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Protection Of The Parties In The Implementation Of The Ship Lease Agreement (Case Study Decision No.231 / Rev.G / 2020 / PN.JKT.UTR)

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ABSTRACT

The mechanism of transfer of rights in the lease agreement can be done with several stages, namely: the transfer of rights to an object must be accompanied by the delivery of the object. Surrender in the process of handing over property rights cannot be done carelessly regardless of the law that regulates it. Deed of lease made by and before a notary. Settlement of disputes over the sale and purchase agreement of the ship can be done by: non-litigation dispute resolution i.e. settlement out of court by means of abritrase, negotiation, mediation, conciliation, expert assessment. Dispute resolution in court (litigation) is the process of dispute resolution in court all parties in dispute face each other to defend their rights in court by filing a civil lawsuit.. Based on decision number 231 / Pdt.G / 2020 / PN.Jkt.Utr legal protection provided that the parties can file a civil lawsuit to the court where the parties in dispute are PT.Indoraya Makmur Energi (Hamad Siri) as the plaintiff with Rachman Saleh (PT.Timas Merak) as the defendant in the decision of the case the judge has provided legal protection where: stating the defendant has defaulted to the plaintiff. Punish the defendant to pay the rent for the SPOB Pulomas 7 ship for 11 months starting from June 11, 2019 to May 11, 2020, which is Rp. 450,000,000 x 11 months = Rp. 4,950,000,000 (four billion nine hundred and fifty million rupiah).

INTRODUCTION

Water transportation in Indonesia is still one of the alternative choices in fulfilling economic and social activities. In general, water transport can be defined as the movement of people or goods using water vehicles. As for the types of water transportation in Indonesia, such as freight ships, passenger ships, warships, ferries, sailing ships, ships and so forth (Jusup,2016).

The legal acts that will be discussed in this study are related to the legal relationship in sea transportation, which is carried out between the ship owner or shipping company and the user/tenant of the ship. Sea transportation plays an important role because in addition to being a physical tool that carries goods from producers to consumers, as well as a tool to determine the price of these goods. Chartering a ship is a good way to overcome the shortage of ships, in addition to chartering a freight

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ship can be transported safely, quickly and relatively cheaper (Kma Sabsyiesty,2007)

Chartering ships / sea transportation has many benefits, including the following (Zaeni Asyhadie,2014):

1. Freight forwarding interests.

The sender obtains benefits for personal consumption as well as commercial gain.

2. Importance of freight forwarders

The carrier obtains a material benefit of some money or immaterial benefit, in the form of increasing public trust or transportation services undertaken by the carrier.

3. Interests of the consignee

The consignee obtains benefits for personal consumption as well as commercial gain.

4. Public interest at large

The community benefits from Equitable needs and for the sake of sustainable development, especially encouraging business growth between islands and / or between countries (Ariman Sitompul , 2023)

Chartering of ships / sea freight by law is regulated in Book II W.v.K. Article 468 and Article 470 W.v.K, which contains regulations of the same meaning as Article 28 Wegverkeersordonnantie mentioned above. Article 470 of which prohibits a carrier to promise that he will not bear or will only bear part of the damages to the goods he is transporting, which may be due to the lack of good means of transport or insufficient workers used. The agreement entered into in violation of the prohibition is threatened with invalidation, but the carrier is allowed to enter into a limitation of liability for each piece of goods transported by him (C.S.T. Kansil,2001).

The provision of ships and equipment by the transport entrepreneur through the lease of the ship can occur marked by the agreement in advance. The basis for the freight forwarder to enter into a lease agreement, if the lease of the ship for the transport of goods and people has been completed by the lessee, it will be followed by the return of the ship and its equipment to the freight forwarder in accordance with the date and time that has been agreed, but the lease agreement does not always run without obstacles. Sometimes there are problems where the tenant and the lessee do not fulfill the obligations as agreed in the agreement. Non - fulfillment of these obligations can be caused by negligence or intentional or due to an event that occurs beyond the ability of each party, in other words caused by wanprestasiatau overmacht. Default is a situation in which, due to negligence or fault, the debtor is unable to fulfill the performance as stipulated in the agreement and is not a force majeure situation.

Article 1 Number 36 of Law No. 17 of 2008 on shipping states that ships are water vehicles of certain shapes and types that are driven by wind, mechanical, other energy, towed and delayed, including vehicles with dynamic carrying capacity, vehicles under the surface of the water, as well as floating devices and floating buildings that do not move. While the definition of the ship according to Article 309 KHUD "" ship is all sailing equipment, regardless of its name and whatever its nature. Unless otherwise provided, or another agreement is entered into, it shall be deemed that the vessel includes the equipment of the vessel. By ship equipment is meant all goods that are not part of the ship, but are intended to be used with the ship."(Tanti,2018).

This study focused on the decision of the District Court of North Jakarta number 231 / Pdt.G / 2020 / PN.Jkt.Utr. As a case to be investigated. This case discusses the dispute between the parties of the initial sale and purchase agreement on the ship in the end the occurrence of leases. Where PT.Indoraya Makmur Energi as the plaintiff who bought the ship demanded to complete the renovation of the ship that had not been repaired by Rachman Saleh as President Director of PT.Timas Merak as the defendant where to default, so this study raises the issue of leasing a ship.

METHOD

Research is "the search for something (incquiry) in systematic with the emphasis that this is done towards problems that can be solved." In conducting research there are several types of research, namely normative juridical research and empirical or sociological juridical research (Ariman Sitompul, 2023). Legal research carried out by researching library materials or mere secondary data, can be called normative juridical law research or library Law Research. In the writing and research of this thesis, the type of research used is "normative juridical research that includes research on the principles of Law, Research on legal Systematics, research on the level of legal synchronization, legal history research, and Comparative Law Research

RESULTS AND DISCUSSION

A. Legal Protection Of The Parties In The Implementation Of The Lease Agreement

In carrying out legal protection to the parties to the lease agreement there are several points that must be considered, namely:

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1) Making Deed Of Lease

Ship as an object of lease based on Law No. 17 of 2008 on shipping, Government Regulation No. 51 of 2002 on shipping, and regulation of the Minister of Transportation no. PM 39 year 2017 about the registration and nationality of the ship then in making the deed of leasing the ship must be done in front of a notary.

In making the deed of lease must meet several processes that must be taken, namely :

a) approval stage

This stage is an initial stage that must be taken telebih first. In this initial stage there is a boat rental agreement along with equipment between the lessee and the tenant. All of them must first meet the requirements set forth in the provisions of Article 1320 of KHUPerdata, namely the existence of an agreement between the parties, the ability to make agreements, a certain thing and a lawful cause. After meeting the four requirements above to be said to be valid for a ship rental agreement, it must also be followed by meeting the technical and administrative requirements that have been set. After the agreement is fulfilled and other technical and administrative requirements such as those already listed and such as having submitted an identity in the form of an ID card or driver'S license, having a clear address, being willing and able to comply with applicable regulations and having filled out the forms provided. After all the conditions and processes of the first stage have been implemented and have been met, then all the files are enforced by binding them with a rental agreement contract.

B) approval contract making stage

In this stage, if an agreement has been reached between the two parties in terms of leasing the ship along with equipment and fulfilled all the technical and administrative requirements that have been determined and the next stage has also been strengthened in the contract of agreement on leasing the ship in a certain form contained in a letter of contract agreement.

c) administrative structuring phase approval

In this stage it is regulated regarding the administrative execution of the lease agreement between the lessee and the lessee . in the administrative arrangement, each party is required to sign a ship rental contract that has been made and prepared. The amount of rent depends on the type of ship you want and the capacity of the ship. After the signing of the contract and the tenant has made the payment of rent that has been agreed upon and only then yanng rent a ship and utilize the use of the ship for its purposes in mengangkutbarang from a place to a place that diingin intended or desired.

2) Fulfilling the principle of publicity the existence of the principle of publicity in the traffic of legal relations on the rights of individuals and materials, affirms that in the legal relationship of the bond there is an element of the obligation of a particular bond either on the subject or object, after an engagement occurs, the engagement or objects as the object of the engagement, both the engagement itself and the object are subject to the principle of publicity. This principle indicates that in order to fulfill the validity of the engagement, it must first be seen how the engagement is carried out and what is the object of the engagement . The announcement of rights to immovable (fixed) objects occurs through registration by a government-appointed registry official, while the announcement of movable objects through the real possession of the object. The public registration of a ship puts the ship under the jurisdiction of the flag state in terms of administrative arrangements, and the flag state "is obliged to comply with international obligations on the ship carrying its flag and the ship is protected by the state". Publications on ships that have been registered today are very easy to access through the website page that has been provided by the Ministry of transportation of the Republic of Indonesia, and can be accessed by entering the registration number and name of the ship. This is one of the advances given by the Ministry of Transportation to prevent the occurrence of ship forgery, as well as embezzlement or misuse of ships by certain parties. This system is one part of the Electronic ship registration system (SPKE) that has been implemented by the Directorate General of Transportation.

The above description only makes that the parties get legal protection which is also given to the parties in the form of legal protection against the tenant or the lessee listed in the notarial deed of renting a ship that indicates illegal acts, that the tenant or the lessee can file a lawsuit to the court if the tenant or the lessee and the notary who issued the deed of lease does not explicitly explain the condition of the object agreed. Therefore, the tenant or the one who rents and the notary has committed unlawful acts, and the one who rents or the tenant has also committed default for not doing what has been agreed, the legal protection that can be filed by the tenant or the one who rents is by filing a lawsuit to the court to demand compensation for damages resulting from these actions.

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B. Chronological Case Based On The Decision Of Case Number 231 / Pdt.G / 2020 / PN.JKT.UTR

Decision of case number 231 / Pdt.G / 2020 / PN.JKT.The UTR examines civil cases in the first instance as follows: PT. Indoraya makmur Energi, represented by Hamdan Sri lives on Jl. United Won The No.36 Block B / 5, Cilincing, North Jakarta. In this case represented by his attorney Iryanto advocates and lawyers from the law office which is located at ITC Cempaka Iryanto, SH & Partner Mas Lt.9 No. 5 Jl. Gen, R. Suprapto Central Jakarta based on a special power of attorney dated April 17, 2020 and a special power of attorney dated March 18, 2021 hereinafter referred to as the plaintiff versus Rachman Saleh as President Director of PT.Timas Merak Banten – Indonesia. In this case it is represented by its power H.gusti Endra advocates and lawyers, legal counsel at GHR law office which is domiciled in Jl. South Ring number 99A Serang Village, Serang District, Serang City based on special power of attorney number 020/SKK/GHR/V/2020 dated May 29, 2020, hereinafter referred to as the defendant.

In decision number 231 / Pdt.G / 2020 / PN.JKT.UTR, that the District Court of North Jakarta, adjudicate the case dropped the confiscation of collateral in the form of: under Article 1239 KHUPerdata, so that this lawsuit tdak illusoir, vague and worthless and in order to avoid the defendant's efforts to transfer his wealth to other parties, the Plaintiff please that can be placed confiscation of collateral (conservatior beslag) in the presence of (Djaja, H. ,2015).

In the decision of case 231 / Pdt.G / 2020 / PN.JKT.UTRPengadilan Negeri Jakarta Utara, tried a civil case at first instance in a case between PT. Indoraya Makmur Energi as a plaintiff against PT.Timas Merak as the defendant, in sitting the following cases:

1) the plaintiff is a legal entity engaged in domestic shipping

2) the plaintiff is a national private company engaged in shipping (commercial, operation and agency), solar fuel industry that will buy the ship from the defendant

3) The defendant is a shipping company and owns a dockyboard and a ship SPOB Pulomas 7

4) plaintiff and defendant agreed to enter into a sale and purchase agreement SPOB Pulomas 7 ship with Tanjung Priok Port registration

5) notary Agreement number 1120 dated January 20, 2017 Plaintiff and defendant signed an agreement on the sale and purchase of SPOB vessels

6) agreement in accordance with Point 5 above, Article 3 payment of points A and b approved payment in cash amounting to Rp. 4,000,000,000 (four billion rupiah) remaining payment of Rp. 18,000,000,000 (eighteen billion rupiah) will be disbursed or paid in installments for 8 months in the amount of Rp. 2,250,000,000 (two billion two hundred and fifty million rupiah) to be paid by using a check issued by PT.Bank Rakyat Indonesia Persero Tbk on behalf of PT. Lamurukung Jaya with the following details:

a. First disbursement dated March 30, 2017 with check number GFN 516451

b. Second disbursement dated April 28, 2017 with check number GFN 516452

c. Third disbursement dated May 31, 2017 with check number GFN 516459

d. Fourth disbursement dated June 30, 2017 with check number GFN 516454

e. Fifth disbursement dated July 31, 2017 with check number GFN 516455

f. Sixth disbursement dated August 30, 2017 with check number GFN 516456

g. Seventh disbursement dated September 30, 2017 with check number GFN 516457

h. Eighth disbursement dated October 31, 2017 with check number GFN 516458

7) ship SPOB Pulomas 7 initially in a damaged condition and will be renovated by the defendant in good condition with a speed of 8 knots and ready to sell to the plaintiff after the plaintiff gave an advance payment of Rp. 4,000,000,000, (four billion rupiah) and a second payment of Rp. 2.000.000.000, (two billion rupiah)

8) Agreement Article 3 Paragraph 4 the defendant will complete the ship within 40 days after the first payment stage is received including a better renovation of the ship in accordance with the plaintiff's proposal, but after the advance payment paid by the plaintiff in the amount of Rp.4,000,000,000 (four billion rupiah) and a second payment of Rp. 2,000,000,000 (two billion rupiah) with the condition that the speed of the SPOB Pulomas 7 ship was only 4 knots not in accordance with the agreement of the defendant and plaintiff with a ship speed of 8 knots.

9) before making payment the plaintiff must first process the financing facility from a financial institution

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10) upon the financing agreement between the plaintiff and the defendant, the plaintiff submits a request for sale and lease back ship financing facilities in accordance with the letter of offer of financing facilities from PT. Asset Management Company (Persero) number S-23/PPAF-DIR/IX-2016 amounting to Rp.20,000,000,000 (twenty billion rupiah) to the plaintiff.

11) point 10 above plaintiff borrowed funds to PT. Asset Management Company (persero) amount of money Rp. 20,0000,000,000 (twenty billion rupiah) but the management of funds for payment is not enough because of the transfer of debt repayment financing PT. Petroleum Energi Indonesia address Jl. Hamlet No. 55 RT / RW/001 / 008 ex. Lagoa Kec Koja, North Jakarta at Rp. 10,500,000,000 (ten billion five hundred rupiah), interest costs for 3 months, and administrative costs of Rp. 2,500,000,000 (two billion five hundred million rupiah) funds received by the plaintiff only Rp. 7,000,000,000 (seven billion rupiah), the funds were used by the plaintiff to pay for the Pulomas 7 SPOB ship of Rp. 4,000,000,000 (four billion rupiah) in the first phase and Rp.2,000,000,000 (two billion rupiah) the second phase and Rp. 1,000,000,000 (one billion rupiah) in the allocation to finance the ship facilities SPOB Pulomas 7. The amount of the plaintiff's debt deficiency of Rp. 16,000,000,000 (sixteen billion rupiah) to the defendant, is not enough to do the settlement as agreed between the plaintiff and the defendant.

12) the lack and for repayment of the PT.PPA Finace again promises to provide additional capital for the repayment of the Pulomas 7 SPOB ship, but PT.PPA Finance until now has not realized the intended repayment budget.

13) the plaintiff attempted to settle the payment to the defendant by holding a meeting with the defendant on Thursday, April 04, 2017, then the plaintiff and defendant made the following decisions:

a. The plaintiff filed roya on the land owned by Mr. M Yusuf to Bank Mandiri and the bank notary issued a coverminut to return the name to the defendant

b. Contract ship SPOB Pulomas 7 with PT. Aghra Niaga Panca Tunggal with the remaining 4 months of the contract will be continued and the results of the contract will be given entirely to the plaintiff

c. The deal has already been approved by the tergugar and the plaintiff

14) the plaintiff completed the payment of the Pulomas 7 SPOB ship by providing 7 (Seven) certificates of ownership, all of which are in the name of Muhammad Yusuf, president director of PT. Petroleum Energi Indonesia address Jl. Hamlet No.55 RT / RW 001/008 ex. Lagoa District.Koja North Jakarta, which is known as the appreciative price of the land, according to PT.Bank Mandiri (Persero) Tbk, a sum of Rp. 22,000,000,000 (twenty-two billion rupiah). If the defendant does not agree then the defendant can mortgage the land for 10 working days

15) in point 14 above on Day 12 the defendant submitted an application number 085/TMS-MRK/VI/19 dated June 18, 2019 to PT.Bank Mandiri (Persero) Tbk regarding withdrawal of advance payment of Rp. 3,500,000,000 (three billion five hundred million rupiah) deposited by the defendant on the purchase of land owned by M Yusuf Wahid, the defendant considers the appreciative price of the land to be the object of collateral in Bank Mandiri is only Rp. 7,176,000,000 (seven billion one hundred and seventy-six million rupiah), unilateral interpretation of the defendant did not match the initial agreement

16) the defendant verbally applied for a loan to use the SPOB Pulomas 7 ship to the plaintiff. That the plaintiff realizes that it has not been able to complete the payment according to the agreement, the plaintiff makes a letter addressed to the defendant number 016/B/IME/VI/2018 on June 25, 2018 which allows the defendant to borrow and use SPOB Pulomas 7 to be cultivated and will not demand profits from the SPOB Pulomas 7 ship business. The plaintiff requested a letter officially from the defendant to borrow and use the Pulomas 7 SPOB ship in question

17) in point 14 above the defendant agreed to borrow the ship SPOB Pulomas 7 based on number 001/TMS-MERAK / 2018 with a lease for one year

18) the plaintiff provided an operational power of attorney dated July 13, 2018 to the defendant to operate SPOB Pulomas 7

19) defendant has leased the ship SPOB Pulomas 7 to PT.Arghaniaga Panca Tunggal based on a lease agreement Number: 01/SMK/TMS-AP/VII/18 dated July 18, 2018 Happy One year of Rp. 450,000,000 (four hundred and fifty million rupiah)/month

20) defendant during the lease ship SPOB Pulomas 7 to PT. Agrha Niaga Panca Tunggal for 20 months only provides a boat rental for one month in the amount of Rp.450,000,000 to the plaintiff. And until now the defendant never again give money to rent the ship SPOB Pulomas 7 to the plaintiff

21) the lease agreement points 20 the plaintiff has been harmed by the amount of rent calculated in August 2018 to March 2020 Rp.

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450,000,000 (four hundred and fifty million rupiah) x 20 months = Rp. 9,000,000,000 (nine billion rupiah)

22) plaintiff, defendant, PT. PPA Finance and PT.Timas Selaras Line entered into an agreement on Thursday, December 26, 2019, Article 2 points a,b and c completion of the basic agreement no later than 10 (ten) working days, but the defendant again canceled the agreement unilaterally and even reported the plaintiff to the Banten Police

23) on April 5, 2020, the plaintiff revoked the operating power of the SPOB Pulomas 7 ship to the defendant, so that the ship was immediately returned to the plaintiff.

In the legal consideration of the decision of case number 231 / Pdt.G / 2020 / PN.JKT.UTR Considering, that the purpose and purpose of the plaintiff's lawsuit which in essence is about the act of default where ;

A) the plaintiff is the owner of the ship SPOB Pulomas 7 which was purchased in installments from the defendant as outlined in notarial deed no. 1120 dated January 20, 2017 at a price of Rp 22.000.000.000, - (twenty-two billion rupiah) which until the time the new plaintiff paid Rp 6.000.0000.000, - (six billion rupiah) while the remaining plaintiff can not pay in accordance with the specified time ;

b) The defendant verbally applied for a loan to use the SPOB ship. Pulomas-7 to the plaintiff, because the plaintiff realizes that he has not been able to complete the payment for the purchase of the ship according to the agreement, the plaintiff makes a letter addressed to the defendant number : 016/B/IME/VI/2018 on June 25, 2018 which allows the defendant to borrow and use the SPOB Pulomas 7 ship to be cultivated and will not demand profits from the SPOB Pulomas 7 ship business, which in turn the plaintiff requests a letter officially from the defendant to borrow and use the SPOB ship. Pulomas-7 in question;

c) The defendant agreed to borrow the ship SPOB Pulomas-7 based on number: 001 / TMS-MERAK/2018 with a lease for one year, and the plaintiff provided an operational power of attorney dated July 13, 2018 to the defendant to operate SPOB Pulomas 7;

D) The defendant has leased the ship SPOB Pulomas 7 to PT.Arghaniaga Panca Tunggal based on lease agreement Number: 01/SMK/TMS-AP/VII/18 dated July 18, 2018 for one year of Rp.450.000.000, - (four hundred and fifty million rupiah) per month that the defendant during the lease ship SPOB. Pulomas-7 to PT. Argha Niaga Panca Tunggal for 20 months only give money to rent a boat for one month in the amount of Rp.450.000.000, - to the plaintiff. And until now the defendant has never again given money to rent SPOB ships. Pulomas-7 to the plaintiff.

e) on the rental agreement, point 20 the plaintiff has been harmed by a certain amount of rent, starting from August 2018 to March 2020 Rp.450.000.000, - (two hundred and fifty million rupiah) x 20 months= Rp.9.000.000.000, - (nine billion rupiah);

Considering, that on the plaintiff's claim, the defendant stated that he firmly rejected the arguments of the plaintiff's claim because they were very contrary to what the plaintiff had argued in point 16 "... allow the defendant to borrow and use SPOB Pulomas 7 to be cultivated and will not claim profits from the business of the SPOB Pulomas 7 ship; ...". In addition, the plaintiff's arguments are very contradictory to what the plaintiff has agreed to as contained in point 1 (one) letter number : 016/B/IME/VI/2018 dated June 25, 2018 regarding loans and SPOB Pulomas 7 which states that as long as the debts and receivables for the sale and purchase of the ship have not been paid off / paid in full, we PT. Indoraya Makmur Energi allows PT. Timas Merak to borrow ship / operate SPOB ship.Pulomas-7 and will not claim rights / profits from the results of operations on SPOB ships. The Pulomas-7. That related to the rental of ships SPOB Pulomas 7 to PT. Arghaniaga Panca Tunggal only with PT. Timas Peacock(defendant), it should not be a matter for the plaintiff.

Consider, that because it has been recognized or at least not denied, according to the law should be considered proven things;

a) it is true that the defendant has sold the Pulomas 7 SPOB ship to the plaintiff at a price of Rp 22.000.000.000, - (twenty-two billion rupiah) whose payment is as outlined in Notary Agreement number 1120 dated January 20, 2017,;

b) true for the purchase of the Pulomas 7 SPOB ship, the defendant just made a payment of Rp 6,000,000,000, - (six billion rupiah) while the remaining Rp 16,000,000,000, - (sixteen billion) has not been repaid by the defendant even though it has passed the agreed time ;

c) it is true that the defendant applied for a loan on the SPOB ship. Pulomas-7 to the plaintiff. And because the Plaintiff realized that he could not complete the payment according to the agreement, the plaintiff handed over the ship to the defendant and provided an operational power of attorney dated July 13, 2018 to the defendant to operate the Pulomas 7 SPOB;

d) it is true that the defendant has leased the ship SPOB Pulomas 7 to PT.Arghaniaga Panca Tunggal based on a lease agreement Number:

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01/SMK/TMS-AP/VII/18 dated July 18, 2018 for one year of Rp.450.000.000, - (four hundred and fifty million rupiah) per month;

Considering, that the dispute between the two parties is about: is it true that the defendant has defaulted to the plaintiff because during the defendant leased the ship SPOB Pulomas 7 to PT.Arghaniaga Panca Tunggal for 20 months, the defendant only gave rent to the Plaintiff for one month, namely Rp 450,000,000, - (four hundred and fifty million rupiah).

Considering that based on the above, the panel of judges needs to consider first in terms of how a person can be categorized as committing an act of default, namely not fulfilling something that is required as stipulated in the agreement/agreement, where to determine in what circumstances the debtor is said to be in default, there are four circumstances, namely

1) The Debtor Does Not Meet The Performance At All,

2) The Debtor Meets The Performance But Not Good Or Wrong,

3) The Debtor Meets The Achievement, But Not On Time Or Late And

4) The Debtor Carries Out What According To The Agreement Should Not Be Done;

Considering, that under Article 163 HIR/283 RBg the plaintiff is obliged to prove the foregoing, likewise the defendant is obliged to prove the arguments of his refutation ; considering, that the plaintiff to strengthen his arguments has submitted evidence in the form of evidence P-1 to P-15 and witnesses, namely

1) Witness Muhammad Yusuf Wahid ,

2) witness Herman Pelani, and

3) Witness Aptiansah ;

Considering, that the defendant to strengthen the arguments of his denial has submitted evidence in the form of evidence T-1 to T-10 and witnesses, namely

1) Witness Imam Praise Raharjo,

2) witness Asep Jamaludin, and

3) Witness H.Yoelianyo Fajari .

Considering that the tribunal has examined all the evidence of the letter submitted by both parties, but the evidence considered by the tribunal is relevant evidence to support the arguments that are the subject matter of the aquo case, against evidence that is not considered irrelevant;

Considering, that the next will be considered the main issue between the plaintiff and the defendant is whether it is true that the defendant has defaulted to the plaintiff because during the defendant leased the ship SPOB Pulomas 7 to PT.Arghaniaga Panca Tunggal for 20 months, the defendant only gave rent to the plaintiff for one month, namely Rp 450,000,000, - (four hundred and fifty million rupiah) as follows ;

Considering that from the evidence submitted by the plaintiff, namely the attachment of evidence letter P-15 which is in conjunction with evidence letter T-7, namely the letter for borrowing to use the ship SPOB Pulomas7 number 7016/B/IME/VI/2018 dated June 25, 2018 sent by the plaintiff to the defendant, the fact was obtained that as a follow-up to the defendant's, the plaintiff sent a letter to the defendant allowing the defendant (PT.Timas Merak) to borrow and use the ship / operate the ship SPOB Pulomas 7 and will not claim rights /profits from the results of operations on the ship SPOB Pulomas 7, this is done/allowed by the plaintiff because the plaintiff is still unable to repay the ship's underpayment of Rp 16,000,000,000, - (sixteen billion ruapai) again to the defendant ;

Considering that from the evidence submitted by the plaintiff, namely the evidence letter P-15 which is in conjunction with the evidence letter T-8, which is about the application letter for borrowing and using the SPOB Pulomas 7 ship dated June 30, 2018 which the defendant sent to the plaintiff, it was found that the plaintiff had not been able to pay off the purchase, then the defendant borrowed against the ship with several conditions including that as long as the ship is in the control of the defendant (PT.Timas Merak) is not charged rent or borrowed money and then during the process of using the ship, the profits obtained by the defendant (PT. Timas Merak) is not considered a form of installment or installment payment or installment payment or any other payment.

Considering, that from the evidence submitted by the plaintiff, namely appendix P-15 which is in conjunction with the evidence letter T-9, namely the operational power of attorney dated July 13, 2018, the fact was obtained that the plaintiff gave power of attorney to the defendant (PT.Timas Merak) to run and operate the ship SPOB Pulomas 7 in accordance with Letter No. 016/B / IME/VI / 2018 dated June 25, 2018 ;

Considering that based on the witness statements submitted by the plaintiff, namely witness Muhammad Yusuf , Herman Pelani, witness Aptiansah and also from the witness statements submitted by the defendant, Imam Puji Raharjo, witness Asep Jamaluddin and witness H.Yoelianto Fajari, who basically explained that because the Pulomas 7 SPOB ship purchased by the plaintiff from the defendant had not been paid off, the ship was returned to the defendant to be operated ;

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Considering, that based on the evidence of letter P-6 B which is in conjunction with the evidence of letter T-10, namely the Ship Lease Agreement Letter No. 01/SMK/TMS-AP/VII/18 dated July 18, 2018, between the defendants (PT.Timas Merak) with PT. Arghaniaga Panca Tunggal and also from the testimony of witnesses both submitted by the plaintiff and the witnesses submitted by the defendant obtained the fact that the defendant leased the ship SPOB Pulomas 7 to PT. Arghaniaga Panca Tunggal for 12 months starting from July 18, 2018 to July 18, 2019 with a monthly rental price of Rp 450.000.000, - (four hundred and fifty million rupiah);

Considering that from the evidence of letters P-15,T-7,T-8, T-9, and also from the testimony of witnesses Muhammad Yusuf , Herman Pelani, aptiansah witnesses and also from the testimony of witnesses submitted by the defendant, namely Imam Puji Raharjo, witness Asep Jamaluddin and witness H.Yoelianto Fajari as considered above, with proof letter P-6B and proof letter T - 10, then obtained the legal fact that throughout the lease of the ship on the basis of proof letter P-6, T-10, the plaintiff does not have the right to demand rent money because it has been agreed from the beginning that the plaintiff will not demand rights/profits from the results of operations on the Pulomas 7 SPOB ship, and is also not considered a form of installment or installment payment ;

Considering, that the next based on the evidence of letter P-6 A is a letter of collective agreement between the plaintiff (PT. Indoraya Makmur Energi) with the defendant (PT. Timas Merak) dated April 29, 2019, it was found that because the plaintiff had not been able to repay the purchase of the SPOB Pulomas 7 ship to the defendant even though the gross deed had been named to the plaintiff, the plaintiff provided 7 (seven) land certificates belonging to Muhammad Yusuf Wahid as collateral and were considered as repayment of the plaintiff's debt to, and the defendant made the payment of the debtor's debt Muhammad Yusuf Wahid in Bank Mandiri Jakarta (the defendant redeemed the land certificate guarantee from PT. Bank Mandiri)

Considering, that based on the testimony of witness Muhammad Yusuf Wahid that between the plaintiff, defendant and witness had held a meeting to discuss the repayment of the purchase of the ship SPOB Pulomas 7 which in conclusion the witness handed over 7 (seven) parcels of land belonging to him in Palopo South Sulawesi valued at Rp 22,000,000,000,- (twenty-two billion rupiah) according to witnesses.

Considering, that furthermore, based on the evidence of letter P-7, namely Ship Lease Agreement letter number 001/SP/TMS-IME/V/2019 dated May 11, 2019 between the plaintiffs (PT. Indoraya Makmur Energi) with the defendant (PT. Timas Merak) obtained the fact that the plaintiff leased the Pulomas 7 SPOB ship to the defendant for 12 months at a rental price of Rp 450,000,000,- (four hundred and fifty million rupiah) every month starting from May 11, 2019 to May 11, 2020, in Article 2 of the lease it was agreed that the lease payment was paid for the first 1 (one) month plus a deposit of 1 (one) month and paid in cash by the defendant to the plaintiff after a survey of the operational feasibility of the ship by the ship surveyor. While for the next rent will be paid in cash every month (due on the 11th of each month).

Considering, that based on the witness statement of Imam Puji Raharjo, the witness submitted by the defendant himself, where the witness explained that after the lease agreement the defendant gave 1 (one) month rent to the plaintiff, so that the next question arises whether the lease agreement is still valid even though the repayment of the price of the Pulomas 7 SPOB ship is not so with the surrender of 7 (seven) plots of land in Palopo South Sulawesi, according to the panel of judges in accordance with Article 1338 of the Civil Code, that the Ship Lease Agreement SPOB Pulomas 7 is still binding on both parties because there is no evidence that cancels the Ship Lease Agreement and it also turns out that the defendant has made lease payments even though only 1 (one) month, while the continuation is 11 (eleven) months yet to be paid by the defendant ;

Considering that based on the evidence presented by both parties as mentioned above in relation to each other which turned out to be in accordance The panel of judges argued that the defendant had defaulted to the plaintiff because he did not meet his achievements properly ;

Considering, that based on the consideration of the above petitum numbers 3 and 4 which are essentially the same legal grounds to be granted;

Considering, that the next regarding the petitum number 1 which pleads to decide that the agreement between the plaintiff and the defendant is valid according to law, according to the council it is reasonable to be granted because the agreement made between the plaintiff and the defendant has fulfilled article 1320 of the Civil Code, while for the petitum number 2 which pleads to decide, According to the panel of judges, there is no need to consider further because it turns out that until now the plaintiff cannot complete his obligation to pay off the

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purchase of the Pulomas 7 SPOB ship to the defendant ;

Considering, that further to the petitum number 5 which asks to punish the defendant to pay the rent of the SPOB Pulomas 7 ship for 20 months, starting from August 2018 to March 2020 Rp 450.000.000,- (two hundred and fifty million rupiah) every month x 20 months = Rp. 9.000.000.000, - (nine billion rupiah), according to the panel of judges because the defendant was declared to have defaulted on the Ship Lease Agreement letter number 001/SP/TMS-IME/V/2019 dated May 11, 2019, and the defendant only paid 1 (one) month's rent, the defendant must. sentenced to pay unpaid rent for 11 (eleven) months multiplied by Rp 450,000,000, - (four hundred and fifty million rupiah) so that the total amount of Rp 4,950,000,000, - (four billion nine hundred and fifty thousand rupiah) ;

Considering, that regarding the petitum number 6 because of the request to punish the defendant to pay immaterial losses to deal with this problem amounting to Rp, 1,500,000,000, - (one billion five hundred million rupiah), according to the panel of judges should be rejected, because the plaintiff can not prove the existence of such losses ;

Considering, that the next to the petitum number 7 which pleads to punish the defendant to pay forced money (dwangsom) of Rp.5.000.000, - (five million rupiah) every day if the defendant fails to carry out the contents of the decision of this case starting from the decision with permanent legal force, it must be rejected because in punishment the payment of a sum of money is not known the existence of forced money (dwangsom) ;

Considering, that regarding the plaintiff's petitum number 10 which requested that this decision be executed first (uitvoerbaar bij voorraad) despite the resistance of Appeal, Cassation and verzet, the panel of judges held that the petitum should be rejected because it did not meet the conditions specified in SEMA No. 3 year 2000;

Considering, that based on the above considerations, the panel of judges believes the plaintiff's lawsuit can be partially granted;

Considering that since the plaintiff's claim was partially granted and the defendant was on the losing side, the defendant must be sentenced to pay the costs of the case;

C. Consideration of judges and legal analysis

In the decision of case number 231 / Pdt.G / 2020 / PN.JKT.UTR judges make decisions in the form of:

1) Grant the plaintiff's claim for a portion ;

2) states that the agreement between the plaintiff and the defendant is lawful.

3) states that the defendant has defaulted to the plaintiff

1. Convict the defendant to pay the rent for the SPOB Pulomas 7 ship for 11 (eleven) months, starting from June 11, 2019 to May 11, 2020, which is Rp 450.000.000, - (two hundred and fifty million rupiah) every month x 11 months = Rp. 4.950.000.000, - (four billion nine hundred and fifty thousand rupiah) ;

2. Reject the plaintiff's claim other than and beyond ;

3. Punish the defendant to pay the costs of the case arising in the amount of Rp 676.000, - (six hundred seventy six thousand rupiah).

That the actions of the defendants are acts of default as described in Article 1243 of the Civil Code which reads "reimbursement of costs, losses and interest due to non-fulfillment of suatau engagement began to be required, if the debtor, even though it has been declared negligent, remains negligent to fulfill the engagement, or if something that must be given or done can only be given or done within a predetermined time".

That the act of default committed by the defendant is to meet its elements, namely :

a) there is an agreement by the parties

b) there are parties that violate or do not carry out the contents of the agreement that has been agreed, namely : the existence of an act, the Act violates the agreement, the fault of the perpetrator, the loss for the victim.

That the right to demand compensation in default does not need a negligent warning, whenever a default occurs, the party who feels aggrieved has the right to immediately demand compensation.

That according to jurisprudence (judgment of the Supreme Court of the Netherlands) in the case of Arrest Cohen-Lindenbaum (H.R. January 31, 1919)"expanded the notion of lawlessness not only limited to laws (written laws only) but also unwritten laws". This means that the agreement under hand made by the plaintiff and defendant as in the subject matter of the case meets the elements in Article 1365 of the Civil Code and can be filed a civil lawsuit in the District Court, in this case the North Jakarta District Court Class I A.

That based on the description above the panel of judges who examined and tried this case to decide with amar as follows:

1. Decide that the agreement between the plaintiff and the defendant is lawful.

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2. Decided that it was true that the plaintiff had done good faith by trying to complete the repayment of the Pulomas 7 SPOB ship belonging to the defendant at the request of the defendant in accordance with the agreement.

3. States that the defendants have committed default;

4. Determined that it was true that the defendants had defaulted on the plaintiff;

5. Convict the defendant to pay the rent of the SPOB Pulomas 7 ship for 20 months, starting from August 2018 to March 2020 Rp 450.000.000,- (two hundred and fifty million rupiah) every month x 20 months = Rp. 9.000.000.000, - (nine billion rupiah);

6. Punish the defendant to pay immaterial losses to take care of this problem amounting to Rp, 1,500,000,000,- (one billion five hundred million rupiah).

7. Punish the defendant to pay forced money (dwangsom) of Rp.5.000.000, - (five million rupiah) every day if the defendant fails to implement the contents of the decision of this case as of the decision with permanent legal force;

8. Charge the costs arising from this case to the defendant;

9. Decided to accept the laying of bail (conservatoir beslaag) proposed by the plaintiff;

10. States this decision can be executed first (uitvoerbaar bij voorraad) despite the resistance of Appeal, Cassation and verzet.

The judge is of the opinion that the plaintiff requested a fair decision that according to the law is feasible and appropriate (Ex aequeo et bono).

1. On the day of the trial that has been determined, for the plaintiff and defendant to come before the court each represented by his power
2. The panel of judges has sought peace between the parties through mediation as stipulated in Perma No. 1 of 2016 concerning mediation procedures in court by appointing Dodong Iman Rusdani, S.H.., M.H.., Judge at the North Jakarta District Court, as a Mediator;
3. That based on the Mediator's report dated July 7, 2020, the peace efforts were unsuccessful;

4. That therefore the examination of the case continued with the reading of the lawsuit whose contents are retained by the plaintiff;
5. That to the plaintiff's claim the defendant gave the answer in essence as follows:
a. North Jakarta state court does not have the authority to examine, prosecute, and decide the status quo (insolvent authority);

1) the plaintiff in the arguments of his lawsuit on Page 2 point 5 postulates "that based on the notarial Agreement number 1120 dated January 20, 2017 the plaintiff and the defendant signed an agreement on the sale and purchase of SPOB ships", the arguments indicate the notarial Agreement number 1120 dated January 2017 is the object being disputed by the plaintiff;

2) in Article 6 of the notarial Agreement number 1120 of January 20, 2020 between the plaintiff and the defendant explains: Article 6 Dispute Resolution

A) in the event of any dispute relating to this agreement, the parties agree to resolve it by consensus within fifteen (15) business days;

b) if the period of dispute settlement by deliberation as meant in Article 14 paragraph (1) has passed and no agreement has been reached, the dispute will be resolved and managed by the Indonesian National Arbitration Board (BANI) Jakarta, according to the applicable regulations.

3) Article 6 of the agreement a quo has clearly explained that disputes related to this agreement will be resolved within 15 (fifteen) working days and if no agreement is reached then the settlement of the dispute will be managed by the Indonesian National Arbitration Board (BANI) Jakarta;

4) based on the provisions of Article 1 point 1 of Law No. 30 of 1999 on arbitration explains that " arbitration is a way of resolving a civil dispute outside the general court based on an arbitration agreement made in writing by the parties to the dispute."; .

5) based on the provisions of Article 134 Hir allows judges exofficio declare themselves not authorized to judge : "if the dispute is a matter that does not enter the power of the district court, then at any time in the examination of the case, can be requested that the judge declared himself powerless and the judge was also obliged to admit him because of his position.";

6) based on the provisions of Article 24 paragraph (2) of the Constitution 1945 jo. Article 18 of Law No. 48 of 2009 on Judicial Power which explains the granting of power to judge (attributie van rechtsmacht) consists of the General Court, religious court, Military Court, and Administrative Court;

7) based on the provisions of the notary Agreement number 1120 and the provisions of applicable law, the North Jakarta District Court is therefore not authorized to examine, adjudicate, and decide disputes related to the A quo agreement as the object disputed by the plaintiff;

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8) based on the description above, it is very basic and legal grounds if the plaintiff's claim has violated absolute competence and it is appropriate that the plaintiff's claim must be rejected.

b. The plaintiff's lawsuit is formally flawed because it does not meet the formal requirements and material requirements of a lawsuit;

1) the lawsuit filed by the plaintiff at the North Jakarta District Court does not meet the formal requirements of a lawsuit;

2) because the lawsuit filed by the plaintiff dated April 21, 2020 does not contain the full identity of the plaintiff

3) as the provisions contained in Article 8 Rv (Reglement op de Rechtsvordering) at least include full name, place and date of birth, occupation, religion, and residence;

4) the plaintiff in preparing the lawsuit does not meet the material requirements of a lawsuit, it is seen that there is a discrepancy in the arguments of the plaintiff's lawsuit (fundamentum petendi) with the claim (Petitum);

5) in the arguments of the plaintiff's lawsuit (fundamentum petendi) does not include the basis of the claim as contained in the claim (petitum) plaintiff;

6) the necessity of the arguments of the lawsuit / posita (fundamentum petendi) must be consistent with the demands (Petitum) this is seen in the decision of the Supreme Court of Indonesia No.67/K/Sip / 1975 dated May 13, 1975 which affirms the following : "that since the petitum does not comply with the arguments of the lawsuit (posita), the Cassation application is accepted and the decision of the High Court and the District Court is canceled";

7) such a decision is reaffirmed in the Supreme Court decision no. 28/K/Sip / 1973 dated November 15, 1975 as follows: "because the rechtsfeiten filed contrary to the petitum the lawsuit must be rejected";

8) based on the description above, it is very basic and legal grounds if the plaintiff's lawsuit does not meet the formal and material requirements. Then it is appropriate for the plaintiff's claim to be rejected or at least declared the plaintiff's claim inadmissible (Niet Onvankelijke Verklaard).

c. Plaintiff's lawsuit error in persona in the form of disqualification

1) the plaintiff in his lawsuit identifies Siri as the president director of PT. Indoraya Makmur Energi;

2) it has been known that in 2017 a person named Siri has changed his name to Ahmad Bedu Raman,as determined by the North Jakarta District Court number :171/Pdt.P / 2017 / PN.Jkt.Utr dated April 12, 2017 with Amar

a) grant the applicant's application

(B) the name of H. Hamad Siri, male, born in Bone, dated October 24, 1981, and subsequently the applicant using the name Ahmad Bedu Raman, male, born in Bone, dated October 24, 1962;

C) instruct the head of The Jakarta Provincial Civil Registry Office to record in the register used for it, and on behalf of Ahmad Bedu Raman, male, born in Bone, dated 24 October 1962;

d) charge a case fee to the applicant of Rp. 221.000,- (two hundred twenty one thousand rupiah);

3) that, based on the description above, the plaintiff who uses the identity with the name Hamad Siri in his lawsuit does not have a legal position as a party who can file a complaint;

4) that, then it is very basic and reasoned law if the plaintiff's complaint is error in person in the form of disqualification and it is appropriate that the plaintiff's lawsuit must be rejected or at least declare the plaintiff's lawsuit unacceptable(Niet Onvankelijke Verklaard).

d. Plaintiff's lawsuit error in persona in the form of plurium litis consortium (less party);

1) in the arguments of the plaintiff's lawsuit at least mention some other parties related to the plaintiff and the defendant, namely ON : PAGE 2 point 6 postulates "... will be paid using the check issued PT. Bank RakyatIndonesia Persero Tbk on behalf of PT. Lamurukung Jaya ..."; page 3The postulating point 11 "... The plaintiff borrowed funds to PT.Asset Management Company (persero) a number of ... the transfer of financing debt repayment PT. Petroleum Energy Indonesia ..."; page 4 point 12 which postulates "that there is a shortage and for the repayment of the PT. PPA FINANCE again promises to provide ..."; page 4 postulates 14 points "... yangkeseluruhnya on behalf of Muhammad Yusuf president director of PT.Petroleum Enegi Indonesia ...";

2) the other parties have a legal position in the object being disputed plaintiff in his lawsuit, as referred to the Supreme Court jurisprudence RINomor: 365 K"Pdt/1985, dated June 10, 1985, which in its rules and legal considerations, States: "it is important to include all parties who have a relationship with the

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subjects of the issue or in other words must complicit all parties;

3) that, with the exclusion of other parties related to the points of dispute, it is very basic and legal grounds if the claim pengugaterror in personadalam form plurium litis consortium (less party) and the plaintiff's lawsuit should be duly rejected or at least declare the plaintiff's claim can not be accepted (Niet Onvankelijke Verklaard).

e. The plaintiff's lawsuit is vague, unclear, inaccurate, and incomplete (obscuur libel);

1) the claim filed by the plaintiff in the North Jakarta State Court is in respect of the tort of default;

2) with the arguments of the plaintiff based on the performance of the lawsuit citing Article 1243 of the Civil Code as the arguments of the plaintiff page 6 (six) point 1;

3) that, the plaintiff's argument contains a contradiction (obscuur libel) with the plaintiff's argument on Page 7 (seven) point 4 which postulates that " ... as in the subject matter of the case meets the elements in Article 1365 of the Civil Code and can be filed for civil indemnity ...", as is known that article 1365 of the civil code is the implementation of a lawsuit;

CONCLUSION

Based on decision number 231 / Pdt.G / 2020 / PT.Jkt.Utr legal protection provided that the parties can file a civil lawsuit in court where the parties to the dispute are PT.Indoraya Makmur Energi (Hamad Siri) as the plaintiff along with Rachman Saleh (PT.Timas Merak) as the defendant in the case the judge has provided legal protection where: states that the defendant has defaulted to the plaintiff and punish the defendant to pay for the rental of the Pulomas 7 SPOT ship for 11 months from June 11, 2019 to May 11, 2020, which is Rp. 450,000,000 x 11 months = Rp. 4,950,000,000 (four billion nine hundred and fifty million rupiah).

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