



Responsibility of Parking Managers for Loss of Helmets of Parking Service Users

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ABSTRAK

Pengelola parkir mempunyai kewajiban merawat kendaraan dan mengembalikannya dalam keadaan yang sama saat dititipkannya kendaraan sebagaimana yang diatur dalam Pasal 1706 dan Pasal 1714 KUHPerdara. Namun, dalam praktiknya pengelola parkir tidak bertanggung jawab atas kehilangan barang berupa helm milik pengguna jasa parkir seperti halnya yang terjadi di area parkir pasar paya ilang. Tujuan dilakukannya penelitian ini untuk mengetahui tanggung jawab pengelola parkir terhadap kehilangan helm pengguna jasa parkir. Jenis penelitian ini yuridis empiris atau disebut dengan penelitian lapangan yaitu mengkaji ketentuan hukum yang berlaku serta apa yang terjadi dalam kenyataannya dalam masyarakat. Sifat penelitian ini adalah deskriptif analitis. Hasil penelitian ini menjelaskan Tanggung jawab pengelola parkir terhadap kehilangan helm pengguna jasa parkir, petugas parkir atau pengelola parkir di area parkir pasar paya ilang tidak bertanggung jawab atas kehilangan atas barang milik konsumen atau pengguna jasa parkir, pengelola parkir hanya bertanggungjawab sebatas membantu mencari barang yang hilang di area parkir Pasar Paya Ilang saja, hal tersebut bertentangan dengan Pasal 1694 Kitab Undang-Undang Hukum Perdata, dan juga bertentangan dengan Pasal 7 huruf f dan Pasal 19 ayat (1) Undang-Undang Nomor 8 Tahun 1999 tentang Perlindungan Konsumen.

Kata Kunci : Tanggungjawab; Pengelola Parkir; Kehilangan.

ABSTRACT

The parking manager has the obligation to maintain the vehicle and return it in the same condition when the vehicle was deposited as stipulated in Article 1706 and Article 1714 of the Civil Code. However, in practice parking managers are not responsible for the loss of goods in the form of helmets belonging to parking service users as happened in the parking area of Pasar Paya Ilang. The purpose of this study is to find out the responsibility of parking managers for losing helmets of parking service users. This type of empirical juridical research or called field research examines applicable legal provisions and what happens in reality in society. The nature of this study is descriptive analytical. The results of this study explain the responsibility of parking managers for the loss of helmets of parking service users, parking officers or parking managers in the parking area of Pasar Paya Ilang are not responsible for the loss of belongings belonging to consumers or users of parking services, parking managers are only responsible for helping to find lost items in the parking area of Pasar Paya Ilang only, this is contrary to Article 1694 of the Civil Code, and also contrary to Article 7 letter f and Article 19 paragraph (1) of Law Number 8 of 1999 concerning Consumer Protection.

Keywords: Responsibility; Parking Manager; Loss.



I. Introduction

The 1945 Constitution in Article 3 paragraph (1) affirms "that the State of Indonesia is a state of Law". Therefore, as a state of law based on Pancasila, it must provide legal protection to its citizens. One of the human needs is the fulfillment of a sense of security for oneself and for his personal belongings. One of the important things in parking management is about the issue of protection for consumers who use parking services regarding the safety of vehicles and items deposited in the parking lot (Basri, 2015).

According to the provisions of Article 1 point 15 of Law Number 22 of 2009 concerning Road Traffic and Transportation: "Parking is the state of the vehicle stopped or not moving for a while and abandoned by the driver". In relation to parking, when vehicle owners decide to park their vehicles in parking areas, be it *on street parking* or *off street parking*, there has been a legal relationship between vehicle owners and parking managers (Tobing, 2007). In the event of the loss of a consumer-owned vehicle, the owner or manager of the parking lot cannot simply release his responsibility.

In Supreme Court Decision No. 3416/Pdt/1985, the panel of judges argued that parking is a storage agreement. Article 1694 of the Civil Code defines custody as occurring when a person receives something from someone else, on condition that he will keep it and return it in its original intention. In this case we can take the meaning that custody is an agreement where the parking manager receives a vehicle from the consumer and is obliged to return it.

The parking manager has the obligation to maintain the vehicle and return it in the same condition when the vehicle was deposited as stipulated in Article 1706 and Article 1714 of the Civil Code (KUHPercivil). Therefore, the loss of vehicles owned by consumers is the responsibility of parking managers or entrepreneurs.



In addition, the parking manager is also responsible for all objects that are "attached" to the motorcycle. Helmets can be said to be objects that are "attached" to the motorcycle because based on Article 57 of Law Number 22 of 2009 concerning Road Traffic and Transportation, every motorized vehicle operated on the road must be equipped with motor vehicle equipment, which in the case of the vehicle is a motorcycle, it must be equipped with a helmet. That way helmets and motorcycles are considered one unit. So as a motorbike storage area, parking lot managers not only have to maintain the motorbike, but also have to maintain the helmet as a unit with the motorbike (Tobing, 2019).

Losing the motorcycle and luggage such as helmets in the parking lot is definitely not wanted by the owner. However, in practice we often encounter incidents such as losing helmets in parking lots, as happened in the parking area of Pasar Paya Ilang, where parking service users lose helmets when thinking about their vehicles. The responsibility of the parking manager is still not fully carried out even though the vehicle owner has paid a predetermined fee which is a parking reward for the parking attendant who has maintained the vehicle and it is the obligation of the vehicle owner to do so.

Based on the description above, problems can be formulated that will be researched and discussed in this study, namely, *First*, How is the responsibility of parking managers for losing helmets of parking service users? *Second*, What are the settlement efforts made by parking service users who experience losses?

II. Methode

This type of empirical juridical research, or called field research, examines applicable legal provisions and what happens in reality in society (Arikunto, 2012). The types of data in this study include primary data and secondary data. Thus there are two main activities carried out in carrying out



this research, namely: field studies (*fiel research*) and library studies (*library research*). How to analyze data is done by means of data that has been collected from both primary and secondary data will be analyzed qualitatively, so that reality is found as a symptom of primary data associated with theories from secondary data. The data is presented descriptively, namely by explaining and collecting problems related to this writing.

III. Discussion and Analysis

Responsibility of Parking Managers for Loss of Helmets of Parking Service Users

The implementation of a legal right and obligation always requires legal responsibility. A person is legally responsible for certain actions or that someone bears legal responsibility, meaning that someone is responsible for a sanction if his actions are contrary to applicable regulations (Kelsen, 2006). Moegni Djojodirdjo emphasized that legal responsibility in the realm of private law is legal responsibility in civil law can be in the form of responsibility based on default and responsibility based on unlawful acts (Djojodirdjo, 1979).

According to Bachtiar, in the civil context, the responsibility is born because of an agreement or contractual relationship and because the civil law liability can be filed on the basis of, namely: (1) the existence of an unlawful act as specified in Article 1365 of the Civil Code which basically determines that whoever commits an act that brings harm to another person requires the wrong person because of his fault to compensate for the loss; and (2) there is a default, namely not giving achievements at all, being late in giving achievements, performing achievements not according to the provisions stipulated in the agreement made by one of the parties to the agreement as specified in the Civil Code Article (Bachtiar, 2018).

In general and fundamentally, the relationship between producers (companies producing goods and / or services) and consumers (end users of



goods and / services for themselves or their families) is a continuous and continuous relationship. This relationship occurs because both of them really want each other and have a high level of dependence between one another.

Every legal relationship has two aspects, namely on the one hand it is a right, and on the other hand it is an obligation (Apeldoorn, 1993). According to Janus Sidabalok, there are two legal relationships between business actors and consumers, *first*, legal relationships may have existed first between business actors and consumers in the form of a contractual relationship (contractual relationship), but there may also never have been a legal relationship before and legal attachment is actually born after an event that harms consumers (Sidabalok, 2010).

Minister of Justice Mudjono in his remarks at the opening of the symposium "Legal Aspects of Consumer Protection Issues" organized by the National Legal Development Agency (BPHN) in Jakarta on October 16-18, 1980, stated two reasons why consumer protection issues are one of the important problems in today's world. First, that all members of society are consumers who need to be protected from the quality of objects or services provided by producers to the community. Second, it turns out that consumers are very decisive parties in capital development to stir the wheels of the economy (Sidabalok, 2010).

Consumer protection law can be said to be a law that regulates the provision of protection to consumers in order to fulfill their needs as consumers, with the fact that consumer protection law regulates consumer rights and obligations, producers' rights and obligations, and ways to maintain rights and carry out these obligations (Sidabalok, 2010). Parking has become one of the crucial things in road traffic, especially urban areas, therefore parking problems are regulated in Law Number 22 of 2009 concerning Road Traffic and Transportation.



The existence of a parking lot is very helpful for the community, especially for those who have vehicles. This opens up opportunities for the emergence of parking businesses, namely a business activity that provides parking services for the public or business activities that provide parking facilities for the public. In practice, there are two types of parking based on the place or location of the parking business, namely parking inside the shoulder of the road and parking outside the shoulder of the road.

According to Indah Parmitasari, parking inside the shoulder of the road, for example, is parking on the roadsides, while parking outside the shoulder of the road, for example, is parking in malls or shopping centers, hospitals, and so on. Parking on the shoulder of the road is usually managed by individuals or groups who have obtained permission from the local government, and the profits will be divided between the parking manager and the government for regional cash income. While parking outside the shoulder of the road is usually managed by private parties, and of course has also received permission from the local government and has also cooperated with the building manager concerned (Parmitasari, 2016).

To create order and security in the management of parking lots, the local government of Central Aceh Regency through the Transportation Office entrusts its parking lots to be managed by third parties. These third parties are known as parking service providers or parking managers, parking managers can be individuals, groups or legal entities.

According to Jauhari, in the management of parking lots in Central Aceh district, there are as many as 8 location points where parking management is handed over to third parties, one of which is the Paya Ilang Market parking area. Each party, both the Regional Government of Central Aceh Regency and third parties in this agreement have rights and obligations including revenue sharing and levy payment obligations for increasing Regional Original Revenue (PAD).



The problem of storage and parking are two terms that are in principle the same, namely the owner of the vehicle hands over his vehicle to another person (parking attendant) so that he guards it or maintains it and the entrustment officer hands it back if the owner of the vehicle takes it.

It's just that if the term custody applies to all goods and parking specifically for vehicles, as stated by R.M. Suryodiningkrat as follows: "Actually obligation. car parking attendants, motorcycles under Article 1707 of the Civil Code are aggravated, because. Parking attendants offer their services to receive entrustment of cars, motorcycles for a certain time, for example: entrustees shopping at the market or watching movies, plays, puppets people by receiving rewards. In practice, the entrustee receives tickets to numbered protesters, which are evidence of legitimacy, meaning that the entrustee has shown enough and handed over the parking ticket to receive back the entrusted vehicle.

The same thing was expressed by Ridwan Khairandy, the Supreme Court Decision which became the jurisprudence for parking cases, namely Supreme Court Decision Number 3416 / Pdt / 1985 jo. Number 19/1983 / Pdt / PT. Y, jo. No. 1/1982/Pdt/G/PN. SLM between Ahmad Panut against Rajiman alias Pujiharjo, Suwardi and PD Management. Argajasa. In the ruling, the panel of Supreme Court judges confirmed the judgment of the Yogyakarta High Court. In the appeal decision, the Yogyakarta High Court gave considerations, among others: The legal relationship between the vehicle owner and the parking manager is a custody agreement, so that if the goods are lost, the manager must be responsible (Suryodiningkrat, 1980).

In general, the legal construction that applies in parking is a custody agreement (Khairandy, 2003). Based on this explanation, it can be concluded that the legal relationship between the parking manager and the vehicle owner consumer is a custody agreement, because it meets the elements in the provisions of Article 1694 of the Civil Code, which reads "The parking



manager receives goods, namely vehicles from consumers, then the parking manager will store and return the vehicle in its original state".

According to Letezia Tobing, helmets can be said to be objects that are "attached" to motorcycles because based on Article 57 of Law Number 22 of 2009 concerning Road Traffic and Transportation, "Every motorized vehicle operated on the road must be equipped with motor vehicle equipment, which in the case of the vehicle is a motorcycle, it must be equipped with a helmet. Therefore helmets and motorcycles are considered a single entity. So as a motorbike storage area, the parking lot manager not only has to maintain the motorbike, but also has to maintain the helmet as a unit with the motorbike.

Based on the explanation above, it can be concluded that helmets and motorcycles are considered one unit. As a consequence, parking lot managers must not only maintain motorbikes, but also must maintain helmets belonging to parking service users as a unit with motorbikes. Likewise, in the event that the helmet is lost from the parking lot, the parking manager is also responsible as explained above regarding the relationship between the parking manager and parking service users is a luggage storage agreement.

Based on observations and data collection that the author made during field research, that during 2020 there were no more cases or reports of parking service users losing vehicles or items such as helmets, but in 2019 there was 1 case and in 2018 there were 2 cases of losing helmets when parking service users' motorcycles were parked in the parking lot of Paya Ilang Market, Bebesen District, Central Aceh Regency. Further details can be seen in the table below:

Table. 1
List of Cases of Loss of Vehicles and Goods
In Paya Ilang Market Parking Area

<i>No</i>	<i>Year</i>	<i>Case</i>	<i>Jumlah</i>
1	2018	Loss of Helm	2
2	2019	Loss of Helm	1



3	2020	-	-
Jumlah Keseluruhan			3

Sumber : Pengelola Parkir Pasar Paya Ilang Tahun 2020

Based on the table. 1 mentioned above, cases of loss of goods in the parking area of Paya Ilang Market in the last three years amounted to 3 cases, namely in 2018 loss of goods belonging to parking service users or consumers in the form of helmets amounted to 2 cases and in 2019 1 case, while in 2020 there were no cases or no reports from parking service users of loss of goods in the parking area of Pasar Paya Ilang.

According to Syuhada Kobat, in the contract of his cooperation agreement with third parties, the things regulated not only include revenue sharing and the obligation to pay regional levies, as well as giving rights and responsibilities to parking managers if something happens in the parking area they manage, the local government is exempt from responsibility in the event of loss of vehicles such as cars and motorcycles in the parking area, It is entirely the responsibility of the parking manager.

Based on the interview above, the Central Aceh Regency Transportation Office is not responsible for the loss of vehicles and belongings belonging to parking service users, because the Transportation Office has handed over the responsibility regarding the management of the parking area to a third party or parking manager. Responsibility for the loss of vehicles and belongings belonging to parking service users is the full responsibility of the parking manager.

The task of the parking manager is to maintain the security of consumer vehicles parked in the parking area he manages and hand over the vehicle back to consumers in its original state. In addition, the function of parking managers is to create order and security in the parking lot. The rights and obligations of parking business owners or parking managers, namely:



1. The right to get payment from the owner of the vehicle for using his parking service.
2. The obligation to maintain the vehicle and hold the entrusted vehicle, this can occur if the owner of the vehicle at the time of taking the vehicle he cannot show proof in the form of a ticket.

In practice, violations of consumer rights in the field of parking services are often encountered in everyday life. The violation is in the form of no responsibility from the parking manager in the event of loss of goods in the form of helmets and damage to vehicles deposited by consumers in the parking area. Based on research conducted by the author by means of direct interviews with 1 parking manager and 2 parking attendants or parking attendants, do not want to be responsible for providing compensation if consumers experience losses such as loss of consumer property. Such losses can be in the form of loss of helmets, damage or loss of vehicles. The reason why parking managers do not want to be responsible for consumer losses is because the goods belonging to parking service users are the responsibility of each vehicle owner.

Gultom stated that it is not responsible in the event of loss of vehicles or helmets at the parking location. This is because the parking ticket has stated that any loss or damage is the responsibility of the owner. However, if the theft of the vehicle or helmet occurs in the presence of the parking attendant, the parking attendant will be responsible for pursuing the thief.¹

The same thing was also said by Ruhdi, his party is not responsible if there is a loss of consumer property, how do we want to be responsible for compensation for lost consumer property, our income per day is sometimes less sometimes mediocre to pay deposits, so if there is a loss of consumer property is absolutely the responsibility of the vehicle owner.

¹ Gultom, parking attendant of Paya Ilang Market, Bebesen District, Central Aceh Regency, *interview*, on March 4, 2020.



Based on the results of the interview mentioned above, it can be concluded that parking attendants or parking managers are generally not responsible for the loss of property belonging to consumers or users of parking services, so far they are only responsible for helping find lost items in the parking area of Paya Ilang Market.

Thus, the author can conclude that parking managers who are not responsible for the loss of property of parking service users in the form of helmets, contrary to Article 1694 of the Civil Code, namely "Custody of goods occurs when people receive other people's goods with a promise to keep them and then return them in the same state". That is, in this agreement the object of this agreement is the parking manager as the recipient of parking and his achievement is to receive vehicles and goods attached to vehicles parked in the parking lot he manages and must maintain security and maintain the vehicle and goods and must hand it back in its original state to the vehicle owner (consumer). While the achievement of consumers is to hand over the vehicle to be parked in the parking lot managed by the parking manager and must pay parking fees according to the rates determined by the parking manager.

The parking manager can be held liable by the aggrieved party on the basis of default in the custody agreement between the parking manager and the motorcycle owner. It is said to be a default, because parking managers cannot carry out their obligations, namely maintaining the security of consumer property attached to parked vehicles, and cannot hand over consumer property back to the owner, namely parking service users. According to Abdul R. Saliman, default is an attitude where a person does not fulfill or neglects to carry out obligations as specified in the agreement made between creditors and debtors (Saliman, 2004).

The element of default is expressly regulated in Article 1243 of the Civil Code, as follows: "Reimbursement of costs, losses and interest due to



non-fulfillment of an engagement begins to be mandatory, if the debtor, even though he has been declared a defaulter, still fails to fulfill the engagement, or if something that must be given or done can only be given or done within a time beyond the specified time”.

According to Indah Parmitasari The facts in the event of loss of vehicles and / or goods in the parking lot are associated with elements of default, namely (Fuadi, 2001):

1. Not fulfilling the obligations specified in the agreement

The obligation (presatasi) of the parking manager in the parking agreement which is a storage agreement is to maintain and maintain the parked vehicle / entrusted to him, and return the same vehicle he has received to the parking service user. The achievement of service users is to pay parking service wages to parking managers. In this case, the parking manager does not carry out its obligations, namely maintaining, maintaining parked vehicles safely and cannot hand back vehicles belonging to parking service users. Therefore, the parking manager fulfills the first element of default, which is not fulfilling the agreed obligations.

2. There was an error

In this case, the parking manager's fault is due to his negligence in not checking and securing the parked vehicle, and not checking the vehicle police number in the parking ticket with the vehicle police number in the vehicle, resulting in the vehicle being lost stolen by thieves and leaving the parking area easily without being prevented by the parking manager. Therefore, the parking manager fulfills the second element of default in this matter.

3. There are Disadvantages

As a result of the negligence / error of the parking manager which results in the vehicle belonging to the parking service user being lost, the



parking service user experiences losses, namely material losses in the amount of the lost vehicle price, as well as losses due to incurring costs for transportation of service users due to the absence of a vehicle because the vehicle is lost. Losses in the form of loss of profits obtained are also experienced by service users, service users lose profits that they should get if there is a vehicle, but become unable to get because the vehicle is lost. Therefore, the third element of default has been fulfilled, mistakes made by parking managers cause losses to consumers / vehicle owners.

4. There is a causal relationship between fault and loss

The causal relationship between mistakes and losses is from a mistake committed by one party causing losses experienced by the other party. In this motorbike loss problem, the fault lies with the parking manager who neglected to maintain the vehicle belonging to the parking service user so that the vehicle was lost and caused losses to parking service users. Therefore, the fourth element of default has been fulfilled, mistakes made by parking managers cause losses to parking service users.

From the provisions mentioned above, it is very clear that parking managers must be responsible for the loss of vehicles and / or goods when parking in the parking area they manage. In addition, parking managers who are free from being responsible for loss of goods in their parking area also contradict Article 7 letter f of Law Number 8 of 1999 concerning Consumer Protection states that "Business actors are obliged to provide compensation, compensation, and/or compensation for losses due to the use, use, and utilization of traded goods and/or services".

Furthermore, the provisions of Article 19 paragraph (1) of the Consumer Protection Law state that "Business actors are responsible for providing compensation for damage, pollution, and/or consumer losses due to consuming goods and/or services produced or traded". The form of loss to consumers can be done by business actors by indemnifying or by refund, replacement of goods and / or services of the same or other equivalent.



IV. Conclusion

The responsibility of the parking manager for the loss of helmets of parking service users, parking officers or parking managers in the parking area of Pasar Paya Ilang is not responsible for the loss of belongings belonging to consumers or users of parking services, parking managers are only responsible for helping to find lost items in the parking area of Pasar Paya Ilang only, this is contrary to Article 1694 of the Civil Code, in addition, it is also contrary to Article 7 letter f and Article 19 paragraph (1) of Law Number 8 of 1999 concerning Consumer Protection.



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