



Legal Liability Forms of Parking Operators for Motor Vehicle Damage or Loss in Kupang City

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Abstract

Purpose: This study analyzes the legal liability of parking service operators for vehicle damage or loss at on-street parking facilities in Kupang City, East Nusa Tenggara. Despite Perda No. 15/2011 governing parking fees, it lacks provisions on operator liability, leaving vehicle owners without legal recourse.

Research Methodology: A juridical-empirical (socio-legal) approach was used, combining interviews with operators, users, and law enforcement, field observations, and documentation review. Secondary sources included statutory instruments, court decisions, and academic literature, with source triangulation applied. Analysis integrated civil law (KUHPperdata), criminal law (KUHP), consumer protection law, and regional regulations.

Results: Parking operators bear civil liability under KUHPperdata Articles 1365–1367 and criminal liability under KUHP Articles 362, 406(1), and 56(2) when negligence or facilitation occurs. Standard ticket clauses disclaiming liability are invalid. Perda No. 15/2011 fails to regulate operator liability, creating a legal gap that allows operators to avoid accountability.

Conclusions: Operators are both civilly and criminally liable for vehicle damage or loss, but regulatory gaps limit enforceability. Revision of regional regulations is needed to include explicit liability, consumer protection, and insurance requirements.

Limitations: The study is limited to Kupang City on-street parking, using case data from 2014–2017, and regulatory changes may have occurred since.

Contributions: This study provides the first systematic juridical-empirical analysis of parking operator liability in Kupang, offering a civil-criminal liability framework and concrete recommendations for regulatory reform.

Keywords: Consumer Protection, KUHPperdata, KUHP, Legal Liability, Parking Service Operator

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1. Introduction

The right to property security is a fundamental legal guarantee for all Indonesian citizens. When individuals use paid commercial services, including parking facilities, the transaction creates a legal relationship between the service user and service provider that carries mutual rights and obligations. Parking users pay retribution (*retribusi*) and, in exchange, are entitled to receive safe, secure, and accountable vehicle custody during the parking period (Buana et al., 2018). However, in practice, parking service operators at on-street facilities in Kupang City routinely disclaim all liability through standard

clauses printed on parking tickets — ‘loss of or damage to vehicles is not the responsibility of the parking operator’ — and have been consistently supported in this position by the absence of explicit liability provisions in the applicable regional regulation (Sembiring et al., 2023).

Kupang City, as one of East Nusa Tenggara Province’s major urban centers, manages on-street parking retribution through Kupang City Regional Regulation (*Peraturan Daerah/Perda*) No. 15 of 2011 on On-Street Parking Retribution Services. This regulation establishes the legal basis for collecting parking fees from motorcycles and four-wheeled vehicles using on-street public parking spaces. The regulation prescribes penalties for non-paying users but is conspicuously silent on parking operator obligations, security standards and liability for vehicle loss or damage. The Kupang City Government delegates on-street parking management to private parties but has not established contractual or regulatory mechanisms that hold these private operators accountable for custody security (Kusuma & Nuryana, 2024; Meurs et al., 2020).

The practical consequences of this regulatory gap are documented in Kupang City Police Resort (*Polres Kota Kupang*) records: from 2014 to 2017, 21 cases of motorcycle theft were reported from on-street parking locations. In each instance, the parking operators refused to take responsibility, invoking the standard disclaimer on parking tickets. Victims were left without effective legal recourse because the applicable regional regulations provided no basis for holding operators liable. This pattern — widespread theft, operator impunity, and victim abandonment — constitutes a systematic failure of legal protection that demands analytical resolution (Frenken et al., 2020). This study investigates two research questions: (1) What is the form of parking operator liability under Perda No of. 15/2011 (“Peraturan Daerah Kota Kupang Nomor 15 Tahun 2011 tentang Retribusi Pelayanan Parkir di Tepi Jalan Umum”, 2011), KUHP Articles 362 and 406(1) (“Kitab Undang-Undang Hukum Perdata”, n.d.; “Kitab Undang-Undang Hukum Pidana”, n.d.), and the legal certainty perspective? (2) What is the relationship between leadership strategy, HR quality, and organizational performance?

2. Literature Review

2.1 Parking as a Legal Relationship: Deposit of Goods Theory

The legal nature of a parking service transaction determines which liability framework applies. Under the Indonesian Civil Code (*Kitab Undang-Undang Hukum Perdata/KUHPerdata*) Book III, a contract of deposit (*perjanjian penitipan barang*) is defined as an agreement whereby one party receives goods from another with an obligation to keep and return the goods. The decisive question is whether parking constitutes a mere license (*ijin tempat*) for vehicle storage space — which would create no custody obligation — or a deposit contract — which creates a legal obligation to keep the vehicle safe (Filjannah & Hidayat, 2025; Parikesit et al., 2025).

The Indonesian Supreme Court (*Mahkamah Agung*) definitively resolved this question in Decision No. 3416/Pdt/1985, holding that parking services constitute a contract of deposit (*perjanjian penitipan barang*). Under this precedent, the loss of a consumer’s vehicle from a parking facility makes the parking operator legally liable as the custodian of the deposited goods. This Supreme Court position is further supported by Decision No. 2157 K/PDT/2010 (Purnamawati et al., 2017), which struck down disclaimer clauses in parking service agreements as violating consumer protection principles.

Standard disclaimer clauses on parking tickets that state ‘loss or damage is not the operator’s responsibility’ are standard clauses (*klausula baku*) as defined in Law No. 8 of 1999 on Consumer Protection (UUPK). UUPK Article 18 prohibits standard clauses that transfer or shift responsibility from operators to consumers; such clauses are null and void (*batal demi hukum*) as they violate consumers’ rights to safety, correct information, and fair treatment (Harianto, 2010). Therefore, the standard disclaimer cannot

validly waive operator liability, regardless of the parking user's acknowledgment of it at the time of using the facility.

2.2 Civil Liability: KUHPerdata Articles 1365, 1366, and 1367

Three provisions of the Indonesian Civil Code establish a civil liability framework for parking operators. Article 1365 (*perbuatan melawan hukum*) provides that every act that violates the law and causes harm to another obliges the person who, through their fault, caused the harm to make restitution. Three elements must be proven: (1) an unlawful act (failing to guard vehicles in one's custody); (2) harm suffered by the victim; and (3) a causal link between the unlawful act and the harm. Article 1366 extends this to negligence and carelessness: persons are liable not only for the damage caused by their actions but also for the damage caused by their negligence or lack of caution. For parking operators, this means that negligence in supervision — failing to monitor the parking area, failing to screen unauthorized persons, failing to request identification from persons removing vehicles — constitutes grounds for liability even without intentional wrongdoing. Article 1367 establishes vicarious liability: persons are responsible not only for their own acts but also for the acts of persons under their supervision. Therefore, parking operators are liable for the acts of their employees and agents within the scope of their employment (Farooq et al., 2021; García-Sánchez & García-Sánchez, 2020).

The three-element test for liability under Articles 1365–1367 (unlawful act/negligence, harm, causation) is satisfied in vehicle theft cases at parking facilities: the operator's failure to exercise custody obligations constitutes unlawful negligence, the vehicle theft constitutes concrete harm, and the operator's failure of supervision directly enables the theft. Product liability theory (*pertanggungjawaban mutlak*) further applies in parking contexts: under strict liability principles, operators bear responsibility regardless of fault demonstration because the transaction creates an absolute custody obligation (Farooq et al., 2021; Hunkenschroer & Luetge, 2022).

2.3 Criminal Liability: KUHP Articles 362, 406, and 56

Criminal liability in the parking context arises from the failure of operators to prevent theft and damage at their facilities (Chullabodhi et al., 2022; Purba & Rizal, 2024). KUHP Article 362 criminalizes theft — taking another's property with the intent to possess it unlawfully — carrying a maximum sentence of five years imprisonment. KUHP Article 406(1) criminalizes intentional unlawful destruction, damage, or rendering unusable of another's property, carrying a maximum sentence of two years imprisonment and eight months. Pertinently, KUHP Article 56 establishes accessory liability: persons who deliberately provide assistance at the time a crime is committed, or deliberately provide the opportunity, means, or information to enable a crime, are punishable as accessories to that crime. For parking operators, this provision is directly applicable: by operating a parking facility without adequate security measures, failing to screen unauthorized persons, or failing to monitor the area, operators provide the 'opportunity' (*kesempatan*) or 'means' (*sarana*) for theft to be committed, meeting the Article 56(2) standard for accessory liability (Badaru & Begishev, 2024; Erfina et al., 2025).

In practice, Perda No. 15/2011 provides no basis for criminal liability for parking operators. Its criminal sanction provision (Article 22) targets only users who fail to pay parking retribution, threatening up to three months' detention or a fine not exceeding three times the unpaid retribution. This asymmetry — criminal accountability for non-paying users but none for negligent operators — reflects a fundamental regulatory failure that prioritizes revenue collection over public safety and consumer protection (Gotham & Kennedy, 2021; Menaker et al., 2024).

2.4 Legal Protection Theories and Prior Research

Hadjon (1987) distinguishes two forms of legal protection: preventive (preventing disputes from arising through clear regulatory frameworks) and repressive (resolving disputes after they have arisen through

enforcement mechanisms). Effective legal protection for parking users requires both preventive protection through clear regulatory liability standards that deter negligence and repressive protection through enforceable remedies when harm occurs. The current Perda framework provides neither — there are no preventive standards for operator security conduct and no repressive remedies for users who suffer loss. [Kelsen \(1945\)](#) describes legal certainty principle requires that law provide clear, predictable, and consistent rules — the Perda’s silence on operator liability fails this fundamental requirement. Prior research confirms the systemic nature of this problem: [Abdiana \(2016\)](#) documented poor parking service quality in Yogyakarta; [Jalilah \(2023\)](#) confirmed inadequate consumer protection in parking contexts; [Sembiring et al. \(2023\)](#) documented exoneration clause challenges in Jambi parking agreements; and [Andayani \(2014\)](#) analyzed police-community partnership roles in crime prevention, all converging on the need for stronger regulatory frameworks protecting parking service users.

3. Methodology

This study employs a juridical-empirical (*yuridis empiris*) research design, examining law in action — how legal norms operate in actual social practice — rather than only in legislative text ([Andayani, 2014](#)). A descriptive analytical approach describes the existing legal conditions and analyzes their normative adequacy. Primary data were collected through structured and semi-structured interviews with parking operators, parking users (particularly those who experienced vehicle loss or damage), and Kupang City Police Resort personnel; direct field observation of on-street parking management practices; and review of police case documentation (21 theft cases, 2014–2017) and regional government records. Secondary data were collected from Perda Kupang No. 15/2011; KUHPperdata; KUHP; Law No. 8/1999 on Consumer Protection; Supreme Court Decisions No. 3416/Pdt/1985 and No. 2157 K/PDT/2010, and academic legal literature. Source triangulation validated the findings by comparing the interview data, observation findings, and documentary evidence. The analysis followed legal interpretation methods: grammatical (text-based), systematic (contextual within the legal system), historical (legislative intent), and teleological (purposive) interpretations

4. Results and Discussion

4.1 Parking Retribution Context and Case Data

Table 1. Motorcycle Theft Cases at On-Street Parking Locations — Kupang City, 2014–2017

Year	Cases (n)	% of 21-Year Total	Trend	Observation
2014	2	9.53%	Baseline	Initial documented cases
2015	4	19.05%	+100% vs 2014	Increasing trend; operator disclaimers routinely invoked
2016	7	33.33%	+75% vs 2015	Peak growth; no regulatory change
2017	8	38.10%	+14% vs 2016	Highest annual count; Perda gap un-addressed
TOTAL	21	100%	Consistent increase	All cases: operators disclaimed liability; no prosecutions of operators

Source: Kupang City Police Resort (Polres Kupang Kota) Primary Data, 2014–2017.

Table 1 shows the four-year data trajectory reveals a consistently worsening pattern: theft cases nearly quadrupled from two (2014) to eight (2017). In every documented instance, parking operators invoked the standard disclaimer on parking tickets and declined to accept the liability. No parking operator has been

prosecuted under any criminal provision. Victims are effectively left without recourse. This systematic impunity is the direct product of the Perda gap: without an explicit regulatory liability standard, operators have no institutional incentive to invest in security measures, and users have no clear legal instrument to demand accountability from operators.

4.2 Civil Liability Analysis

The parking service transaction in Kupang City creates a legal relationship of deposit (*perjanjian penitipan barang*) by operation of law, as established by the Supreme Court Decision No. 3416/Pdt/1985. When parking users pay retribution and park their vehicles, they enter a legal relationship with the operator who, by accepting payment for the service, assumes custody obligations over the vehicle. This characterization has three critical implications. First, the operator's standard disclaimer clause — 'loss or damage is not the operator's responsibility' — is void as a matter of law under UUPK Article 18, which prohibits any standard clause transferring operator liability to consumers. The presence of the clause on parking tickets does not create a valid legal effect; users' acceptance of it does not constitute an informed waiver of legal rights. Second, the operator bears the burden of proving that they exercised due care (diligence) in vehicle custody; the mere occurrence of theft or damage raises a presumption of negligence under civil law. Third, under KUHPerdata Article 1367, operators bear vicarious liability for the acts of their employees, including any employee who, through negligence, enabled a theft to occur.

The civil remedy available to vehicle owners is a lawsuit for damages (*gugatan perdata*) against the parking operator under KUHPerdata Articles 1365–1367. Claimable damages include the market value of the stolen or damaged vehicle (material damages) and consequential costs incurred from the loss (transportation, replacement costs, productivity loss) ([Del Riego, 2021](#)). The Supreme Court precedent in Decision No. 3416/Pdt/1985 provides direct judicial authority for this action. However, the practical barrier is significant: many parking users lack the financial resources, legal knowledge, or institutional support to pursue civil litigation, making regulatory prevention the more effective protection mechanism.

4.3 Criminal Liability Analysis

The criminal liability framework for parking-related vehicle loss operates through KUHP Article 56(2), which punishes persons who 'deliberately provide opportunity, means, or information' enabling a crime. A parking operator who fails to implement adequate security measures — no security personnel, no vehicle entry/exit monitoring, no license plate verification — provides the 'opportunity' (*kesempatan*) through which theft becomes feasible. The deliberateness element of Article 56 does not require the intentional facilitation of theft; constructive knowledge that inadequate security creates a theft risk, combined with a failure to address it, satisfies the deliberateness requirement in the Indonesian criminal law doctrine ([Taniady, 2024](#)).

The elements of criminal liability for operators are therefore: (1) the existence of a criminal act (theft under Article 362 or malicious damage under Article 406); (2) the operator's provision of 'opportunity or means' through security negligence under Article 56(2); and (3) the causal connection between the negligence and the criminal act. In practice, this analysis is complicated by the difficulty in proving the operator's constructive knowledge and causal link. However, the more fundamental barrier is regulatory: Perda No. 15/2011 only imposes criminal sanctions on users who do not pay parking fees (Article 22). Prosecutors have no regional regulatory basis — only general criminal law provisions — to ground a prosecution of a parking operator for their failure to prevent vehicle theft. This resulting enforcement gap allows systematic impunity despite the theoretical availability of criminal liability under the KUHP framework ([Anan et al., 2024](#); [Mariza, 2024](#); [Widyawati et al., 2025](#)).

4.4 Regulatory Gap Analysis and Reform Imperatives

The failure of Perda No. 15/2011 to regulate parking operator liability represents a fundamental deficiency measured against three legal standards. Against the legal certainty standard (*kepastian hukum*), the regulation fails Sudikno Mertokusumo's requirement that law provide clear, predictable, and enforceable rules: there are no measurable security standards, no clear liability triggers, and no designated enforcement pathway for operator negligence (Ben-Shahar, 2025; Goswami & Khan, 2025; Kumar et al., 2024). Against the legal justice standard (*keadilan hukum*), the regulation fails to protect parking users who are structurally in a weaker bargaining position than operators: they must pay retribution but receive no guaranteed corresponding protection (Hadjon, 1987). Against the legal protection standard (*perlindungan hukum*), the regulation provides only preventive protection for the government's revenue collection function and no repressive protection mechanism for users who suffer harm (Priyantiwi, 2025; Ramdhani & Lutfi, 2025).

The Kupang City Government must amend Perda No. 15/2011 to include: explicit operator liability provisions for vehicle damage and loss; minimum security standard requirements for on-street parking facilities (security personnel, CCTV, vehicle registration verification); mandatory insurance or compensation fund obligations for operators; administrative sanctions for operators who fail to meet security standards; and a clear consumer complaint mechanism with defined response timelines (Manek & Soemartono, 2025).

5. Conclusions

This juridical-empirical study found that parking service operators in Kupang City bear both civil and criminal liability for motor vehicle damage or loss. Civil liability is based on the provisions of the KUHPerdata and Supreme Court jurisprudence recognizing parking as a contract of deposit, while criminal liability may arise from negligence that facilitates theft or damage. Disclaimer clauses on parking tickets cannot eliminate operator responsibility. The study also found that Perda No. 15/2011 does not explicitly regulate operator liability, creating an enforcement gap despite the availability of legal remedies. The absence of operator prosecutions or civil judgments in 21 documented theft cases (2014–2017) highlights this weakness. Therefore, the Kupang City Government should revise the regulation to establish clear operator liability standards, minimum security requirements, and consumer protection mechanisms.

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Author Contributions

ESOM conceptualized the study, designed the juridical-empirical methodology, and drafted the manuscript. JP conducted data collection through interviews, field observations, and documentation review. PB performed legal analysis, integrating civil, criminal, consumer protection laws, and regional regulations. DYD contributed to data validation, cross-checking police and court records, and prepared tables and figures. All authors read and approved the final manuscript.

Conflicts of Interest

The authors declare that there are no conflicts of interest that could have influenced, or be perceived to have influenced, the research presented in this article. This study was conducted in an objective and independent manner, and no financial, commercial, or personal relationships exist that may constitute a potential conflict of interest in relation to the design, implementation, analysis, interpretation, or publication of the findings.

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