

Legal Review of Default (*Wanprestatie*) in Gas Cylinder Lease Agreement

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Abstract

This research is to obtain legal protection for the people in Bandar Lampung City, the Act is enacted as a guide in the law that regulates legal relations between humans with one another. Which gives rise to rights and obligations between the two which are commonly known as agreements. There are various kinds of agreements, such as a lease purchase, in which the prospective buyer becomes a tenant first before paying off the goods he wants to buy. This relationship creates a legal relationship where in a relationship there is a denial of obligation or default. Which can cause problems between both parties. The problems that occur are resolved either by peaceful means or through the courts. In this study using a normative juridical approach, as well as an empirical approach. The problem that will be raised in this research is how the legal consequences and how the judge's consideration in making a decision.

Keywords: Agreement; Lease Purchase; Default; Wanprestatie.

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Introduction

Humans as legal subjects cannot be separated from their relationship with other humans in fulfilling their life needs. There are some human needs that cannot be done alone, so it requires other humans to fulfill these needs. Human life side by side with other humans is called a society where they live in an organized manner to achieve a common goal. Living together in society is not based on the large number of people who exist, but is based on a common goal (Mertokusumo, 2005).

Law is a rule that everyone in social life must obey (Umar and Jimmy, 2012). Which means that the law is a guide for every community in behaving in a shared life. These regulations have a coercive nature. If this is not implemented or violated, it will be subject to sanctions. A rule is made to make life better and more orderly. If there are no rules, life cannot proceed as it should.

The law also regulates civil law regarding human relations with one another that prioritizes individual needs (Asmah, 2018). Which is sourced from the *Burgerlijk Wet Book* or the called Indonesia civil law (Asmah, 2018). One thing that is regulated in civil law is an agreement. An agreement is an agenda where a person promises to another person or where the two people promise each other to do something (Inka et al, 2020). In it there are rights and obligations that have been determined together. As a result of the birth of an agreement,

it creates a legal relationship because both have agreed. The birth of an agreement must also carry out the legal requirements of the agreement based on Article 1320 of the Civil Code which contains:

1. Agreed;
2. competence;
3. Certain objects or things;
4. lawfull clause.

An agreement that does not carry out these conditions is not recognized by law, even though the person who created it has stated the existence of an agreement. If the parties have stated and obeyed the agreement they have made but do not carry out all the existing requirements, then the agreement is valid between them (Muhammad, 200).

Agreements take many forms, one of which is a lease. It is contained in Article 1548 of the Civil Code, which is an agreement in which group one tethers itself to submit to different groups the pleasure of an object, for a certain period of time and by paying a value, the payment of which has been approved by the latter party. Leases can be made on movable or immovable objects. Both the owner of the goods and the lessee have their respective obligations that must be carried out by both, so that the lease agreement runs smoothly and is mutually beneficial to both and achieved a common goal in a lease agreement.

In addition to the lease, another form of the agreement, namely the lease and purchase is like buying and selling, which is more like a sale and purchase agreement than a lease agreement, even though it is a combination of the two and is given the name of the lease (Subekti, 1995). A lease purchase agreement is made to make it easier for buyers who want something but are not able to have it in cash. Even so, the lease-purchase agreement is considered not to harm the seller because the ownership rights transfered when the lease-purchase agreement ends. So the lease purchase agreement is considered a suitable solution for both (Prawatya, 2021). The phenomenon of Industry 4.0 is also associated with the Industry / Internet of Things, which is the most discussed issue in the industrial business concept in recent years (Thalib and Meinarni, 2021).

Lease purchase are often found in the practice of everyday life in the community, which occurs because many prospective buyers want to buy goods in a shop owned by a merchant. But do not have enough money or can not afford the price of the goods. If the merchant agrees that the price of the goods is paid in installments or by the buyer and is given a guarantee that the unpaid goods will not be sold again by the buyer. Then there was a lease agreement. Before the buyer pays the price of the goods in full, the buyer becomes the first tenant of the goods he wants to buy. The granting of new property rights is carried out when the installments are paid at the end, the granting of property rights cannot be done with a statement because the goods are already in the power of the buyer and his position as a tenant. The granting or surrender of property rights is called *traditio brevi manu* (Subekti, 1995). The obligation of the purchaser (debtor) is to pay installments of the lease purchase. The purchaser must pay the lease-purchase installments at a predetermined time. Payment of lease and purchase installments is carried out periodically, generally on a monthly basis (Indrayani, 2020).

However, not all agreements can run well. There are often cases where there are still many violations of the rights and obligations in an agreement. What is usually called a default or breach of contract that occurs either intentionally or unintentionally. If the debtor has an obligation to fulfill obligations that have been agreed upon at the beginning of the agreement by both, but these obligations are not carried out, then it is considered to have breach of contract or in default. According to O.W Holmes, if there is an obligation to

maintain an agreement until if they do not maintain it, then they must be responsible for paying compensation, or as much as compensation (Oliver, 2009).

In default or breach of contract is regulated under Article 1243 of the Civil Code, namely to compensate for costs, losses and interest due to the non-completion of the relationship since it was required, if the debtor, even though it has been proven negligent, is of course negligent to carry out the agreement, or if something that must be given or carried out can only be given or carried out in the tempo that is past the stipulated time. Of course, this is not desired by the two who carry out the agreement. So that before entering into an agreement, it is necessary to understand the rights and obligations of each person so that there are no violations. In this way, the desired agreement will be created. The legal issues in this research are as follows:

1. What are the legal consequences of default in the gas cylinder lease agreement?
2. What is the judge's consideration in making a decision on default in the gas cylinder lease agreement?

Materials and Methods

The method used in this research is using a normative juridical approach, namely an approach by examining the rules, norms, rules, which are related to the problem to be studied through library research. Which aims to collect various kinds of laws and regulations, theories, and literatures that are closely related to the problem under study.

This study also uses an empirical approach, namely by researching and collecting primary data obtained directly through research on the object of research by means of interviews with respondents or sources related to the problems discussed in the study.

Results and Discussion

The results of the discussion in this study are useful for answering the legal issues and research questions, which show the results of the research. Based on the Civil Code, an agreement is a relationship that occurs as a result of an agreement between a party and another party. According to Article 1313 of the Civil Code which confirms that an agreement is an act in which one group binds itself to another group. Where the condition for the validity of an agreement is the existence of an agreement. What is regulated in Article 1320 of the Civil Code are agreed, competent, certain things and lawfull clauses.

Based on Article 1548 of the Civil Code which confirms the lease agreement, where one person binds himself to submit to another group the enjoyment of an item, for a certain period of time and with the payment of a price, which the latter group is willing to pay by the latter group. Humans are able to rent out a variety of goods, both fixed and movable. In the lease there is a lease purchase agreement. Lease and purchase is actually like buying and selling at least more like a sale and purchase agreement than a lease agreement, even though it is a combination of the two and is called a lease.

For violations of performance in an agreement, penalties will be given in the form of paying compensation, terminating the agreement, transferring risk and paying for the case. Violation of this obligation is called default which is regulated in Article 1243 of the Civil Code, namely replacing costs, losses and interest due to not completing an engagement since it was required, if the debtor, even though it has been explained that he was negligent, of course neglects to complete the engagement, or if something that must be given or carried out is only can be given or run on a day that exceeds the specified time. Which default is enshrined in Decision number 201/Pdt.G/2018/PN TJK.

A. Legal Consequences of Default in the Gas Cylinder Lease Agreement, Decision Study Number: 201/Pdt.G/2018/PN TJK.

In law, humans or persons are carriers of rights in law. Humans tend to need other humans to fulfill their needs (Djoko, 2016). For example, in the current community activities, which many enter into lease and purchase agreements, which aim to meet the needs of the community and in the business, which are expected to be able to provide benefits for the actors. In addition, the legal agreement has legal consequences, namely binding the group that created it and applies like the law for the group that created it, so that the groups are required to obey the contents of the agreement (Anandita et al, 2020). The object of the agreement is the goods and the price with the condition that the goods being leased are lawful goods, meaning that they do not conflict with the law, order and decency (Claudia, 2018).

Of course, the agreement does not always run smoothly. If the parties carry out the agreement properly, it can be beneficial for both parties concerned. But many subjects are not responsible for the agreement that has been created with various reasons presented so that the agreement is not implemented / carried out properly or what is commonly known as default or breach of contract. According to the legal dictionary, default is negligence, a violation, breach of contract, not fulfilling their obligations under the agreement. This is what causes the loss of the other party (Sudarsono, 2007).

Legal consequences are all consequences that occur from all legal actions carried out by legal subjects on legal objects or other consequences that occur because certain events by the law in question have been determined or assessed as legal consequences (Pipin, 2011). The legal consequence that arises from the debtor who does not carry out his obligations is that the creditor does not get the fulfillment of the rights that should be in accordance with the agreement. As well as debtors get sanctions or penalties, namely:

1. Paying compensation

Article 1247 of the Civil Code emphasizes that those who have debts are only required to pay compensation and interest which have been proven or if they were mandatory, it can be considered when the agreement was created, but if the agreement was not completed because of a trick carried out by him.

2. Termination/cancellation of contract

The cancellation of the contract is regulated by Article 1266 of the Civil Code which emphasizes that the failed provision is considered often stated in reciprocal agreements, if one group does not carry out its obligations.

3. Risk transfer

Article 1237 paragraph (2) of the Civil Code means that risk is the obligation to bear the loss if something happens outside the fault of one of the groups, which concerns the object as the object of the agreement.

4. The debtor is required to fulfill the engagement if it can still be executed, or the cancellation is accompanied by the payment of compensation.

5. Pay court fees

The debtor must pay the expenses of the case if he is sued in a district court, and the debtor is found guilty.

B. Judges' Considerations in Making Decisions Against Default in the Gas Cylinder Lease Agreement for Study Decision Number: 201/Pdt.G/2018/PN TJK.

The judge's consideration when deciding the decision is very important to ensure the creation of a value from the judge's decision that contains justice and legal provisions. Until the time of deciding a case, a judge cannot determine it arbitrarily or without a clear legal basis. The judge's consideration is also an important sign in ensuring the creation of value from a judge's decision that contains justice and legal certainty and contains benefits for interested groups (Koesrin, 2019).

Law No. 48 of 2009 concerning Judicial Power in Article 5 paragraph (1) states "judges and constitutional judges must explore, follow, and know the legal values and sense of justice that take place in society," paragraph (2) "constitutional judges and judges must have integrity and impeccable personality, be honest, fair, professional, and have experience in the legal field. Paragraph (3) judges and constitutional judges must comply with the Code of Ethics and the Code of Conduct for Judges".

When adjudicating a case, the judge must carry out 3 things, namely:

1. Constatng is confirming or correcting that a case has been submitted by a group before the trial. The necessary provision is that a concrete event must be proven first.
2. Qualifying, namely giving an assessment of events that have been judged to have occurred as belonging to legal bonds or assigning the law to events that have been confirmed by practicing legal regulations for these events.
3. Constituting, namely determining the law or quoting conclusions from the legal regulations (major premise) and events (minor premise) (Fence).

In deciding the decision Number: 201/Pdt.G/2018/PN TJK where a default occurs, it means a condition caused by forgetfulness or error, so that the debtor cannot fulfill the obligation as stipulated in the agreement and not in an overmacht (Nindyo, 2003). Force majeure is indeed a threat to the sustainability of the implementation of business contracts because it does not come from parties but from outside and is caused by natural disasters (Arrizal, 2020). Sourced on the evidence presented by both of them when their relationship with each other proves to be commensurate. The Panel of Judges is of the opinion: that between the Plaintiff and Defendant I there was an agreement to buy and sell gas cylinders which was stated in the Minutes of Collective Agreement Number 04S.PERJ/LPJ/12.2016, dated December 18th 2016. 200 tubes at a price of IDR 75,000,000 (seventy five million rupiah) and 5.5 Kg for 350 tubes at a price of IDR 113,750,000 (one hundred and thirteen million seven hundred and fifty thousand rupiah) so that the total is IDR 188,750,000 (one hundred and eighty eight million seven hundred fifty thousand rupiah) with collateral for a plot of land with an area of 157 M² located at Ikan Kembung street Number 30/36 LK III, RT 038 Sub-district of Rice Fields, Teluk Betung Selatan District, Bandar Lampung City, on the basis of Certificate of Ownership No. 1200/PS/2000 Pesawahan Village, Teluk Betung Selatan District, Bandar Lampung Municipality on behalf of Defendant I with Measurement Letter No.47/ Pesawahan/2000 and constitutes property together.

By agreement, Defendant I is obliged to pay in installments of Rp. 5,000,000 (five million rupiah) every month and on October 13th 2018 Defendant I and Defendant II broke up due to divorce but the debt became a joint responsibility as Complications of Islamic Law (*KHI*) Article 93 paragraph (2) emphasized "responsibility for debts carried out for the benefit of the family, borne on joint assets"; and that Defendant I has just paid its debt to the Plaintiff in the amount of Rp. 10,000,000 (ten million rupiah) in 2 (two) installments.

Which resulted in the judge's decision, namely adjudicating:

1. Partially granted the Plaintiff's claim;
2. Declare that the Gas Cylinder Lease Agreement based on the Minutes of Collective Agreement Number 04-S.PERJ/LPG/12.2016 dated 18 December 2016 is valid;
3. Declare that Defendant I and Defendant II have broken their promise (default), namely not making installment payments of Rp. 5,000,000 (five million rupiah) every month from June 2017 to October 2018, so that this action resulted in losses to the Plaintiff .
4. Sentencing Defendant I and Defendant II by way of joint responsibility to make a cash payment of Rp. 178,875,000 (one hundred and seventy eight million eight hundred and seventy five thousand rupiah);

5. Refuse the claim other than and the rest.

Based on the results of the decision, it is clear that the defendant has violated his obligations or is in default. If there is a default, there will be a denial of legal interests, an interest that is structured and protected by law (Satrio, 2012). So the judge decides the debtor or the defendant to pay the settlement which is the right of the plaintiff and the defendant is obliged to do what has become the judge's decision.

Conclusion

Humans tend to need other humans to fulfill their needs. For example, in today's community activities, there are many lease and purchase agreements. Of course, the agreement does not always go well. There are also many subjects who are not responsible for agreements that have been created with various reasons presented so that the agreement is not implemented / carried out properly. Or what is commonly known as default or breach of contract. The legal consequences arising from debtors who do not carry out their obligations are:

- a. Paying compensation
- b. Termination/cancellation of engagement
- c. Risk transfer
- d. The debtor is required to carry out the engagement if it can still be done, or cancel it along with the payment of compensation.
- e. Pay court fees.

The judge's consideration in making a decision is very important to ensure the creation of a value from the judge's decision that contains justice and legal certainty. In accordance with Law Number 48 of 2009 concerning Judicial Power in article 5 paragraph (1) it states "judges and constitutional judges are obliged to explore, follow, and understand legal values and a sense of justice that live in society", paragraph (2) judges and judges The constitution must have integrity and a personality that is beyond reproach, honest, fair, professional, and experienced in the field of law. Paragraph (3) judges and constitutional judges must comply with the Code of Ethics and the Code of Conduct for Judges". Based on the conclusions obtained from the research above and from various sources, the researchers provide suggestions that can be submitted as input, namely:

1. When a person enters into an agreement, it should be done correctly, honestly and responsibly so as not to harm the other party. And to provide benefits for the parties to the agreement.
2. To all law enforcement officers, especially to judges, in determining a decision to consider all aspects contained in the trial, and based on the law. So that when giving a decision on a case, the parties can decide fairly.

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