THE DISPUTES RESOLUTION AGAINST PARTIES OF DIFFERENT CITIZENSHIP

Annie Myranika
Universitas Islam Syekh-Yusuf (UNIS) Tangerang, Banten, Indonesia
amyranika@unis.ac.id

Abstract

The agreement is carried out by the agreement of both parties which has binding legal consequences and is valid according to law, if the parties do not comply with or violate the provisions agreed upon by both parties, a default arises. The issue that will be raised in this research is the settlement of evidence against default cases in court with parties of different nationalities based on judges' considerations in deciding default cases between parties of different nationalities, and the legal consequences of these defaults. This study aims to identify and analyze the settlement of defaults on differences in citizenship status from the perspective of international private law and the legal consequences of default. This research approach method uses qualitative research with primary data materials and secondary data materials which are analyzed using literature studies and normative juridical approaches that refer to applicable law.

Keyword: *Disputes Resolution; Citizenship; parties;*

A. INTRODUCTION

When carrying out a contract, it often happens that one of the parties must face difficult circumstances so that a contract cannot be carried out properly. These predicaments can happen intentionally or unintentionally. In the sense that the party is not aware of or does not want this difficult situation to occur. In this kind of situation is said to have defaulted. The forms of default that we can encounter are not carrying out the contents of the contract at all, carrying out part of the contents of the contract, carrying out the contract not as it should and executing the contract but being late.[1]

An agreement can be carried out properly if the parties have fulfilled their respective achievements as agreed without any aggrieved party. However, sometimes the agreement is not carried out properly due to a default made by one of the parties. The word default comes from the Dutch language, which means achievement or bad faith. What is meant by default is a condition caused by negligence or mistake, the party is unable to fulfill the performance as specified in the agreement and is not under coercive circumstances.[2]

1 Ahmad Rizki Sridadi, *Aspek Hukum Dalam Bisnis*, Surabaya, Airlangga University Press, Surabaya, 2009, page. 86.
2 Anita D.A. Kolopaking, *Asas Itikad Baik Dalam Penyelesaian Sengketa Kontrak Melalui Arbitrase*, Bandung, Penerbit PT. Alumni, 2013, page. 86.

An agreement, whether one-sided or two-sided, is a legal act, in which every action has a legal consequence, either in the form of the emergence of rights or in the form of the loss of rights. One-sided legal actions only require a will or a statement of will from one party, which is enough to cause legal consequences. Agreements made legally cannot be canceled by one party only. An agreement can only be canceled if there is agreement from both parties who entered into the agreement. In fact, regardless of the legal sanctions imposed on the party who defaults, from an ethical point of view, an agreement should be implemented in good faith.[3] States are obliged to fulfill and protect the rights of their citizens, including the right to citizenship status.[4]

Default on a contract is a violation of civil law and can even be a criminal act, depending on the type of contract or the person making the contract, besides depending on the nature and formality of the contract in question.[5]

The occurrence of default comes from the debtor's mistake (schuld), the error is an error in a broad sense, namely in the form of intentional (opzet) or negligence (onachtzaamheid). In a narrow sense, mistakes only mean intentional. Errors in default are errors that cause losses to creditors. The act in the form of default causes loss to the creditor, and the act must be blamed on the debtor.[6]

Soebekti explained that according to teachings currently adhered to in Indonesia, the judge has discretionary power, in cases of cancellation of an agreement, for example, the judge has the power to assess the size of the debtor's negligence compared to the severity of the consequences of canceling the agreement that might befall the debtor. If the judge considers the negligence to be too trivial, while the cancellation of the agreement will bring too great a loss to the debtor, then the application to cancel the agreement is rejected by the judge.[7] International disputes are a common occurrence in the contemporary global landscape, and the effective management of such disputes is critical to ensuring stability and peace among nations.[8]

International dispute resolution can be carried out in various ways, namely peace, violence, and war. Peaceful settlement of disputes can be seen in Article 33 paragraph 1 of the UN Charter, namely by negotiation,

3 Marvita Langi, Akibat Hukum Terjadinya Wanprestasi Dalam Perjanjian Jual Beli, *Lex Privatum*, Vol. 4, No. 3, 2016, page. 100.

4 Dian Andriani, Dedy Ardian Prasetyo, Legal Protection of The Rights of Indonesian Citizens for Children in Lifetime Mixed Marriages, *IJSSR*, Vol. 3, Issue. 4, April 2023, page. 940-947

5 Munir Fuady, *Teori-Teori Besar Dalam Hukum (Grand Theory)*, Kencana, Jakarta, 2014, page. 212.

6 Lia Amalia, *Hukum Perikatan*, Surabaya, Cipta Media Nusantara, 2022, page. 19.

7 Togi Pangaribuan, Permasalahan Penerapan Klausula Pembatasan Pertanggungjawaban Dalam Perjanjian Terkait Hak Menuntut Ganti Kerugian Akibat Wanprestasi, *Jurnal Hukum & Pembangunan*, Vol. 49, No. 2, 2019, page. 451.

8 Bidu Ibrahim, International Dispute Settlement Mechanisms: An Examination of Nature of Disputes And The Intersection of Diplomatic And Legal Mechanisms, *International Journal of Global Community*, Vol. VI, No. 1, March, 2023, page. 1-18

inquiry, mediation, conciliation, arbitration, legal judicial settlement).[9] If one of the parties is deemed to have defaulted, then the settlement of the dispute can be carried out through litigation or non-litigation. Settlement of disputes through litigation is carried out through court institutions, while settlement of disputes through non-litigation channels, namely dispute resolution outside the court based on Act No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, namely by way of Consultation, Negotiation, Mediation, Conciliation, Assessment Expert or through the Arbitration sheet.[10]

Supposing resolution cannot be found, the parties can take legal action through "arbitration." This is a non-judicial legal technique for resolving disputes through referral to a neutral party for a binding decision or "award." An arbitrator may consist of a single person or a board, usually consisting of three members. Arbitration is most commonly used in resolving commercial disputes and is distinct from mediation and conciliation, both of which are common in settling disputes between labor managements and unions. In mediation, the parties resort to a third party to offer a settlement recommendation or assist in reaching a compromise. Such interventions, which also occur in international disputes between states through diplomatic interventions and good offices, have no binding force upon the disputants, unlike the arbitrator's ruling.[11] Mediation is not a new concept that emerged the twentieth century in the United States during the twentieth century.[12]

Usually in international contracts there is a mention of how to resolve disputes that occur, including the choice of courts or other institutions that will resolve disputes and state law used in dispute resolution. If the contents of the contract do not stipulate the choice of court or choice of law used to conclude the contract, then there is a need for a review/study from the aspect of international private law.

In practice, there are still many people who default or break their promises. As a result of the default, the settlement was not carried out by deliberation between the parties or spouses, but was resolved through court decisions, one of which was in the case of decision number 580/Pdt. G/2018/PN. Jkt. Which cell is between the Australian citizen plaintiff (PC) and the Indonesian citizen defendant (IW), each party is represented by their legal counsel. They are a couple who live together without getting married.

9 Fadia Fitriyanti, Yordan Gunawan, Post-Asean Agreement on Transboundary Haze Pollution: How to Settle the Dispute Settlement?, *Hasanuddin Law Review*, Vol. 5, Issue. 3, December 2019, page.253-265

10 Arkisman, Zakiah Noer, dan Mochamad Syafii, Pentingnya Kesadaran Hukum Masyarakat Terhadap Layanan Pinjam Meminjam Uang Berbasis Teknologi Informasi (Pinjaman Online), *Jurnal Kewarganegaraan*, Vol. 6, No. 3, 2022, page. 6173.

11 Delfiyanti, The Dispute Settlement System of Investment in The ASEAN Comprehensive Investment Agreement (ACIA) Framework and The Implications for Indonesia The Implications for Indonesia, *Indonesian Journal of International Law*, Vol. 19, No. 1, 2021, page 148.

12 Evangelia Nissioti, It Takes Three to Tango: A Behavioral Analysis of the Benefits of Having a Mediator in International Disputes, *German Law Journal* , Vol. 2, Issue 3, 2022, page. 376–394

This case is interesting to analyze because first; the parties have different nationalities. Second: the parties differ in opinion regarding the credit agreement regarding the debt loan alleged by the plaintiff, which is not acknowledged by the defendant. Then the third; they are couples who live together without the marriage process, but live together like husband and wife in a family. In living together, the man finances his life together by transferring funds in US dollars, as well as the woman helping with daily expenses. At first, their life together went smoothly and they even wanted to continue with marriage. This was proven by the man by buying diamond rings, even though in installments. However, the relationship ended because the man was rude and the woman left the rented house they lived in. After they separated, there was a lawsuit filed from the man (plaintiff) to the woman (defendant) for the agreed debt that was not paid.

Previous research examining default disputes was conducted by I Wayan Bandem, I Wayan Wisadnya, and Timoteus Mordan. The previous research problem was that the Defendant had debts to the Plaintiff that started from the lending and borrowing process and was proven by the Plaintiff through a Letter of Receipt made and signed by the Defendant with the principal amount of the loan/debt of the defendant to the Plaintiff amounting to IDR 100,000,000 (one hundred million) rupiah) which was not paid by the Defendant and default occurred. The similarity of the previous research with the present is the similarity in analyzing cases of default on accounts payable which were settled in court. The difference between the previous research and the current research is that the previous research involved parties from Indonesia, while the current research is parties from different countries. In addition to these differences, the differences in the problems in previous studies were in the form of borrowing and borrowing which were stated and set forth through a Receipt Letter made and signed by the Defendant himself. Meanwhile, the difference in current research is the problem in the form of two people of different nationalities living together as husband and wife, entering into a debt agreement. After they separated, the debt bill was submitted to court due to default by the debtor.[13]

Therefore, the parties are required to carry out their achievements or are declared to have committed a Default. Then as a debtor if he does not make payments even though he has been given a warning by the plaintiff as a creditor, thus the defendant can be declared not having good faith, as stipulated in article 1338 paragraph 3 of the Civil Code that: "an agreement must be implemented in good faith".

The purpose of this study is that researchers want to know and analyze the considerations of the panel of judges in deciding a dispute of evidence in default between parties of different nationalities and settlement of defaults on differences in citizenship status from the perspective of international private law.

13 I Wayan Bandem, I Wayan Wisadnya, dan Timoteus Mordan. Akibat Hukum Perbuatan Wanprestasi dalam Perjanjian Hutang-Piutang. *Jurnal Ilmiah Raad Kertha*, Vol. 3, No. 1, 2020, page. 50.

B. RESEARCH METHODS

This study uses qualitative research methods that are analyzed to solve problems. This study uses the literary method to analyze the problem taken from existing literature references such as books or scientific articles. The research uses a normative juridical approach that refers to the applicable laws or regulations. In collecting data, the researcher conducted an analysis by explaining the contents of the judge's decision regarding the default case.

C. RESULTS AND DISCUSSION

1. Considerations of Judges in Deciding Disputes on Evidence of Default Between Parties of Different Nationalities

The judge's consideration of the dispute between the parties in the Indonesian legal system, that in principle a court decision in a civil case must have a party that wins and a party that loses. The civil decision must be able to accommodate both parties even though one party is declared an unlawful act and/or default, but in fulfilling the loss it is not burdensome to the losing party so that the losing party does not accept it and submits a legal remedy. The judge must be able to consider all aspects from both the plaintiff's and the defendant's side so that when the judge makes a decision, the losing party does not feel too defeated.[14]

In the end, the judge must decide the case he is trying solely on the basis of law, truth and justice without discriminating against people with the various risks they face. In order for the judge's decision to be taken in a fair and objective manner based on law, truth and justice, besides the examination must be carried out in a session open to the public (unless the law determines otherwise), the judge is also obliged to make legal considerations that are used to decide his case. By considering good legal values in society and then filtering them according to their own sense of justice and legal awareness, the judge means that he has decided cases based on law and a sense of justice in the cases he faces.[15]

The panel of judges in deciding casuistry-quality cases must also be based on the principles of legal certainty, justice and expediency. The application of these principles is carried out in a balanced or proportional manner. Like a line, in examining and deciding a case, the judge is between the point of justice and the point of legal certainty. The principle of expediency is one of them. The judge in his considerations must be able to describe all of this, when he chooses the principle of justice as the basis for deciding the case he is facing.[16]

14 Pandu Dewanto, Rekonstruksi Pertimbangan Hakim Terhadap Putusan Sengketa Perdata Berbasis Nilai Keadilan, *Jurnal Ius Constituendum*, Vol. 5, No. 2, 2020, page. 305.

15 Afif Khalid, Penafsiran Hukum oleh Hakim dalam Sistem Peradilan Di Indonesia, *Al-Adl: Jurnal Hukum*, Vol. 6, No. 11, 2014, page. 25.

16 Josef M. Monteiro, Putusan Hakim dalam Penegakan Hukum di Indonesia, *Jurnal Hukum Pro Justitia*, Vol. 25, No. 2, 2007, page 137.

Ideally a judge's decision must contain 3 (three) elements, namely: justice, legal certainty, and expediency. These three elements must be considered by the judge and applied proportionally, so that in turn a quality decision can be produced and meets the expectations of seekers of justice. The judge in his decision must prioritize justice because he is responsible for his decision to God Almighty.[17]

In the case of Default, the plaintiff demands that the defendant default on the debt that was agreed between the plaintiff and the defendant. In this regard, the Panel of Judges should consider the following:

Considering, that the intent and purpose of the lawsuit letter is related to the Defendant's rebuttal in relation to one another in such a way that the Panel of Judges is of the opinion that the main issue being disputed by the parties in this case is "Is it true that the Defendant has debts to the Plaintiff and whether the Defendant has have defaulted / broken the promise of the agreement?"

Before making an agreement, the parties must first pay attention to the requirements in making an agreement, the agreement must also be carried out in accordance with the applicable article, this has been regulated in Article 1320 of the Civil Code.

With the existence of a legal relationship between the debtor and the creditor, each party has rights and obligations arising from that legal relationship, namely in the form of achievements.[18] Therefore, the parties are required to carry out their achievements. The achievement referred to in this case is as agreed in the agreement (debt agreement) that the parties have mutually agreed upon.

Considering, that after further considering the subject matter as mentioned above, the Panel of Judges after examining the arguments of the Defendant's rebuttal has obtained the facts/conclusions that the plaintiff's arguments were denied/not recognized.

Considering, that the panel of judges first needs to consider the Defendant's answer above in relation to the facts/conclusions as mentioned above, namely if the debtor does not make a payment then it can be declared a default. Default is a condition where achievement is not carried out due to an error on the part of one of the parties either intentionally or negligently. The legal basis is Article 1243 of the Indonesian Civil Code.

The loss can be blamed on him (the debtor) if there is an element of intent or negligence in an event that is detrimental to the debtor who can be held accountable to him. Negligence is an event where a debtor should have known or should have suspected that the actions or attitude taken by him would result in a loss.

17 Edi Rosadi, Putusan hakim yang berkeadilan. *Badamai Law Journal*, Vol. 1, No. 2, 2016, page 385.

18 Dwi Tatak Subagiyo, The Position of Creditors in Consumer Financing Agreements Due to Fiducian Guarantee Not Registered, *International Journal of Social Science And Human Research*, Vol. 6, Issue. 5, 2023, page. 2599

Whereas the Panel of Judges considered that there was a difference of opinion between the Plaintiff and the Defendant, it can be concluded that the argument for the Plaintiff's lawsuit has been refuted by the Defendant, this is in accordance with Article 163 HIR, the Plaintiff is required to prove his claim.

Furthermore, the panel of judges considered whether there had been a credit agreement between the plaintiff and the defendant which ended with a default from the defendant.[19] Considering the evidence submitted by the plaintiff in the form of a credit agreement letter with evidence (P-2A, P-2B, P2-C, and P-2D), where the evidence is only in the form of photocopies and the original letter is not shown at trial; even though the translation of the evidence is in the form of an original letter. Considering according to article 1888 of the Civil Code it states: "the strength of proof of written evidence is in the original deed. If the original deed exists, then the copies and summaries can only be trusted, only the copies and summaries are in accordance with the original, which can always be ordered to show them. The same thing also stipulates that in practice the Supreme Court has emphasized evidence in the form of photocopies of letters/documents, with the rule of law "copying evidence that has never been submitted or never had the original letter, must be set aside as a letter of evidence" according to the decision; MA No: 3609 K/Pdt/1985, MA No: 112 K/Pdt/1996, dated 17-09-1998. Therefore, the plaintiff's evidence/documents cannot be used as evidence that the plaintiff has made a credit loan agreement to the defendant, especially since the defendant has rejected the plaintiff's claim in its exception.

The Defendant's exception or answer to the Plaintiff's lawsuit, where the Exception is in accordance with Article 132 Rv and Article 133 HIR, Replik and Duplik from the parties so that the Panel of Judges gave an Interlocutory Decision which was read out on July 30 2018, there are legal facts from the Plaintiff's lawsuit and the answer of the Defendant who is recognized or at least not refuted or denied. The Panel of Judges in trying this case gave a decision that the plaintiff's claim could not be accepted.

Regarding the subject matter, the decision is; Rejecting the plaintiff's lawsuit in its entirety and ordering the plaintiff to pay the court fee, which has so far been IDR 561,000 (five hundred sixty one thousand rupiah).

2. Settlement of Default on Differences in Citizenship Status from the Perspective of International Private Law

The legal system or legal regulations of a sovereign country are often faced with legal problems that are not entirely internal-domestic in nature and instead show a connection with foreign elements. Legal relations/events, both in the field of civil and non-civil law which contain

19 Budi Her Utomo, Suharningsih, Passive Subjective Novation in Credit Arrangement: Legal Assurance and Protection Capability, *International Journal Of Research in Business & Social Science IJRBS,* Vol. 11, No. 3, 2022, page. 240-247

elements that transgress the territorial boundaries of the state or transnational elements that are the center of attention in the field of law known as international private law (hereinafter referred to as HPI). So, "foreign elements" mean points of contact (contacts) with one or more other legal systems outside the legal system of the "forum" state (the country where the court adjudicates the case), and that link actually exists in the facts of case.[20]

International business relations held by the parties do not always run smoothly. Sometimes problems or disputes arise from international trade relations based on a contract or not. Disputes are common issues that are avoided by the parties because they can disrupt stability, efficiency, time and costs. Settlement of disputes or business disputes that arise in contracts is usually carried out through 2 (two) patterns, namely through alternative dispute resolution, and through the courts. Dispute resolution will become more complex in the context of international relations. This is due to the differences between the parties. These differences are foreign elements such as language, nationality, domicile and so on.[21] At other times, governments invoke or construe foreign actions as provocative to mobilize domestic audiences, with a potentially unintended consequence being greater pressure for international escalation.[22]

Ease in international civil contract relations often encounter obstacles when a dispute occurs between them, for example one party does not fulfill its promise (achievement). If one party does not feel disadvantaged because of the actions of the other party in default, he can sue the competent authority, for example the court. Settlement of international civil contract disputes through the courts often creates dissatisfaction for the defeated party because the judge in the court must determine the lex cause (law that should apply) first and sometimes the lex cause is not so familiar to the judge or one of the parties, not to mention the existence non-juridical factors that greatly influence the judicial process so that these conditions can produce unsatisfactory decisions.[23]

The principles contained in international private contracts often have to be taken into account by the theory of international private law in the preparation of contracts that are commonly used, such as: 1. Lex Loci Contractus, according to the Lex Loci Contractus theory, the applicable law is the law from where the contract was made. So the place where a contract is made is an important factor in determining the applicable law. 2. Lex Loci Solution, according to this theory the law is

20 Bayu Seto Hardjowahono, *Dasar-Dasar Hukum Perdata Internasional Buku Kesatu Edisi Kelima*, Bandung, PT. Citra Aditya Bakti, 2013, page. 3

21 Adriana Pakendek, Kontrak Bisnis Internasional Prespektif Kitab Undang-undang Hukum Perdata, *Voice Justisia: Jurnal Hukum dan Keadilan*, Vol. 2, No. 1, 2018, page. 23.

22 Allan Dafoe, Provocation, Public Opinion, and International Disputes: Evidence from China, *International Studies Quarterly*, Vol. 6, Issue. 6, 2022, page. 1-14

23 Aminah, A. Pilihan Hukum dalam Kontrak Perdata Internasional, *Diponegoro Private Law Review*, Vol. 4, No. 2, 2019, page. 4

from the place where the agreement is carried out, so it is not the place where the contract is signed but where the contract is carried out. 3. The Proper Law of The Contract. Used to put forward what is called the "intention of the parties" law that will apply to the agreement because it is desired by the parties concerned. 4. Theory of The Most Characteristic Connection in each contract it can be seen which party has made the most characteristic achievements and the law of the most characteristic party is the law that is deemed to have to be used because this law is the toughest and should be used appropriately.[24]

All violations of international law, including breach of contract, may be considered as either an international offense or an act against international law. There is a difference between crimes that are referred to as international crimes and criminal acts that have an international element. In the draft Article 19 paragraph (4) made by the ILC, it is emphasized that any international wrongful act which is not an international crime constitutes an international delict. In other words, any action or omission that is prohibited by international law is an international offense as long as it is not referred to as an international crime.[25]

3. Legal Consequences of Default in an Agreement

As a result of the fulfillment of the contents of the agreement, it is the parties who do not fulfill the contents of the agreement, they are said to be in default. The legal consequences that arise from a debtor who defaults on an agreement where the debtor does not fulfill his obligations, it can be seen that as a result the agreement cannot be fulfilled or implemented correctly, a creditor does not get the fulfillment of his rights which should be obtained in accordance with the agreement.[26]

If in an agreement there has been a default or broken promise, then there will definitely be a consequence, namely the creditor can still sue the debtor for the performance, if he is late in fulfilling the achievement. In addition, creditors have the right to demand compensation for delays in carrying out their achievements.[27] This is because the creditor will benefit if the debtor carries out the performance on time and the burden of risk shifts to the loss of the debtor, if the obstacle arises after the debtor defaults, unless there is intentional or major error on the part of the creditor. Therefore, the debtor is not justified in holding on to force majeure. If a warning is born out of a

24 Mokohama, Kebatalan Perjanjian Jual Beli Kapal Akibat Wanprestasi, *Lex Crimen*, Vol. 10, No. 11, 2021, page.106.

25 Wagiman, dan Anasthasya Saartje Mandagi, *Termonologi Hukum Internasional*, Jakarta, Sinar Grafika, 2016, page. 370

26 A.A. Dalem Jagat Krisno, dan Ni Ketut Supasti Dharmawan., Akibat Hukum Yang Ditimbulkan Dari Wanprestasi Dalam Perjanjian Autentik Sewa-Menyewa Tanah, *Kertha Semaya: Journal Ilmu Hukum,* 2015, page. 3

27 Yati Nurhayati, Breach of Contract: A Comparison Between Indonesian and Malaysian Contract Law, *International Journal of Law*, Vol. 2, No. 1, 2022, page. 33-45

reciprocal agreement, creditors can free themselves from their obligation to provide counter-performance by using Article 1266 of the Civil Code.[28]

As for the legal consequences due to default in an agreement, the debtor is required to pay compensation for losses suffered by the creditor (article 1234 of the Civil Code). When the words are reciprocated. The creditor can demand cancellation or cancellation of the agreement through a judge (article 1266 of the Civil Code).[29] Default has legal consequences, namely the obligation for the debtor to pay compensation or with a default by one party, the other party can demand cancellation of the agreement.[30]

A very important consequence of not fulfilling the agreement is that the creditor can ask for compensation for the costs, losses and interest he has suffered. For the existence of an obligation to compensate the debtor, the law determines that he must first be declared negligent. Being in a negligent state is a warning or statement from the creditor about when the debtor is required to fulfill the performance at the latest, if this time is exceeded then the debtor is declared in default.[31]

Compensation in civil law can arise due to default as a result of an agreement or can arise due to unlawful acts.[32] Compensation that arises from default is if there are parties to the agreement who do not carry out their commitments that have been stated in the agreement, then according to law he can be held responsible, if the other party to the agreement suffers a loss because of this.[33]

There are 4 (four) consequences of default namely The engagement still exists, The debtor must pay compensation to the creditor (Article 1243 of the Civil Code), The burden of risk shifts to the loss of the debtor, if the obstacle arises after the debtor defaults, unless there is a gap or major error on the part of the creditor. Therefore, the debtor is not justified in holding on to force majeure, and if the engagement is born from a reciprocal agreement, the creditor can free

28 Mahalia Nola Pohan, dan Sri Hidayani., Aspek Hukum Terhadap Wanprestasi Dalam Perjanjian Sewa Menyewa Menurut Kitab Undang-Undang Hukum Perdata, *Jurnal Perspektif Hukum*, Vol. 1, No. 1, 2020, page. 47.

29 Kristiane Paendong, dan Herts Taunaumang. Kajian Yuridis Wanprestasi Dalam Perikatan Dan Perjanjian Ditinjau Dari Hukum Perdata, *Lex Privatum*, Vol. 10, No. 3, 2022, page. 5

30 Sri Redjeki Slamet, Tuntutan Ganti Rugi Dalam Perbuatan Melawan Hukum: Suatu Perbandingan Dengan Wanprestasi, *Lex Jurnalica*, Vol. 10, No. 2, 2013, page. 112

31 Umul Khair, Analisis Yuridis Perjanjian Pembiayaan Konsumen Dan Akibat Hukum Jika Terjadi Wanprestasi Dalam Perjanjian Pembiayaan Konsumen Di Indonesia, *JCH (Jurnal Cendekia Hukum)*, Vol. 3, No. 1, 2017, page. 41

32 Dewa Putu Adiputra, Legal Actions Against Default in the Delivery of Goods Agreement at PT On Time Express Branch Office Bali, *Journal Equity of Law and Governance*, Vol. 2, No. 1, 2022, page. 15-23

33 Abel Agustian, Pembatalan Perjanjian Pengikatan Jual Beli (PPJB) Kondominium Akibat Wanprestasi, Recital Review, Vol. 2, No. 2, 2020, page. 88

himself from the obligation to provide counter-performance by using article 1266 of the Civil Code.[34]

The existence of a default causes losses to the parties, therefore there must be compensation. Compensation here includes replacement compensation and complementary compensation. Compensation for compensation is compensation resulting from the non-performance that should be the right of the creditor, covering all losses suffered as a result of the debtor's default. While complementary compensation is compensation as a result of being late or not fulfilling the debtor's achievements as they should or due to termination of the contract.[35]

D. CONCLUSION

The conclusion from the results of this study is based on the theory of civil law, it is only natural that the law used to resolve this case uses Indonesian law, in this case the area of the court authorized to adjudicate is the South Jakarta District Court. The panel of judges in determining the law that applies to cases of default with parties of different nationalities is in accordance with the applicable law which refers to Indonesian law based on *Lex Loci/Locus Contractus*. Based on the explanation from the results of the research, it answered a purpose of this research, namely knowing and analyzing the considerations of the panel of judges in deciding the case was in accordance with statutory regulations and connected based on international private law theory.

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34 Dermina Dalimunthe, Akibat Hukum Wanprestasi Dalam Perspektif Kitab Undang-Undang Hukum Perdata, *Jurnal AL-MAQASID: Jurnal Ilmu Kesyariahan dan Keperdataan*, Vol. 3, No. 1, 2017, page. 18

35 Agus Yudha Hernoko, *Hukum Perjanjian Asas Proporsionalitas Dalam Kontrak Komersial*, Jakarta, Prenadamedia Group, 2014, page. 264.

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