agreement", which if connected with Articles 1365, 1366 and 1367 of the Civil Code, the Defendant is obliged to bear the loss of the Plaintiff's motorcycle at the Defendant's management place so that with the loss of the Plaintiff's motorcycle the Defendant must be responsible;

Considering, that based on the above considerations, it is also evident that the decision of the *Judex Facti* (High Court) in this case is not contrary to the law and/or the law, the cassation petition filed by Cassation Petitioner I : PT Securindo Packatama Indonesia (Secure Parking) and Cassation Petitioner II: Sumito Y. Viansyah must be rejected; Considering that because the cassation petition of the Cassation Petitioners is rejected and the Cassation Petitioner I / Defendant is on the losing side, the Cassation Petitioner I / Defendant is ordered to pay court costs at this cassation level.

That the High Court is the level court the appeal can take over the consideration of the District Court which it considers to be correct and correct and make it its own consideration;

From the various legal considerations of the judges described above in deciding the lawsuit, the lawsuit rejected by the Supreme Court in this Cassation is correct, because the first plaintiff, Sumito Y. Viansyah as a consumer, did not include Article 1320 of the Civil Code in his lawsuit which caused no legal ties between him as a consumer party and PT Securindo Packtama Indonesia as a business actor.

There is a difference in understanding between PT Securindo Packtama Indonesia and Sumito Y. Viansyah and the judges regarding the parking principle used in deciding the case. At the first court, appeal, and cassation levels, judges from the District Court, High Court, and Supreme Court used the principle of entrusting goods to the parking lot. This is based on the fact that the Plaintiff's motorcycle disappeared when connected to the goods entrustment agreement that had

occurred between the Plaintiff and the Defendant, then the Defendant as the parking manager has legal responsibility for the loss, because the Defendant's officers as parking managers are responsible for adequate supervision and security of the entrusted goods, considering that it is impossible for a motorcycle to leave the area without showing a "parking ticket" or proof of STNK (Vehicle Registration Number) to the parking attendant, therefore due to the negligence and lack of care of the Defendant's employees in checking the identity of the motorcycle and its owner, the motorcycle belonging to the Plaintiff was lost and suffered losses.

Looking at the characteristics of a rental agreement, then conceptually if applied in the parking agreement is a matter that is not appropriate, because in the land lease agreement (lease) is an agreement that gives birth to rights and obligations to each party. Meanwhile, the parking agreement adheres to a unilateral agreement because it only creates rights for one party and creates obligations for the other party. Apart from that, the risk aspect has also been regulated in Article 1553 of the Civil Code, which includes the risk of the hirer is land or land that cannot be lost, so there is no risk from the hirer, then what often becomes a problem is the goods contained on the object of the lease, namely the vehicle. Therefore, if seen correctly in practice in this parking agreement basically does not use a lease agreement.

There are also differences in principles that are contrary to consumer protection, where Article 18 paragraph (1) letter a explains that it is not allowed for business actors to transfer responsibility for the services provided, but in DKI Jakarta Regional Regulation Number 5 of 1999 there is an explanation that contradicts the Consumer Protection Law, namely the loss of a vehicle or object in the vehicle while in the parking lot is the responsibility of the parking lot user.

Related to the conflict, there is the principle of *lex superior derogat legi inferiori* which means that higher laws (norms/legal rules) negate the validity of lower laws (norms/legal rules) (Nurfaqih Irfani). Based on this case, the Consumer Protection Law is higher in hierarchy than the DKI Jakarta Regional Regulation No. 5 of 1999 concerning Parking. So that the judge's decision at the District Court, High Court and Supreme Court level is appropriate, because if the judge is guided only by the DKI Jakarta Regional Regulation, it can be considered applying and approving defects in a law. Given that in the current era the regulation has been amended to become DKI Jakarta Regional Regulation No. 5 of 2012 concerning Parking, where the notes in the law have been refined which are also contained in Chapter VIII concerning compensation which is regulated in Article 48 to Article 50. Even so, this case still uses DKI Jakarta Regional Regulation No. 5 of 1999 concerning Parking.

In the cassation applicant's statement that the business run by him is a business engaged in parking area



management services, where the Cassation Applicant is only a party that provides/leases parking space, this means that the Cassation Petitioner is not a party who has the capacity as a guarantor of the goods in the parking area that he leases. The obligation of the renting party based on Article 1550 of the Civil Code is to provide peaceful enjoyment to the tenant. What has been explained above is also reinforced by the contents in Article 1714 paragraph (1) of the Civil Code, which also explains that the entrustee is obliged to return the goods received in the same condition.

When a user uses parking services, the expectation of the renter is none other than to leave his vehicle in a safe place when the parking user leaves his vehicle, not just to rent land to put his vehicle. Therefore, the argument of the cassation applicant regarding the relationship between the manager and the user as merely a rental relationship is not correct.

DKI Jakarta Regional Regulation Number 5 Year 1999 on Parking and the inclusion of standard clauses that result in the transfer of responsibility are not in accordance with Article 4 Paragraph (1) of Law Number 8 Year 1999 on Consumer Protection which states that consumer rights which states that the right to comfort, security, and safety in consuming goods and/or services. Then it is reinforced again regarding the compensation that should be obtained when something happens that is not in accordance with the agreement, which is stated in Paragraph (8) which states the right to compensation, compensation and / or replacement, if the goods and / or services received are not in accordance with the agreement or not as they should be. From this, the regulation should be replaced because it causes defects in the application of law in society, especially regarding the parking system in the Jakarta area. So that by updating the regulations made in 2012 is already a good step from the Jakarta Regional Government to improve the legal order that has been in effect. However, it is because the case has occurred in 2009 which was in the year before the DKI Jakarta Regional Regulation was adjusted to the existing regulations at that time.

This DKI Jakarta Regional Regulation also has several principles that invite problems, namely related to the inclusion of standard clauses on parking tickets. Therefore, DKI Jakarta Regional Regulation Number 5 of 1999 concerning Parking deserves to be revised so that it can also improve the quality of parking in the Jakarta area. Significantly, if we look at the changes, they are changes to the DKI Jakarta Regional Regulation Number 5 of 1999 Regarding Parking, it became DKI Jakarta Regional Regulation Number 5 of 2012 concerning Parking which regulates the same thing, in fact, Regional Regulation Number 5 of 2012 concerning Parking provides changes regarding the implementation of parking in Jakarta which is then regulated in Regional Regulations. This is clear evidence of a change in regional regulations which makes the parking system in Jakarta more efficient and effective so that it can

create order, security, smooth traffic and also better accommodate the rights of parking service consumers themselves.

#### **IV. CONCLUSION**

Based on the author's previous discussion, regarding the main points that have been discussed, the following conclusions can be drawn:

1. The form of protection for consumers who experience the loss of their motorbike in secure parking is divided into two, namely internal and external legal protection. The form of internal legal protection is regulated in the Civil Code, while the form of external legal protection is contained in Law Number 8 of 1999 concerning Consumer Protection and also DKI Jakarta Regional Regulation Number 5 of 2012 concerning Estimates. A form of legal protection for consumers who lose their motorbike in a secure parking is a form of compensation according to the amount of loss suffered by the party who left their vehicle in the parking lot, because the agreement between the parking manager and the parking service user is a goods custody agreement.
2. The judge's legal considerations in deciding the case in Supreme Court decision Number 2078/K/Pdt/2009 were the correct decision because there was an error on the part of the plaintiff in submitting the lawsuit article, where the article submitted did not match what was experienced by the consumer. Then there are differences in the concept of parking agreements between business actors and the considerations of judges at both the District Court and PT where business actors assume that parking agreements use the concept of renting, whereas according to the considerations of Judges at the District Court and PT use the concept of safekeeping of goods. Where this has also been strengthened by the Supreme Court decision Number 3416/Pdt/1985 where the panel of judges is of the opinion that parking is a goods custody agreement. The existence of DKI Jakarta Regional Regulation Number 5 of 2012 concerning Parking replaces the old DKI Jakarta Regional Regulation Number 5 of 1999 concerning Parking brings quite significant changes. This is proof that the existence of this new Regional Regulation makes the parking system in the DKI Jakarta Region effective and efficient so that can realizing order, security, smooth traffic,

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