



BORROWER'S LIABILITY FOR DAMAGED MOTORCYCLE AFTER RETURN

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ABSTRACT

Motorcycle loan agreements that are made verbally often cause legal problems, especially when the motorcycle is damaged after being returned to the owner. This study aims to find out the legal provisions that govern motorcycle loan agreements and the liability of the borrower for the damage that occurs. The research method used is normative legal research with a legislative approach and a case approach, which is analyzed qualitatively based on primary and secondary legal materials. The results of the study show that the loan agreement is regulated in Articles 1740 to 1753 of the Civil Code, and the borrower is responsible for the damage to the motorcycle caused by its negligence in the form of compensation as a result of default.

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1. INTRODUCTION

People in general often make agreements in order to meet their needs. In social life, agreements play a very important role as one of the legal instruments that regulate relations between individuals and between institutions. Agreements are the basis of many legal transactions that allow for the lawful and orderly exchange of goods, services, and rights.

An agreement is an event where one person makes a promise to another person or two people agree to make a covenant with each other. Through this, a relationship is formed between the two people called an alliance. A covenant is a series of words that contain promises or abilities that are written or spoken.

In various treaty laws, if an agreement has fulfilled all its conditions and according to the law the agreement has fulfilled the principles and conditions of the agreement is binding and must be fulfilled and valid as law, in other words, the agreement has legal consequences that must be fulfilled by the parties concerned, as stated in Article 1338 Paragraph (1) of the Civil Code which reads "All agreements made legally shall be valid as laws for those who make it" as seen in Article 1338 Paragraph (1) of the Civil Code, this is also affirmed in Article 1315 of the Civil Code. The agreement is the most important source of the agreement, because the agreement is an abstract sense while the agreement is a concrete thing or a real event that binds the parties who make an agreement.

The form of agreement can be divided into two types, namely written and oral. A written agreement is an agreement made by the parties whose contents are stated in written form. While an oral agreement is an agreement made by the parties in an oral form (it is enough agreement of the parties).

Borrowing is an agreement by which one party gives an item to the other party to be used for free, on the condition that the recipient of this item, after using it or after a certain time has passed, returns it (Article 1740).

Loan agreements that are made verbally often occur in the lives of the surrounding community. Such as motorcycle loan agreements are familiar in neighbors, friends, and family environments. In the loan-and-use agreement, it occurs orally on the basis of mutual trust. The loan agreement occurs between the motorcycle owner and the motorcycle borrower.

In verbal agreements, there are often defaults. The default experienced by the motorcycle owner is that the borrower is negligent in the use of the goods used by the borrower, such as damage or defects in the goods when returned to the motorcycle owner.

As a citizen, of course, it cannot be separated from social life that is thick with values and norms that govern it. The state of Indonesia, which is a democratic and open country, certainly has values and norms such as the rights and obligations of each citizen. Regulations have been put in place to protect the rights of citizens. And rules have also been set to regulate heterogeneous relationships in social, national, and political life.

In the agreement, provisions and conditions that include the rights and obligations of the parties need to be formulated. The details of the rights and obligations of the parties are the part that constitutes the actual formulation of an act. The relationship between rights and obligations and the set of rights and obligations between the parties is a logical relationship.

Civil law also applies because it is determined by agreements made by the parties. The agreement made by the parties stipulates the acceptance of legal obligations to be carried out by the parties. The agreement is binding on the parties and follows as the law for the parties who make it. The agreement must be executed in good faith (*te goeder trouw*). An agreement creates a legal relationship between the parties who make it. The legal relationship gives rise to mutual obligations and rights between the parties. The legal relationship occurs because of legal events in the form of agreements, for example, buying and selling, renting, debts, and granting of powers.

The purpose of the civil liability system is to provide legal protection to individuals who have legal obligations to others. A person who is legally bound must fulfill his rights and obligations as required by law. If someone fails to fulfill their legal obligations, it causes harm to others. A person who fails to fulfill his or her obligations is responsible for the rights of the aggrieved party.

The purpose of the research is to analyze the legal provisions that regulate motorcycle loan agreements based on the Civil Code, especially those related to loan agreements as regulated, especially related to the implementation of the rights and obligations of the parties in the motorcycle loan agreement, both the motorcycle owner and the borrower, this research aims to be accountable for bicycle damage motorcycle after being returned to the owner, as well as legal settlement efforts that can be made in the event of a default in the loan agreement.

2. RESEARCH METHODS

The type of research used in this study is normative legal research or also called doctrinal law research. Normative law research is law that is carried out by researching literature materials or periodic secondary data. By using a legal systematization approach, a legislative approach, and a case approach. Legal systematics can be carried out in certain laws or recorded laws. The statute approach that needs attention is the structure of norms in the form of a sequence or hierarchy of laws and regulations. The case approach in normative research aims to study the application of legal norms or rules carried out in legal practice.

The data sources used in this study are revelation data and secondary data which include primary legal materials, secondary legal materials and tertiary legal materials. The data collection tool used in this study is library research by collecting literature study data directly by visiting bookstores, libraries (both inside and outside the campus of the University of Muhammadiyah North Sumatra), and document studies (documentary research) carried out by means of search through internet media.

The analysis of this research uses normative legal research, then it is analyzed qualitatively, where the analyst has a starting point from the analysis of the statute approach in addition to being combined with other approaches used in the research.

3. RESULT AND ANALYSIS

Legal Provisions Governing Motorcycle Borrowing

Basically, a valid agreement is an act that binds both parties or more in the existence of the agreement. This is stated in Article 1320 Paragraph 1 of the Civil Code. This statement is based on the assumption that both parties are free to decide on the content of the agreement, the agreement made is a form of agreement between the parties, and the parties are obliged to fulfill the obligations that have been mutually agreed. An agreement can be said to be legally valid if the content of the agreement is in accordance with the applicable laws and regulations.

Loan-and-use agreements play a crucial role in various fields, from property loans, vehicles, to equipment. However, there is often uncertainty regarding the rights and obligations of each party in the agreement. Lenders often have concerns related to the risk of the loaned goods, the security of investments, and the protection of ownership rights. It is important for the law to provide a solid foundation for lenders to feel safe and legally protected.

The definition of borrowing is an agreement by which one party gives an item to another party to be used for free, on the condition that the recipient of this item, after using it or after the passage of a certain time, returns it (article 1740).

In everyday speech, only the term "borrow" is used, but we know that there is a difference between borrowing a car or a desk and borrowing money or rice, for example. If a person borrows a car or a table, then what must be returned is the car or table (it should not be exchanged for another car or table), while if a person borrows a certain amount of money or rice, then what will be returned is not as much money or rice as borrowed from the same quality, because the money or rice that was previously received has been used; So what is returned is not money or rice that was previously received, but other money or rice of the same value.

According to the provisions of Article 1741 of the Civil Code, in this loan-and-use agreement, the lending party remains the owner of the loaned goods. As we will see, this is not the case in the loan and borrowing agreement. There the borrowed goods belong to the person who borrows. This can be proven by looking at the provisions contained in the Civil Code. In Articles 1740 to 1753 of the Civil Code, regulations have been given on lending agreements. Where Article 1740 regulates the meaning of the loan-use agreement. In the provisions of Articles 1741 and 1742, provisions are given regarding the subject and object of the loan-use agreement. Furthermore, Article 1743 provides provisions regarding the inheritance of borrowing agreements.

The legal provisions that regulate motorcycle borrowing, namely the borrowing agreement as mentioned in (article 1742) everything that can be used by people and not destroyed by their use, can be the material of this agreement. Without us realizing it, in our daily lives, we often borrow and use or commonly referred to in daily life with the word "borrow".

Borrowing and using which is done orally often occurs in the lives of the surrounding community. Like this motorcycle loan agreement, it is familiar in the life of neighbors, friends, and family. In verbal loan-and-use agreements, it occurs on the basis of mutual trust. In oral agreements, there are often defaults, so the importance of the legal provisions that govern motorcycle loan agreements.

In the context of the motorcycle loan agreement, both have the following rights and obligations:

- a. Rights and Obligations of the Lender's
 - 1) Rights
 - a) The right to a proper return.
The lender has the right to get the goods or services back according to the agreed time.
 - b) Right to compensation or indemnity.
In the event of damage or improper use, the lending party has the right to seek compensation or compensation.
 - 2) Obligations
 - a) Provide the goods in a condition suitable for use.
 - b) Provide clear information about terms of use.
 - c) Request the return of the goods according to the agreed time that has been set. In the Loan Agreement, there is also a provision that the person who lends cannot request the loan item again other than after the time specified in the Agreement has passed.
- b. Rights and Obligations of the Borrowing Party
 - 1) Rights
 - a) Using borrowed items
in accordance with the agreement.
 - b) Get clear information
regarding the terms and conditions of use.
 - c) Obtain assistance and repair if the borrowed goods are damaged caused by fair use.
 - 2) Obligations
 - a) Maintenance Obligations
Carefully take care of borrowed goods or services and use them according to predetermined rules or instructions
 - b) Return Obligation
Return goods or services on time and in the same condition as borrowed, unless there is a regulated damage.

Borrower's Liability for Damaged Motorcycle After Return

In a dynamic modern society, the use of motor vehicles such as motorcycles has become a primary need for many individuals for daily mobility. This encourages the rampant practice of motorcycle lending, both through pawn agreements, leases, and informal loans. However, it is often a dispute when a borrowed vehicle is damaged after it has been returned to its owner, raising crucial questions regarding the borrower's legal liability.

Liability arises when one party causes harm to the other party, and the aggrieved party refuses to accept it, thus prompting them to file a lawsuit in court. Since these responsibilities come from civil contracts, these responsibilities are commonly known as civil liability. Regarding this civil liability, which includes the obligation to indemnify, the law (as specified in Articles 1131 and 1132 of the Civil Code) has established safeguards to ensure the fulfillment of this obligation. This security involves using all the assets of individuals (debtors) as collateral to ensure the fulfillment of their obligations to others.

The purpose of the civil liability system is to provide legal protection to individuals who have legal obligations to others. A person who is legally bound must fulfill his rights and obligations as required by law. If someone fails to fulfill their legal obligations, it causes harm to others. A person who fails to fulfill his or her obligations is responsible for the rights of the aggrieved party.

One of the loan agreements is the 2021 NMAX motorcycle loan agreement between the first party on behalf of Mr. Sutiono (owner) and the second party on behalf of Mr. Suyetno (borrower), the agreement is made orally. Mr. Suyetno promised to return the motorcycle in good condition and Mr. Sutiono also agreed with what had been promised by Mr. Suyetno. On June 7, 2025, Mr. Suyetno borrowed a motorcycle vehicle in good condition for sudden interests. There is no written agreement, only an oral agreement in the presence of a witness (Mr. Sutiono's wife). Mr. Suyetno used a motorbike for shopping purposes at 14.00 WIB. When returned at 16.30 WIB. The motorcycle suffered damage to the lower body of the motorcycle broke, this damage did not exist before it was borrowed. Mr. Sutiono demanded compensation for repairs. But Mr. Suyetno did not want to admit his negligence so he did not want to compensate for the loss.

In the agreement, a default occurs. A debtor's default (negligence or forgetfulness) can be of four types, namely not doing what he is willing to do, doing what he promised but not as promised, doing what he promised but being late, and doing something that according to the agreement he is not allowed to do. The consequences of the default can usually be subject to sanctions in the form of compensation.

In this case, legal sanctions arise to force the defaulting party to fulfill the obligation. The implementation of promises is achievement, while default is the absence of the implementation of promises. According to Salim H.S., default has a close relationship with somasi. If there has been a default, the step that can be taken is to make a summons or reprimand for the act of breaking the promise. This summons or reprimand is useful to remind the party who has defaulted on the obligations that must be fulfilled according to the agreement.

Basically, a person who borrows someone else's goods is obliged to maintain the goods as stipulated in Article 1744 of the Criminal Code:

"Whoever receives a borrowed item is obliged to keep it as a good family head, he must not use the item except for the purpose of use that is in accordance with its nature, or for the benefit specified in the agreement. If the borrower deviates from this prohibition, the borrower may be liable to reimburse costs, losses and interest, if there is a reason for it.

The liability of the motorcycle borrower is in the form of compensation. Compensation for default is a form of compensation imposed on one of the parties who does not fulfill the content of the agreement that has been made or agreed upon by the parties. In article 1249 of the Civil Code, it is determined that compensation for losses caused by default can be divided into two, namely:

- a. Material damages, that is, a loss suffered by the creditor in the form of money or wealth or objects.
- b. Intangible damages, that is, a loss suffered by creditors who are not worth money, such as pain, pale face and others.

Responsibility is an awareness that humans have of intentional or unintentional actions. In addition, it can be interpreted as an obligation to carry out all duties seriously and to be able to accept all risks from these actions that come from oneself to carry out obligations. According to Stevenson, responsibility means that we are accountable for what we do. If we're going to do something, keep our promises. If we follow a mistake, we must be honest with it and take responsibility by bearing the consequences. In this case, everything we plan and do will have an end in the form of responsibility according to the truth or the wrong that occurs. Liability in the Civil Code refers to the obligation to compensate for losses (settlement) arising due to the consequences of unlawful acts or defaults in the implementation of the loan and use agreement of an object.

4. CONCLUSION

Based on the results of the research and discussion, it can be concluded that the motorcycle loan agreement is regulated in Articles 1740 to 1753 of the Civil Code and remains valid and binding on the parties even though it is done orally as long as it meets the requirements for the validity of the agreement. In the agreement, the title to the motorcycle remains with the owner, while the borrower is obliged to use, maintain, and return the motorcycle in good condition. If there is damage due to the negligence of the borrower, the borrower is declared to have committed a default and is legally responsible to compensate for the losses experienced by the motorcycle owner, so that the loan agreement causes clear legal consequences and provides a basis for legal protection for the aggrieved party.

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