

CHAPTER I

INTRODUCTION

1.1 Topic Selection Background

The role of law in the society world is very important. Law can be said as the wheel of a society's so that it can run well where all individual rights can be fulfilled in a fair and equitable manner. The law regulates all aspects of life both culturally, socially, politically, economically, etc, to create a synergy for a good social life. Humans are social creatures which means there will always be interactions between individuals who live in society. These human interactions are then regulated through law, both written and unwritten, such as customary law. Interactions in all aspects, especially in the economic aspect, will definitely lead to an agreement between the two parties.

One of the agreement interactions regulated by law is leasing activities, where there is an agreement with the parties where one pays a price that he can afford, and the other gives enjoyment to the goods with a certain period of time, whether it is movable or non-movable asset. With the development of the time, there has been such growth in many factors, both from the increase in the number of people, technological developments, globalization, making leasing agreements more complex and numerous, hence why regulations or laws are regulated in the country of Indonesia with one of the main ones being regulated through the Indonesian Civil Code (hereinafter referred to as the Civil Code) or *Burgerlijk Wetboek* (hereinafter referred to as BW), in its third book concerning contracts.

Book III regulates all forms of agreements made, so that the performance and contra-performance of each parties are protected by law in accordance with the jurisdictions protected by the Indonesian Constitution, without reducing the freedom of the parties to regulate the provision that binds them,¹thereby creating what is referred to in the Indonesian Civil Code as birth of contracts. In the Indonesian Civil Code, the definition of contract is to give something, to do something or not to do something². Contracts can be born from an agreement or agreement, or from law.³

Leasing agreements create a contract to give something, both to the lessee and the lessor. The lessee has an obligation to hand over a sum of money or other object that has a value similar to the amount agreed with the lessor, and therefore obtains the rights to the object he has rented. Meanwhile, the party who rents out or the lessor, is obliged to hand over the object to be rented by the lessee, and is entitled to receive compensation in the form of money or objects with a monetary value of the agreed amount.⁴

In an agreement, there will always be two or more than two parties, where one party is entitled to receive a performance, and where the other party is obliged to give the performance. Performance comes from the Dutch word 'Prestatie' which means 'Performance'.⁵ In the Indonesian Civil Code, Performance is better known

¹ Christiana Tri Budhparagaphi, “Asas Kebebasan Berkontrak dalam Hukum Perjanjian Indonesia”, Widya Sari, Vol 10, No.3, January 2009, 232-248, pg 233.

² Article 1234 Indonesian Civil Code

³ Article 1233 Indonesian Civil Code

⁴ Article 1235-1238, Indonesian Civil Code

⁵ Interglot Dictionary, Prestatie, <https://m.interglot.com/nl/en/prestatie>, accessed on September 8 2022

as an obligation that must be fulfilled in an agreement or contract and has been regulated in Article 1234 of the Civil Code. The Article states that there are three types of achievements in civil law, namely:⁶

1. To give something;
2. To do something;
3. To not do something.

Performance to give something is an obligation that arises from an agreement to give or deliver goods between parties, which for example, in a rental agreement there are parties who are obliged to give money in return and there are parties who are obliged to provide goods that have been rented with the money like renting a car. Performance for doing something can be seen from the sales and purchase of services agreement, where one party gives money in return and the other party promises to do something, for example providing house painting services. And the last one Performance of not doing something, for example in certain agreements the parties agree not to use the Court as an effort to resolve disputes.

If a performance that has been promised by the parties in the leasing agreement are not delivered, then the parties that do not fulfill their performance can be declared negligent or have committed a default. The word "Default" was born from the Dutch "wanbeheer" and "wan daad" which means bad performance. In a leasing agreement which gives birth to an agreement to give something, default can occur in 4 forms for both the lessor and the lessees. The lessees can:

⁶ Article 1234 Indonesian Civil Code

1. Not give a compensation or money as what is promised to the lessor.
2. Giving compensation or money to the lessor, but not in accordance with the amount, form, type or method of provision that has been promised.
3. Giving compensation or money to the lessor, but after the promised time has passed, or,
4. Doing something that has been prohibited by the lessor and is approved by the lessees

Whereas for the lessor who gives the lease, he can be considered default in 4 forms, namely:

1. Do not give the object to be leased or rented by the lessee;
2. Giving the object to be rented to the lessee, but the object is not in accordance with what was agreed;
3. Giving the object to be rented to the lessee, but given after the due delivery time, or
4. Doing something he shouldn't have done based on the agreement with the lessees.

The case that occurred was between a Limited Liability Company X (PT X), Representative of the Surabaya Branch and its central branch, which is engaged in shipping services and the head of the area, namely Mr. Y, as Defendants 1, 2 and 3, and Mrs. A who represented PT ABC as the Director as the Plaintiff whose company is engaged in truck rental expeditions. The legal relationship between the Defendants and the Plaintiff began in 2012, where the Defendants rented a number

of trucks from the Plaintiffs (as transporters) on a monthly basis to send their goods to several destinations.

The leasing relationship between the Defendant and the Plaintiff went smoothly until at the end of 2020, the Defendants did not fulfill their obligation to make monthly payments to the Plaintiff for their transporter services, while the Plaintiff had carried out its obligation to deliver a number of the Defendants' goods. It is known that since October 2020, the Defendants have not made full payments to the Plaintiffs, where the monthly invoice should have amounted to Rp. 42,500,000, - (forty million five hundred rupiah) is often paid only in part, hence there is underpayment.

From October 2020 to October 2021, every month the leasing relationship between the Defendants and the Plaintiffs are still ongoing, with a bill of Rp. 977,500,000.- (nine hundred seventy seven million five hundred thousand rupiah) and the Defendants has paid a total of Rp. 527,500,000, - (five hundred twenty seven million five hundred thousand rupiah). For this reason, the amount of underpayment that must be paid by the Defendants to the Plaintiff totalled Rp. 450,000,000.- (four hundred and fifty million rupiah). Hence it can be said that the Defendants have owed the Plaintiff.

On June 8, 2022, through Dr. Anner Mangatur Sianipar, S.H., M.H., CTA. & Partners (AMS Law Firm), the Plaintiff sent a legal notice to the Defendants which the Defendants replied with a response letter dated June 14, 2022. The Defendants stated that they would pay a debt of Rp. 450,000,000, - in installments

of Rp. 10,000,000 (ten million rupiah) up to Rp. 15,000,000 (fifteen million rupiah) every month until the debt is paid off. The Defendants' response had shown bad faith, therefore the Plaintiff represented by their attorney decided to take this case to the Surabaya District Court, in accordance with the agreement, that if a dispute occurs, the settlement of the dispute will be submitted to the Surabaya District Court. In the petition of the lawsuit, the Plaintiff requests the Court to:

1. Accept and grant the plaintiff's claim in its entirety
2. Declare that the Defendants have committed an act of default or breach of contract.
3. Declare that the Defendants still owed debts and fines/penalties of Rp. 450,000,000, - to the Plaintiff.
4. Punish the Defendants to pay a material loss of Rp. 450,000,000, - to the Plaintiff in cash.
5. Declare the Legitimacy and Valuability of the Collateral Conservatoir (Conservatoir Beslag) of the Defendants' assets.
6. Punish the Defendants to pay forced money (*Dwangsom*) in the amount of Rp. 10,000,000.- (ten million rupiah) for each day of delay, if the Defendants fail to implement this Decision, from the time this Decision is read out until the case decision is implemented.
7. Declaring that this Decision can be implemented immediately in advance (Uit Voorbaard Bij Voorrad), even though there are legal remedies for Verzet/objection, Appeal, Cassation or Judicial Review.

In accordance with the background above, the author hereby makes an internship report with the title "**INTERNSHIP REPORT AT DR. ANNER MANGATUR SIANIPAR, S.H., M.H., CTA. & PARTNERS LAW FIRM REGARDING JURIDICAL REVIEW ABOUT DEFAULT IN RENTAL TRUCKS**"

1.2 Formulation of Issues

Based on the background mentioned above, two problems can be formulated that can be discussed in writing this report, namely:

1. How Are The Procedures of Settlement of Default Cases According to the Indonesian Civil Procedure?
2. How Are The Legal Consequences of the actions of PT. X if Declared as Default?

1.3 Internship Objectives

The purpose of this research is based on the author's desire to get answers to the formulation of the problem in this case, namely:

1. As a tool or means to be able to practice law knowledge that has been obtained and studied during the study period on campus.
2. So that the author has the opportunity to be able to gain knowledge and experience in the field which will later become useful and relevant when entering a real work environment.
3. In order to understand the roles and duties of legal practitioners who are in their field.

4. In order to meet the criteria for an internship report as a substitute for a thesis for the final project as one of the mandatory criteria for graduation from the Bachelor's degree in the Faculty of Law.

1.4 Internship Benefits

1.4.1 Theoretical Benefits

It is hoped that this internship report can add references to Default and how a lawsuit for Default can be made, both systematically and substantively.

1.4.2 Practical Benefits

The practical benefits expected to be obtained by the author are for this internship report to become a guide for advocates who are faced with default cases regarding leasing regarding how to formulate an effective lawsuit.

1.5 Time and Location of Internship

The author's activities and schedule during his internship at DR. ANNER MANGATUR SIANIPAR, S.H., M.H., CTA. & PARTNERS (AMS Law Firm) are as follows:

Time Period	: August 8 2022 - December 8 2022
Working Days	: Monday- Friday
Working Time	: 08:00-17:00
Place	: Law Firm Dr. Anner Mangatur Sianipar, S.H., M.H., CTA. & Partners (AMS Law Firm)

Address : Apartemen Tamansari Papilio, Tower A, Lt.
23 Unit 05 (2305) Jl. Jend. Ahmad Yani 176-178 Surabaya, Jawa Timur
60235
Phone : (031) 99003060

1.6 Systematic of Writing

This internship report is divided into 5 (five) chapters, with the following systematic writing.

Chapter I Introduction

This chapter explains the background of the internship, the formulation of the problems to be discussed in the internship report, the objectives of the internship, the practical and theoretical benefits of the internship and the systematics of writing this internship report.

Chapter II Theoretical Framework

This chapter contains the theoretical and legal basis on which this internship report is written. This chapter will focus on contract law and civil procedural law, especially default in a leasing agreement, as well as the definition of a lawsuit.

Chapter III Overview of Internship Institution

This chapter contains an explanation about the general description of **DR. ANNER MANGATUR SIANIPAR, S.H., M.H., CTA. & PARTNERS** Law Firm (AMS Law firm) where the author does an internship at the office

for a certain period of time before graduating from university. This chapter will explain the general view of this Law firm, namely its history, vision and mission, and specialization in the fields handled by **DR. ANNER MANGATUR SIANIPAR, S.H., M.H., CTA. & PARTNERS** Law Firm (AMS Law firm).

Chapter IV Analysis and Discussion

Chapter IV will discuss the legal basis of a lease agreement, how Default can occur in a leasing agreement, as well as the systematics and substance contained in a civil lawsuit regarding Default. The role of AMS Law Firm advocates in the leasing default case is also discussed, from the process of working on the lawsuit until later in the court.

Chapter V Conclusion and Recommendation

This last chapter closes this Internship Report and contains a conclusion on the Default lawsuit made by the Author, as an answer to the problem formulation mentioned in Chapter I of this Report. This chapter also contains suggestions that the author provides which are expected to help advocates in dealing with similar cases.