

CONSUMER PROTECTION UNDER LAW NUMBER 8 OF 1999 ON PARTIAL CANCELLATION IN MOTOR VEHICLE SALE AND PURCHASE AGREEMENTS

Maysara Ulfa

Universitas Islam Negeri Ar-Raniry Banda Aceh, Indonesia

Email: 210106043@student.ar-raniry.ac.id

Abstract

This study examines consumer protection against the unilateral cancellation of motor vehicle sales and purchase agreements, with a focus on the practice at the Berkah Motor business in Banda Aceh, Indonesia. The research method employed is a sociological juridical approach, utilizing primary data collection through interviews and secondary data from laws, regulations, and related literature. The results of the study indicate that a business actor unilaterally canceled the deal due to late installment payments by the consumer, without providing prior information regarding the provisions, and without returning the down payment. This action violates the principle of good faith and the provisions of Articles 7 and 18 of Law Number 8 of 1999 concerning Consumer Protection, which require business actors to provide clear information and prohibit the inclusion of unilateral exoneration clauses. Hence, I argue that although oral agreements are valid and binding, business actors are still obliged to fulfill consumer rights reasonably. In the event of a dispute, Berkah Motor generally resolves the dispute through deliberation to reach a consensus. Still, its effectiveness depends heavily on the good faith of the business owner. If peaceful efforts fail, consumers can pursue legal action through the Consumer Dispute Resolution Agency (BPSK) or the courts. This study highlights the importance of drafting written agreements and the need to enhance legal education for consumers to prevent losses resulting from the unilateral cancellation of verbal contracts.

Keywords: Business, Buying and Selling, Unilateral Cancellation, Consumer Protection

Abstrak

Penelitian ini mengkaji tentang perlindungan konsumen terhadap pembatalan sepihak perjanjian jual beli kendaraan bermotor, dengan fokus penelitian pada praktik di Berkah Motor di Banda Aceh, Indonesia. Metode penelitian yang digunakan adalah pendekatan yuridis sosiologis, dengan menggunakan pengumpulan data primer melalui wawancara dan data sekunder dari peraturan perundang-undangan dan literatur terkait. Hasil penelitian menunjukkan bahwa pelaku usaha secara sepihak membatalkan perjanjian karena keterlambatan pembayaran angsuran oleh konsumen, tanpa memberikan informasi terlebih dahulu terkait ketentuan yang berlaku, dan tanpa mengembalikan uang muka. Tindakan tersebut melanggar asas itikad baik dan ketentuan Pasal 7 dan Pasal 18 Undang-Undang Nomor 8 Tahun 1999 tentang Perlindungan Konsumen yang mewajibkan pelaku usaha untuk memberikan informasi yang jelas dan melarang pencantuman klausula baku secara sepihak. Oleh karena itu, saya berpendapat bahwa meskipun perjanjian lisan adalah sah dan mengikat, pelaku usaha tetap berkewajiban untuk memenuhi hak-hak konsumen secara patut. Dalam hal terjadi sengketa, Berkah Motor pada umumnya menyelesaikan sengketa melalui musyawarah untuk mufakat. Namun, efektivitasnya sangat bergantung pada itikad baik pelaku usaha. Jika upaya damai gagal, konsumen dapat menempuh jalur hukum melalui Badan Penyelesaian Sengketa Konsumen (BPSK) atau pengadilan. Studi ini menyoroti pentingnya membuat perjanjian tertulis dan perlunya meningkatkan pendidikan hukum bagi konsumen untuk mencegah kerugian yang diakibatkan oleh pembatalan sepihak dari kontrak lisan.

Kata kunci: Bisnis, Jual-Beli, Pembatalan Sepihak, Perlindungan Konsumen

INTRODUCTION

Buying and selling transactions have been an integral part of people's economic activities since ancient times. However, there is no clear record of when this trade officially began. Sale and purchase agreements are among the most common forms of agreements in trade transactions, encompassing both everyday consumer goods and high-value items such as motor vehicles.¹ Vehicles, such as cars and motorcycles, have become a necessity for many people as a means of transportation or part of economic activities. However, in practice, the implementation of motor vehicle purchase and sale agreements often faces various obstacles. One of the problems that frequently arises is

¹ Shobirin Shobirin, 'Jual Beli Dalam Pandangan Islam' (2016) 3 BISNIS : Jurnal Bisnis dan Manajemen Islam 239.

unilateral cancellation by one of the parties to the contract, whether it is the seller or the buyer.²

According to Article 1457 of the Civil Code, buying and selling is defined as an agreement in which one party promises to deliver goods and the other party pays the agreed price. This is by the provisions of Law Number 8 of 1999 concerning Consumer Protection. In buying and selling transactions, there is a principle of freedom of contract, which grants individuals complete independence to enter into agreements regarding any matter, as long as they do not violate laws, moral norms, or public order (Articles 1337-1338 of the Civil Code).³

In the current era of globalization, motorcycles have become a necessity for many people, so many motorcycle dealers offer more affordable prices. This results in various instances of losses for consumers in used motorcycle transactions. Related to that, a phenomenon occurred in the Berkah Motor business in Ule Kreng sub-district, Banda Aceh city, where consumers made transactions by wanting to buy used motorcycles at that location. When meeting and making transactions, the business actor and the consumer agree to carry out a buying and selling transaction and determine the selling price for the used motorcycle. Then, when both parties have decided to carry out a buying and selling transaction, the business actor and the consumer enter into a verbal agreement, with the consumer agreeing to provide a down payment to the business actor. The motorcycle selling price agreement is IDR 10,000,000, with a system that requires a down payment as an initial guarantee. The consumer pays IDR 500,000, and the remaining payment is made in monthly installments. The motorcycle will be handed over to the buyer on the agreed-upon date, along with complete documents. Business actors also guarantee that the motorcycles sold are free from all forms of disputes, demands, or other legal burdens. Both parties also agreed to conduct family deliberations if any problems arise during the implementation of the agreement.⁴

² Chairul Fahmi and Syarifah Riyani, 'ISLAMIC ECONOMIC ANALYSIS OF THE ACEH SPECIAL AUTONOMY FUND MANAGEMENT' (2024) 11 Wahana Akademika: Jurnal Studi Islam dan Sosial 89.

³ T Syahfitri, 'Tinjauan Yuridis Jual Beli Menurut Hukum Perdata'" [2018] Jurnal Hukum Das Sollen 1.

⁴ Cut Afra, Nahara Eriyanti and Nasr Mohamed Arif, 'SETTLEMENT OF DEFECTS IN MURABAHAH FINANCING AT BANK ACEH SYARIAH REGIONAL BIREUEN, INDONESIA' (2023) 7 JURISTA: Jurnal Hukum dan Keadilan 201.

One of the sale and purchase agreement systems that is now widely used is buying and selling with a down payment. A down payment is a sum of cash paid by the buyer to the seller, which will be counted towards the total payment if the transaction is completed. However, if the seller does not proceed with the transaction, then the advance remains the seller's. An advance serves as a binding tool for agreements, and in buying and selling transactions, the term "down payment" becomes very important. One of the key considerations in buying and selling transactions is ensuring that the goods purchased are halal and that the method of purchase is also halal. To demonstrate the seriousness of potential buyers, they are typically required to make a down payment. Sometimes, sellers feel the need to request a payment so that potential buyers feel more involved in the transaction.⁵

In this agreement, the parties agree to agree orally, where in the oral agreement both parties agree on the selling price of the motorcycle of IDR 10,000,000, which is paid in installments by the consumer for 10 months, the business actor also guarantees the quality of the bike and if there is a defect in the motorcycle within a month after purchase, it will be borne by the business actor. However, after the implementation of the agreement in the third month, the consumer is late in paying the installments because his child is sick. Suddenly, the business actor cancels the deal because the consumer is late in paying the installments. Still, the business actor does not return the down payment that the consumer submitted at the beginning of the agreement. This is the gap in the oral agreement where the perpetrator does not disclose at the start of the agreement that there will be no advance refund in the event of a problem with the agreement.⁶

However, the business actor does not provide information to consumers regarding the provisions for the cancellation of unilateral buying and selling, where the business actor will take back the motorcycle when the consumer is late in paying the installments, and there is no down payment. As a result, consumers are dissatisfied because there is no explanation from the business actor at the beginning of the agreement, and they still want a full refund of the down payment. This situation is contrary to Law No. 8 of 1999 concerning

⁵ Muhammad Achyar, Chairul Fahmi and Riadhus Sholihin, 'ISLAMIC LAW REVIEW OF MONOPOLY PRACTICES IN MODERN ECONOMICS' (2024) 5 Al-Mudharabah: Jurnal Ekonomi dan Keuangan Syariah 288.

⁶ Iwandi Iwandi, Rustam Efendi and Chairul Fahmi, 'THE CONCEPT OF FRANCHISING IN THE INDONESIAN'S CIVIL LAW AND ISLAM' (2023) 4 Al-Mudharabah: Jurnal Ekonomi dan Keuangan Syariah.

Consumer Protection, especially in Article 7, letter b, which states the obligation of business actors to "provide accurate, transparent, and honest information about the condition and warranty of goods and/or services and provide an explanation of use, repair, and maintenance."⁷

A verbal contract is an agreement between two or more parties that is formally made and agreed upon in writing by all parties involved. Usually, a verbal contract is executed in writing and paid for by the parties involved in the contract.⁸ However, verbal agreements have significant weaknesses because it is difficult to prove the contents of the agreement reached by all parties. Therefore, it is advisable to make a written agreement that clearly states the terms of the contract.

While the provisions of Article 1313 of the Civil Code do not explicitly address written agreements, the Civil Code defines an agreement as an act of one or more persons to associate themselves with another person. Then, in Article 1320 of the Civil Code, it is stated that there are two main elements of a contract: 1. agreement, 2. capacity, 3. certain matters, and 4. lawful cause. Thus, agreements made orally also have binding legal force between the parties who make them. However, in reality, agreements are not always kept by the parties who make them, and this can be a serious problem for both parties.⁹ Therefore, it is essential to address both sides to mitigate the risk of pest development. Defaults are challenging to prove in other licensing agreements because there is no clear written evidence of the agreement's terms and conditions.¹⁰

The law of Islam is based on Islamic law, and its provisions also regulate the laws of the land. According to Islamic law, every piece of jewelry that is filled with liquid is considered fulfilled, and it is permissible to have a particular element of happiness other than the loss of a loved one. This hail is in line with the principle of *seaidilain* yaing becoming another daisiin utaimai dailaim of Islamic law. Therefore, it is necessary to reorganize the *wajib* by

⁷ I Made Arya Irawan and I Putu Rasmadi Arsha Putra, 'Perjanjian Lisan: Kekuatan Hukum Dan Keabsahaannya Berdasarkan Kitab Undang-Undang Hukum Perdata' (2023) 10 Jurnal Kertha Desa 1128.

⁸ Siti Fatimah and others, 'Aspek-Aspek Hukum Dalam Dunia Bisnis' (2022) 3 Jurnal Indonesia Sosial Teknologi.

⁹ Regina Veronika Wauran, 'Kepastian Hukum Perjanjian Secara Lisan Menurut Kuhperdata Pasal 1338' (2020) VIII Lex Privatum 90.

¹⁰ Chairul Fahmi, 'Pajak Dalam Syariat Islam : Kajian Normatif Terhadap Kedudukan Wajib Pajak Bagi Muslim' (2010) 5 EKBISI:Jurnal Ekonomi dan Bisnis Islam.

the pertimbaingain, which states that saih daipait is to be protected by the government, and that it will not cause any loss that benefits other parties.¹¹

In practice, even if a dispute arises between the seller and the buyer, it does not guarantee that there will be no dispute over the agreement that has been previously made. Such other agreements may certainly cause losses for both parties. Every transaction that fulfills the necessary elements becomes permanent (cannot be canceled), ensuring the deal is binding and must be fulfilled by the parties involved. This is stated in QS – Al-Isra' verse 34.

لَا تَقْرُبُوا مَالَ الْيَتِيمِ إِلَّا بِالَّتِي هِيَ أَحْسَنُ حَتَّى يَبْلُغَ أَشُدَّهُ وَأَوْفُوا بِالْعَهْدِ إِنَّ الْعَهْدَ كَانَ مَسْئُولًا

"Do not approach the property of orphans except in the best manner (by developing it) until they reach maturity, and fulfill your promises, for indeed, you will be held accountable for your promises."

The agreement stipulates that, once it is made, both parties are obligated to comply with its terms. This is because the deal that is made is the result of mutual consent. A new agreement is considered valid once it has been agreed upon by the parties involved. If there are any changes or amendments, the final agreement becomes the basis for the deal that has been reached.¹²

Therefore, this research is urgent when the dispute is played out between both parties in a verbal manner, which raises questions about the legal power and protection of consumers, as well as the resolution of disputes between the seller and the consumer. A comprehensive approach that considers applicable legal provisions and provides a more suitable solution to the problem, while ensuring fair and equitable legal protection that benefits both parties.

RESEARCH METHODS

This research is an empirical legal study with a qualitative juridical-sociological approach. The aim is to analyze the application of Law Number 8 of 1999 concerning Consumer Protection in the practice of buying and selling motor vehicles, particularly in cases of unilateral cancellation. This study uses

¹¹ Muflihatul Bariroh, 'Tinjauan Hukum Islam Terhadap' (2016) 2 Jurnal Pemikiran Hukum dan Hukum Islam 102.

¹² Suatu Penelitian, DI Banda and Rayhan Ariangga Hs, 'JUAL BELI SEPEDA MOTOR DENGAN PANJAR THE SETTLEMENT OF BREACH OF CONTRACT IN THE CANCELLATION OF MOTORCYCLE SALE AGREEMENT WITH ADVANCE PAYMENT (A STUDY IN Banda Aceh) PENDAHULUAN Pasal 1313 Dalam Kitab Undang-Undang Hukum Perdata Menggambarkan Bahwa Pe' (2024) 8 9.

primary data, namely interviews with consumers who experienced unilateral cancellation and business actors (motor vehicle dealers/showrooms). Secondary data includes laws and regulations (UUPK, KUHPerdair, and related regulations) as well as relevant scientific literature and academic references.

RESULTS AND DISCUSSION

A. Form Of Sale And Purchase Agreement

Article 1233 of the KUHPerdair concerning contracts explains: "A contract is an agreement between two parties to perform certain obligations." Furthermore, Article 1333 of the Civil Code states that: "A contract is an agreement between two parties to do something or not to do something."

Furthermore, Article 1320 of the Civil Code states that there are four (4) parties to a contract, namely:

1. The parties who are bound by the contract. This means that the parties involved in the agreement must have given consent that aligns with the contents of the agreement. This consent must be given voluntarily, without coercion, force, or undue influence from any other party.
2. The ability of parties to agree; Parties agreeing must have the legal capacity or authority to enter into a legal relationship. In general, a person is considered legally competent if they are of legal age and have a sound mind.
3. A specific result. This requirement is necessary to determine the obligations of the parties, especially the debtor, in the event of a dispute. By Article 1338 of the Civil Code, a contract must have a subject matter that is clearly defined and understood.
4. A cause (cause of action) that is valid. This means that the purpose to be achieved through the agreement must be lawful, not contrary to regulations, morality, or public order.¹³

The provisions of Article 1313 of the Civil Code do not explicitly mention "written agreements." The KUHPerdair defines a contract as an act by which one or more parties bind themselves to another party.¹⁴ However, contracts are generally divided into two forms: verbal and written. Verbal agreements are agreements made by parties through a sufficient exchange of

¹³ Irawan and Putra (n 7).

¹⁴ Wauran (n 9).

verbal communication. In contrast, written agreements are made in written form (contracts), either in the form of authentic documents or documents certified by a notary. The legal validity of these two types of agreements does not depend on their form, whether written or verbal.¹⁵

The validity of an agreement is not dependent on a specific form. The Civil Code does not systematically mention the form of a contract. Each party entering into a contract has the freedom to create a contract, meaning they are free to create a contract either verbally or in writing. This freedom to enter into a contract is a freedom that gives the parties the freedom to:

- a. Enter into or not enter into a contract;
- b. Enter into a contract with anyone;
- c. Determine the content of the agreement, its parties, and its conditions; and
- d. Determine the form of the agreement, whether it is written or verbal.¹⁶

In general, agreements according to form are differentiated into:

1. Oral Agreement

This is an agreement that was verbally agreed upon. This type of oral agreement remains valid, but it becomes effective if a dispute arises regarding this agreement, making it difficult for both parties to provide proof.

2. Written agreement

This agreement has two forms, namely a written contract with a trusted source and a written contract with an authentic source.

Thus, agreements that are carried out verbally without being stated in a written agreement, either through a private contract or an agreement with an authentic deed, are still recognized and valid based on the agreement of the parties.¹⁷

¹⁵ Ridho Oktavianto, Sardjana Orba Manullang and Retno Kus Setyowati, 'Tinjauan Yuridis Kekuatan Perjanjian Lisan Sebagai Bukti Dalam Perbuatan Melawan Hukum' (2023) 5 *Krisna Law : Jurnal Mahasiswa Fakultas Hukum Universitas Krisnadwipayana* 109.

¹⁶ Penelitian, Banda and Hs (n 12).

¹⁷ Nurul Maghfirah and others, 'UNDERSTANDING INTELLECTUAL PROPERTY RIGHTS IN THE INDONESIAN TRADING BUSINESS' (2023) 4 *Al-Mudharabah: Jurnal Ekonomi dan Keuangan Syariah*.

The legal force of an agreement is reflected in the provisions of "Article 1338 paragraph (1) of the Civil Code, that all agreements made legally apply as law for those who make them." The provisions of this article do not include the form of the agreement made. The clause stating that all agreements apply indicates that it applies to all forms of agreements. All forms of agreements referred to are both written and oral agreements. For all forms of agreements, whether written or oral, as long as they are valid, they are not covered by oral agreements. Therefore, the oral agreement can be applied to forms of agreements made verbally.¹⁸

Based on the applicable provisions, the executor of the used motorcycle buying and selling agreement, through a verbal agreement, involves at least two parties who agree. Both individuals act as parties to the agreement, as well as legal subjects who have legal rights and obligations. In the context of this research, the intended ones are the seller and the buyer of the used motorcycle. This agreement is interpreted as an agreement to obtain the appropriate action, to carry out the action, and to protect oneself from doing the proper action. In other words, an agreement creates a legal relationship that binds two parties, whether in the form of a written agreement or an oral agreement that contains a promise to act in accordance with it. Therefore, an agreement to buy and sell a used motorbike, even if it is carried out orally, remains valid as long as it fulfills the elements of a legally binding relationship.¹⁹

B. Form of Motor Vehicle Sales and Purchase Agreement at Berkah Motor Business

Berkah Motor is a business that operates in the field of buying and selling motor vehicles, particularly used ones. Berkah Motor operates its business through on-site sales. Based on observations and interviews with management, Berkah Motor employs verbal agreements in vehicle sales transactions.

In some cases, especially in quick sales or when the buyer states that he will return to pay at a later date, Berkah Motor carries out the transaction verbally, by:

¹⁸ Billy Dicko Stepanus Harefa, 'Kekuatan Hukum Perjanjian Lisan Apabila Terjadi Wanprestasi (Studi Putusan Pengadilan Negeri Yogyakarta Nomor 44/PDT.G/2015/PN.YYK)' (2016) 4 Privat Law 114.

¹⁹ Putu Nugraha Widiarta and I Wayan Novy Purwanto, 'Keabsahan Perjanjian Lisan Dalam Jual Beli Mobil Di Wahana Adikarya Motor Kabupaten Badung' (2017) 6 Kertha Semaya : Journal Ilmu Hukum 1.

- a. verbal agreement on the selling price and payment method in installments
- b. handing over a down payment without being accompanied by a formal agreement.
- c. Hanvan provides a simple receipt or proof of transfer as a sign of the initial transaction.²⁰

Although this practice is more practical and faster, from a legal perspective, this form of agreement leaves room for disagreement in the event of unilateral cancellation or misunderstanding. An oral agreement is an agreement that is agreed upon by the parties without being written down. According to Article 1320 of the Civil Code, an oral agreement is valid if it meets four conditions.

- a. Agree to bind oneself.
- b. Speak according to the law.
- c. the presence of a clear object.
- d. lawful purposes.²¹

However, although oral agreements are valid, they have significant weaknesses in terms of proof.

A verbal agreement is a form of agreement based solely on verbal statements between two parties, the seller and the buyer. In the context of the Berkah Motor business, this form of agreement is common practice because it is considered faster, more practical, and in line with local customs. Even if not written down, a verbal agreement remains legally binding as long as it meets the requirements for a valid agreement.

Some of the main characteristics of oral agreements made at the Berkah Motor business can be described as follows:

1. The agreement process occurs directly and spontaneously

Generally, consumers visit Berkah Motor's business premises directly to inspect the vehicles on offer. After communication between the seller and buyer regarding the vehicle's specifications (year of manufacture, engine type, physical condition, completeness of documents), an agreement is reached

²⁰ Novina Sri Indiraharti, 'Aspek Keabsahan Perjanjian Dalam Hukum Kontrak (Suatu Perbandingan Antara Indonesia Dan Korea Selatan)' (2016) 4 Jurnal Hukum PRIORIS 15.

²¹ Wauran (n 9).

spontaneously and directly, without lengthy administrative procedures. This agreement can include price, payment method, and delivery time.

2. Absence of Official Agreement Documents

This agreement is not set out in a written form such as a contract or deed. Typically, the only document provided is a payment receipt as proof of the transaction. In many cases, the receipt does not detail essential provisions such as the vehicle's condition, warranties, or consumer rights in the event of defects. Hidden. As a result, the legal evidence regarding the contents of the agreement is weakened, which can be detrimental to one of the parties, especially the consumer.²²

3. Dependence on Personal Beliefs

The nature of verbal agreements depends heavily on the level of trust between the consumer and the business. In practice at Berkah Motor, many consumers enter transactions based solely on trust in the business owner's reputation or on recommendations from third parties. This trust can be both a strength and a weakness. When the seller acts honestly, the transaction proceeds smoothly. However, if the business is dishonest, consumers find it difficult to assert their rights due to the lack of concrete evidence.

4. Prone to Disputes or Misunderstandings

Without a written agreement, the interpretation of the terms becomes subjective and open to interpretation. For example, a buyer might perceive the seller as promising that the machine would be in excellent condition. In contrast, the seller might perceive the seller as merely providing a general description. In this case, the difficulty of providing proof becomes a significant obstacle if the consumer wishes to file a complaint or a lawsuit. Many instances of unilateral cancellation or hidden damage cannot be resolved fairly due to the lack of valid proof of the agreement.

5. Practice of Not Including Witnesses or Supporting Documentation

In verbal transactions, legal witnesses, whether third parties or professionals such as notaries, are rarely present. Even documentation, such as photos of the vehicle taken during the transaction, audio recordings, or text

²² Chairul Fahmi and Wira Afrina, 'ANALYSIS OF LEGAL ASPECTS ON DEBT TRANSFER FROM CONVENTIONAL BANK TO SHARIA BANK POST THE APPLICATION OF QANUN ACEH NO. 11 OF 2018' (2023) 4 Al-Mudharabah: Jurnal Ekonomi dan Keuangan Syariah 28.

messages confirming the terms of the agreement, is often unavailable. This leaves consumers in a very vulnerable position if a conflict or fraud arises from the seller.

C. Analysis of Consumer Protection in Oral Agreements for the Sale and Purchase of Motor Vehicles at Berkah Motor Business

The verbal agreements made in motor vehicle sales transactions at Berkah Motor reflect informal business practices still standard in the field. These agreements are formed through verbal communication between the seller and buyer without any written documents as concrete evidence. However, under Indonesian civil law, such contracts remain valid and legally binding if they meet the requirements for a valid agreement as stipulated in Article 1320 of the Civil Code. By fulfilling the elements of agreement, legal capacity, a specific object, and a lawful cause, the agreement creates a legal relationship that gives rise to reciprocal rights and obligations for the parties.²³

Furthermore, in the Indonesian legal system, as explicitly stated in Article 1338 of the Civil Code, it is emphasized that every legally made agreement applies as law to the parties who make it. This reinforces the principle of *pacta sunt servanda* (promises must be kept), which obligates the parties to fulfill the agreement as initially agreed upon. Thus, even if the deal is made orally, if all the elements in Article 1320 are fulfilled and carried out by legally competent parties, then all legal consequences of the agreement remain valid. Suppose there is a violation of the agreement. In that case, the injured party can demand fulfillment of performance, compensation, or cancellation of the contract, as regulated in Articles 1243 to 1252 of the Civil Code.²⁴

However, issues arise in the use of verbal exoneration clauses, namely, unilateral statements that limit the business actor's responsibility and impose a disproportionate risk on the consumer. In Berkah Motor's business practice, such clauses are commonly expressed in verbal form, such as: "*If the consumer does not pay off the installments within the specified time, the motorcycle will be repossessed and the down payment will be forfeited.*" This clause, although not written, shows the unilateral intention of the business actor to limit his obligations and at the same time free himself from refunding the consumer's

²³ Kitab Undang-undang Hukum Perdata, '1 2 3 4' (2021) IX 237.

²⁴ Juliati Br Ginting, 'Kekuatan Mengikat Perjanjian Secara Lisan' (2022) 6 The Juris 429.

money²⁵ This kind of practice contradicts Article 18 paragraph (1) letter c and letter d of Law Number 8 of 1999 concerning Consumer Protection, which expressly prohibits business actors from including or conveying clauses that are unilateral and detrimental to consumers, whether in writing or not.

Legally, a verbal exoneration clause can still be considered detrimental to consumers, especially if it results in the loss of the consumer's right to a refund, compensation, or cancellation of the transaction. Although the Consumer Protection Law primarily refers to "standard clauses" in written documents, the spirit of its protection is broad, namely to ensure equality between business actors and consumers. In this case, consumers are the weaker party and have the right to legal protection from unfair agreements.²⁶

On the other hand, business actors like Berkah Motor also must honestly and openly explain all vehicle conditions and payment procedures to consumers, as stipulated in Article 7 of the Consumer Protection Law. When business actors use exoneration clauses to avoid responsibility for vehicle damage or eliminate consumers' rights to down payments, they have violated the principle of good faith, a fundamental principle in every contract. This can ultimately result in legal consequences, including a responsibility to pay compensation or even face criminal sanctions, as permitted by Article 62 of the Consumer Protection Law.²⁷

Thus, although the legal relationship established in the sale and purchase of motor vehicles at Berkah Motor is verbal and valid under civil law, the practice of business actors unilaterally issuing exoneration clauses constitutes a violation of the principles of justice and consumer protection. Such clauses can be canceled and declared invalid because it is contrary to positive Indonesian law, especially the Consumer Protection Law.

In the verbal sale and purchase of motor vehicles conducted by Berkah Motor, disputes often arise between sellers and buyers. Disputes typically arise from differing perceptions of the agreement's terms. These vehicle conditions do not match the initial description, late installment payments, or the unilateral application of an exoneration clause. Given the informal nature of the legal relationship and the lack of written documentation, Berkah Motor's

²⁵ Magister Kenotariatan and Universitas Padjadjaran, 'Rewang Rencang: Jurnal Hukum Lex Generalis. Vol.5. No.4 (2024) Tema/Edisi: Hukum Perdata (Bulan Keempat) <https://jhlrg.rewangrencang.com/>' (2024) 5 1.

²⁶ Solideo Willy Ticoh and Jemmy Sondakh, 'Jurnal Fakultas Hukum UNSRAT Lex Privatum Vol.13 NO.3 2024' (2024) 13.

²⁷ Ridho Oktavianto, Sardjana Orba Manullang and Retno Kus Setyowati (n 15).

dispute resolution approach generally prioritizes a deliberation-to-consensus approach.

Deliberation is a method of dispute resolution outside of court that relies on direct communication, negotiation, and mutual agreement between the parties. In this context, businesses and consumers meet to discuss the issues openly and without pressure, with the hope of reaching a fair solution for both parties. For example, in the case of late installment payments, Berkah Motor can first provide a verbal warning, then open the door to compromise, such as rescheduling payments or reducing fines. Similarly, in the case of vehicle damage after the transaction, businesses can offer certain forms of liability, such as minor servicing or component replacement, as a form of amicable settlement.²⁸

This amicable resolution aligns with the spirit of Article 6 of Law Number 8 of 1999 concerning Consumer Protection, which states that consumers are obligated to act in good faith when conducting transactions, and businesses are also obligated to fulfill their responsibilities by the principle of justice. Furthermore, amicable resolution also reflects local cultural values within Indonesian society that prioritize peaceful resolution over formal legal channels.²⁹

However, the success of amicable resolution depends heavily on the good faith of the business owner. Suppose deliberation fails or the business owner fails to demonstrate due diligence and responsibility. In that case, the consumer has the right to take legal action through the Consumer Dispute Resolution Agency (BPSK) or the district court, based on default as stipulated in Article 1243 of the Civil Code or unlawful acts as per Article 1365 of the Civil Code.

CONCLUSION

The verbal motor vehicle purchase agreement entered into by Berkah Motor is a valid practice under Indonesian civil law, as long as it meets the requirements for a valid agreement as stipulated in Article 1320 of the Civil Code. Although valid and binding, this form of agreement has serious

²⁸ Chairul Fahmi, 'The Impact of Regulation on Islamic Financial Institutions Toward the Monopolistic Practices in the Banking Industrial in Aceh, Indonesia' (2023) 11 Jurnal Ilmiah Peuradeun 667.

²⁹ Moh Ainun Najib, 'Penyelesaian Sengketa Wanprestasi Pada Perjanjian Kerjasama (Ijarah) Antara Pengusaha Dengan Pengrajin Batik Di Kota Pekalongan' (2023) 3.

weaknesses, especially in terms of proof in the event of a dispute. The case of unilateral cancellation by the business actor against a consumer who is late in paying installments without returning the down payment reflects the unequal position between the business actor and the consumer. In this case, the business actor failed to fulfill its obligations as stipulated in Article 7 of Law Number 8 of 1999 concerning Consumer Protection, which requires business actors to provide clear, honest, and complete information regarding the product and terms of the transaction. The use of unilateral exoneration clauses in verbal agreements also contradicts Article 18 of the Consumer Protection Law, which expressly prohibits practices that unilaterally harm consumers.

The amicable dispute resolution adopted by Berkah Motor is based on Indonesian consumer protection law. However, the effectiveness of such a negotiation depends heavily on the business owner's good faith. If the negotiation fails to reach an agreement, the consumer has the right to pursue legal action through the Consumer Dispute Resolution Agency (BPSK) or the district court. To prevent future losses, increased legal awareness is needed from both businesses and consumers. It is recommended that all agreements, especially those involving high-value transactions such as motor vehicles, be written down to ensure legal certainty and fair protection for both parties.

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