

## VEHICLE TRADE OF DEFAULTED FINANCE LEASE COMPANIES IN MATARAM CITY SHARIA ECONOMIC PERSPECTIVE



**Nur Fitri Hidayanti<sup>1</sup>**

**Universitas Muhammadiyah Mataram, Mataram, Indonesia**  
[nurfitri.hidayanti90@gmail.com](mailto:nurfitri.hidayanti90@gmail.com)

**Ahmad Hulaimi<sup>2</sup>**

**Universitas Muhammadiyah Mataram, Mataram, Indonesia**  
[hulaimimilenbe@yahoo.com](mailto:hulaimimilenbe@yahoo.com)

**Zaenafi Ariani<sup>3</sup>**

**Universitas Muhammadiyah Mataram, Mataram, Indonesia**  
[efisholiha@gmail.com](mailto:efisholiha@gmail.com)

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### Abstract

In Indonesia, auctions were officially entered in 1908 with the Auction Law, *Vendu Reglement*, in *Staatblad* 1908 Number 189. Public sales or auctions are any sale of goods in public by oral and/or written bidding efforts to gather interested parties/auction participants. Vehicle auctions for defaulted owners who can no longer make payments will proceed with auctioning the vehicle. Auction sales in *fiqh muamalah* are called *Bai' imuzayyadah* or more commonly known as auction sales, which is a form of offering merchandise in a crowd where buyers bid with higher prices until the highest price is reached, and a contract is made, and the buyer takes the goods from the seller. The purpose of this study is to thoroughly explore the auction sale process of defaulted vehicles by finance companies in Mataram City. The method used in this research is qualitative, with key informants being debt collectors, both freelance and permanent employees from PT. Adira Dinamika Multi Finance Syariah Tbk Mataram branch. The study results show that the entire auction sale process has complied with the applicable regulations and follows Islamic Sharia.

**Keywords:** Trade, Vehicles, Default

## INTRODUCTION

Leasing is a new term from a foreign language that has entered the Indonesian language. The term "leasing" comes from the English word "lesse," which in general terms means renting. Leasing has been known in Indonesia since 1973 and has been regulated since 1974. However, despite its rapid development, there is still no specific regulation for leasing agreements, causing a lack of legal certainty in the leasing industry (Nida et al., 2020) Leasing companies conduct their agreements based on a Joint Decree of Three Ministers, various other decrees, and general provisions in the Civil Code regarding agreements (Syariah, 2015).

Although it has developed quite rapidly, until now there have been no specific provisions for this leasing agreement, so it is felt that there is no legal certainty in the leasing industry. Until now, leasing entrepreneurs have made their agreements based on the Joint Decree of the Three Ministers, namely the Minister of Finance, the Minister of Industry, and the Minister of Trade of the Republic of Indonesia No. KEP 122/MK/IV/2/1974, No. 32/M/SK/2/1974, and No. 30/Kpb/I/1974 dated February 7, 1974, and the Decree of the Minister of Finance of the Republic of Indonesia No. 1169/KMK.01/1991 dated November 27<sup>th</sup>, 1991, along with various decrees and circulars of the Minister and the provisions of the agreement contained in the Civil Code regarding agreements in general (Nida et al., 2020).

As is known, the Civil Code, especially regarding contract law, adheres to an "Open System", which means that contract law provides the broadest possible freedom to the parties concerned to enter into agreements about anything, as long as it does not conflict with the law (Hulaimi & Nur Fitri Hidayanti, 2023). The principle of freedom of contract is contained in Article 1338 of the Civil Code, which states that: All agreements made legally are valid as law for those who make them.

In the midst of society, there is a rumor that finance companies are so cruel to customers who default, related to vehicles that are forcibly withdrawn to vehicles that are simply auctioned off. Starting from this, researchers are curious about what happened between the company and consumers, whether consumers are harmed or if it is just public

opinion. So, the purpose of this study is to answer this question. Do finance companies harm consumers or what the company has done is following applicable regulations.

## REVIEW OF LITERATURE

Leasing comes from the English word "lease", and can also be translated into Indonesian as the term Lease, which is an agreement to rent something for a certain period of time (Melina & Saputra, 2022) Leasing has two global categories, namely: operating lease and financial lease. An operating lease is a process of renting an item to obtain only the benefits of the item being rented, while the item itself remains the property of the lessor.

A financial lease is a form of lease where ownership of the goods is transferred from the lessor to the lessee (Hidayanti, 2022) If, at the end of the lease, the lessee is unable to pay off the rent, the item remains the property of the lessor (leasing company). The agreement is considered a lease agreement. Whereas if at the end of the lease, the lessee can pay off the installments, then the item becomes the property of the lessee.

From here it can be seen that leasing is a financing institution that has developed into an alternative financing industry besides banks and other financial institutions (N. Hidayanti et al., 2017). Leasing can also be said as one of the most important forms of spending methods in the business world because capital goods or production equipment can be obtained or used without having to buy or own them ourselves. In addition, companies that lack capital or want to save on the use of funds can use the leasing alternative. In addition, the benefits of leasing in the business world or economic development are one of the efforts or ways to cultivate funds in the community.

Types of leasing can be divided into two main groups. The most important thing that distinguishes the two types is the legal ownership rights, the way of recording in accounting, and the amount of rental (Nida et al., 2020). The two types of leasing are:

1. Finance Lease, is a form of payment method where:
  - a. The lessor obtains ownership rights over movable property which is then handed over for use by the lessee, for a maximum period of time equal to the economic useful life of the property in question, and vice versa. The lessee is obliged to pay the lessor all of the lessor's costs plus the lessor's financing costs and the lessor's

profits.

- b. The agreement to use the object can be terminated by the lessee, so that the lessee bears the economic risk of the object. What is meant by economic risk is the risk of an increase or decrease in the value of the object in question; The lessee records the object as an asset and the lessee also records his debt to the lessor.
- c. At the end of the agreed period, the lessee can return the object to the lessor or buy it at a relatively low price as previously agreed, or the lessee can extend the lease period with mutually agreed conditions.

## 2. Operating Lease

It is a form of providing financing services, where:

- a. The lessor buys a movable or immovable object, then hands it over to the lessee to be used for a period shorter than the economic useful life of the object or a maximum of the useful life of the object in question and returns the lessee is obliged to pay the lessor a periodic fee.;

## 3. Finance Lease, is a form of payment method where:

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In addition to the types of leasing mentioned above, there are other forms of leasing, namely:

1. Leverage Lease

This leverage lease is a finance lease. However, its implementation is much more complex and involves a third party, called a credit provider. The lessor does not finance the goods up to 100% of the price of the goods but only between 20% and 40%. Then the rest of the price of the goods will be financed by a third party. Usually, this type of leasing is carried out for goods that have a high value.

2. Syndicate Lease

It also often happens that several leasing companies jointly finance the provision of a leased item and then jointly lease the goods to the lessee. In this relationship, a separate agreement is always made between the members of the leasing syndicate to regulate the implementation of collateral if any, and the distribution of the results of the implementation of the collateral.

3. Cross Border Lease

Is a leasing transaction that is carried out by crossing a country's borders. Thus, the lessor and lessee are located in two different countries. Special handling is required for this type of transaction because the legal and tax aspects of each country are not necessarily the same.

In Indonesia, these financial institutions consist of three parts, namely:

1. Banks

2. Non-Bank Financial Institutions

3. Financing Companies

According to the Decree of the Minister of Finance of the Republic of Indonesia Number 125/KMK/08/1988, the three groups of financial intermediaries can operate as financing institutions that may carry out activities covering the business sector. (N. Hidayanti, 2019)

1. Leasing
2. Securities Trading
3. Factoring
4. Credit Card Business
5. Financing

The more these leasing companies develop, the more methods they use in their daily business development, such as every vehicle that will be leased, the vehicle has previously been registered in a Fiduciary manner. This is to ensure that if the Debtor defaults, the Creditor can immediately seize the vehicle without going through the courts.

If the execution of the Fiduciary object has been carried out and then the execution results exceed the guarantee value, then the Fiduciary Recipient is obliged to return the remaining excess to the Fiduciary Grantor. Conversely, if the execution results are insufficient to pay off the debt, then the Debtor remains responsible for the unpaid debt.

Fiduciary Guarantee execution can be carried out in the following ways:

- a. Implementation of the executive title
- b. Sale of objects that are the object of the guarantee under the authority of the Fiduciary Recipient himself through a public auction and taking payment of the receivables from the proceeds of the sale.
- c. Underhand sales are carried out based on an agreement between the Fiduciary Giver and the Recipient, if in this way a high price can be obtained which is profitable for both parties (N. Hidayanti, n.d.)

### **End of Leasing**

In principle, there are three types of termination of a leasing agreement, namely because (Melina & Saputra, 2022):

- (1) Consensus, (2) Default, (3) Force Majeure.

- a. Termination of Leasing Contract Due to Consensus

Like any other agreement, of course, a leasing agreement can be terminated at any time if the parties to the agreement mutually agree to it. This is indeed a general principle in contract law. Usually, the right of one party to terminate the

contract with the consent of the other party is explicitly stated in the contract in question.

In practice, the termination of the leasing contract by consensus is very rare. This is due to the characteristics of the leasing contract where one party performs a single performance, in this case the lessor. This means that the lessor only performs once, namely by submitting funds for the purchase of leased goods. Once the funds are disbursed, in principle the lessor's substantial task is complete. The supplier is then obliged to hand over the goods to the lessee, and then the lessee must return the installment money to the lessor.

Because after disbursing the funds, the lessor's substantial task is finished, then of course it is very difficult for the lessor to agree if the lessee wants to terminate the contract in the middle of the road. Because, if the contract is terminated, then what about the fate of the funds that have been disbursed?

Sometimes there are also contracts where both parties can freely terminate it in the middle of the road, with or without any reason at all. This type of contract model is rarely practiced and does not match the characteristics of a leasing contract as a single performance contract from the lessor. Because, once the lessor has performed, the contract can't be terminated in the middle of the road. Except for leasing transactions where the lessor has not had time to provide his performance in any form, or in leasing where the lessor can easily sell capital goods at a sufficient price. Meanwhile, if the leasing contract is terminated by consensus of the parties precisely when no party has performed, for example, the lessor has not disbursed his funds, then what happens is also not a termination of the contract. But it is more appropriate to say as a cancellation of the contract. As a result, the contract is considered to have never existed at all. It's just that with Article 1266 of the Civil Code, which will be explained later, there is a blurring between the canceled contract and the terminated contract.

b. Termination of leasing contract due to default

Default or breach of contract is one of the reasons why the contract is stopped. In this case, what is meant by default is that one or more parties do not carry out

their performance in accordance with the contract. Article 1239 of the Civil Code stipulates that if a party commits a default, the other party may demand compensation in the form of costs, losses, and interest.

Another alternative apart from a claim for compensation by the injured party is that the implementation of the agreement itself can also be sued with or without compensation.

Specifically for leasing contracts, various possibilities of default can occur with different legal consequences. The possibilities of default include the following:

1) Default that is ignored

Our law does not recognize the doctrine of substantial performance. The doctrine of substantial performance teaches that what is considered to be a failure to perform by one party so that the other party can terminate the contract is if the performance that is not performed is substantial enough in the contract in question.

2) Default by the leasing contract breaker

It is possible that for certain reasons, one of the parties terminates the relevant leasing contract. The reason for terminating the contract is because the other party has committed a breach of contract against one or more clauses in the leasing contract. It does not matter whether the unfulfilled performance is substantial or not. Unless otherwise specified in the relevant contract.

In a leasing contract, there are many items, which if violated especially by the lessee, then the contract is considered terminated. The most important of which is of course if the lessee does not pay the installment money when due.

3) Default due to defective goods

Legally, the consequences of defects/damage to leased goods are highly dependent on the situation of the defect/damage to the goods. For that, there are several legal possibilities, namely as follows:

- a. hidden defects
- b. non-hidden defects

- c. damaged goods due to lessee's fault
- d. damaged goods not due to lessee's fault Termination of Leasing Contract  
Due to Force Majeure

Although the ownership has not been transferred to the lessee before the purchase option is exercised by the buyer, because the lessor was originally intended only as a funder, not as an owner, it is only right that the burden of risk from a lease in a force majeure situation is borne by the lessee. In leasing contracts, it is clear that the lessor does not want to take risks. So, the risk management in leasing transactions is more inclined towards the risks in sale and purchase transactions rather than renting.

However, in practice, this risk issue is not so much of a problem because usually the leased goods in question have been insured. Even often in the form of "all-risk" insurance. Where the right to receive compensation from this insurance has been transferred to the lessor (insurance cession is carried out).

However, the regulation of this risk is still important considering that if something happens and other things cause the insurance party to be unable or unwilling to pay all or part of the compensation if force majeure occurs. For example, because insurance is not for "all-risk", or the insurance company goes bankrupt, or because there is a "dispute" in seeing the cause of the force majeure event. Therefore, in this case, the lessee is the party that ultimately bears the risk. In practice, this is followed completely.

Auction buying and selling in the fiqh of *muamalah* is called *Bai' imuzayyadah* better known as auction buying and selling is a form of bidding on merchandise in the middle of a crowd, then the buyers bid against each other at a higher price until the highest price is reached by one of the buyers, then the contract is made and the buyer takes the goods from the seller.

The Islamic religion protects human rights in owning the property they own and provides a way out for each person to own the property of others, through a predetermined path, so that in Islam the principle of trade that is regulated is an agreement between the two parties, namely the seller and the buyer, as outlined by the principle of *muamalah*, namely:

- 1) The Principle of Willingness
- 2) The Principle of Benefit
- 3) The Principle of Helping One Another

### **Types of Auctions**

In general, there are only two types of auctions, namely down auctions and up auctions. Both can be explained as follows (N. F. Hidayanti, 2021):

#### 1). Auction down

It is an offer, that initially opens the auction with a high price, then decreases gradually until finally it is given to the prospective buyer with the highest offer agreed to by the seller through the auctioneer as the seller's attorney to conduct the auction, and is usually marked by knocking.

#### 2). Auction goes up

It is an offer of certain goods to bidders who initially open the auction at a low price, then increase it until finally it is given to the candidate with the highest price.

The methods used in the auction system are open auctions and closed auctions, both of which can be explained as follows:

#### 1). Open auction

It is an auction conducted by an auction house where property enthusiasts are gathered in one place to take part in the auction.

#### 2). Closed auction

It is an auction conducted where interested parties submit a price for the property they are interested in in a sealed or confidential envelope. In a closed auction system, the highest bidder's price is not known.

### **Auction Terms and Conditions**

- 1) Transactions are carried out by legally competent parties voluntarily.
- 2) Auction objects must be halal and beneficial.
- 3) Full ownership/power over the goods or services being auctioned without any manipulation.
- 4) Ability to deliver goods from the seller.
- 5) Clarity and certainty of the agreed price without the potential for disputes.

- 6) Do not use methods that lead to collusion and bribery to win bids (Hidayanti, 2021).

## **RESEARCH METHOD**

Based on the formulation of the problem and the objectives of the research, the research method used in this research is qualitative (Sirilius Seran, 2020). Stating that qualitative research aims to understand the phenomena of what is experienced by research subjects, for example, behavior, perception, motivation, actions, and so on. Meanwhile, according to (Achmadi, 2011) Qualitative research is research that is used to research in natural conditions, (as opposed to experiments) where the researcher is the key instrument. Data collection techniques are carried out by triangulation, data analysis is inductive, and qualitative research results emphasize meaning rather than generalization.

Based on this, this research uses a qualitative approach and the main tool is humans, meaning that it involves the researcher himself as an instrument by paying attention to the researcher's ability to ask, track, observe, understand, and abstract as an important tool that cannot be replaced by other methods.

This research activity was conducted at the Head Office of PT. Adira Dinamika Multi Finance Syariah, Tbk in Mataram City, West Nusa Tenggara Province located on Jalan Pejangik No. 56 A-B, Cakra Negara District with Call Adira: 1500 511 (021-500511) Email Care: [customercare@adira.co.id](mailto:customercare@adira.co.id). The selection of this location was based on the researcher's decision. So, the key informants in this study were debt collectors as freelance employees and permanent employees of PT. Adira Dinamika Multi Finance Syariah, Tbk, Mataram Branch.

## **RESULTS AND DISCUSSION**

### **Vision and Mission of PT. Adira Dinamika Multi Finance Syariah, Tbk**

#### **Vision**

Adira Finance Syariah to become a 'World Class Company' and the mission to help Indonesian people realize their dreams today is the foundation of business activities. Creating shared value for the sustainability of the company and the welfare of the Indonesian people.

### **Mission**

- 1) Provide a variety of products and services according to the customer life cycle. ·
- 2) Provide a profitable and friendly experience to stakeholders
- 3) Empowering communities to achieve prosperity.

### **Goals and Objectives of PT. Adira Dinamika Multi Finance Syariah, Tbk**

Objective Since the beginning, PT. Adira Finance Syariah has been committed to becoming the best and leading financing company in Indonesia that serves financing for various brands, both for motorcycles, cars, and new and used.

1. Adira Finance always strives to continue to contribute to the Indonesian nation and state to expand its business.
2. Adira Finance strives to maintain the company's long-term commitment to continue to preserve the environment, maintain good relations with the community, consumers, co-workers, shareholders, the Indonesian government, and the continuity of Adira Finance's business activities.
3. To create a harmonious relationship to be able to provide optimal contributions so that a better life can be achieved.
4. Adira Finance strengthens its brand and increases public trust (N. Hidayanti et al., 2017).

### **Murabahah Financing Agreement**

Based on Sharia provisions, financing by companies and consumers is carried out based on a *murabahah* contract scheme regulated and will take place according to Sharia principles as follows:

1. That the consumer has submitted a request for financing facilities to the company to purchase goods.
2. Based on the cooperation agreement between the company and the provider of the goods, the company will purchase goods from the provider of the goods to meet consumer interests with financing provided by the company.
3. Delivery of the goods is carried out by the supplier directly to the consumer with the company's approval.
4. The company sells the goods to consumers after the company in principle owns the goods (Nida et al., 2020).

The consumer pays the selling price (total *murabahah* financing facility), namely the acquisition price plus a margin to the company within a certain period agreed upon by the parties based on this agreement (as explained in article one 1 of this agreement), so that before the consumer pays the selling price in full and other necessary costs to the company, the consumer still has an obligation that must be paid in full to the company.

After this research was conducted, several factors were found as to why the auction sale and purchase of vehicles in default could occur, especially from customers of PT. Adira Dinamika Multi Finance Syariah, Tbk, Mataram Branch. The basic thing is that the vehicle was withdrawn by the Debt Collector officer because the vehicle had delayed payment for at least three months. If the customer has delayed payment for three months, the police number of the vehicle will be included in the search list and then the lists will be submitted to the Debt Collector officer.

Vehicles that have been successfully towed by Debt Collector officers will be handed over to the vehicle storage warehouse located on Lengkara Dasan Cermen Street behind the Nusa Tenggara Barat Provincial Hospital. If customers whose vehicles have been towed want to take back their vehicles, whether it is a motorbike or a car, then the customer must pay off all remaining debts along with fines and toll fees. The time given to make payments is a maximum of one week for motorbikes and a maximum of two weeks for cars.

For the cost of the dance itself, the details are as follows: 1. The towing fee for two-wheeled vehicles is five hundred thousand rupiah, and 2. The towing fee for four-wheeled vehicles or cars is one million rupiah. The amount of the fine that must be paid by the customer is zero-point five percent per day from the amount of the monthly installment. If the customer is unable to pay all the fees charged, then the party from the finance company, namely PT. Adira Dinamika Multi Finance Syariah, Tbk, Mataram Branch, will provide a statement letter to the customer to sign a statement letter that they are unable to pay off all the existing costs so that the vehicle can be auctioned by the company and the results of the auction will not be returned to the customer.

The auction process is not carried out in the auction hall, but the company does it and the auction participants are requests from the company, namely showroom entrepreneurs on the island of Lombok who have collaborated. The list of showrooms that collaborate with the

finance company, namely PT. Adira Dinamika Multi Finance Syariah, Tbk, Mataram Branch, includes:

1. Abadi Motor
2. Adi Motor
3. DED Motor
4. Dwi Tunggal
5. Fajar Motor
6. Fujia Motor
7. Habib Motor
8. Widia Motor
9. Zizu Motor
10. MH

In determining the price of auctioned goods carried out by the finance company, namely PT. Adira Dinamika Multi Finance Syariah, Tbk, Mataram Branch, following the current market price. The price thrown to the auction participants will certainly be slightly lower than the market price because it depends on the condition of the vehicle itself which will be a consideration in determining the amount of the auction price. Mintera showroom that dares to set the highest price is the one that has the right to get the vehicle.

## **CONCLUSION**

The auction sale process of defaulted vehicles at PT. Adira Dinamika Multi Finance Syariah Tbk Mataram aligns with Sharia economic perspectives. It ensures fairness and mutual consent among all parties. The auctions are conducted independently by the company, involving showroom partners, and held at a designated storage facility. This study is expected to provide insights into vehicle financing and auctions by leasing companies, and future researchers are encouraged to build on these findings.

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