

**LEGAL PROTECTION AGAINST DEFAULT BY THE DEBTOR IN THE
IMPLEMENTATION OF A LEASE AGREEMENT (BUILDING, ACCORDING TO
VERDICT NUMBER:63/Pdt.G/2018/PN.Skt)**

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ABSTRACT

This research focuses on legal protection for debtors who bind themselves to an agreement and in the end there is a misuse of rental goods by the debtor. The basis of this research refers to the decision of the Surakarta District Court, and in this problematic the Surakarta District Court is authorized and decides the case. This research uses a normative juridical approach method and uses secondary data. The results of this study indicate that the legal protection given to creditors for acts of default by the debtor has been pursued by the rules of law if the debtor does not fulfill or does not do what has been promised, he has committed an act of default and returned the object of dispute to be returned to the creditor. The judge's consideration is by the applicable laws relating to the default committed by the defendant. **Keywords:** Debtor, Agreement, Judgment

INTRODUCTION

Civil law is a translation of *burgelijk recht*, which by definition is a law between individuals and regulates the rights and obligations of one person to another in a family relationship and community life (Wardiono, Kelik, dkk 2018). Article 1338 of the Civil Code provides requirements related to the agreement that exists in each individual based on the agreement as explicitly explained in the Civil Code.

An agreement is an event where a person promises to another person or 2 (two) people promise each other to do something (Subekti 2008). The agreement consists of several terms, such as achievements where the debtor and creditor carry out obligations based on the

agreement that has been made. The consequence of a juridical agreement is that the parties must carry out all agreements that have been made.

The implementation of an agreement is so much for each person who wants to bind himself with the aim of determining the object of the agreement. Article 1548 of the Civil Code states that *“A lease is an agreement by which one party binds himself to give the enjoyment of an item to another party during a certain time, with the payment of a price agreed by the latter party. People can lease various types of goods, both fixed and movable.”*

A lease agreement is an agreement where the owner of an item gives / surrenders goods / objects based on the object of the agreement to be rented to the tenant (Manik 2021). The renter has the right to control the goods / objects that have been rented based on the consequences of the agreed agreement (terms and conditions apply).

Article 1553 of the Civil Code explains the provisions related to the lease agreement is an event that the owner of an item / object bears the risks arising from the leased item / object. Risk is an obligation to bear any losses that will come in the future either based on the will of one of the parties or outside the will of the parties to an agreement object (Manik 2021). Parties who bind themselves to an agreement based on Article 1867 of the Civil Code are based on the making of an underhand agreement deed (*ionderhandsi*) as well as an official deed (authentic).

There was a case in 2016 regarding a lease agreement as described in the Surakarta Court. The origin of this case occurred when a lease agreement with the object of a plot of land and buildings in Kerten Village, Laweyan District, Surakarta City with the names of the owners Kusminah, Putut Haristarkus and Dheny Kus Biantoro.

The land owned by the owners was leased to Slamet Qomari (debtor), where the subject matter had entered into an agreement on June 22, 2009 until June 22, 2019 with an extension on the basis of an agreement letter until March 18, 2014 and an additional extension from June 22, 2019 until June 22, 2026. The lease agreement was made before a notary on June 19, 2015 which was extended until June 19, 2030 and the accumulated rental expense was stated in the agreement.

Over time, the creditor (owner of the object of the lease agreement) did not receive a shortage of rent, resulting in default by the debtor. This is because the debtor transferred the object of the lease (house and building) to another person so that according to the creditor the debtor broke the agreement made on June 15, 2015.

The default case committed by the debtor is a consequence (risk) that must be borne because it transfers the lease object to another party and violates the agreement made by the other parties. The creditor considers that the attitude of the debtor is an act of default and a family settlement cannot be reached, therefore a civil lawsuit was filed at the Surakarta District Court.

Based on the description of the background, the researcher will analyze the lease agreement with the following problem formulation: a) How is the legal protection for the creditor on the state of default committed by the debtor?; b) How is the judge's consideration in deciding case No. 63/Pdt.G/2018/PN.Skt?

The purpose of this research is to find out the legal protection provided for creditors who are harmed by the debtor's default and the elements and conditions for parties to be declared to have committed default based on applicable laws and regulations.

METHOD

The research method uses a normative juridical approach and uses descriptive research. This research uses secondary data types that contain primary legal materials and secondary legal materials and this research data collection method is through library studies (Library Research). The data analysis method uses descriptive qualitative with deductive explanation.

RESULT AND DISCUSSION

Legal protection for creditors for defaults committed by debtors

Some of the problems of agreements that often occur between creditors and debtors regarding the provision of credit are that the creditor defaults, so that it requires legal rules (regulations) with the aim of providing legal certainty and legal protection to the parties concerned, specifically for creditors if the debtor defaults (does not carry out the obligations of the agreement) (Risa 2017).

Legal relations between 2 (two) or more people based on an agreement provide legal consequences. Every legal principle has a function, namely guidance or direction oriented to

the law to be carried out properly. Legal principles are not only used as guidelines when dealing with legal cases, but also aim to apply a rule of law. In the law of agreements, five important principles are known, namely: a) The Principle of Freedom of Contract, this principle is stated in Article 1338 paragraph (1) of the Civil Code which reads: “All agreements made legally apply as laws for those”. Who make it. “The applicability of this principle of freedom is not absolute, the Civil Code provides restrictions or provisions against it. b) The principle of consensualism (concensualism), can be concluded in Article 1320 paragraph (1) of the Civil Code. In this article, it is determined that one of the conditions for the validity of an agreement is the agreement between the two parties c) The principle of *pacta stunt servanda*, Article 1338 paragraph (1) of the Civil Code: “All agreements made legally shall apply as law to those who make them”. The *adagium* (expression) *pacta stunt servanda* is recognized as a rule that all agreements made by humans reciprocally essentially intend to be fulfilled and if necessary, can be enforced, so that they are binding. d) The principle of good faith, Article 1338 paragraph (3) of the Civil Code, states that agreements must be carried out in good faith. Good faith can be divided into (2) types, namely: (1) good faith at the time of exercising the rights and obligations arising from the agreement; e) The principle of personality, the principle of personality is stated in Article 1340 of the Civil Code: “An agreement is only valid between third parties: third parties cannot benefit from it other than in what is regulated in Article 1317”.

The information in Article 1315 of the Civil Code explains that “*in general, a person cannot enter into an obligation or agreement other than to himself*”. The provisions of Article 1315 of the Civil Code also have exceptions which are introduced in Article 1317 of the Civil Code, namely “agreements can also be made based on the interests of third parties, if an agreement made to oneself or a gift to another person consists of these conditions”. Article 1318 of the Civil Code explains that “not all regulate agreements to themselves, but there are also the interests of heirs and also people who get the rights thereof”.

Default in the scope of Civil Law can occur due to an unfulfilled performance by the debtor, as a result of the debtor’s fault (either intentionally or unintentionally) or due to force (*force majeure/overmacht*) where a situation occurs outside the debtor’s will / ability. The debtor (who owes) does not carry out the performance will be responsible for the mistakes made.

The creditor (debt giver) has the right to sue the debtor in the court process. Article 1238 of the Civil Code explains that “the debtor is negligent if by warrant or by a similar deed is declared negligent or by an obligation itself and if it is determined that the debtor is considered negligent with the passage of time specified”.

Based on the provisions of Article 1238 of the Civil Code, the contents of the article explain that the debtor is in default if a summons has been issued, so that the notification letter or summons is used as the basis (evidence) to determine that a debtor is in default of an agreement which is a means of regulating the exchange of rights and obligations to be able to take place properly, fairly and proportionally based on a commercial agreement (R.Tjitrisadibio dan R. Soebekti 1876).

The description of the definition of an agreement, then the conclusion is that an agreement consists of several elements, namely: a) the existence of the parties; b) the agreement of the parties; c) there is a performance performed; d) the agreement is made orally or in writing; e) there are certain conditions on an agreed agreement.

An agreement will give rise to an engagement or legal relationship that presents rights and obligations to the parties who carry out, so that an agreement from the agreement is essentially binding on the relevant parties as explained in Article 1338 of the Civil Code, namely the agreement has binding force and is a law for the parties who make it (Adolf 2006).

The creditor can make demands on the debtor with an agreement if the debtor defaults (does not fulfil the performance / agreement) even though an agreement made by the parties aims and hopes to run as it should (normal), but in its implementation in the field there are situations outside the will and ability of the parties and make the agreement cannot be carried out as it should (Harahap 1986).

Judges’ consideration in deciding Case No. 63/Pdt.G/2018/PN.Skt

The agreement between the plaintiffs represented by Putut H and Slamet Qomari as the defendant dated 22 June 2009 the plaintiffs leased a plot of land and a building measuring 115 square meters to the defendant for a period of 10 years from 22 June 2009 to 22 June 2019 to be used as a residence. During this agreement the defendant still had many shortcomings in fulfilling the performance in the form of rent to the plaintiff.

The defendant requested an extension of the lease to the plaintiff who was represented by Putut H. Then on March 18, 2014 the plaintiff and the defendant again entered into an agreement under the hand regarding a lease with the same object as the previous agreement to be leased from June 22, 2019 to June 22, 2026 for 7 years. The respondent would fulfill the performance by giving the rent in two instalments, but at a later date the plaintiff asked the respondent for the shortfall in rent but was not given it.

The respondent requested an extension of the lease by handing over a corolla dx car to the plaintiff and granted a 15-year extension from 19 June 2015 to 19 June 2030 and this was set out in a notarial deed by Felix Johansyah S.H on the same date. After that, the plaintiff asked for the shortfall in rent as stated in the notarial agreement and the defendant did not provide it. On the other hand, the defendant did not use his house as an office and rented it out to another party without the consent of the plaintiff. This shows that the Defendant has deviated from Article 5 paragraph 2 which explains that the second party is renting for office purposes and the defendant or tenant is not allowed to use the rented office for other purposes without the consent of the plaintiff or the first party.

The provisions of article 1560 of the Civil Code tenants must keep two main obligations include: a) Use the leased goods as a good head of the household, in accordance with the purpose of the goods according to the lease agreement or if there is no agreement on this matter, in accordance with the purpose of the goods according to the presumption regarding the circumstances; b) Pay the rental price at the specified time.

Article 1561 of the Civil Code also emphasizes that if the lessee uses the leased item for a purpose other than that for which it was intended or for a purpose that can cause harm to the lessee, this party according to the circumstances can request the cancellation of the lease.

The case involving the plaintiff and the defendant referred to negligence or default, which means that one of the parties to the agreement did not do what was promised. Based on the verdict given by the panel of judges of the Surakarta Court, it is stated that the convention plaintiff has successfully proven the arguments of his lawsuit and stated that the defendant has committed a default (Rahim 2022).

Regarding rights and obligations, the tenant has obligations to the renting party as stipulated in Article 1560 of the Civil Code. The tenant has two obligations, namely: a) the tenant is obliged to use the leased goods very carefully and according to the purpose and

purpose of the lease agreement; b) the tenant is obliged to pay rent at the times specified in the lease agreement (Suryodiningrat 2002).

The case shows that the lessee transferred the lease without the knowledge of the lessee or plaintiff. Article 1559 paragraph 1 of the Civil Code explains that the lessee is prohibited from subletting the leased goods to a third party because basically the lessee is bound by the prohibition not to sublet to another person. If there is no agreement on each party, it is allowed to sublet to a third party (Harahap 1986). Basically, this article allows re-renting as long as it is expressly permitted in the agreement. However, in this case, the content of the lease agreement contained a clause on the consent of the tenant, but the prohibition was ignored by the tenant. So in this case, the defendant has committed a breach of promise in the lease agreement based on the notarial deed that has been made.

Basically, a lease can end within a certain time agreed orally, which can be through a notice from one of the parties stating their intention to terminate the lease (Harahap 1986). So that in this case there are several renewals of the lease agreement and it is considered valid if both parties agree to terminate even though afterwards they make a lease agreement again.

Referring to the arguments that were granted by the panel of judges on the plaintiffs' lawsuit in the Surakarta Court, which stated that the defendant was in default because he had broken his promise by not fulfilling the performance in the agreement. Regarding the elements of default, Subekti in his book Law of Agreement explains four elements in default, among others: a) Not doing what was promised or not doing what was promised; b) Doing what was promised but not as promised; c) Doing what was promised but late; d) Doing something that according to the agreement should not be done (Tim Hukum Online 2024).

The substance of the case has proven the existence of elements of default committed by the defendant as a tenant based on the content of the notarial deed agreement. The negligence or default began when the defendant/lessee did not fulfill the right of the lessee by providing a shortage of rent, on the other hand he had violated the agreement by transferring the lease to a third party without the knowledge and/or consent of the plaintiff or the lessee (Asuan 2021). The legal consequences are based on the judicial authority that adjudicates, namely the local district court in accordance with the object of the agreement. Surakarta district court has the authority to decide disputes arising from the agreement.

The legal basis relating to the decision of the Surakarta Court is in accordance with the applicable laws and regulations by declaring the defendant legally and convincingly

committed an act of default. Starting from the defendant's lack of good faith to fulfill the performance as promised in the lease agreement by not fulfilling the rights of the renting party in the form of rent shortages (Rastuti 2011). So that the judge's decision in the Surakarta District Court case is in accordance with the rules of law applicable in Indonesia in the Civil Code.

The suitability of the judge in deciding a default case in Decision No. 63/Pdt.G/2018/PN.Skt is in accordance with the rules of applicable law, both the testimony of the parties and the evidence included in the court process, this is part of the judge realizing the value of justice. The value of justice in question is impartiality towards the litigants, recognizing the equal rights and obligations of both parties.

The judge's decision is part of the law enforcement process with the aim of truth and realizing legal certainty. The application of law carried out by the judge in Decision No. 63/Pdt.G/2018/PN.Skt is in accordance with the default case and is constructed as a whole, wisely and objectively. The legal certainty outlined by the judge in the decision is a product of law enforcement based on relevant trial facts.

CLOSING

1. Conclusion

The legal protection given to creditors for defaults by debtors has been pursued by the laws and regulations if the debtor does not fulfill or does not do what has been agreed upon, then he has committed an act of default. This is based on the principle of freedom of contract, the principle of consensualism, the principle of *pacta sunt servanda*, the principle of good faith, and the principle of personality. So that the law has guaranteed someone who has bound himself to an agreement by providing protection to someone who has been harmed due to non-fulfillment of performance by resolving disputes in court. Another form of legal protection is evidenced in the decision of the Surakarta District Court which decided to return the object of the dispute to the creditor.

The consideration of the decision of the Surakarta District Court has been in accordance with the applicable rules of law relating to the act of default committed by the defendant. The description of the rights and obligations of the renting party or the plaintiff and the tenant or the defendant has proven that there is an element of default committed by the defendant, this is evidenced by the absence of good faith from the defendant to fulfill the

performance by providing the shortage of rent to the plaintiff. On the other hand, the defendant has committed an act that violates the agreement in the form of transferring the lease to a third party without involving or obtaining the consent of the renting party or the plaintiff, so this is the plaintiff's argument presented before the panel as a dispute arising from the existence of a lease agreement. Therefore, the decision of the Surakarta District Court in deciding the case has been justified in the lease agreement between the plaintiff and the defendant if a dispute occurs in the future.

2. Suggestion (optional)

It is hoped that in the future the parties to the lease agreement will be open/transparent about the contents of the agreement.

Judges are expected to be able to examine technically the lease agreement both the object, the amount of fees and understand the contents of the lease agreement contract so that the decision given aims to provide justice.

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