The Inclusion of Clauses in Motor Vehicle Financing Agreements That Harm Consumers in Medan City

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Abstract

Consumer financing agreement clause determined unilaterally by a consumer financing company by eliminating consumer rights to rengotiate the clause. This condition causes the inclusion of a clause more oriented to the interests of consumer finance company and potentially harm consumers. The formulation of the problem in this study is as follows :how is the form of the clause of a motorized vehicle financing agreements that harm consumers in the city of Medan, how is the legal impact caused by the inclusion of a clause on motorized vehicle financing agreements that harm consumers in the city of Medan. The research method used is a normative juridical and empirical juridical research method with, inductive and deductive method of drawing conclusions. There are several consumer financing agreement clauses that have the potential to cause consumer lossesin the city of Medan, including : the inclusion of a payment clause in full if the debtor delays the installment payment, authorizing consumer finance companies to withdraw vechile units without prior notice. The legal impact caused in the form of a dispute between the parties at BPSK and the court and the refusal of the parties to implement the agreement on motor vehicle consumer financing agreements.

1. Introduction

To ensure legal certainty in the legal relationship of the parties, generally these agreements are set forth in the form of a "written agreement", so that the object of performance to be carried out, the rights and obligations of the parties, the term of the agreement, and various other agreements can be clearly seen and guided by the parties.[1] As Article 1313 of the Civil Code (KUHPerd.) explains, an agreement is "an act by which one or more people bind themselves to one or more other people".

This is also the case in legal relationships regarding the financing of motorized vehicle units by consumer finance companies (finance), where payment of motorized vehicle units is carried out in installments over a certain period of time in accordance with the agreement between consumer finance companies (finance) as creditors and consumers as debtors. Due to the legal relationship of the parties taking place in a relatively long period of time (can reach a period of 8 (eight) years (tenor), as well as the possibility of various risks that may arise and potentially lead to losses, the legal relationship of the parties is set forth in the form of a "Consumer Financing Agreement".[2] The need for the utilization of consumer financing agreements is increasingly important with regard to the reality in society that the sale of motor vehicle units 80% (eighty percent) is realized by using the services of financing institutions and banks, as part of the fulfillment of consumer goods needs.[3] The limited purchasing power of the public to buy vehicles in cash encourages the growth of credit purchases, this is what causes the growth of a number of finance or leasing companies in 2023 in general to increase to above 25% (twenty-five percent) although there are also finance companies whose financing distribution is still below 10% (ten percent), for example PT Adira Dinamika Multi Finance Tbk. (ADMF) experienced growth in financing distribution reaching 31% (thirty-one percent), which amounted to Rp. 41.6 Trillion (forty-one point six Trillion Rupiah) in 2023.[4]

From the aspect of agreement law, the limited purchasing power of the community and the utilization of standard agreements in consumer financing agreements, create unbalanced conditions in the legal relationship between

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1 Aaron Pietter dan Lauditta Humaira, "Efektivitas Alat Bukti dalam Pembuktian Perjanjian Lisan yang Sah di Muka Pengadilan," Jurnal Lex Patrimonium, Vol. 1, No. 1 (2022), hlm. 4.

2 Yanuar Kokoh Prabowo, "Perjanjian Pembiayaan Konsumen Berdasarkan Akta Di Bawah Tangan" *Jurnal Jurist-Diction,* Vol. 1 No. 1 (2018): 365 DOI:10.20473/jd.v1i1.9750

3 CNBC Indonesia, "Siap-siap, Beli Mobil DP Ringan Bakal Lewat Prosedur Khusus", 2023, https://www.cnbcindonesia.com/news/20231205131457-4-494659/siap-siap-beli-mobil-dp-ringan-bakal-lewat-prosedur-khusus

4 Bisnis.Com., "Leasing Mencatat Pertumbuhan Pembiayaan Sepanjang 2023". 2024, https://finansial.bisnis.com/read/20240108/89/1730384/leasing-catat-pertumbuhan-pembiayaan-sepanjang-2023

consumers/debtors and consumer finance companies. As a result, the party with a stronger bargaining position tends to control the party with a weaker bargaining position.[5] This can be seen in the inclusion of agreement clauses that have the potential to harm consumers/debtors, by imposing more obligations than rights, limiting and transferring responsibilities (exculpatory clauses), and various other clauses.[6] Consumer finance companies include these various clauses for reasons of practicality, time efficiency, operational cost savings, and avoiding greater company losses, without considering the impact on consumers/debtors. The inclusion of clauses that are detrimental to consumers is possible by utilizing a standard agreement with the following characteristics: 1) The contents are determined unilaterally by creditors who are in a relatively stronger position than debtors; 2) The debtor does not participate in determining the contents of the agreement at all; 3) Motivated by necessity, the debtor is forced to accept the agreement; 4) Using a format in the form of a written agreement; and 5) Printed in bulk to serve many transactions. [7]

2) The utilization of standard agreements places consumers as parties who do not have the opportunity to renegotiate the terms / clauses in consumer financing agreements, consumers only agree or reject the substance of the agreement (take it or leave it contract).[8] The reality of consumer powerlessness that has an impact on the inclusion of harmful clauses, this is an interesting legal phenomenon to be studied in a series of problem formulations: What are the forms of motor vehicle financing agreement clauses that are detrimental to consumers in Medan City, and what are the legal impacts caused by the inclusion of motor vehicle financing agreement clauses that are detrimental to consumers in Medan City. The purpose of this research is to identify the forms of motor vehicle financing agreement clauses that are detrimental to consumers in Medan City, as well as to identify the legal impact caused by the inclusion of motor vehicle financing agreement clauses that are detrimental to consumers in Medan City. In order to raise the possibility of limiting the inclusion of such clauses, as well as improving the bargain position of consumers/debtors in legal relations with consumer finance companies/debtors.

2. Research Method

The research method used in this research is a combination of normative juridical research methods regarding the use of secondary data from various

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5 Ridwan Khairandy, *Itikad Baik Dalam Kebebasan Berkontrak,* Program Pascasarjana Fakultas Hukum Universitas Indonesia, Jakarta, 2003, hlm. 2.

6 Ahmadi Miru, Sutarman Yodo, *Hukum Perlindungan Konsumen,* RajaGrafindo Persada, Jakarta, 2004, hlm. 114.

7 Sri Turatmiyah dan Arfianna Novera, "Peran Badan Penyelesaian Sengketa Konsumen dalam Pengawasan Klausula Baku di Kota Palembang", *Jurnal Hukum Ius Quia Iustum,* Vol.24 No. 1 (2017): 148 DOI : 10.20885/iustum.vol24.iss1.art8 Lihat juga Ahmadi Miru dan Sutarman Yodo, *Op.cit*, hlm. 116.

8Fadhelika Mahendar dan Christiana Tri Budhayanti, "Konsep Take It Or Leave It Dalam Perjanjian Baku Sesuai Dengan Asas Kebebasan Berkontrak", Jurnal Ilmu Hukum Alethea, Vol. 2 No 2 (2019) : 99. DOI: https://doi.org/10.24246/alethea.vol2.no2.p97-114

laws and regulations, law books, and court decisions, and empirical juridical regarding the use of primary data obtained directly from the field[9], with the nature of descriptive research.[10] The data collection technique utilizes library research and field research.[11] Data collection was carried out by conducting surveys and interviews in several research locations, namely 70 (seventy) consumer finance companies in Medan City, 100 (one hundred) consumers who use consumer finance company services in Medan City which were determined by purposive sampling, the District Court, the Financial Services Authority and the Consumer Dispute Resolution Agency. Medan City was determined as the research location, because it is one of the largest cities in Indonesia that has a fairly high market share and absorption of consumer financing. Qualitative data analysis and deductive and inductive inference.[12]

3. Results and Discussion

Several Types of Clauses in Motor Vehicle Financing Agreements That Harm Consumers in Medan City

Typically as a form of legal action,[13] the legal relationship that exists between the debtor/consumer and the consumer financing company will be outlined in a written agreement, namely the "Consumer Financing Agreement" to determine the rights and obligations of the parties, the performance to be carried out, the term of the agreement, and various other requirements.[14]

According to Salim H S, what is defined as a consumer financing agreement is "an agreement between the facility provider and the facility recipient to provide funds for the purchase of goods for the benefit of the facility recipient with the obligation of the facility recipient to pay the loan in the form of principal and interest in installments within a certain period of time."15

From the understanding as expressed by Salim H S, it can be seen that there are several subjects involved in the consumer financing agreement, namely the facility provider, in this case the consumer financing company and the facility recipient, namely the debtor who gets a loan for the purchase of financing objects in the form of motorized vehicles from the seller as a supplier.[16]

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[9] Peter Mahmud Marzuki, *Penelitian Hukum,* Kencana, Jakarta, 2011 hlm. 35.

[10] Sunaryati Hartono, *Penelitian Hukum di Indonesia Pada Akhir Abad Ke-20,* Alumni, Bandung, 1994, hlm. 78.

[11] Mukti Fajar dan Yulianto Achmad, *Dualisme Dalam Penelitian Hukum Normatif dan Empiris,*Pustaka Pelajar, Yogyakarta, 2012, hlm. 42-43.

[12] *Ibid.,* hlm.192

[13] Ridwan Kharandy, *Hukum Kontrak Indonesia Dalam Perspektif Perbandingan (Bagian Pertama),* Fakultas Hukum Universitas Islam Indonesia, Yogyakarta. 2013, hlm. 6.

[14] Muhammad Rio Ervanda Putra, "Analisis Penyelesaian Kredit Macet Akibat Debitor Wanprestasi Dalam Perjanjian Pembiayaan Konsumen di Kantor PT Arthabuana Margausaha Finance Cabang Surakarta", *Jurnal Privat Law,* Vol. 5 No. 1 (2017) : 114. DOI: https://doi.org/10.20961/privat.v5i1

In addition to providing legal certainty to the parties, the existence of a consumer financing agreement is also important in order to serve as a "valid evidence document" for consumer finance companies and debtors, in the event of a dispute due to default in the future.[17] So that judges in court or arbitrators at arbitration institutions can gain confidence about various matters surrounding the legal relationship of the parties.

Referring to the opinion of Salim H.S., in general, the substance regulated in the Consumer Financing Agreement contains the following matters:

1. The identity of the parties, namely the finance company as the provider of financing (creditor) and the consumer as the recipient of financing (debtor);

2. The status of the consumer financing object, as long as the financing agreement takes place, the consumer financing object is still owned by the consumer financing company and will only be transferred to the debtor at the end of the agreement period with the repayment at the end of the agreement.

3. Delivery/levering of the consumer financing object, in the form of a motorized vehicle unit to the debtor in good condition. Since the delivery, the risk of the vehicle unit becomes the responsibility of the debtor, which is usually anticipated by insuring the vehicle unit.

4. Financing payment system. where the debtor within the period agreed upon in the consumer financing agreement, is required to return the funds for the purchase of the vehicle unit along with interest / profit in installments on each predetermined date;

   Fines and collection. For every late payment of vehicle unit installments, the debtor will be subject to sanctions in the form of fines, where the amount of the fine is set at 0.5% per day of the installment amount, as well as collection costs;

6. Responsibilities and prohibitions in consumer financing agreements, where the debtor is responsible for:

   a. After the vehicle unit is handed over to the debtor, the maintenance and integrity of the condition of the vehicle is the responsibility of the debtor as long as the repayment has not been made;

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[15] Salim H S., *Perkembangan Hukum Kontrak di Luar KUHPerdata,* RajaGrafindo Persada, Jakarta, 2008, hlm. 130.

[16] Firya Oktaviarni, "Penerapan Klausula Baku Dalam Perjanjian Pembiayaan Konsumen Menurut Undang-undang Nomor 8 Tahun 1999 Tentang Perlindungan Konsumen", *Jurnal Ilmu Hukum,* Vol. 6 No. 2. (2015): 110.

[17] Abdul Kadir Muhammad dan Rilda Murniati, *Segi Hukum Lembaga Keuangan dan Pembiayaan,* Citra Aditya Bakti, Bandung, 2000, hlm. 256

b. The debtor shall bear everything related to the use of the vehicle, such as vehicle fuel, maintenance costs, replacement of spare parts and so on;

c. The debtor is prohibited from transferring the financed vehicle unit, including mortgaging, selling, transferring the address as long as the debtor has not made repayment;

7. Cancellation of the agreement can be carried out unilaterally by the consumer finance company, if the debtor defaults without a warning;
8. Closing; this section contains a statement of the parties to agree to the entire contents of the consumer financing agreement without the possibility for the debtor to renegotiate the contents of the agreement. [18]

Taking into account the substance contained in the consumer financing agreement, which also concerns the rights and obligations of the debtor. So it is appropriate for debtors to know the existence and substance of the consumer financing agreement, in order to provide certainty in the legal relations of the parties.

Based on a questionnaire distributed to 95 (ninety-five) respondents[19] who are debtors of various consumer finance companies in Medan City, the data shows that most debtors, when carrying out transactions with consumer finance companies, are aware of the existence of a "consumer finance agreement" as the basis for regulating legal relations between the parties as can be seen in the following table:

Table 1
Debtor's Knowledge of the Existence of the Consumer Financing Agreement

No	Alternative Responses	Answer Options	Frequency
1	Aware	83	87,4 %
2	Not aware	12	12,6 %
	Total	95	100 %

Source : Derived from the Consumer Questionnaire of a Consumer Finance Company

[18] Salim H.S., *Op.Cit.,* hlm., 135, 136.

[19] The questionnaire was distributed to 100 (one hundred) debtors of a consumer financing company, but only 95 (ninety-five) debtors were willing to complete and return the questionnaire

From the data in Table 3, it can be seen that most of the debtors, namely 83 (eighty-three) debtors or around 87.4% (eighty-seven point four percent) out of a total of 95 (ninety-five) debtors, know the existence of a consumer financing agreement as the basis for regulating the legal relationship between the parties, while 12 (twelve) debtors or around 12.6% (twelve point six percent) others do not know the existence of the consumer financing agreement.

Opportunities for business actors, especially consumer finance companies to dominate the regulation of legal relations in consumer financing agreements, are possible by utilizing “standard agreements”, or commonly referred to as “standard agreements”,[20] in English called "standard contracts. Standard agreement". What is standardized in a standard agreement includes models, formulations and sizes.[21]

Based on the characteristics described above, Sutan Remy Sjahdeni formulated a standard agreement as "an agreement whose clauses are determined by the party whose position is relatively stronger by closing the possibility for the other party to negotiate the contents of the agreement or request changes. Matters that have not been standardized only concern the identity of the parties, type, price, quantity, color, place, time, and some specific matters of the object being agreed upon.” [22]

Standard agreements are widely used among business people because they will provide benefits to entrepreneurs in the form of savings in terms of time, energy and costs, practicality because they have been printed in the form of blanks or forms so that they only need to be filled in and signed by the parties, transactional relationships can run more practically because there is no need for negotiation stages, and forms are printed in bulk to serve many transactions.”[23]

The potential for problems to arise in the relationship between debtors and consumer finance companies, apart from being caused by the unbalanced bargaining position of the parties,[24] can also be caused by the behavior of some debtors who are still reluctant to read the terms/clauses of consumer financing agreements, as summarized in the following table:

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[20] Sri Turatmiyah dan Arfianna Novera, *Op.Cit.,* hlm. 150

[21] Abdul Kadir Muhammad, *Perjanjian Baku Dalam Praktek Perusahaan Perdagangan,* Citra Aditya Bakti, Bandung, 1992,. hlm. 6.

[22] Milawartati T Ruslan, “Perlindungan Hukum Terhadap Konsumen Dalam Perjanjian Pembiayaan Kenderaan Bermotor Roda Dua Berdasarkan Undang-undang No. 8 Tahun 1999 Tentang Perlindungan Konsumen,” *ejurnal Katalogis,* Vol. 4 No. 10 (2016): 205.

[23] Sri Turatmiyah dan Arfianna Novera, *Op.Cit.* hlm. 165.

Table 2
Debtors' Behavior in Reviewing the Terms and Clauses of Consumer Financing Agreements

No	Alternative Responses	Answer Options	Frequency
1	Read the clause(s)	68	71,6
2	Did not read the clause(s)	27	28,4
	Total :	95	100 %

Source : Derived from the Consumer Questionnaire of a Consumer Finance Company

Based on the primary data in Table 4, it can be seen that there are still quite a lot of debtors who are reluctant to read the terms/clauses of consumer financing agreements. Of the 95 (ninety five) debtors, 68 (sixty eight) debtors or around 71.6% (seventy one point six percent) read the terms/clauses of the consumer financing agreement, while 27 (twenty seven) or around 28.4% (twenty eight point four percent) debtors did not read the terms/clauses contained in the consumer financing agreement.

The obstacles for debtors to read the terms/clauses of consumer financing agreements can be attributed to the characteristics of standard agreements inherent in consumer financing agreements, which in format and substance will be made with a fairly small font size and use highly technical language, making it difficult for debtors to understand, and contain terms/clauses that tend to benefit consumer financing companies and limit their responsibilities to debtors (exoneration clauses).[25] Requirements/clauses like this are known as “standard clauses”.

Here are some of the obstacles faced by debtors in reading the terms/clauses contained in consumer financing agreements:

[24] Fadhelika Mahendar dan Christiana Tri Budhayanti, *Op.Cit.,* hlm. 99.

[25] Milawarti T Ruslan, *Op.cit.,* hlm 203. Lihat juga Ahmadi Miru, *Prinsip-prinsip Perlidungan Konsumen di Indonesia,* RajaGrafindo Persada, Jakarta, 2011, hlm. 126.

Table 3
Obstacles Faced by Debtors in Understanding the Terms and Clauses of Consumer Financing Agreements

No	Alternative Responses	Answer Options	Frequency
1	The phrasing of the sentences is difficult to comprehend	23	24,2
2	The font size employed is too small, rendering the text difficult to read	26	27,4
3	An excessive number of pages	43	45,3
4	The printed material is unclear and illegible (blurred text)	3	3,1
	Total :	95	100

Source : Derived from the Consumer Questionnaire of a Consumer Finance Company

Based on primary data obtained from debtors of consumer finance companies, as stated in the table above, the obstacles faced by debtors in reading and understanding the terms/clauses of consumer financing agreements stem from the editorial sentences of agreements that are difficult to understand. This obstacle was complained about by 23 (twenty-three) debtors with a percentage of around 24.2% (twenty-four point two percent). The debtor's complaint is understandable because the sentence structure used is adjusted to the agreement format, which is expected to convey the agreement material in a clear, concise and firm manner. In fact, to achieve this goal, the formulation of the terms of the agreement clause often ignores the rules of writing in good and correct Indonesian. In addition, the formulation of the terms of the agreement is made in detail by using numbers or by articles, or briefly in the form of certain clauses that contain certain meanings that are only understood by entrepreneurs, while consumers are difficult or do not understand them in a short time. The size of the agreement paper is determined according to the model, the formulation of the contents of the agreement, the form of letters and numbers used in accordance with the wishes and needs of the entrepreneur.[26]

[26] *Ibid.,* hlm. 7.

Another obstacle is the use of font sizes that are too small, usually between font sizes 9, 10 or 11. For some debtors, which in this study amounted to 26 (twenty six) debtors, with a percentage of around 27.4% (twenty seven point four percent), this will certainly cause its own difficulties. This is especially the case for elderly debtors, whose visual abilities have been greatly reduced. From the analysis of 15 (fifteen) consumer financing agreements, only 1 (one) consumer financing agreement uses a font size of 12, namely PT Clipan Finance Indonesia Tbk, while 14 (fourteen) other consumer financing agreements use font sizes between 9, 10 or 11, making it difficult for debtors to read.

Another obstacle that was also raised by 43 (forty-three) debtors with the largest percentage of 45.3% (forty-five point three percent) was the number of pages of the consumer financing agreement which was too many. Actually, the number of pages of the agreement itself is not too much, only ranging from 4 (four) to 8 (eight) pages, but if it is taken into account with other supporting documents, such as a letter of authorization to withdraw a motor vehicle, a statement of payment of consumer financing installments, a letter of approval, and so on, it does make the documents that must be read quite a lot.

In addition to several obstacles as described earlier, debtors also expressed obstacles related to the printout of the consumer financing agreement form that was not clearly legible, due to the poor quality of the printing. As expressed by 3 (three) debtors with a percentage of 3.1% (three point one percent). This obstacle contributes to the debtor's reluctance to read the consumer financing agreement provided by the consumer financing company.

Since the substance of the consumer financing agreement is formulated unilaterally in the form of standard clauses, it has the opportunity to be utilized by consumer finance companies to exploit debtors for company profits, as well as ignoring debtors' rights, and potentially harming debtors' interests.[27] The following are some of the terms/clauses of consumer financing agreements that have the potential to harm consumers:

Table 4
Clauses in Consumer Financing Agreements That Harm Consumers

No	Description of Harmful Clauses	Frequency	Percentage
1	Inclusion of a clause for immediate full payment if the debtor defaults on installment payments	16	23,2

[27] Hartini, "Pelaksanaan Perjanjian Pembiayaan Konsumen Kenderaan Roda Pada Krisna Finance Surakarta," *Jurnal Rechstaat,* Vol. 8 No. 1, (2014): 2

2	Granting authority to the consumer financing company to repossess the vehicle without prior notice or warning letter	21	30,4
3	Termination of the consumer financing agreement without a court decision (excluding Articles 1266 and 1267 of the Civil Code)	9	13
4	Debtor grants the creditor power without notification to re-pledge, transfer, or hand over the creditor's receivables or claims to another party	9	13
5	Creditor has the right to repossess the vehicle even if the fiduciary guarantee agreement has not been signed, without a court decision, and without the assistance of a court bailiff	12	17,4
6	Inclusion of an exoneration clause that limits or eliminates the business actor's liability	1	1,5
7	Changes in the financing interest rate with or without notification to the	1	1,5

Source : Data derived from the Consumer Financing Agreements of Consumer Financing Companies

Based on the primary data obtained through the distribution of questionnaires, out of 95 (ninety-five) debtors who were willing to fill out the questionnaire, there were around 69 (sixty-nine) debtors who saw terms/clauses of consumer financing agreements that could potentially harm debtors, while the remaining 26 (twenty-six) debtors did not see any such terms/clauses. Therefore, Table 5 outlines some of the terms/clauses of consumer financing agreements that are analyzed based on the substance regulated and linked to the restrictions on the inclusion of standard clauses as stipulated in the Consumer Protection Law and the Financial Services Authority Regulation, which have the potential to harm debtors.[28]

There are several terms/clauses of the consumer financing agreement which, according to the debtor, have the potential to harm the debtor's interests, namely the inclusion of an immediate payment clause if the debtor is in arrears with installment payments, as in practice stated in 16 (sixteen) clauses of the consumer financing agreement, with a percentage reaching 23.2% (twenty-three point two percent). An example of such a requirement can be found in the consumer financing agreement issued by PT Clipan Finance Indonesia Tbk, where Article 7 of the Event of Default states:

“The creditor has the right to demand or collect payment of installments or other obligations owed by the debtor to the creditor based on this agreement at once and immediately without prior / further warning from the creditor or a letter from the bailiff / court is no longer required if the following events occur....”

Another requirement/clause of the financing agreement that, according to the provisions, has the potential to harm the debtor's interests is the inclusion of the requirement/clause “authorizing the consumer financing company to withdraw the vehicle unit without prior notice/reprimand letter”. The practice of including clauses regarding this matter was found in 21 (twenty-one) consumer financing agreements with a percentage reaching 30.4% (thirty point four percent). The following is an example of such requirement/clause as stated in the consumer financing agreement of PT Magna Finance Article 6 Grant of Power of Attorney as follows: "If the debtor is negligent in making installment payments and / or other obligations, without the need for the debtor to first be declared negligent through a warning letter, the debtor hereby authorizes the creditor to have the right to take legal actions on behalf of the debtor as follows:

a. To immediately execute and or take back the object referred to in this financing agreement....."

[28] Pasal 18 Undang-undang Nomor 8 Tahun 1999 Tentang Perlindungan Konsumen serta Pasal 30 Ayat (5) Peraturan Otoritas Jasa Keuangan Republik Indonesia Nomor 6/POJK.7/2022 Tentang Perlindungan Konsumen dan Masyarakat di Sektor Jasa Keuangan.

As a comparison of the description contained in table 5, several standard clauses that are often applied in consumer financing agreements can be stated:

1. The authority to terminate the agreement unilaterally at any time without prior notice;
2. The authority to execute collateral provided by consumers or vehicle owners;
3. The authority to sell collateral, and take into account all debts of consumers from the proceeds of the sale of collateral unilaterally;
4. Can change the interest rate;
5. Can determine the amount of arrears fines and other fees charged to debtors unilaterally;
6. Can make a power of attorney to the consumer that authorizes the action to enter the room of the residence or office of the authorizer or other places where the vehicle is located;
7. Can transfer the object goods to other parties;
8. Consumer finance companies can charge a finalty nego fee (a fee charged to each installment payment made by consumers before the end of the agreement period, the fee is in accordance with the applicable provisions in a company.[29]

Not a few business people keep business intentions or strategies, to realize their business targets, which are deliberately hidden or not included in the discussion items in negotiations. Such business targets are deliberately not offered explicitly in the negotiation process and are secretly intended to be realized through the weaknesses of the opposing party's clauses which are deliberately conditioned as such.[30]

The Legal Implications of the Inclusion of Harmful Clauses in Motor Vehicle Financing Agreements for Consumers in Medan City

The act of circumvention by consumer finance companies in formulating the terms/clauses of consumer finance agreements will ultimately lead to various legal impacts in the future which can result in difficulties for the parties, failure in the implementation of the agreement and lead to conflicts in the Consumer Dispute Resolution Agency (BPSK) or formal courts..[31]

The following are some of the legal impacts of motor vehicle consumer financing agreements that include terms/clauses that are detrimental to consumers:

[29] Firya Oktaviarni, *Op.cit.,* hlm. 115
[30] Soedjono Dirdjosisworo, *Misteri Dibalik Kontrak Bermasalah,* Mandar Maju, Bandung, 2002, hlm. 28.

1. The legal impact includes the emergence of disputes/conflicts between the parties that are submitted to the Consumer Dispute Settlement Agency (BPSK) or to the court.

If connected with the rise of disputes between the parties in the context of motor vehicle consumer financing agreements, which lead to a lawsuit to the Consumer Dispute Resolution Agency (BPSK) or to a formal court.[32] This condition can be preceded by the existence of inaccuracies during the preparation of the terms/clauses of the agreement and the existence of elements of bad faith from one of the parties during the preparation and implementation of the agreement.[33]

In connection with this, to prove the existence of an element of imprudence and an element of bad faith in a motor vehicle consumer financing agreement, the parties can submit the problem to the court to ask the judge to help determine the existence of these two elements, and cancel the agreement. According to Asikin Kusuma Atmaja, "the judge is authorized to enter/examine the contents of a contract if necessary because the contents and implementation of the contract are contrary to the values in society."[34]

The following is the data on the submission of disputes between Debtors/Consumers and Consumer Financing Companies (finance) to BPSK Medan City, as presented in the following table: [35]

Table 5
Consumer Dispute Submissions to BPSK Medan City, 2019-2021

No	Year	Total Cases		Total Cases Received
		Consultation	Complaint	
1	**2019**	54	54	108
2	**2020**	58	67	125
3	**2021**	88	87	175

[31] Mia Hadiati, dan Mariske Myeke, "Menakar *Justice for Peace* dalam Penyelesaian Sengketa Konsumen Melalui Mediasi (Studi Keputusan BPSK Nomor Reg. 004/Reg.BPSK-DKI/I/2016), *Jurnal Hukum Ius Quia Iustum,* Vol 25 No. 1 (2018): 105 DOI : 10.20885/iustum.vol25.iss1.art5

[32] Binsar Halomoan Siburian, Netti Elfrida Sihombing, Maurice Roggers, Jaminuddin Marbun, "Peran Badan Penyelesaian Sengketa Konsumen (BPSK) dalam Menyelesaikan Sengketa Konsumen (Studi Pada Badan Penyelesaian Sengketa Konsumen Kota Medan)", *Jurnal Diktum* , Vol. 2 No. 2 (2023): 2 DOI : http://dx.doi.org/10.46930/diktum.v2i2.3404

[33] Ridwan Khairandy, *Op.cit*., hlm. 134.

[34] Ni'matul Khoiriah, "Batasan Kebebasan Berkontrak Dalam Kontrak Konvensional Dan Kontrak Syariah", *Jurnal Ahkam,* Vol. 5, No. 1, (2017): 47 https://doi.org/10.21274/ahkam.2017.5.1.41-59

[35] Tanti Juliana "Analisis Kinerja Pegawai Pada Badan Penyelesaian Sengketa Kota Medan", *Tesis,* Program Magister Ilmu Administrasi Publik Pasca Sarjana Universitas Medan Area, Medan, 2022, hlm. 7.

Source : Tanti Juliana's Thesis: Employee Performance Analysis at the Consumer Dispute Settlement Agency (BPSK) in Medan City.

Based on the data contained in Table 5 above, information is obtained that from 2019 to 2021, the submission of consumer disputes to BPSK Medan City has increased quite rapidly. Whereas initially in 2019, incoming consumer disputes amounted to 108 (one hundred and eight) cases, with details, 54 (fifty-four) cases in the form of consultations and 54 (fifty-four) cases in the form of complaints. Next in 2020, incoming consumer disputes increased to 125 (one hundred and twenty-five) cases, consisting of 58 (fifty-eight) cases in the form of consultations and 67 (sixty-seven) cases in the form of complaints. Furthermore, in 2021, there was a considerable increase in incoming consumer disputes, namely 175 (one hundred seventy five) cases, with details of 88 (eighty eight) cases in the form of consultations and 87 (eighty seven) cases in the form of complaints. Problems in transactional relationships between business actors and consumers, which are increasingly diverse and consumers' awareness of their rights is increasing, will encourage more consumer disputes to be submitted for resolution to BPSK Medan City.

2. The legal impact is in the form of the parties' reluctance to carry out an agreement on a motor vehicle consumer financing agreement that includes terms/clauses that are detrimental to the parties.

There is a possibility that an agreement cannot be implemented even though the elements necessary for a valid agreement have been fulfilled. This situation can occur if the party who is asked to carry it out raises certain objections at the time of implementation, one of which arises because the series of sentences that make up a contract do not accommodate the will of the parties equally.[36]

According to Soedjono Dirdjosisworo there are two main reasons that affect the implementation of an agreement:

a. The agreement contained in the contract does not reflect the true will of the parties. There are several factors that become the background why the agreement contains a defect of will which may be due to the contract there is an error, misinterpretation due to fraud, coercion, or improper influence exercised by one of the parties;

b. Certain contracts do not meet the formal requirements set out in the law, for example, certain contracts must be in writing or in a certain form that has been determined by law, including the obligation to use an authentic deed for the establishment of a business entity. In the event of the above, it can be said that there is a "Problem Contract." [37]

[36] Soerdjono Dirdjososworo, *Op.cit.,* hlm. 35

Since the beginning, the terms/clauses formulated in the agreement have contained problems that can affect the willingness of the parties to carry out the agreement. For example, related to the imbalance of the rights and obligations of debtors and creditors, the imposition of excessively high loan interest, the transfer / limitation of creditor responsibility (exoneration clause) and so on. Inequality in the formulation of the terms/clauses of the agreement can become the background for the parties (especially the debtor) not to carry out the agreement in the agreement, thus placing one of the parties in a state of "breach of promise or default".[38] The forms of default that may occur can be in the form of not performing the performance at all, performing the performance but not as it should be, performing the performance but exceeding the predetermined time limit.[39]

In accordance with the default clause agreed by the parties and set out in the consumer financing agreement, several forms of consumer / debtor actions can be found which are categorized as defaults, namely the negligence of consumers
/ debtors to make payments of principal installments or interest, late payment of installments in accordance with the agreed deadline, consumers / debtors transfer motorized vehicles to other parties without the knowledge / permission of the consumer financing company and so on,[40] the following is an example of determining the conditions of default in the PT Summit Otto Finance Consumer Financing Agreement, in Article 11 Cidera Promise determines that:

The events below constitute a breach of promise by the debtor in carrying out this agreement, without the need to be preceded by a special warning letter or a court order but it is sufficient to prove it:

a. The debtor fails to pay installments, penalties and other charges on an amount which has become due in accordance with the agreement, which in the case of the lapse of time alone provides sufficient evidence that the debtor has defaulted on his obligations under this agreement, so that warnings by bailiffs or other similar papers are no longer required;

b. The goods are sold, leased, transferred, assigned or pledged to a third party without the prior written consent of the creditor;

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37 *Ibid.*

38 Syaiful Khoiri Harahap, "Renegoisasi Kontrak Sebagai Upaya Penyelesaian Pelaksanaan Kontrak Saat Pandemi Covid 19" *Jurnal Hukum Ius Quia Iustum,* Vol. 29 No. 2 (2022): 249 DOI: 10.20885/iustum.vol29.iss2.art1

39 *Ibid.*

40 Arista Setyorini, dan Agus Muwarto, "Akibat Hukum Perjanjian Pembiayaan Konsumen Dengan Pembebanan Jaminan Fidusia yang Tidak Didaftarkan", *Jurnal Ilmu Hukum Mimbar Keadilan,* , (2017) :127 DOI 10.5281/zenodo.1154998

c. If any statement, certificate or documents provided by the debtor and/or collateral owner in connection with this agreement turns out to be untrue/false;

d. The debtor and/or collateral owner does not carry out obligations or neglects to fulfill the terms and conditions in the agreement.

The conditions or circumstances as described above will place the consumer/debtor in a state of breach of promise/ default, which will have a legal impact in the form of:

a. the obligation of consumers/debtors to provide compensation to consumer finance companies (Article 1243 of the Civil Code),

b. if the obligation is a reciprocal obligation, the consumer financing company has the right to demand the cancellation of the obligation through a judge (Article 1266 of the Civil Code),

c. the debtor is obliged to perform the agreement if it is still possible to perform, or the cancellation of the agreement is accompanied by compensation (Article 1267 of the Civil Code), and

d. the debtor is obliged to pay court costs if he is brought to court and found guilty based on a judge's decision.[41]

Although several provisions of the Civil Code have anticipated the possibility of consumer/debtor default in the implementation of consumer financing agreements, specifically the parties independently regulate the legal impact of default, for example the obligation of consumers/debtors to pay a fine for each late installment payment, as contained in the PT Mandiri Tunas Finance consumer financing agreement number 5 regarding Late Penalties, letter a:

"If the debtor fails to pay installments and/or if there are installment payments that are smaller or less than the amount of installments that must be paid on the due date of the installment based on the Consumer Financing Agreement, the debtor will be subject to late fees as specified in the Consumer Financing Agreement."

Similarly, with the right of the consumer financing company/creditor to cancel the agreement if the consumer/debtor defaults, there is a special arrangement in Article 11 Termination of Agreement Number 2 of the PT Oto Multiartha consumer financing agreement which determines:

"Notwithstanding Paragraph (1) and outside the provisions of Article 5, the creditor has the right to unilaterally terminate this agreement at any time if one or more of the following circumstances occur: a. the occurrence of a

[41] Lala Alwi, Merry Tjoanda, dan Pieter Radjawane, "Ganti Rugi Akibat Wanprestasi Perjanjian Kerja Sama (Bagi Hasil) Kajian KUHPerdata", *Jurnal Kanjoli Bussines Law Review,* Vol.1 No. 2 (2023): 111 DOI : 10.47268/kanjoli.v1i2.11618

breach of promise as referred to in Article 10 of the agreement and/or other agreements made between the debtor and the creditor."

The most burdensome thing for consumers / debtors and often leads to disputes is the authority of consumer finance companies / creditors to forcibly withdraw vehicle units from the hands of debtors, as clearly stated in Article 6 letter g of the PT Internusa Tribuana Citra Multi Finance Consumer Financing Agreement as follows:

"if the debtor does not pay off part or all of his debts or does not fulfill his obligations according to the provisions of this agreement then: (i) without going through a stipulation or court decision first, the creditor has the right and is hereby authorized with the right of substitution by the debtor to take wherever and wherever the vehicle is located, if necessary by requesting the assistance of the authorities, and then sell it in public or directly or by mediating other parties according to a fair market price according to the creditor."

The clause as listed above refers to the existence of “Parate Execution”, namely “the authority of the creditor to withdraw the vehicle unit from the hands of the debtor with the existence of the executorial title of the fiduciary guarantee certificate which contains the inscription ”For the Sake of Justice Based on the Almighty God". Therefore, there is no need for a court decision as the basis for the withdrawal of the fiduciary security object vehicle unit by the creditor.[42]

Of course, by paying attention to some of the requirements/clauses of the consumer financing agreement above, the severity of the legal impact that must be borne by the consumer/debtor if in a state of default, is inversely proportional to the condition of the consumer financing company, where the consumer/debtor's default can be used as a basis for immediately terminating the agreement and getting faster repayment by conducting an auction of the fiduciary security object.

4. Conclusion

Based on the explanation as described above, the following conclusions can be obtained: There are several forms of terms/clauses of consumer financing agreements that have the potential to cause harm to consumers/debtors in Medan City, including; the inclusion of an immediate payment clause if the debtor is in arrears with installment payments, authorization for the consumer financing company to withdraw the vehicle unit without prior notice or warning letter, termination of the consumer financing agreement without a court decision (waiver of Articles 1266, 1267 of the Civil Code), the debtor authorizes the creditor without notice to re-pawn, The creditor has the right to withdraw the vehicle unit even though the fiduciary guarantee agreement has not been signed, without a court decision, and without the assistance of a court bailiff, the inclusion of exoneration clauses that limit or eliminate the responsibility of business actors, changes in financing interest rates with or without notice to the debtor. In addition, in terms of the format/form of the agreement, some of the terms/clauses of the consumer financing agreement pose obstacles for consumers/debtors in Medan City to read the terms/clauses

of the consumer agreement, namely; editorial sentences that are difficult to understand, the font size used is too small so that it is difficult to read, the number of pages is too much, the printout is not clearly legible (blurred writing). The legal impact caused as a consequence of the inclusion of clauses of motor vehicle financing agreements that are detrimental to consumers in Medan City can be divided into 2 (two) groups, namely; legal impact in the form of the emergence of disputes between the parties submitted to BPSK or to the Court, in addition to the reluctance of the parties to implement the agreement of motor vehicle consumer financing agreements that include terms/clauses that are detrimental to the parties.

42 Rumawi, **Udiyo Basuki, Mellisa Towadi, dan Supianto,** "Parate Executie dalam Fidusia Menurut *Ratio Decidendi* Putusan Mahkamah Konstitusi," *Jurnal Konstitusi*, Vol. 19, No. 3 (2022), hlm. 561. https://doi.org/10.31078/jk1933

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