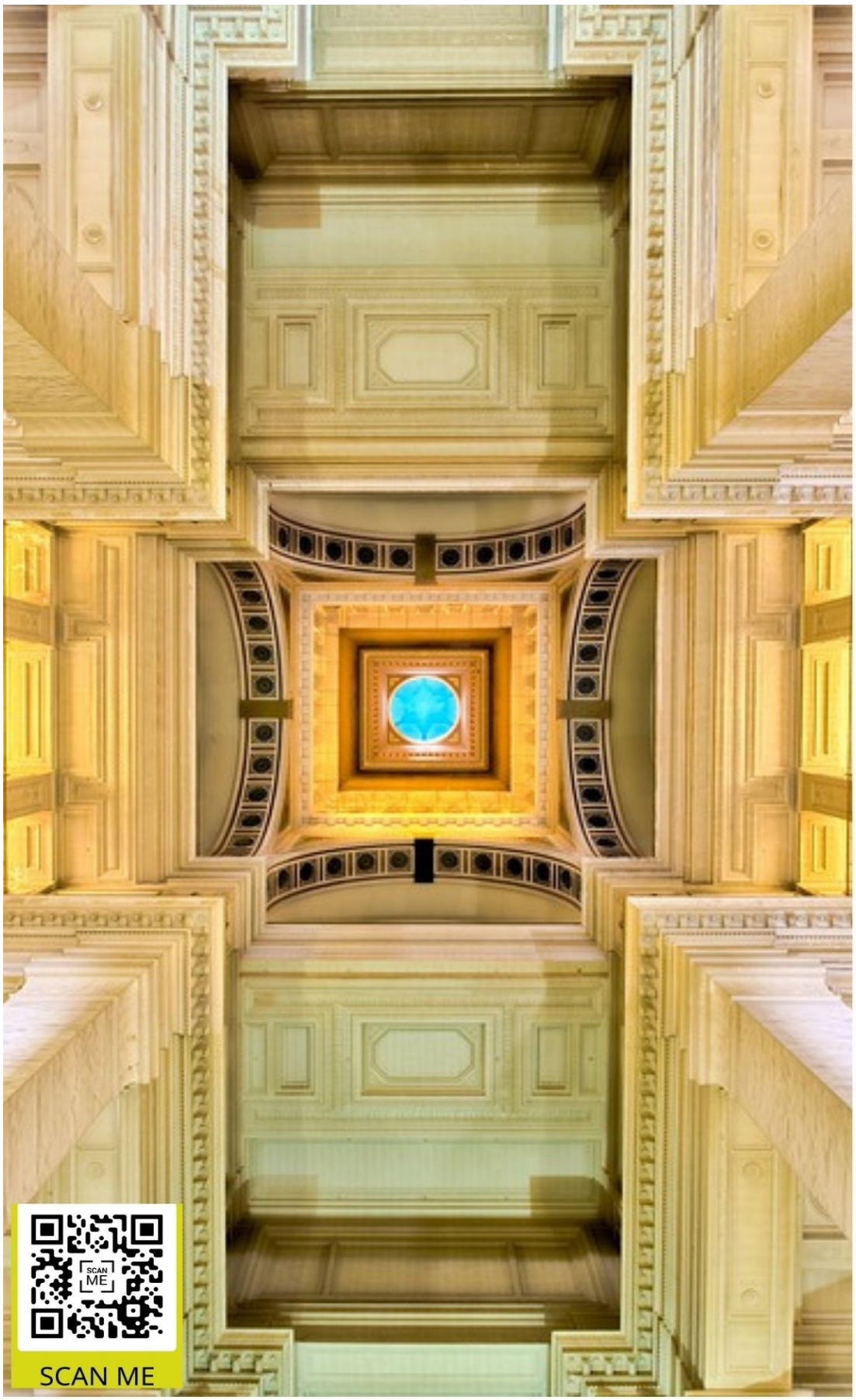
Rechtsidee

Vol. 14 No. 1 (2026): June
DOI: 10.21070/jihr.v14i1.1163



RECHTSIDEE

PUBLISHED BY UNIVERSITAS MUHAMMADIYAH SIDOARJO

ISSN 2443-3497 (online)

Rechtsidee

Vol. 14 No. 1 (2026): June
DOI: 10.21070/jihr.v14i1.1163

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DOI: 10.21070/jihr.v14i1.1163

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DOI: 10.21070/jihr.v14i1.1163

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DOI: 10.21070/jihr.v14i1.1163

Comparison of Consumer Dispute Resolution of Car Purchases on Credit in Indonesia, Malaysia and Australia

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Abstract

General Background: Consumer protection in car credit financing requires effective dispute resolution mechanisms. **Specific Background:** Indonesia, Malaysia, and Australia apply different legal and institutional approaches to resolving consumer disputes. **Knowledge Gap:** Comparative evidence on the strengths and weaknesses of these systems remains limited. **Aims:** This study compares consumer dispute resolution mechanisms for car credit purchases in the three countries. **Results:** Using normative legal research with statutory, case, conceptual, and comparative approaches, the study found that Indonesia faces overlapping institutional authority, Malaysia provides a simpler tribunal-based mechanism, and Australia adopts preventive protection through hardship notices and the Australian Financial Complaints Authority. **Novelty:** The study integrates institutional authority, procedural simplicity, legal certainty, and preventive protection into a comparative framework across three different legal systems. **Implications:** Strengthening institutional authority, simplifying procedures, and adopting preventive consumer protection mechanisms may improve legal certainty in Indonesia.

Highlights:

- Indonesia experiences overlapping institutional authority in dispute resolution.
- Malaysia applies a streamlined tribunal-based settlement system.
- Australia emphasizes preventive consumer protection through external dispute resolution.

Keywords: Car Loan Purchase, Consumer Protection, Dispute Resolution, Legal Comparison

Published date: 2026-06-30

Vol. 14 No. 1 (2026): June
DOI: 10.21070/jihr.v14i1.1163

Introduction

The increasingly dynamic development of people's lives encourages the increasing need for transportation facilities to support daily activities. Transportation is no longer seen as an additional necessity, but has become an important part of the life of modern society. In this case, motor vehicles, especially cars, are one of the choices that are in great demand because they provide convenience, comfort, and flexibility in supporting various activities. Along with the increasing need for transportation facilities, buying a car is one of the main choices in supporting daily activities. However, not all people have the ability to make purchases in cash, so the purchase of cars on credit through financing companies (Leasing) to be a popular alternative [1]. The term leasing comes from the word lease which means lease and is a form of derivatives From Rent Rental[2]. The main purpose of leasing is to obtain the right to use objects from the property of others [2]. This allows consumers to still be able to use the vehicle without having to pay in full at the beginning, so that this credit purchase system makes it easier for consumers to acquire vehicles by making payments in stages according to the agreed agreement.

The gradual ease of payment has also encouraged the increasing use of vehicle financing services in Indonesia. This development has also occurred in various other countries, such as Malaysia and Australia, so that in the last few decades the motor vehicle financing sector has shown significant progress. Today, cars are no longer considered just a luxury, but have become an important part of the mobility of modern society. This situation encourages the increase in the use of vehicle purchase methods on credit through financing institutions, which in practice involves complicated legal relationships between business actors and consumers. One type of business in a financing institution is consumer financing, which in English terms is known as consumer finance [3, p. 62]. Consumer financing is a business entity that conducts financing activities for the procurement of goods based on consumer needs with an installment or periodic payment system by consumers [4, p. 743]. This financing method is usually in the form of a standard agreement made by business actors, thus creating the risk of an imbalance in the bargaining position between creditors and debtors. Business actors tend to have a higher position than consumers [5, p. 7]. The risk faced by finance companies in consumer financing is the risk of default or consumers defaulting on non-payment installments according to the set time or consumers who commit fraud that often occurs in motor vehicle financing, such as embezzlement or the use of vehicles to commit criminal acts. To overcome the risk of default by consumers, the finance company applies guarantees to consumer financing [6].

In Indonesia, generally, the way of financing motor vehicles follows the legal structure of consumer financing agreements that are equipped with fiduciary guarantees, the regulation of which includes various legal systems, including the Civil Code, Law Number 42 of 1999 concerning Fiduciary Guarantees, and Law Number 8 of 1999 concerning Consumer Protection. A consumer financing agreement is a contractual instrument that regulates the relationship between creditors (financing companies) and debtors (consumers), which is based on the principles of civil law as stipulated in Article 1338 of the Civil Code (KUHPerdata). Based on the content of Article 1338 of the Civil Code, there are three principles of civil law, namely: The principle of freedom of contract gives the right to finance companies and consumers to determine the provisions in the agreement. The principle of pacta sunt servanda ensures that the agreed agreement must be complied with. Meanwhile, the principle of good faith is a fundamental principle in ensuring a balance of rights and obligations between creditors and debtors, including in situations where the debtor dies [7, pp. 338–339].

In practice, the legal relationship between a finance company and a consumer is not only limited to buying and selling transactions, but also includes debt-receivables relationships accompanied by collateral. The Civil Code also regulates the provision of guarantees contained in Article 1131 of the Civil Code which states that "all the property of the debtor (debtor), both movable and immovable, both existing and new will exist in the future, shall be the guarantee of all personal obligations of the debtor." The provisions in the article are a guarantee for the payment of debts of the debtor, without an agreement and without designating a special object of the debtor. In addition to general guarantees based on Article 1131 of the Civil Code, in the science of guarantee law, guarantees are also known as special guarantees. What is meant by this special material guarantee is the appointment/determination of certain objects belonging to the debtor or belonging to a third party, which is intended as collateral for his debt to the creditor, where if the debtor defaults on the payment of his debt, the result of the object of the guarantee must be first (preference) is paid to the creditor concerned to pay off the debt, while if there is a remainder, it will be distributed to other creditors (concurrent creditors) [8, p. 95]. Tangible security is "a security in the form of rights attached to an object, namely a certain object belonging to the debtor that is born as a result of an agreement between the debtor and the creditor, can be maintained, always follows the object and can be transferred" [9].

In practice, buying a car on credit does not always go smoothly. Problems often arise when consumers experience late payments or even unable to fulfill their obligations according to the content of the agreement. This condition has the potential to cause disputes between consumers and financing companies, especially related to the act of withdrawing vehicles by creditors which in some cases is carried out without paying attention to applicable legal provisions. This situation causes that in the event of a default, the business actor has the right to execute the object of the guarantee, which often triggers disputes, especially related to the vehicle recall procedure, the amount of fines, and standard clauses that are considered detrimental to consumers.

The phenomenon of consumer disputes in motor vehicle financing in Indonesia has become increasingly complex due to two types of disputes, namely disputes related to consumer protection and default disputes in civil law. In many cases, including Decision No. 764/Pdt. Sus-BPSK/2024/PN Mdn and Decision No. 18/Pdt.G.S/2023/PN Cbi, there is a debate about who has the authority to resolve disputes, especially between the Consumer Dispute Resolution Agency (BPSK) and the general court. This shows that the line between consumer protection law and treaty law is still unclear, resulting in legal uncertainty for all parties involved.

ISSN 2443-3497 (online), https://rechtsidee.umsida.ac.id, published by Universitas Muhammadiyah Sidoarjo

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DOI: 10.21070/jihr.v14i1.1163

On the other hand, Malaysia as a country that implements a legal system that is influenced by tradition common law Apply a different approach in vehicle financing arrangements. The system used is known as hire-purchase clearly set out in Hire Purchase Act 1967 and equipped with Consumer Protection Act 1999 [10, p. 39]. In this system, the ownership of the vehicle remains the property of the financier until all payment obligations are paid off by the consumer. In addition, regulations in Malaysia provide more detailed arrangements on procedures repossession, including the obligation to provide notice, restrictions on vehicle recalls, and additional protections for consumers who have fulfilled most of their obligations.

The main difference between Indonesia and Malaysia lies in the way consumer protection is regulated. In Malaysia, the process of reclaiming goods cannot be done carelessly as it must follow certain official procedures, and in some cases, permission from the court is required. In contrast, in Indonesia, despite regulations on the implementation of fiduciary guarantees, practices in the field often experience irregularities, including vehicle recalls that lead to disputes, either due to non-compliance with procedures or consumers' lack of understanding of their rights. This reflects the gap between the rule of law and the actual practice. In addition, recent developments in Malaysia, including reforms to the financing system through amendments to the Hire Purchase Act, demonstrate efforts to improve fairness for consumers, particularly in terms of transparency in interest rates and accelerated repayment mechanisms. This approach reflects a more progressive consumer protection orientation compared to Indonesia, which still faces various obstacles in the effective implementation of consumer protection.

Alongside Indonesia and Malaysia, Australia has also shown significant developments in the arrangement of car loan financing, particularly in the aspects of consumer protection and dispute resolution mechanisms. The vehicle financing system in Australia is governed through an integrated legal framework, including through the National Credit Code (NCC) which governs the rights and obligations of the parties to a credit agreement. In this system, consumer protection is not only provided at the stage of contract formation, but also in the implementation and settlement of disputes. One form of protection is the existence of a hardship notice mechanism that allows debtors to apply for contract changes if they experience financial difficulties. In addition, Australia also provides an out-of-court dispute resolution mechanism through the Australian Financial Complaints Authority (AFCA), which provides faster, simpler, and more affordable access for consumers than litigation channels. AFCA has the authority to order changes to credit contracts under certain conditions, thereby strengthening the position of consumers in dealing with financial institutions. Thus, the Australian legal system shows a more comprehensive approach, both from preventive and repressive aspects, in protecting consumers of vehicle financing.

Thus, comparisons between Indonesia and Malaysia and Australia are important to be made to identify the advantages and weaknesses of each legal system in resolving consumer disputes over car purchases on credit. This study is not only relevant in an academic context, but also has practical implications in the formulation of fairer and more effective legal policies. Through a comparative law approach, it is hoped that a dispute resolution model can be found that is able to provide a balance between consumer protection and legal certainty for business actors. Based on this description, this study focuses on a comparison of consumer dispute resolution of car purchases on credit in Indonesia, Malaysia, and Australia, with the aim of analyzing the characteristics of each system, identifying problems that arise, and formulating recommendations for legal improvements that are more responsive to the needs of the community.

Method

The research methods used in this study are normative legal research methods with a statutory *approach*, conceptual *approach*, case *approach*, and *comparative approach*). Normative legal research is carried out by examining legal norms, legal principles, legal doctrines, laws and regulations, and court decisions related to consumer protection and dispute resolution in motor vehicle financing.

The legislative approach is carried out by examining various legal instruments that regulate consumer protection, motor vehicle loan financing, material guarantees, and consumer dispute resolution in Indonesia, Malaysia, and Australia. In Indonesia, the legal materials studied include the Civil Code (KUHPerdata), Law Number 8 of 1999 concerning Consumer Protection, Law Number 42 of 1999 concerning Fiduciary Guarantees, Law Number 10 of 1998 concerning Banking, Supreme Court Regulation Number 4 of 2019 concerning Procedures for Settlement of Simple Lawsuits, and Financial Services Authority Regulation Number 29/POJK.05/2014 concerning Business Implementation of Finance Companies. In Malaysia, this study examined the Consumer Protection Act 1999, the Hire-Purchase Act 1967, as well as the provisions on the Malaysian Consumer Claims Tribunal (TTPM). Meanwhile, in Australia, this study examines the National Consumer Credit Protection Act 2009, the National Credit Code (NCC), as well as regulations governing the Australian Financial Complaints Authority (AFCA) as a dispute resolution institution in the financial services sector.

Conceptual approaches are used to analyze legal concepts related to consumer protection, consumer financing, fiduciary guarantees, *hire-purchase agreements*, defaults, credit restructuring, and consumer dispute resolution. Furthermore, the case approach is carried out by reviewing court decisions and relevant motor vehicle financing dispute cases. In Indonesia, the cases analyzed are Decision Number 764/Pdt.Sus-BPSK/2024/PN Mdn and Decision Number 18/Pdt.G.S/2023/PN Cbi. In Malaysia, the cases analysed include *Thambipillai v Borneo Motors (M) Ltd*, *Tractors Malaysia Bhd v Kumpulan Pembinaan Malaysia Sdn Bhd*, and *Credit Corporation (M) Sdn Bhd v The Malaysian Industrial Finance Corp & Anor*. In Australia, the cases analyzed include *ASIC v Channic (No. 4)* and the New South Wales Supreme Court decision related to the application of *hardship provisions* under Article 72 of the National Credit Code. Furthermore, a comparative approach was used to compare the legal framework, institutions, dispute resolution mechanisms, and consumer protection models in motor vehicle financing disputes in Indonesia, Malaysia, and Australia. Through this approach, the research aims to identify the

similarities, differences, advantages, and weaknesses of each legal system, as well as formulate recommendations for strengthening consumer protection and dispute resolution mechanisms in Indonesia.

The sources of legal materials in this study consist of primary legal materials, secondary legal materials, and tertiary legal materials. Primary legal materials include laws and regulations, court decisions, and official legal documents applicable in Indonesia, Malaysia, and Australia. Secondary legal materials consist of law books, scientific journal articles, research results, and other scientific papers that discuss consumer protection and motor vehicle financing disputes. The tertiary legal materials are in the form of legal dictionaries, legal encyclopedias, and other supporting sources. The technique of collecting legal materials is carried out through literature studies by inventorying, reviewing, and analyzing various legal materials that are relevant to the object of research. Furthermore, all legal materials were analyzed qualitatively using descriptive-analytical and comparative methods to obtain a comprehensive understanding of the effectiveness of consumer dispute resolution in car purchases on credit in Indonesia, Malaysia, and Australia.

Results and Discussion

The purchase of a car on credit is a form of transaction that is rapidly developing in modern economic practice, which basically involves not only buying and selling relationships, but also financing relationships between consumers and financial institutions. In the perspective of consumer protection law, the purchase of a car by a person for their own use, not for resale, is included in the consumer category because the goods are used for personal needs, not for business or commercial purposes, whether done in cash or in installments or on credit through a financing agreement commonly referred to as leasing. A financing agreement is an agreement to provide funds and/or capital goods which includes, among others, consumer financing businesses, leases (*Leasing*), factoring (*factoring*), credit card business, venture capital (*venture capital*) and securities trading, hence this financing agreement is closely related to financial matters [11, p. 200]. The definition of consumer financing according to the decree of the Minister of Finance Number 1251/KMK.013/1988, is an activity carried out in the form of providing funds for consumers for the purchase of goods whose payment is made in installments or periodically by consumers [12, p. 103]. However, after the issuance of Financial Services Authority Regulation Number 29/POJK.05/2014, the term consumer financing has changed to multipurpose financing. The definition of Multipurpose Financing according to Article 1 number 4 of PJOK Number 29/POJK.05/2014, is Multipurpose Financing is financing for the procurement of goods and/or services required by the debtor for use/consumption and not for business purposes (productive activities) within the agreed period of time [13, pp. 111–112]. Therefore, consumers in motor vehicle financing transactions are entitled to obtain legal protection for legal relationships arising from the agreement.

In practice, the financing relationship does not only stop at the provision of funds, but is also followed by the binding of guarantees as a form of legal protection for creditors to ensure the repayment of debtors' debts. In Indonesia, car purchases on credit are generally done through financing institutions (*Leasing*) by using a fiduciary guarantee that has been registered [14, p. 12]. The definition of a financing institution according to Article 1 number (2) of Presidential Decree No. 61 of 1988 concerning Financial Institutions, is a business entity that carries out financing activities in the form of providing funds or capital goods by not withdrawing funds directly from the Community [15, p. 43]. In the implementation of these financing activities, financing institutions generally require the existence of material collateral, which means that the financing institution as a creditor requires a guarantee from the debtor [16], one of which is through fiduciary guarantees. Based on Article 1 Paragraph 1 in Law Number 42 of 1999 concerning Fiduciary Guarantees, it is explained that fiduciary is the transfer of ownership rights of an object on the basis of trust with the provision that the object whose ownership rights are transferred remains in the possession of the owner of the object [17]. Meanwhile, it is stated in article 1 paragraph 2 that the Fiduciary Guarantee is the right to guarantee movable objects, both tangible and intangible, and immovable objects, especially buildings that cannot be encumbered with dependent rights as referred to in Law Number 4 of 1996 concerning Dependent Rights that remain in the control of the Fiduciary, as collateral for the repayment of certain debts, which gives priority to the Fiduciary over other creditors [18, p. 211].

Furthermore, Law Number 42 of 1999 concerning Fiduciary Guarantees also regulates important provisions related to the obligation to register the object of fiduciary guarantees, as affirmed in Article 11 paragraph (1) *Jo*. Article 12 paragraph (1). This registration is carried out at the Fiduciary Registration Office, which then issues a Fiduciary Guarantee Certificate with the title "For Justice Based on the One Godhead", which has executory power equivalent to a court decision that has permanent legal force [19, p. 22]. Thus, the registration of fiduciary guarantees not only fulfills the principle of publicity and provides a strong legal standing, but also gives priority rights (*Right of preference*) to creditors compared to other creditors who do not have collateral [20, p. 58]. In line with these provisions, with the birth of Law Number 42 of 1999 concerning Fiduciary Guarantees (hereinafter referred to as the Fiduciary Guarantee Law), in order to provide legal certainty and legal protection to the parties, the fiduciary agreement must be made in a notary deed and registered at the Fiduciary Registration Office electronically as stipulated in Article 5 of the Fiduciary Guarantee Law. This aims to fulfill the principle of publicity in property law, which is affirmed in Article 5 paragraph (1) of the Fiduciary Guarantee Law which states that "the encumbrance of objects with fiduciary guarantees is made by a notary deed in Indonesian and is a fiduciary guarantee deed". A notary deed is an authentic deed that has the most perfect evidentiary power, so the encumbrance of objects with fiduciary guarantees must be stated in the notary deed as a fiduciary guarantee deed [21].

In the legal relationship of buying a car on credit, there are three main parties, namely the consumer as the debtor, the financing company as the creditor, and the dealer as the vehicle seller. Consumers are obliged to pay installments according to the agreement, while the finance company has the right to collect and execute the collateral object in the event of default. The object in this agreement is a motor vehicle as a movable object that is physically controlled by the consumer, but is juridically used as collateral for creditors through a fiduciary mechanism. This condition shows the duality of control, namely

physical control by the debtor and legal control by the creditor. The payment mechanism in buying a car on credit generally consists of down *payments* and periodic installments that include principal debt and interest. However, in practice, this relationship is often unbalanced because the position of consumers tends to be weaker than business actors, especially in terms of understanding the content of agreements and standard clauses. This then triggers various disputes, such as late payments, burdensome fines, and unilateral vehicle withdrawal by creditors.

1.Case Analysis of Consumer Dispute Decisions in Car Vehicle Financing in Indonesia, Malaysia and Australia

a. Cases in Indonesia

Various problems in motor vehicle financing are then reflected in the practice of dispute resolution in Indonesia, one of which is through court decisions. In Decision Number 764/Pdt.Sus-BPSK/2024/PN Mdn, a consumer dispute case at the objection level at the Medan District Court involving PT BFI Finance Indonesia Tbk as the Plaintiff (Business Actor) and M. Idri Siregar as the Defendant (Consumer). The object of dispute in this case is a unit of Toyota New Fortuner Diesel G 4x2 2. 5 MT car in 2014 with police number BK 903 AU which was withdrawn by the leasing party due to arrears in installment payments. The flow of the case began with a decision by the Medan City Consumer Dispute Settlement Agency (BPSK) Number 031/PEN/2024/BPSK.Mdn which punished the business actor to return the car, but then a legal remedy was submitted to the Medan District Court because the Plaintiff considered that BPSK did not have absolute authority in deciding financing disputes guaranteed by fiduciary guarantees. The credit financing mechanism in this case is based on financing agreement number 4012002412 with a tenor of 47 months, where consumers are required to pay monthly installments of IDR 7,041,000.00 and guarantee the vehicle fiducially through a fiduciary guarantee certificate number W2.00191409.AH.05.01 of 2021 as debt collateral. The legal basis used in this objection application includes Articles 18 and 52 of the Consumer Protection Law, the Fiduciary Guarantee Law, and the Supreme Court Jurisprudence Number Catalog 1/Yur/Perkons/2018. The consideration of the Panel of Judges of the Medan District Court essentially stated that the dispute arising from the financing agreement with fiduciary guarantees is not the authority of BPSK, but the absolute authority of the general court, and the procedure for selecting arbitrators at BPSK is considered legally defective because it is not based on the written agreement of both parties. Finally, the decision of the Medan District Court stated that it accepted the Objection Request from the Applicant, canceled the Decision of the Medan City Consumer Dispute Settlement Agency 031/Arbitrase/2024/BPSK.Mdn dated August 1, 2024, stated that the Medan City Consumer Dispute Settlement Agency was not authorized to adjudicate the A quo case, punished the Objection Respondent to pay the case fee which until today has been set at Rp272,500 (two hundred and seventy-two thousand five hundred rupiah) [22].

Another relevant case is Decision Number 18/Pdt.G.S/2023/PN Cbi which is a civil case through the Simple Lawsuit mechanism between PT Mandiri Tunas Finance Cibinong Branch as the Plaintiff against Fiori Kristiawan as the Defendant. The object of dispute in this case is the default or breach of promise on one unit of Honda Mobilio E MT brand car in 2017 police number F 1411 PV. The flow of the case began when the Defendant only fulfilled the obligation to pay the 1st to 40th installments, but since the 41st installment which was due on March 3, 2021 until the lawsuit was filed, the Defendant no longer made payments. This legal remedy was submitted to the Cibinong District Court because even though the Plaintiff had sent warning letters and summonses many times, the Defendant still did not have good faith to settle his arrears. The credit financing mechanism carried out is a consumer financing facility of Rp195,574,790,- with a period of 60 months and a flat interest of 7.30%, where the vehicle is then charged with a fiduciary guarantee based on Fiduciary Deed Number 57 dated October 5, 2017. The legal basis used includes Article 1239 of the Civil Code concerning default, Law Number 42 of 1999 concerning Fiduciary Guarantees, and Supreme Court Regulation Number 4 of 2019 concerning Amendments to Supreme Court Regulation Number 2 of 2015 concerning Procedures for Settlement of Simple Lawsuits. In its consideration, the Panel of Judges considered that the legal relationship between the parties was legally valid and the Defendant had been proven to have committed a default because he was negligent in paying the remaining debt obligations. Finally, the judgment stated that the plaintiff had partially granted the plaintiff's lawsuit, stating that the defendant had committed a default, and punishing the defendant to pay the remaining arrears and late fees to the plaintiff [23].

The decision shows that the settlement of motor vehicle financing disputes in Indonesia is generally resolved through a litigation mechanism on the basis of default, and emphasizes the fulfillment of debtors' obligations to creditors.

b. Kasus of Malaysia

In contrast to the practice in Indonesia, motor vehicle financing dispute resolution in Malaysia has its own characteristics that are regulated in a more specific legal framework. When compared to Malaysia, the arrangement of buying cars on credit is regulated in a more structured way through *Hire-Purchase Act* 1967. *Hire-Purchase Act* 1967 is a consumer credit option that is widely used to purchase vehicles. These laws are in place to protect your rights as a consumer and ensure that all parties involved in the purchase are treated fairly. The HPA outlines the formation and nature of the hire purchase agreement, the rights and obligations of the parties to the hire purchase agreement, the important provisions in the hire purchase agreement, and the process and procedure for foreclosure. Article 2(1) of the HPA, the hire purchase contract consists of two main elements: (i) the owner rents the goods to the tenant, who is given the option to purchase the goods, and (ii) the agreement for the tenant to purchase the goods in installments. The hire purchase transaction will involve three parties: the buyer (tenant), the merchant/seller and the lender (owner).

Based on the HPA First Schedule, the types of goods included in the HPA coverage are (i) all consumer goods and (ii) motor vehicles. These include strollers for people with disabilities, motorcycles, cars, taxis and rental cars, goods vehicles (the maximum permissible load weight does not exceed 2540 kilograms), and buses, including public buses. In its implementation, the HPA also regulates the formal terms of the agreement. According to Article 4A(1), the hire purchase

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agreement must be made in writing to ensure the protection and clarity of the responsibilities of the parties. Failure to comply with these terms may result in the agreement being void and the owner being deemed to have committed a violation. In addition, Article 4B prohibits the signing of agreements or blank documents, which are also categorized as violations of the law. Further, with a hire purchase contract, you can use the items you want without paying the total price upfront. Ownership of the goods will be transferred to you once you have fully paid the agreed price in accordance with the hire purchase agreement.

Regarding default, the Bank can only make a seizure if it fails to make two consecutive payments. Prior to foreclosure, they are obliged to issue a notice to you, under the Fourth Schedule of the HPA, giving you 21 days to settle the arrears, otherwise the vehicle will be confiscated, and a reminder must be sent to you prior to the actual foreclosure. According to Article 16(1) and Article 16(1B) of the HPA, if you have paid 75% of the car installment, the bank can only make a seizure by court order. (Article 16(1A)). Let's stay informed and adhere to these important guidelines.

These normative provisions in practice are also reflected in various court decisions in Malaysia related to motor vehicle hire purchase agreements. In the case *Thambipillai v Borneo Motors (M) Ltd*, the court stated that the hire purchase agreement is basically a form of custody of goods (*bailment*) accompanied by an option to buy, where the main purpose is to provide the tenant with the opportunity to become the owner by fulfilling all the terms of the agreement.[24] Further, in the case *Tractors Malaysia Bhd v Kumpulan Pembinaan Malaysia Sdn Bhd*, the Federal Court of Malaysia affirmed that title to the financing object does not transfer to the lessee before the entire payment is paid, so the agreement qualifies as a hire purchase agreement that gives the creditor the right to withdraw in the event of default [24]. In addition, in the case *Credit Corporation (M) Sdn Bhd v The Malaysian Industrial Finance Corp & Anor*, the High Court of Malaysia also affirmed that the title to the vehicle remains with the financier until all payment obligations are fulfilled by the lessee [24].

These three cases show the consistency of judicial practices in Malaysia in placing the ownership of fixed financing objects on creditors until all debtors' obligations are met. Based on this, it is important to examine the mechanism for resolving consumer disputes in buying cars on credit in Malaysia.

c. Cases in Australia

In the practice of vehicle financing in Australia, various legal issues show that car loan disputes are not only related to the contractual relationship between debtors and creditors, but also involve the role of intermediaries, interest rate setting policies, and procedural protections for debtors. This can be seen through the following cases that reflect that complexity.

1) The Clinton Case:

Clinton visited a car dealership to buy a vehicle. After making a choice, the dealer offers to arrange the financing of the vehicle. Clinton then agreed to the offer and through a dealer, she signed a credit agreement with a major bank. In this case, the dealer does not act as a lender, but rather as an intermediary who relies on the point of sale exemption so that it is not required to have a credit license.

This case shows that there is a regulatory loophole, where the role of dealers as a liaison between consumers and financial institutions has the potential to cause information imbalances and increase risks for consumers, especially due to the lack of legal obligations attached to dealers as intermediaries [25].

2) Interest Rate Case (ASIC v Channic):

In addition to the problem of intermediaries, other problems in vehicle financing are related to the determination of interest rates. Car loans (other than those issued by *Authorised Deposit-taking Institution* (ADI)) Subject to an inclusive annual fee rate maximum limit of 48%, which covers an administration fee of up to $400 if the loan falls under the category of a mid-sized credit contract. In practice, non-mainstream lenders (*non-mainstream lenders*) tends to offer credit products that are close to that maximum limit. This is reflected in the case of ASIC v Channic (No 4), where the credit contract provided has an annual percentage rate (APR) of 48%, which is right at the maximum allowable limit. This condition shows that although it does not formally violate the provisions of the law, the practice has the potential to burden consumers substantially. Thus, this case reflects the tendency of business actors to maximize profits within the limits of existing regulations, which ultimately raises issues of justice and consumer protection [25, p. 65].

3) Cases of Unilateral Judgment in the Supreme Court of NSW:

Problems in vehicle financing also include procedural protection aspects for debtors in the law enforcement process. This is reflected in the Supreme Court's decision *New South Wales* (NSW) which reviews the obligations of banks under Article 72 *National Credit Code* (NCC) as well as its relation to the litigation process. In the case, Judge McCallum ordered the reversal of the default judgment on the grounds that "the bank's conduct has deprived Mrs Wales of the opportunity to avail herself of the remedies set out in Division 3 of Section 4 of the Code." The debtor is known to have tried in good faith to follow the mechanism for resolving financial difficulties, but these efforts were hampered by the "passive resistance" of the bank which immediately filed a lawsuit without adequate notice. However, the decision was limited to the special circumstances of the case. However, this ruling confirms that financial institutions are not only obliged to fulfill substantive obligations, but also procedural obligations to act fairly, transparently, and not obstruct the rights of debtors [25, p. 69].

2. Consumer Dispute Resolution for Car Purchases on Credit

a. Consumer Dispute Resolution in Indonesia

Article 1457 of the Civil Code defines the definition of sale and purchase as an agreement in which one party promises to deliver goods and/or services and the other party pays the agreed price [26, p. 280].

The definition of credit is according to the provisions of article 1 number 11 of Law No. 10 of 1998 concerning amendments to Law No. 7 of 1992 concerning banking. "Credit is the provision of money or bills equalized based on the consent of the bank, or a loan and borrowing agreement between a bank and another party that obliges the borrower to pay off his debt after a certain period of time with interest."[27, p. 178].

The laws and regulations governing consumer protection in Indonesia, explaining the term "consumer" as a formal juridical definition are found in article 1 number 2 of Law Number 8 of 1999 concerning Consumer Protection (hereinafter referred to as the UUPK). The UUPK states that "Consumers are every person who uses goods and/or services that are available in society, either for the benefit of themselves, family, other people or other living beings and not for trade".

The provisions on consumer dispute resolution according to Law Number 8 of 1999 concerning Consumer Protection are regulated in Chapter X with the title Dispute Resolution, starting from Article 45 to Article 48, and linked to Chapter XI concerning the Consumer Dispute Resolution Agency in Articles 49 – 58, however, the provisions in Chapter X are preceded by Articles 19 and 23 [28].

One of the fundamental issues about consumer disputes, according to Law No. 8 of 1999 concerning Consumer Protection (UUPK) [29, p. 255]. Based on Article 45 paragraph (2) of Law Number 8 of 1999 concerning Consumer Protection, that the settlement of consumer disputes can be pursued through the court or out of court based on the voluntary choice of the parties to the dispute [30, p. 157]. In Article 49 Paragraph (1) of the Consumer Protection Law, the Government establishes BPSK for the settlement of consumer disputes outside of court [2, p. 163]. If the resolution of consumer disputes is carried out outside the courts according to Article 52 of the Consumer Protection Law, it is through BPSK, through mediation, arbitration, and conciliation. Lawsuits that have been submitted to BPSK must be followed up by BPSK, and BPSK is obliged to give a verdict [31].

In Indonesia, consumer dispute resolution for car purchases on credit can be done through non-litigation and litigation channels. The non-litigation route is carried out through BPSK with mediation, conciliation, or arbitration mechanisms. However, the legal basis of BPSK's authority, which originated from Law Number 8 of 1999 concerning Consumer Protection, often clashes with jurisprudence practices that limit its authority. On the other hand, the litigation route is carried out through the general court on the basis of default or unlawful acts based on the Civil Code. In addition, there is also a simple lawsuit mechanism that can be used to resolve disputes with certain values more quickly and simply.

Thus, comparatively, it can be seen that Indonesia has a fairly complete legal framework in regulating car purchases on credit and dispute resolution, but still faces obstacles in implementation, especially related to the authority of institutions and the effectiveness of dispute resolution. In contrast, Malaysia has a simpler, integrated system that provides better legal certainty through special arrangements and the existence of an effective consumer tribunal. This distinction shows that the effectiveness of consumer protection is determined not only by the completeness of the regulations, but also by the consistency of the application of the law and the institutional clarity in the dispute resolution system.

b. Consumer Dispute Resolution in Malaysia

Malaysia adheres to the *common law* influenced by the English legal tradition. In the system *common law*, in addition to laws and regulations, judges' decisions or jurisprudence have an important role as a source of law.[32, p. 3] Malaysia enacted Malaysia Act No. 599, Consumer Protection Act 1999 on 9 September 1999 (Malaysian Consumer Claims Tribunal (TTPM)) and came into force on 15 November 1999.[33, p. 110] Malaysia's consumer protection law, although passed in the same year as Indonesia's consumer protection law, has currently undergone 8 (eight) amendments, namely in 2002, 2003, 2007, 2010, 2015, 2017 and 2019. One of the amendments is the addition of the amount of losses that can be settled in the TTPM which is limited to a maximum of RM10,000 to RM25,000 (amendment in 2003), then from RM. 25,000 to RM.50,000 (2019 amendment) [34, pp. 89–90].

In addition, consumer protection in Malaysia is also strengthened through the Consumer Protection Act 1999 which provides a dispute resolution mechanism through consumer tribunals. These tribunals have simple procedures, low costs, and easy access for consumers. Disputes related to vehicle financing can be resolved quickly without having to go through a lengthy court process.

Comparison of consumer dispute resolution in Indonesia and Malaysia based on the authority of BPSK and TTPM. First, BPSK and TTPM are permanent alternative institutions, and both are not ad hoc institutions and are not part of state courts such as the Supreme Court of Indonesia and the Indonesian Constitutional Court in common law countries. Furthermore, in terms of membership, TTPM requires its members to have a legal background, while BPSK membership consists of 3 elements, namely consumers, business actors, and government elements. In this case, BPSK has an advantage over TTPM, because TTPM has special authority to resolve disputes and only accepts claims with a clear value, while BPSK does not have the authority to limit the value of complaints, it's just that in imposing administrative sanctions, the compensation value is limited.

Furthermore, the settlement mechanism at BPSK uses independent mediation, conciliation, and arbitration, so that incoming

cases cannot be guaranteed to be resolved by issuing a decision, while the mechanism at TTPM uses mediation if it cannot be continued to trial, so that cases that reach TTPM can be confirmed with a decision. Furthermore, both BPSK and TTPM's decisions are final and binding, only both can be submitted to the legal channel. BPSK's decision can be challenged by the District Court and cassated to the Supreme Court, while the TTPM decision can be submitted for review to the High Court because the TTPM's decision is the same as the District Court's decision. Then for those who do not comply with the BPSK decision, the BPSK decision is preliminary evidence for the investigation whether there is a criminal offense with imprisonment and fines. Finally, the decisions of TTPM and BPSK are final and binding, both decisions can be used as legal remedies, for TTPM decisions can be carried out judicial review to the High Court because it is considered a decision of the District Court, while objections to BPSK's decisions can be submitted to the District Court and cassation to the Supreme Court [34, p. 98].

c. Consumer Dispute Resolution in Australia

Consumer dispute resolution in credit financing in Australia is regulated in layers, which provides protection to debtors through internal mechanisms, litigation, and external dispute resolution. This system reflects an approach that prioritizes gradual settlement as well as protection for debtors experiencing financial difficulties.

1) Hardship Notice *Mechanism*:

National Credit Code (NCC) provides a process for debtors to propose changes to their credit contracts if they feel unable to meet existing obligations. This process begins with the debtor providing a "notice of hardship" (*hardship notice*) to credit providers, both orally and in writing. Upon receipt of the notice, the credit provider has 21 days to request additional information from the debtor to decide whether the debtor is having a hard time meeting its obligations or how to amend the contract. The credit provider must then decide whether they agree to amend the contract and provide a written decision to the debtor. If the request is denied, the notice must include the reason for the decision, details of the scheme *External Dispute Resolution* (EDR) or the relevant out-of-court dispute resolution mechanism, as well as the debtor's rights under the scheme [25, pp. 67–68].

2) Through the Courts of Justice:

If the credit provider rejects the application, the debtor can apply to the court to change the terms of the credit contract. The court may order a change in the contract or reject it after hearing information from the relevant parties. However, the court may not make an order that will reduce the total amount of bills that the debtor must pay to the credit provider [25, p. 68].

3) Through the *External Dispute Resolution* (EDR) Scheme:

In addition to going through the courts, the most common dispute resolution is through the External Dispute Resolution (EDR) mechanism, which is the settlement of disputes outside of court organized by independent institutions. In the Australian context, this mechanism is currently implemented by the *Australian Financial Complaints Authority* (AFCA), which is a merger of the *Financial Ombudsman Service* (FOS) and *the Credit and Investments Ombudsman* (CIO). Since November 1, 2018, all complaints and disputes previously handled by FOS or CIO have been transferred and handled by AFCA. This indicates the consolidation of the external dispute resolution system with a wider scope of jurisdiction compared to the previous scheme.]

AFCA has the authority to order credit providers (*Financial Service Providers* (FSPs) to make changes to credit contracts, especially in the event that the debtor experiences financial difficulties. This mechanism is a faster, simpler, and more affordable alternative to settlement through the courts.

However, in practice, AFCA will only order a change of contract if there is an adequate basis, including:

a) The debtor is able to demonstrate the capacity to pay off the debt in full, albeit over a longer period of time; and

b) The assistance provided is considered proportionate and in accordance with the debtor's current financial condition.

Thus, the EDR mechanism through AFCA functions as a consumer protection instrument that balances the interests of debtors and financial service providers, without ignoring the principle of prudence in lending [35].

3. Comparative Analysis of Consumer Dispute Resolution (Indonesia, Malaysia, Australia)

A comparative analysis of consumer dispute resolution in car purchases on credit in Indonesia, Malaysia, and Australia shows that there are differences in the legal, institutional, and effective approaches to consumer protection in each country. Indonesia basically has a fairly complete regulation through Law Number 8 of 1999 concerning Consumer Protection by providing litigation and non-litigation channels through the Consumer Dispute Resolution Agency (BPSK). However, in practice, there are still obstacles in the form of overlapping authority between BPSK and the general court, as well as restrictions on BPSK's authority through jurisprudence. This condition causes dispute resolution to often not provide optimal legal certainty for car financing consumers.

In contrast to Indonesia, Malaysia has a simpler and integrated dispute resolution system through the Malaysian User

Claims Tribunal (TTPM). These tribunals provide easier access, low costs, and fast procedures for consumers. In addition, the authority of the TTPM is also clearer because it is supported by the *Consumer Protection Act* 1999 which specifically regulates the mechanism for resolving consumer disputes. This institutional clarity makes the dispute resolution process in Malaysia relatively more effective and able to provide better legal certainty than Indonesia.

Meanwhile, Australia implements a more modern and preventive consumer protection system through *the hardship notice* mechanism, court channels, and *External Dispute Resolution* (EDR) by the *Australian Financial Complaints Authority* (AFCA). The system in Australia not only focuses on resolving disputes after a default, but also provides an opportunity for debtors to apply for restructuring or changes to credit contracts when experiencing financial difficulties. The presence of AFCA as an independent institution provides a faster, simpler, and more flexible settlement than the litigation process in court. This approach shows that consumer protection in Australia is not only repressive, but also preventive and adaptive to the economic conditions of debtors.

Based on this comparison, it can be seen that the effectiveness of consumer dispute resolution is not only determined by the number of regulations owned by a country, but also influenced by the clarity of institutional authority, simplicity of procedures, and the ability of the legal system to provide access to fast and definitive dispute resolution for consumers. Indonesia tends to still face the problem of dualism of authority and uncertainty of implementation, Malaysia is superior in the simple and effective institutional aspects of consumer tribunals, while Australia stands out through its consumer protection approach based on gradual settlement and credit restructuring.

The novelty or novelty in this study lies in a comparative analysis of the dispute resolution mechanism for consumers buying cars on credit in three countries with different legal systems, namely *civil law* in Indonesia, *common law* in Malaysia, and modern financial protection system in Australia. This study not only compares litigation and non-litigation channels, but also examines the institutional effectiveness of dispute resolution, legal certainty, and protection for consumers of motor vehicle financing. In addition, the study found that an effective dispute resolution model does not rely solely on the existence of dispute resolution institutions, but also requires an integrated system, clear authority, simple procedures, and preventive mechanisms such as credit restructuring as implemented in Australia. Therefore, this study offers the idea that strengthening the consumer dispute resolution system in Indonesia needs to be directed at simplifying the authority of BPSK, increasing legal certainty, and establishing a preventive protection mechanism for car vehicle financing debtors.

Conclusion

Based on this discussion, it can be concluded that consumer dispute resolution in motor vehicle financing in Indonesia, Malaysia, and Australia has differences in terms of legal, institutional, and consumer protection arrangements. Indonesia has provided litigation and non-litigation mechanisms through the general court and BPSK, but there are still obstacles in the form of overlapping authority and legal uncertainty, especially in financing disputes with fiduciary guarantees. Malaysia has a more structured system through the Hire-Purchase Act 1967 and the Malaysian Consumer Claims Tribunal (TTPM) with a simple and effective settlement process. Meanwhile, Australia implements more preventive protection through hardship notices and External Dispute Resolution (EDR) by AFCA for debtors experiencing financial difficulties. Thus, the effectiveness of dispute resolution is not only determined by the completeness of regulations, but also the clarity of the institution's authority, the simplicity of procedures, and preventive protection for consumers. Therefore, Indonesia needs to strengthen legal certainty and the effectiveness of dispute resolution so that the protection of motor vehicle financing debtors can run more optimally.

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