

## The legal Consequences of Default of Parties in the Lease Agreement between PT. Kereta Api Indonesia (PT. KAI) with PT. J.Co Donuts & Coffee

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Article	Abstract.
Keywords: Agreement; Default; Lease.	The development of the rental business can not be denied can experience a problem along with its development, such as the problem of default that occurred between PT. J.Co Donuts & Coffee with PT. Kereta Api Indonesia (Persero). PT. J. Co Donuts & Coffee (the plaintiff) leased assets from PT. Kereta Api Indonesia (defendant) in the form of land and buildings for a period of 5 years. After the defendant made the payment for term I, the defendant did not immediately hand over the object of lease to the plaintiff to be used as a J.Co Donuts & Coffee store so this matter was brought to court. In the decision of the Supreme Court No. 211/K/PDT/2020, the judge decided that PT. KAI has defaulted by not handing over the object of the lease to PT. J.Co Donuts & Coffee. This study aims to determine the form of default and the legal consequences of the default dispute. The method used in this legal research is a normative juridical approach. The specifications used in writing this law are descriptive analytical. While the method used is a qualitative method. The results of the study indicate that the judge has decided on this case correctly, namely that the defendant has defaulted due to an error due to negligence. Furthermore, researchers also examine the legal consequences that arise in the decision of the Supreme Court no. 211/K/PDT/2020.
Article History Received: 2022-08-22; Reviewed: 2022-09-01; Accepted: 2022-10-16; Published:2022-10-17.	
DOI: 10.30659/jdh.v%vi%i.23 918	

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### 1. Introduction

In the current era of globalization, law is developing rapidly. Law is a picture/reflection of the society in which the law applies. The law that applies in Indonesia will be effective if the law comes from the spirit of the people who

created the law itself, namely the Indonesian legal community.<sup>1</sup> Contract law itself is one of the fields of legal study that develops along with the growth of society. The factors causing the growth and development of contract law are the rapid business activities carried out in modern society and the rapid transactions carried out by the Government with other parties. The central government and local governments as public legal entities, can not only carry out legal actions of a public nature, but can also be in the civil sector. Therefore, the government is subject to existing provisions in the field of civil law. In addition, the factors that cause the growth and development of contract law are due to the principle of freedom of contract, where that freedom includes, the freedom to make or not make an agreement, enter into a contract with anyone, determine the content of the contract and its implementation and terms, determine the form of the contract, namely oral or written.

Basically an agreement is made based on negotiations by the parties, but with the use of standard clauses, the contents of the agreement have been determined unilaterally by the business actor.<sup>2</sup> In the Civil Code, in making an agreement, the types of contracts are known, such as buying and selling, exchanging, leasing, agreements to do work, civil partnerships, legal entities, grants, safekeeping of goods, borrowing and use, borrowing, granting power of attorney, fixed or perpetual interest, chance agreements, debt guarantees and peace. An agreement is born from a legal relationship that occurs between two parties who have agreed that one party has the right to demand something from the other party. The party who has the right to sue is called the creditor (the debtor), while the party who is obliged to fulfill the claim is called the debtor (the debtor).

Article 1233 of the Civil Code stipulates that every engagement is born either by agreement or agreement, or by law. Therefore, an engagement legal relationship can occur due to an agreement or agreement between the two parties who are bound to carry out the agreement. However, it cannot be denied that there are often broken promises between the parties bound in the contract by not carrying out the rights and obligations that have been agreed upon between the two parties.

As a result, the performance of one of the parties is not carried out. Thus, legal problems will arise, as in the dispute of default of the lease agreement between PT. Kereta Api Indonesia (PT. KAI) with PT. J.Co & Coffee, which in essence in the Supreme Court decision No. 211/K/PDT/2020 that the PT. J.Co Donuts & Coffee (the plaintiff) has felt aggrieved due to the achievements that PT. Kereta Api Indonesia

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<sup>1</sup>Maryanto, *Urgensi Pembaharuan Hukum Indonesia Berdasarkan Nilai-Nilai Pancasila*, Jurnal Fakultas Hukum Unissula, Vol. Xxv No. 1 April 2011, p. 421

<sup>2</sup>Sukarmi, Yudhi Tri Permono, *Perlindungan Hukum Konsumen Dalam Transaksi Secara Online*, Jurnal Hukum Unissula, jurnal fakultas hukum unissula, Vol.35 No.1 2019, p.90

(defendant) for the delivery of the Leased Object that has been agreed in the lease agreement. Meanwhile, the plaintiff wants to lease the object in the form of land and buildings for a period of 5 years and the intended use is as a J.Co Donuts & Coffee store. The agreed price to be paid is IDR 1,435,115,000.00.

In the decision of the Supreme Court Number 211/K/PDT/2020 the defendant has defaulted on the lease agreement where the defendant did not immediately hand over the object of the lease. On the other hand, the defendant stated that he had not defaulted on the case because in good faith he had conveyed to the plaintiff that he would return the payment of the First Term to the plaintiff and seek a solution that would not harm the plaintiff on the leased object land which is impossible to occupy because there are other parties occupying it.

Basically, Indonesia itself is a welfare law state that always has noble ideals as stated in the preamble of the 1945 Constitution. The paradigm of the Indonesian legal system is essentially a system consisting of elements or parts that are interrelated and related to achieve goals are also imbued with the philosophy of Pancasila.<sup>3</sup>

One form of concrete steps in carrying out the noble ideals that are the mandate of the state is to protect all or all of its citizens from bad deeds that could harm the people.<sup>4</sup> The law functions as the protection of human interests, so that human interests are protected, the law must be implemented professionally. Law enforcement can take place normally, peacefully, and in an orderly manner. Laws that have been violated must be enforced through law enforcement.<sup>5</sup>

## 2. Research Methods

This research is expected to achieve the objectives as stated above so that this writing can provide benefits for the readers of this legal writing work. From this research, several theoretical and practical benefits can be drawn. The results of this study are expected to contribute to the development of legal science, especially in the field of civil law regarding cases of default in agreements.

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<sup>3</sup>Ruwainta Samniah, Akhmd Khisni, *Kedudukan Dan Kontribusi Hukum Islam Terhadap Hukum Nasional Dalam Bidang Mu'amalat*, Jurnal Hukum Khaira Ummah, Vol 12 No 3 September 2017, p. 67

<sup>4</sup>Ali Mansyur, Irsan Rahman, *Penegakan Hukum Perlindungan Konsumen Sebagai Upaya Peningkatan Mutu Produksi Nasional*, Jurnal Fakultas Hukum Unissula, Vol.II No. 1 January- April 2015 , p. 3

<sup>5</sup>Asep Iswahyudi Rachman, *Perlindungan Hukum Dengan Hak-Hak Pekerja Di PT Grab Semarang*, Jurnal Daulat Fakultas Hukum Unissula, Vol.1, No.1 March 2018 p. 230

### 3. Results and Discussion

#### 3.1. Position Case

PT. KAI (the defendant) and PT. J.Co Donuts & Coffee (the plaintiff) agreed to enter into an asset rental agreement belonging to PT. KAI (Persero) with No. HK.221/II/21/KA-2014, between the plaintiffs, represented by Robert Suteja, as the President Director and the Defendant represented by Sulistyو Wimbo, as the Commercial Director. Based on the agreement, it has been agreed that the defendant as the owner of the assets will lease his assets located at Gambir Besar Station to the plaintiff for a period of 5 years from 01 May 2014 to 30 April 2019, with an agreed price of IDR 1,435,115,000.00 and on the lease the plaintiff agreed to make payments.

On April 1, 2014 the plaintiff has made the first payment of IDR 302,410,000.00 (three hundred two million four hundred ten thousand Rupiah) to the Defendant through the Defendant's account using the internet Banking service, namely BizChannel@CIMB and has sent proof of deposit to the Defendant. After the Plaintiff made the payment of the first term, the Defendant did not fulfill the achievement in the form of an obligation to hand over his assets to the Plaintiff as an object of lease based on the site plan as stated in the agreement. However, because there was no way out for both parties, the plaintiff filed a lawsuit to the Bandung District Court Case Number 462/Pdt.G/2017/PN.Bdg, with the verdict:

In Exception:

- Rejecting the Defendant's Exception;

In Provision:

- Rejected the Request for Provision from the Plaintiff;

In Main Case:

- Granted the Plaintiff's claim in part;

- To declare that the Defendant has defaulted on the Plaintiff based on the Asset Lease Agreement of PT. Kereta Api Indonesia (Persero) No. HK 221/II/21/KA-2014 dated February 20, 2014 and Addendum No. HK 221/III/18/KA-2014 on the Asset Lease Agreement of PT Kereta Api Indonesia (Persero Number: HK 221/III/21/KA-2014 dated March 26, 2014;

- Sentencing the Defendant to return the lease payment for Term I from the Plaintiff to the Defendant in the amount of IDR302,410,000.00 (three hundred two million four hundred and ten thousand rupiah) plus interest of 6% per year or 0.5% per month calculated from May 10 2014 until the payment of Term I money is paid off from the Defendant to the Plaintiff;

- Sentencing the Defendant to pay court fees which until now have been estimated at IDR 531,000, - (five hundred and thirty one thousand rupiah) ;

- Reject the Plaintiff's claim for other than and the rest;

Did not accept the PN's decision, then filed an appeal with case register number 538/Pdt/2018/PT.Bdg. After the judge studies the entire case file, the considerations and conclusions taken by the first judge are taken over by the High Court judge as the basis for deciding the case at the appeal level, so that based on these considerations, the decision at the appeal level is strengthened by adding a decision to cancel the PT Asset Lease Agreement. Kereta Api Indonesia (Persero) dated February 20, 2014 Number HK.221/II/21/KA-2014 and Addendum dated March 26, 2014; Furthermore, the appellant brought this case to the level of cassation with case register number 211/K/Pdt/2020, that on the objections raised by the appellant the judge considered that *Judex facti* had never been wrong in applying the law.

- Reject the appeal from the Cassation Petitioner PT J.CO DONUT & COFFEE;
- Amend the Bandung High Court Decision Number 538/PDT/2018/PT BDG., dated January 24, 2019 which amends the Decision of the Bandung District Court Number 462/Pdt.G/2017/PN Bdg., dated June 6, 2018 only regarding the addition of the burden of compensation that reasonable, so the full warning is as follows:

In Exception:

Reject the Defendant's exception; In Provision:

Reject the request for provision from the Plaintiff;

In Main Case:

- Granted the Plaintiff's claim in part;
- Stating that the Defendant has defaulted on the Plaintiff based on the Asset Lease Agreement of PT Kereta Api Indonesia (Persero) Asset dated February 20, 2014 Number HK.221/II/21/KA-2014 and Addendum dated March 26,

2014 Number HK.221/III/18 /KA-2014, on the Asset Lease Agreement of PT Kereta Api Indonesia (Persero) Number HK.221/II/21/KA-2014 dated March 26, 2014;

- Canceled the Asset Lease Agreement of PT Kereta Api Indonesia (Persero) dated February 20, 2014 Number HK.221/II/21/KA-2014 and Addendum dated March 26, 2014;
- Sentencing the Defendant to return the lease payment for Term I to the Plaintiff in the amount of IDR 302,410,000.00 (three hundred two million four hundred and ten thousand rupiah) plus interest of 6% per year or 0.5% per month calculated from May 10, 2014 until the full refund of the Term I payment from the Defendant to the Plaintiff;
- Reject the Plaintiff's claim for other than and the rest;
- Sentencing the Cassation Petitioner to pay court fees at this level of cassation which is set at IDR500,000.00 (five hundred thousand rupiahs).

### **3.2. Form of Default in the Lease Agreement in Supreme Court Decision No. 211/K/PDT/2020**

According to Abdulkadir Muhamad, default means not fulfilling the obligations that have been set in the engagement, both engagements arising from agreements and engagements arising from law.<sup>6</sup>

Default is an action based on the existence of an agreement, whether the agreement is made orally or in writing, either in the form of an underhand agreement or in an authentic deed. A person cannot be declared in default, if he is not bound in a contractual relationship.

In relation to a contract or agreement, there are conditions for the validity of a contract/agreement, which can be seen in Article 1320 BW, which stipulates four valid conditions for a contract or agreement, namely:

- Agree on those who bind themselves
- Ability to make agreements
- A certain thing
- A lawful/permisible cause

The first two conditions are called subjective conditions, because they relate to the subject of the contract/agreement, while the last two conditions are called objective conditions, because they relate to the object of the contract/agreement. By not fulfilling the subjective conditions, the status of the contract/agreement can be

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<sup>6</sup>Muhammad, Abdulkadir, (2004), *Hukum Dan Penelitian Hukum*, Bandung, Citra Aditya Bakti, p.20

canceled, but if the objective conditions are not met, then the contract or agreement is threatened with void by law.<sup>7</sup>

For a contract/agreement to be valid there must be two wills that reach an agreement or consensus. By agreement it is meant that between the parties concerned there is an agreement of wills, meaning that what one wants is also what the other wants, or that their will is "the same", that is, what they want is the same in the opposite, which one receives his rights and the other performs his obligations.<sup>8</sup>George W Paton in his book, mentions that the "real" will and not the "stated" will.<sup>9</sup>Thus, the will must be notified to the other party, it does not matter whether it is conveyed orally or in writing, and even with sign language or in a silent manner, an agreement can occur as long as there is an agreement.<sup>10</sup>

The second requirement is that the ability to carry out legal actions is generally measured from adult age or old enough, said to be adults for those who are 21 years old on the basis of Article 1330 BW. Meanwhile, on the other hand, it uses the standard age of 18 years, as the basis for Article 47 jo. Article 50 of Act No. 1 of 1974 concerning Marriage.

The third condition is the existence of a certain thing, meaning what has been agreed upon, the rights and obligations of both parties. If a dispute arises, the type of the goods intended in the agreement must at least be determined, that the goods already existed or were in the hands of the debtor at the time the agreement was made, it is not required by law, nor does the amount need to be stated as long as it can be calculated or determined.

The fourth condition is a permissible cause. For this reason, it is the content of the agreement. This reason cannot contain a possibility of misunderstanding in making an agreement. Even though the agreement adheres to the principle of freedom of contract, it does not mean that anything can be agreed upon. If what is agreed is something that is prohibited, then the agreement is null and void. For example, a cannabis sale and purchase agreement, then the sale and purchase is null and void. In this case PT. J.Co Donuts & Coffee with PT. KAI has complied with the fourth condition, namely entering into a lease agreement.

Leasing as a reciprocal agreement which for each party creates an engagement is often also called a bilateral agreement or two-party agreement. If the lease is in

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<sup>7</sup>Niewenhuis, Jacob Hans, *Pokok-Pokok Hukum Perikatan* Terjemahan Djasadin Saragih, p. 2.

<sup>8</sup>R. Subekti, (1979), *Hukum Perjanjian*, Intermedia, Bandung, p. 16

<sup>9</sup>G.W.Paton, (1951), *Text Book of Jurisprudence*, Oxford, p.335

<sup>10</sup>Kusumo, Sudikno Merto, (2004), *Mengenal Hukum*, Liberty, Yogyakarta, p. 98

writing, the lease will terminate by law when the specified time has expired without requiring a notice of termination.<sup>11</sup>

In a lease, the owner of the object only surrenders the right to use and collect the proceeds from the object, while the ownership rights to the object remain in the hands of the lessor.<sup>12</sup>In addition, the tenant is said to have defaulted, if he was negligent in carrying out the performance of the agreement so that he was late from the specified time schedule or in carrying out the performance inappropriately. The consequences arising from default are: the obligation or necessity for the debtor (tenant) to pay compensation (*schade vergoeding*). Or in the event of a default by one of the parties, the other party can demand the cancellation of the agreement.<sup>13</sup>Because the tenant's actions in carrying out their obligations are not timely or inappropriate, it is clearly a violation of the rights of the owner / renter<sup>14</sup>

The Supreme Court judge in his legal considerations stated that to decide the default case of the asset lease agreement between PT. J.Co Donut & Coffee as the Plaintiff and PT. KAI as the Defendant based on Articles 1320 and 1338 of the Civil Code. The lease agreement for assets made by both parties is valid and applies as law for those who do it.

Based on the statements of the plaintiffs and defendants, then they are connected with the evidence that has been submitted. The judge has been able to find the facts that are taken into consideration as follows:

- That the Plaintiff and Defendant have agreed to bind themselves to enter into an Asset Rental Agreement Agreement of PT. Kereta Api Indonesia (Persero) as stated in Agreement Number HK 221/II/21/KA 2014;
- Whereas the Defendant as the owner of the assets will lease out his assets located at the Gambir Besar Station location to the Plaintiff for a period of 5 (five) years starting from May 10, 2014 until April 30, 2019 at a rental price of IDR 2,354,478,500.00 and in connection with the request for a reduction in area from the Plaintiff, between the Plaintiff and the Defendant an Addendum Number HK 221/III/18/KA 2014 has been made to the Railway

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<sup>11</sup>Fitri, Dewi, *Analisis Perbuatan Wansprestasi Pihak Penyewa dalam Perjanjian SewaMenyewa Rumah* (Studi Kasus Putusan Mahkamah Agung RI Np. 1507K/PDT/2010), accessed from <https://media.neliti.com/media/publications/13948-ID-analisis-perbuatanwanprestasi-pihak-penyewa-dalam-perjanjian-sewa-menyewa-rumah.pdf>, 14 July 2022.

<sup>12</sup>Prodjodikoro, (1981), Wirjono, *Hukum Perdata Tentang Persetujuan-Persetujuan Tertentu*, Bandung: Sumur Bandung, p. 49

<sup>13</sup>Harahap, M. Yahya, (1986), *Segi-Segi Hukum Perjanjian*, Bandung : Alumni, p. 60.

<sup>14</sup>Ibid, p. 61.



Asset Lease Agreement (Persero) Number: 221/II/21/ KA-2014; so the price of the rental object becomes IDR 1,435,115,000.00 ;

- Whereas for the lease of the assets of the Railways, the Plaintiff has paid the first term of IDR 302,410,000.00 to the Defendant through the Defendant's account using the Internet Banking service, namely BizChannel@CIMB ;
- Whereas up to now the Defendant has not yet submitted the leased object that has been leased by the Plaintiff as stated on the Plann site in the Agreement Addendum, namely an area of 48 M2 located on the ground floor of Gambir Besar Station as Stone JCO Donut & Coffee.
- That the Plaintiff and the Defendant have tried to find a way out of the problem, but no common ground has been found.

Based on this, the Judge decided that the Defendant had committed a breach of promise (default) to the plaintiff. When associated with the concept of default, default comes from the Dutch language which means bad performance. Default is an attitude in which a person does not fulfill or neglects to carry out the obligations as specified in the agreement made between the creditor and the debtor. There are four forms of a default, namely:

- Not doing what he was promised he would do.
- Carry out what has been promised, but not as promised.
- Did as promised but too late.
- Doing an act that according to the agreement cannot be done.

In this case, PT KAI did not do what it had agreed to at all because it did not hand over the object of the lease that had been agreed upon. This non-fulfillment of an achievement or obligation (default) can be due to two possible reasons. The two possible reasons are, among others, due to errors, and force majeure conditions.

Errors here are errors that cause losses. The loss can be blamed on him (the debtor) if there is an element of intent or negligence in the event that harms the debtor who can be held accountable to him. We say that the debtor is intentional if the loss was intended and desired by the debtor, while negligence is an event where a debtor should know or should suspect, that with an action or attitude taken by him, a loss will occur. It is said that a person has an error in a certain event if he can actually avoid the occurrence of an adverse event either by not doing or doing anything else and the occurrence of the loss can be blamed on him. All of which are certain by taking into account the circumstances and atmosphere at the time the event occurred. Here the debtor does not know for sure whether the loss will occur or not, but as a normal person, he should know or be able to predict the possibility of the loss. Thus the error here relates to the problem of "can avoid" (can do or behave

differently) and "can suspect" (will cause losses). In this case, PT. KAI should have guessed from the start before making an agreement with J.Co that the location that is the object of the lease is not ready to be rented out because it is still used as customer service. PT. KAI made a mistake due to negligence due to not being careful in making an agreement.

In saying that someone is in default of an agreement, it is sometimes not easy because it is often not promised exactly when a party is required to perform the promised performance. According to Article 1238 of the Civil Code, it can be said that a debtor is declared in default if there is a subpoena (in gebreke stelling). The forms of subpoena according to Article 1238 of the Civil Code are:

- Warrant. The warrant comes from a judge which is usually in the form of a determination. With this stipulation letter, the bailiff will notify the debtor verbally at the latest when he must perform at the latest. This is commonly known as "exploit bailiff".
- Deed. This deed can be in the form of an underhand deed or a notarial deed
- Concluded in the engagement itself. This means that since the agreement was made, the creditor has determined the time of the default.

In this case, J.Co has made the right decision to give a subpoena to PT. KAI. J.Co sent a written summons to PT.KAI NOVUM : JOURNAL OF LAW Volume 6 Number 4 October 2019 e-ISSN 2442-4641 195 as stated in the Warning Letter Number 05/RGA-SOM/X/2017 dated October 9, 2017 and the Second Warning Letter Number 09/RGA-SOM/X/2017 dated 20 October 2017 but PT.KAI did not respond.

Theoretically, a person can be declared in default if he does not perform an achievement as agreed or performs an achievement but is not in accordance with or less than what was agreed upon. In this case, up to the time the lawsuit was filed, the defendant had not yet submitted the leased object that had been leased by the plaintiff as stated in the site plan in the addendum to the agreement, namely an area of 48m<sup>2</sup> located on the ground floor of Gambir Station as a J. Co Donuts & Coffee Store. While acts against the law (*onrechtmatigedaad*), is an unlawful act that occurs because of an act committed by someone who because of his mistake causes harm to other parties and the rules that are violated are generally accepted rules and these rules are sometimes made without the involvement of the violator. Acts against the law are not based on an agreement as stated in the agreement such as a default.

When viewed from the above, the lawsuit filed by J.Co according to the author is appropriate, because a breach of contract can be filed due to a violation of the

agreement or rules that have been made and apply between the parties to the agreement.

Judging from the table above, J.Co has the right to claim compensation in defaults that arise because PT. KAI does not carry out its achievements. Prior to suing, J.Co had also sent two written subpoenas to PT. KAI as stated in the Warning Letter Number 05/RGA-SOM/X/2017 dated October 9, 2017 and the Second Warning Letter Number 09/RGA-SOM/X/2017 dated 20 October 2017 as a condition to sue for default.

In case No. 462/PDT.G/2017/PN.BDG when viewed from the side of the concept of default, the author concludes that the judge has tried this case based on that is correct. Due to the fact that the defendant did not fulfill the achievement of the asset rental agreement dated February 20, 2014, namely submitting the object of the lease. In this case the defendant committed a form of default, namely not performing at all and the defendant defaulted due to an error due to negligence because since the agreement was made, the object of the lease was still used as customer service and was not ready to be rented out. The Plaintiff also has the right to file a default claim and not PMH, because the default lawsuit must be based on an agreement in an agreement made by both parties.

### **3.3. Legal consequences for PT. Kereta Api Indonesia (PT. KAI) and PT. J.Co Donuts & Coffee for Default in the Asset Lease Agreement**

Compensation in civil law can arise due to default as a result of an agreement or can arise due to unlawful acts.<sup>15</sup>In a reciprocal agreement, there is a legal principle that emphasizes that both parties must both carry out their obligations and receive their rights equally. Each party to the agreement acts as a creditor and debtor. The non-fulfillment of achievements by one party will be directly related to the fulfillment of achievements by the other party.<sup>16</sup>Achievement as stated in Article 1234 BW is to give something, to do something or not to do something. The difference between doing something and not doing something, the first is positive while the second is negative. The meaning of doing something by giving something is very small.<sup>17</sup>Article 1235-1252 BW contains provisions regarding the consequences of non-fulfillment, that based on Article 1235 BW in an agreement to give an object, there is also an obligation to maintain it or leave it until the time of delivery, which means that he

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<sup>15</sup>Djojodirjo, Moegni, M.A, (2006), *Perbuatan Melawan Hukum*, Jakarta, Paramita, p.11

<sup>16</sup>Syahrani, Riduan, (2004), *Seluk Beluk Dan Asas-Asas Hukum Perdata*, Bandung, Alumni, p. 242

<sup>17</sup>Djasadin Saragih Pohan, (1989), Marthalena, *Wanprestasi*, Yuridika No. 3, IV, May-June, p. 198

must maintain it properly. The word "maintain" here can be interpreted as:<sup>18</sup>

- To maintain as a custodian, namely proper maintenance for the benefit of the person who keeps the goods;
- Maintaining as a borrower is maintenance that is good enough to guarantee the lender's own interest in the loan item.

Article 1243 BW states that in general the default occurs after the debtor is declared negligent. On that basis, the negligent debtor can be given a subpoena in the event that the debtor is in default due to law. A subpoena is required for a default to occur because most engagements that do not refer to a certain period of time, without a debtor's summons are deemed to have fulfilled the performance in a timely manner. Even if there is no final time for fulfilling his achievements, it must be accepted that the creditor can accept his achievements at any time and that time can be measured at any time without default.<sup>19</sup>To stop the debtor from delaying the fulfillment of his performance obligations not contrary to the debtor's will, the law provides an effort to remind the debtor of the last time for fulfillment by subpoena and as a notification of compensation, if he does not pay attention to that time period.<sup>20</sup>

In the subpoena it is not necessary to determine the terms of default in the event that:

- If in the engagement the time period has been determined
- If the engagement contains the nature of the engagement, for example with "dwangsom"
- If the achievement must have meaning, if it is carried out within the specified time (Article 1243 BW)
- If the debtor commits an act that is contrary to his obligations,
- If the debtor refuses to perform (does not acknowledge the existence of an engagement) and the creditor accepts that a subpoena will not bring any change; if the debtor admits himself that he is in default and does not give due prestige, then without a summons compensation can be sued.<sup>21</sup>

According to Abdulkadir Muhammad, what is meant by compensation is compensation that arises because the debtor is negligent and the loss consists of three elements, namely:

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<sup>18</sup>ibid, p. 198

<sup>19</sup>ibid. p.200

<sup>20</sup>ibid.

<sup>21</sup>ibid. p. 202-203.

- Expenses or costs that have been incurred
- Losses due to damage, losses that are really suffered
- Interest or expected profit (interest) According to Article 1248 BW, compensation can only be given as a direct and immediate result of not fulfilling the engagement. The debtor is only obliged to pay compensation if there is a causal relationship between the default and compensation. According to Marhtalena Pohan, it is concluded that a default occurs when:
  - No achievements at all
  - There are achievements, but not on time or too late
  - There are achievements, but not as they should be<sup>22</sup>

As a result of the Bandung District Court Decision Number 462/Pdt.G/2017/PN.Bdg. provide legal consequences for the two warring parties, namely PT. KAI as the defendant and PT J.Co Donut & Coffee as the plaintiff. J.Co performs the act or party, namely making the payment of the first term and the result is ideally receiving the object of the lease that has been agreed upon. PT. KAI commits an act of not submitting the object of the lease that has been agreed upon to J.Co, then PT. KAI will also receive the legal consequences which will be explained below.

According to Soeroso, legal consequences can be as follows:

- The birth, change or disappearance of a legal situation.
- The birth, change or disappearance of a legal relationship, between two or more legal subjects, where the rights and obligations of one party are in conflict with the rights and obligations of the other party.

Even though there is a default, then the creditor can not only claim compensation, but can also demand fulfillment or termination or cancellation of reciprocal engagements. The rights to claim creditors are as follows:

- The right to demand fulfillment of the engagement (nakomen);
- The right to demand termination of the engagement or, if the engagement is reciprocal, to demand cancellation of the engagement (ontbinding);
- The right to claim compensation (*schade vergoeding*);
- The right to demand fulfillment of the engagement with compensation;
- The right to demand termination/cancellation of the engagement with compensation.

There are two terms that are often applied to leasing actors in a case. First, he is

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<sup>22</sup>Abdul Kadir Muhammad, Loc.cit

referred to as a defaulter, namely a party who has poor performance due to his negligence or negligence in fulfilling the promise he has made. There are four types of default, namely:

- Not doing what it is supposed to do;
- Carry out what he promised but not as promised;
- Did what he promised but was too late;
- Doing something that according to the agreement should not be done.

Second, he is referred to as *overmacht*, which is a condition where due to forced conditions he cannot carry out his promised obligations. These two conditions of default and *overmacht* have been adopted by the Civil Code, precisely regulated in Article 1243 with the settlement technique regulated in Article 1267 of the Civil Code. In this case PT. KAI has been billed or has been given an express warning to fulfill its promise to J.Co but PT. KAI still does not want to carry out its achievement, namely handing over the object of the lease that has been agreed upon, so that it can be subject to the following sanctions:<sup>23</sup>

- Pay the loss suffered by the creditor or compensation. Regarding this loss, Article 1242 of the Civil Code determines 3 (three) elements of loss, namely:
  - Costs are losses in the form of expenses or expenses that have actually been incurred.
  - Loss is a loss that actually befalls the creditor's property.
  - Interest is the profit that will be obtained if the debtor is not negligent.

In order to protect the debtor so that the creditor is not arbitrary in demanding compensation, the law provides limits on the things that can be asked for compensation. The provisions regarding these limitations are contained in Articles 1247 and 1248 of the Civil Code which stipulate that the debtor is only obliged to pay compensation for losses that meet two (2) elements, namely:

- Losses that can be foreseen or should be expected at the time the agreement is made unless there is an intention. It is predictable not only in the event of a loss, but the magnitude of the loss must also be predictable.
- The loss suffered is a direct and immediate result of breaking a promise so that there must be a causal relationship between the default and the loss.

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<sup>23</sup>I Gede Yudi Arsawan, *Akibat Hukum Wanprestasi dalam Perjanjian Sewa Menyewa Lisan* (Studi Kasus Putusan Mahkamah Agung Nomor 1093 K/PDT/2016), JUSTITIA: Jurnal Ilmu Hukum dan Humaniora, Vol. 9 No.3, 2022

In determining the amount of loss, objectivity must be considered, namely that it must be investigated in advance how much a creditor's loss would generally be in the same condition as the creditor's condition and the amount of profit the creditor would gain due to a default.

- Agreement Cancellation

Regarding the termination of the agreement, it is not regulated separately in the Civil Code but is included in the chapter on conditional engagement, namely Article 1265-1267 chapter I of the third book of the Civil Code. In this case, the formation of the law is based on the assumption that default is a condition for breaking the agreement. However, even so in practice for the cancellation of the agreement there must be a judge's decision because it is the judge's decision that cancels the agreement, not the existing default.

- Risk Shift

In Article 1237 of the Civil Code, it is determined that if the debtor fails to submit it, since his negligence, the property becomes his responsibility. This provision is a provision regarding the transfer of risk. According to Subekti, risk is: "the obligation to bear if an event occurs outside the fault of one of the parties that befalls the goods that are the object of the agreement. Every negligence or negligence requires the perpetrator to compensate for the loss and must bear the risk due to his negligence or denial.

- Paying Case Fees If You Get Lied Before a Judge

In the provisions of Article 1267 of the Civil Code, it provides an opportunity for creditors to choose the demands that must be met by the debtor in default, namely:

- Fulfillment of the Agreement.
- Fulfillment of the agreement is accompanied by compensation.
- Compensation only.
- Cancellation of agreement.
- The cancellation of the agreement is accompanied by compensation.

The demands that must be met by the defaulting debtor are submitted to the court. In this case the debtor only asks for compensation, it is the freedom of the court judge to determine whether the agreement is terminated or continues to follow the terms of the termination of the agreement as agreed.

Consequences of default:<sup>24</sup>

- Pay the loss suffered by the creditor.
- Cancellation of agreement
- Risk switching

#### 4. Conclusion

The legal consequences of the Supreme Court Decision Number: 211/K/PDT/2020, namely PT. J.Co. Donuts & Coffee has rights to sue PT KAI in the form of the right to demand fulfillment of the engagement (nakomen), the right to demand termination of the engagement or if the engagement is reciprocal, to demand the cancellation of the engagement (ontbinding), the right to claim compensation (*schade vergoeding*), the right to claim fulfillment of the engagement with compensation and the right to demand termination or cancellation of the engagement with compensation.

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