



Legal protection for parking services in the event of a motor vehicle loss

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Abstract

Consumer protection is a business that contains principles, rules, or rules used to provide protection and protect consumer rights. Problems regarding the safety of vehicles parked in public places often occur. These problems include the loss of helmets, vehicle parts, and even frequent loss of parked cars. What is the responsibility of parking managers to consumers who use roadside parking services in Batam City if they experience a vehicle loss? Researchers carried out the data interview technique by interacting and communicating directly at the research location with the interviewees. For the loss of motorized vehicles using parking services, the responsibility lies with the parking operator, which organizes the parking service business that has obtained a permit from the Regional Government. If the parking operator does not carry out the responsibility, then legal action can be taken, both litigation and non-litigation. As one of the essential elements in the transportation system, parking arrangements are necessary and a concern for local governments to create a sense of security and comfort in using public facilities.

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1. Introduction

The regional autonomy policy has had a positive impact, giving the regions the authority to manage themselves without interference from the central government. One form of the implementation of regional autonomy is the implementation of levies, commonly referred to as local taxes, namely parking fees. Parking management is not without problems; the frequent loss of goods or vehicles in the parking area causes a lot of disputes between consumers and parking attendants.

The parking service manager always uses the excuse that it is the binding agreement or clause between the manager and the consumer stated on the parking ticket, namely, "The parking manager is not responsible for the loss of goods and vehicles," and with various kinds of sentences, which contains the same meaning. (Basri, 2015)

These levies in taxes will be used for regional development and development. The legal umbrella for this tax levy is Law Number 28 of 2009 concerning Regional Taxes and Regional Levies. This law was formed so that local governments have the authority to collect regional taxes and regional levies.

Provincial taxes and regional levies (PDRD) are levies by the regions, which are one of the restricted rights in implementing regional autonomy. Local governments' right to collect PDRD s stated in the Law of the Republic of Indonesia Number 23 of 2004 concerning Regional Government. One of the types of levies regulated in the law is general levies. The object of the general levy is the service provided or given by the Regional Government for public interest and benefit. Individuals or entities can enjoy it.

The use of transportation facilities is increasing along with the higher mobility of the population. Every element of society today needs a vehicle for activities. Starting from students, traders, employees, and so on. The increased mobility of cars on the road certainly has direct implica-

tions for the availability of land or parking spaces. In addition to problems related to land, with the number of vehicles using the parking lot, the substances that need to be considered are also associated with the security of parked vehicles. Problems regarding the safety of cars parked in public places often occur in sse problems include the loss of helmets, vehicle parts, and even frequent loss of parked vehicles. The issues often arise in cars parked in official parking lots have never been appropriately resolved. This is because the parking manager claims that his party is not responsible for any form of loss that occurs in vehicles parked in their area.

Disputes also often occur between vehicle owners and parking officers because of the loss of both intact vehicles, vehicle attributes, or consumer belongings left in the car parking officers do not want to be blamed. (Yanto, Imawanto, & Yuliani, 2020) Based on the research entitled "Legal Protection of Parking Consumers in the Event of Loss in the Denpasar City Renon Parking Area," Putra, I. B. K. A. D. (2020), that the application of Regional Regulation Number 11 of 2005 concerning the Parking Implementation System as a whole has not been practical because there are still parking rates that do not comply with the provisions, there are still parking officers who collect parking in areas where there is a parking ban. There are parking attendants who do not want to serve, only asking for money from consumers.

In parking tickets, generally, the sentence "all forms of loss are not our responsibility." The verdict on the parking ticket is a form of escape from the responsibility of the parking manager. The sentence, also called the standard clause, is not justified, so consumers can claim compensation if there is a loss in the manager's parking lot. The legal basis is in Article 18 paragraph (1) of the Law of the Republic of Indonesia Number 8 of 1999 concerning Consumer Protection, which states that: "Inclusion of standard clauses by business actors stating the transfer of responsibility of business actors is prohibited." Parking managers of-

ten do not want to be responsible for all forms of loss experienced by consumers. It is a dilemma for consumers who own motorbikes and use parking spaces to park their vehicles. Consumers pay levies to parking managers regarding vehicle safety and security. The items in the car are not the responsibility of the parking manager.

Consumer protection is a business that contains principles, rules, or rules used to provide protection and protect consumer rights. A consumer is a person or company that buys goods or uses certain services. (Handayani, 2012) The first form of legal protection for consumers who use parking services is the legal relationship between them and the parking manager to determine their rights and obligations. Legal rights and obligations between one party can arise because of the legal relationship between the two parties, which is called an engagement. (Edi Yanto, Imawanto & Tin, 2020)

2. Methods

This type of research is empirical legal research and sociological field research to strengthen empirical legal research with analytical description. The method of collecting materials is by conducting a field study; in this case, the author directly leads a survey at the Batam City Transportation Office by conducting direct interviews and taking some data related to the problems to be studied.

3. Results and Discussion

Talking about legal protection for parking service users in the event of a motor vehicle loss in Batam City means that we will talk about the concept of consumer protection within the legal system in Indonesia. As we know, consumer law is related to various rules and regulations, one of which is the policy carried out by the Regional Government for the income of local revenue (PAD), namely in terms of the use of parking services.

In Batam City, related parking service policies have been regulated in Batam Mayor Regulation Number 8 of 2012 concerning Implementation Guidelines for Batam City Regional Regulation Number 1 of 2012 concerning Parking Administration and Retribution. This Mayoral Regulation states that the implementation of parking is carried out in the form of parking on the edge of public roads and parking in unique parking spaces. Both types of parking operations are carried out by parking operators, namely people or entities that run businesses in the parking service sector. These businesses have obtained permits from the local government (regional government).

As one of the essential elements in the transportation system, parking arrangements are necessary and a concern for local governments to create a sense of security and comfort in using public facilities. We know that the higher the population growth rate, the higher the number of motorized vehicle ownership will be. This creates a new problem that must be considered: how these private vehicles get a sense of security regarding parking needs. (Trisnanto, 2015) The increasing number of private vehicle ownership is influenced by many factors, including a sense of insecurity in using public facilities and the ease with which people own a vehicle, although not by buying cash but by making easy credit. For this reason, the government must immediately create a policy for order and security when public vehicles are parked. Demand for the existing parking space does not interfere with the public interest, and security is related to the vehicle's safety from damage, theft, or loss.

For that, we need a system that reflects the existence of a series of processes and how the government policy is a public policy. As we know, a public policy contains at least 4 (four) elements, namely: 1. There is a goal that reflects a problem-solving effort; 2. Specific actions are realized; 3. Manifestation of a government function; 4. In the

form of negative government decrees. (Sore and Sobirin, 2017)

As we know, there is so much news in the media regarding cases of motorized vehicle loss, ranging from missing parts, for example, vehicle mirrors and items left behind in the vehicle, to the car itself, which disappeared due to the actions of irresponsible elements. Seeing this phenomenon, it is evident that theft has often occurred and is troubling the community. The community no longer feels a sense of security; of course, this will impact the public's trust in the apparatus, including the local government, which is deemed not to think about the safety and comfort of the community in public facilities.

In the case of damage to or loss of motorized vehicles where the vehicle is in a position being deposited and is in the power of the parking operator, this is undoubtedly detrimental to the owner of the motorized vehicle. This is where disputes arise when parking organizers feel that damage or even loss of the car is not their responsibility. In contrast, vehicle owners want accountability from parking operators. (Putra, 2020)

In cases of damage to or loss of motorized vehicles, parking operators should be aware that it is their primary duty to maintain order and security for cars parked in the designated area. Parking operators often argue that there is a sentence on the parking ticket which usually reads damage and loss of motorized vehicles is not the responsibility of the parking operator. The existence of this sentence is legally a deviant clause. (Situmeang, 2020) When the parking operator applies a tariff, the vehicle owner must pay, maintain, and secure the vehicle deposit.

The irresponsible behavior of parking operators for damage or loss of motorized vehicles in their territory is very contrary to the law. Based on the aspects of civil law and consumer protection law related to the act of parking a car in a parking lot, there has been Jurisprudence on the

Supreme Court Decision Number 3416/Pdt/1985, which states that parking a car in a parking lot is an act that is included in the category of daycare. Custody, as regulated in Article 1694 of the Civil Code, states, "Culture of goods occurs when people receive other people's goods with a promise to keep them and then return them in the same condition." Article 1694 of the Civil Code is contained in Book III concerning Engagement (*Van Verbintenissen*). This means that the act of safe-keeping causes a consequence, namely the emergence of rights and obligations on each party, namely the party who owns the vehicle and parks in the parking lot and the parking operator as the party that manages the parking lot. If there is a right, it means an engagement has arisen.

According to Subekti, an engagement is a legal relationship between two people or parties, based on which one party has the right to demand something from the other party, and the other party is obliged to fulfill that claim. Another opinion, R. Setiawan, stated that the measure used in determining a legal relationship "is an engagement in a legal sense or not whether the legal relationship can be valued in the money" (Kurniawan & Ayik, 2014). This means that if there is a legal relationship, on the one hand, one party can get something worth money; on the other, a legal relationship that causes a loss can also get something worth money; however, with the development of society, that focuses on something that can be worth money, the loss from legal relations has shifted to something that can give rise to rights and obligations for other parties. An engagement is a law, and an agreement is a legal act. Legal actions that give rise to an engagement relationship so that it can be said that the deal is the source of the engagement. According to Ahmadi Miru and Shaka Pati, "Agreements as sourced from an engagement as regulated in Article 1233 BW, when viewed from their form, can be in the form of a written agreement or an unwritten agreement". (Marilang, 2017)

About the agreement between the parking operator and the vehicle owner as a consumer, there is proof that it is in the form of a parking ticket. There is usually a clause in the parking ticket that states that the parking operator is not responsible for damage or loss of vehicles in the parking area. About this clause, when examined using Article 1706 of the Civil Code, the recipient of the deposit is obliged to take care of the object being deposited, which stipulates that "The recipient of the promise is obliged to take care of the deposited goods as well as possible, such as maintaining their property." This means the parking operator must guard the parked vehicle, ensure its safety, and hand over the car when the vehicle owner picks it up. Deposits carried out by vehicle owners are also paid; this means that there are costs incurred by the vehicle owner who deposited the car, and automatically there is an obligation on the side of the parking operator to guard the car and secure it so that the loss of the vehicle can be avoided. If a failure occurs, it also implies that the parking operator is fully responsible for it and must replace the lost car.

When using article 1234 of the Civil Code, the agreement between the driver and the parking operator is an agreement that aims to give something and do something. Based on the statement of the article, if there is an engagement that is not carried out, as a consequence, there will be reimbursement of costs incurred. This article is supported by another article, Article 1239 of the Civil Code. In this article, it is determined that every engagement to do something or not to do something must be settled by providing compensation for costs, losses, and interest if the debtor does not fulfill his obligations. Based on this article, it can be seen that the owner of the vehicle who entrusted the car can file a claim for compensation if the car that was deposited is lost.

Regarding the parking operator who does not compensate for the loss of the motorized ve-

hicle entrusted to him, the act can also be categorized as an unlawful act. An act against the law is acting contrary to the perpetrator's legal obligations or violating others' rights; do something or not do something contrary to legal obligations, decency, or appropriate caution in social interaction, for oneself or other people's goods". (Fauzan & Baharudin, 2017)

Unlawful Acts in the Civil Code are spread in several articles, including 1. Article 1365 of the Civil Code states that every act that causes harm to another person is obliged to him because of his mistake to compensate for the loss caused. ; 2. Article 1366 of the Civil Code states that liability is carried out by every person who, because of his actions, negligence, and carelessness, causes losses; 3. Article 1367 of the Civil Code states that a person is not only responsible for losses caused by acts committed by himself but also for the actions of other parties who are his dependents or because the other party is under his control. About the standard clause in the parking paper given by the parking operator to vehicle owners who leave their vehicles in the parking lot, in addition to the Civil Code, the provisions in Law Number 8 of 1999 concerning Consumer Protection also apply.

The inclusion of a standard clause in the parking paper that consumers are in a weak position. The consumer, in this case, is the owner of the vehicle who entrusts his truck to the parking operator and the parking paper is proof of safe keeping. This weak position implies an imbalance between the role of business actors and consumers; in this case, business actors are parking operators, and consumers are vehicle owners who leave their vehicles in the parking lot. The standard clause intends to transfer responsibility is an act that weakens consumers, and this results in losses for consumers. (Sasmita, 2018)

The potential loss experienced by consumers will arise because the standard clause indicates the position of the parking operator as a maker of

the agreement is more muscular, which creates a situation where the provisions he makes are in his favor. (Faizal & Ayik, 2014) This opinion is in line with the requirements contained in Law Number 8 of 1999 concerning Consumer Protection that there is a prohibition on the existence of standard clauses that put consumers in an unfavorable position when dealing with business actors.

Article 18 Paragraph 1 Letter of Law Number 8 of 1999 concerning Consumer Protection states that business actors in their business of trading goods and or services are prohibited from making or including standard clauses if they say that there is a transfer of responsibility from business actors to consumers. Article 18 Paragraph 2 of Law Number 8 of 1999 concerning Consumer Protection also states that business actors are prohibited from placing standard clauses in places that are difficult to see or cannot be seen clearly, and if the disclosure is difficult for consumers to understand. It can be declared null and void by law. as Article 18 Paragraph 3 of Law Number 8 of 1999 concerning Consumer Protection also regulates.

For all of the above provisions, stated in Law Number 8 of 1999 concerning Consumer Protection, parking operators should be responsible for providing compensation. This is stated in Article 19 of Law Number 8 of 1999 concerning Consumer Protection, which states that: 1. Business actors are responsible for compensating for damage, pollution, and consumer losses due to consumer goods and services produced or traded. ; 2. The compensation, as referred to in paragraph (1), maybe in the form of a refund or replacement of goods and services of a similar or equivalent value, or health care and the provision of compensation by the requirements of the applicable laws and regulations; 3. The prize will be given within 7 (seven) days after the transaction date; 4. The provision of compensation, as referred to in paragraphs (1) and (2), does not eliminate the possibility of criminal prosecution based on further evidence regard-

ing the existence of an element of error; 5. The provisions in paragraphs (1) and (2) shall not apply if the business actor can prove that the error is the consumer's fault. Liability is a form of specification of responsibility; the notion of liability refers to the position of a person or legal entity deemed to have to pay a form of compensation or compensation after a legal event or legal action. For example, having to pay compensation to another person or legal entity for having committed an unlawful act causing harm to the other person or legal entity, the term liability is within the scope of private law. (Marzuki, 2017)

The standard clause in the ticket card, which indicates that the parking manager is not responsible for any damage and loss of goods or vehicles in the parking area, suggests that the parking manager has been released from responsibility. A standard clause in the parking ticket states that consumers have lost their rights according to Article 4 of the UK, which stipulates "the right to correct, clear, and honest information regarding the conditions and guarantees of goods and services." Regarding parking, consumers who lose their vehicles at the parking manager's place cause financial losses because they have lost their cars. In contrast, the parking managers have determined a standard clause that specifies that the parking manager is not responsible for the loss of vehicles. The inclusion of standard clauses is a form of imbalance in the position between consumers and business actors based on the principle of freedom of contract that business actors can use to gain profits by violating the law. (Rizal, 2013) Based on this incident, it can be said that the parking manager is the party responsible for the loss of the vehicle because he has committed an unlawful act that caused the loss and is obliged to compensate for the loss. The basis for repaying the loss is supported by Article 4 paragraph (8) of the UK, which stipulates "The right to receive compensation, compensation, and replacement, if the goods

and services received are not by the agreement or not properly." By UUPK and BW, which regulates the purpose and rights of consumers as the use of parking spaces and business actors to compensate for the loss of the vehicle, they are obliged to pay for the loss of the car.

4. Conclusion

The parking manager is obliged to guarantee the security and safety of the object of the good's safe keeping agreement for a certain period. The implementation of Regional Regulation Number 11 of 2005 concerning the Parking Management System as a whole has not been effective because there are parking rates that do not comply with the provisions; there are also parking officers who collect parking in areas where there is a parking ban, and there are parking attendants or parking attendants. Those who do not want to serve only ask for money from consumers.

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