

## Dispute Resolution in Heavy Equipment Rental Agreements Due to Default

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**Abstract.** *The rental agreement submitted by the renting party to the lessee is carried out for a certain time and at a certain price. The heavy equipment rental payment system is carried out by paying 100% of the rent to the lessor before the heavy equipment is used by the lessee and there is a special guarantee in the form of material guarantee and personal guarantee, then to guarantee security in heavy equipment rental a rental system is also created by conducting a survey. to the renter's house in order to provide certainty to the lessor in the event of a default by the heavy equipment renter. The responsibility of the heavy equipment renter in the event of default is as follows: In the event of a delay in returning the heavy equipment, the renter will be charged an additional fee according to the amount of time of delay. In the event of damage to heavy equipment facilities caused by negligence or deliberate action by the heavy equipment renter, the renter is responsible for replacing all costs incurred for heavy equipment repairs. In the event that part of the heavy equipment is lost, the renter must replace the lost equipment. In the event that the heavy equipment is transferred (rented again) then the renter must immediately return the heavy equipment in accordance with the agreement that has been made.*

**Keywords:** *Agreement; Equipment; Rental.*

### 1. Introduction

The goal of economic development is based on democracy based on democracy that is people-based with social justice for all Indonesian people through a welfare approach and market mechanisms. The key to accelerating and expanding national economic development is to build new growth centers, in which there is infrastructure and connectivity that combines sectors and regions.

To support the program of accelerating and expanding economic development, BUMN is required to make budget savings, considering that the state budget is

currently in deficit.<sup>1</sup>The results of the savings in BUMN spending will later be diverted to increase capital spending to be focused on building the national economy. One form of budget savings is heavy equipment, which can use a rental system. Many savings can be made if each year is sufficient to budget for heavy equipment rental. In addition to saving maintenance costs, funds that were originally used to buy heavy equipment can be used for more productive purposes while reviving the rental business which has a positive impact on the economy.<sup>2</sup>

The rental option was chosen because the government no longer spends heavy equipment maintenance costs. Another advantage that can be obtained with the rental system is that the condition of the heavy equipment can always be new, the rental fee includes maintenance, thus reducing the cost of heavy equipment maintenance.<sup>3</sup>The heavy equipment rental system can also increase employee efficiency and productivity which will directly improve company performance, because the workforce and all heavy equipment management will be handled directly by the rental company so that a number of workers are not needed who are specifically responsible for managing the company's heavy equipment.

Likewise, companies that have heavy equipment in the use of heavy equipment. As a BUMN company, it is appropriate to follow the government's appeal to make budget savings, one of which is the cost of heavy equipment. To save the budget, the company rents heavy equipment for the purpose of collaborating with other private companies.

An agreement begins with a difference or inequality of interests between the parties. The formulation of the agreement relationship generally always begins with a negotiation process between the parties. Through negotiation, the parties attempt to create formsan agreement to bring together something desired (interests) through a bargaining process.<sup>4</sup>

Legally, an agreement is an event where one person makes a promise to another person or where two people promise each other to do something.<sup>5</sup>As a result of this event, a relationship arises between the two people which is called an alliance. This agreement establishes an agreement between the two people who make it. In its form, the agreement is a series of obligations containing spoken or written promises or commitments.

Agreements give birth to obligations, although there are also obligations that arise from the Law. This is in accordance with the provisions of Article 1233 of

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<sup>1</sup>BUMN Agrees to Save Budget, (<http://economy.okezone.com>, accessed 15 September 2023).

<sup>2</sup>Ibid.

<sup>3</sup> This is the reason renting heavy equipment is more economical than buying it. (<http://finance.detik.com>, accessed 20 September 2023).

<sup>4</sup>Agus Yudha Hernoko, 2008, Law of Contracts: Principle of Proportionality in Commercial Contracts, Yogyakarta: Laksbang Mediatama, p. 1.

<sup>5</sup>Wirjono Prodjodikoro, 2000, Principles of Contract Law, Bandung: Mandar Maju, p. 4.

the Civil Code which states that every obligation is born, either because of an agreement or because of the Law. An obligation is a legal relationship, which means a relationship that is regulated and recognized by law. This legal relationship needs to be distinguished from relationships that occur in social life based on politeness, propriety and morality.<sup>6</sup>

According to Article 1548 of the Civil Code, a rental agreement is an agreement by which one party binds himself to provide the other party with the enjoyment of an item for a certain period of time and with the payment of a price, which the latter party has agreed to pay.

Renting, like other agreements in general, is a consensual agreement, thus the agreement is binding at the moment an agreement is reached regarding its main elements, namely goods and price, where the lessor hands over the goods to the lessee to be enjoyed, while the lessee is obliged to pay the rental price. The lease agreement submitted by the lessor to the lessee is carried out for a certain period of time and at a certain price. According to Wirjono Prodjodikoro, if the lease agreement does not specify when and when it ends, then each party can freely terminate the lease at any time, with the note that they must pay attention to the time limit according to local customs.<sup>7</sup>

Renting is a civil act that can be done by a legal subject (person and legal entity). The rental agreement is regulated in Article 1548-1600 of the Civil Code. The elements listed in the rental agreement as regulated in Article 1548 of the Civil Code are:

- a) There is a party renting from the lessee.
- b) There is an agreement between both parties.
- c) The subject of the lease is goods (both movable and immovable goods).
- d) There is an obligation from the party renting out the enjoyment to the party renting out an object and so on.
- e) There is an obligation for the tenant to hand over payment money to the party renting it out.

As with agreements in general, a rental agreement must also fulfill the general conditions for a valid agreement as regulated in Article 1320 of the Civil Code, namely:

- 1) Agreement between the parties making the agreement (consensus)
- 2) The capacity of the parties to the agreement
- 3) A certain thing (a certain subject matter)
- 4) Halal causes (legal causes)

Based on the provisions of the Regulation of the Minister of Finance of the

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<sup>6</sup>R. Setiawan, 1987, Principles of Contract Law, Bandung: Binabuat, p. 3.

<sup>7</sup>Subekti, 1996, Contract Law, Jakarta: Intermedia, p.14.

Republic of Indonesia Number 65/PMK.02/2015 concerning Input Cost Standards for the 2023 Fiscal Year, heavy equipment rental functions as a substitute for procurement of heavy equipment through purchase. In its implementation, before entering into a rental agreement, CV. Barokah Abadi as the lessee is required to conduct an inspection that the goods provider guarantees that the condition of the rented heavy equipment is always ready for use (including routine maintenance and providing a replacement if the heavy equipment does not function properly), because the heavy equipment cannot be allocated maintenance costs. This is intended as an effort to take steps to effectively use the budget, while remaining part of the needs plan for the provision of procurement of heavy equipment for officials/office operations. The heavy equipment rental mechanism must comply with the applicable provisions for procurement of goods/services, in this case Presidential Regulation of the Republic of Indonesia Number 4 of 2015 concerning the Fourth Amendment to Presidential Regulation Number 54 of 2010 concerning Government Procurement of Goods/Services.

Default in the implementation of the agreement as mentioned above is an obstacle in the implementation of the lease agreement which generally occurs due to negligence on the part of the lessee, although in certain cases it can be caused by circumstances that force the lessee to fail to perform, resulting in default in the implementation of the lease agreement.

In the implementation of a heavy equipment lease agreement that creates rights and obligations between the two parties reciprocally, indirectly demands that both parties in its implementation are bound by what has been agreed. In general, the obstacles that occur in the obligations of both parties in the implementation of the lease agreement in general are default by the lessee, such as delays in returning heavy equipment (object of research) where the lessee returns the heavy equipment beyond the specified time period.

One of the heavy equipment rental companies in CV. Barokah Abadi in the implementation of the lease agreement, has been clearly regulated how the heavy equipment renter is responsible for the rented heavy equipment. In the heavy equipment lease agreement, the renter or consumer must be responsible for all damage and losses arising from the rented goods as covered in Article 1564 of the Civil Code. The renter is responsible for, among other things, returning the heavy equipment according to the agreed time, returning the heavy equipment in good condition as when rented.

## **2. Research Methods**

legal research method used by the author in this study is the empirical legal method or sociological legal research, namely research that uses primary data. Law which is empirically a social phenomenon, on the one hand can be studied as a causal variable (independent variable) that causes consequences in various aspects of social life. In addition, law can also be studied as a dependent variable

that arises as the end result of various forces in the social process.<sup>8</sup>

This study focuses on the search for primary data, while secondary data is more supportive, so that the type of research is empirical juridical, by conducting research on laws and regulations and the application of these regulations in heavy equipment rental agreements at CV. Barokah Abadi.

### 3. Results and Discussion

#### 3.1. Liability of Heavy Equipment Lessee in the Event of Default under the Rental Agreement

In Article 1319 of the Civil Code, agreements are divided into two types, namely named agreements and unnamed agreements. Named agreements are special agreements such as rent, sale and purchase agreements, exchange, partnership, association, grant, deposit of goods, loan, fixed and eternal interest, profit, grant of power of attorney, guarantor of debt, and peace. While unnamed agreements are agreements that arise, grow, live and develop in society. Named and unnamed agreements are subject to Book III of the Civil Code.

The purpose of the distinction in Article 1319 of the Civil Code is that there are agreements that are not governed by general teachings as contained in titles I, II, and IV. Article 1319 of the Civil Code does not forget to mention title IV, but is also regulated by special provisions that are subject to some that deviate from the general provisions, especially those intended are the contents of titles V to XVIII. The provisions in this title, which in common practice are called special agreements or named agreements.<sup>9</sup>

Based on Article 1548 of the Civil Code, what is meant by renting is an agreement, by which one party binds himself to provide enjoyment of an item to another party for a certain period of time, with the payment of a price agreed to by the latter party. People can rent various types of goods, both fixed and movable.

According to Yahya Harahap, an agreement (*verbintennis*) contains the meaning of a legal relationship regarding property between two or more people, which gives the power of right to one party to obtain performance and at the same time requires the other party to carry out performance.<sup>10</sup>

The difference between heavy equipment rented by individuals and companies according to the owner of CV. Barokah Abadi is:<sup>11</sup>

1. The heavy equipment rental agreement at CV. Barokah Abadi, most of the tenants come from individuals, while there are not many from companies, but in the rental of heavy equipment at CV. Barokah Abadi is done in writing,

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<sup>8</sup>Ronny Hanitijo Soemitro, 1988, *Legal Research Methods and Jurimetrics*, Jakarta: Ghalia Indonesia, p. 34.

<sup>9</sup>Salim HSOp.Cit.,Page 47

<sup>10</sup> Yahya Harahap, *Legal Aspects of Contracts*, 2nd Edition, Alumni, Bandung, 1986, Page 60

<sup>11</sup>Interview Results with the Head of CV. Barokah Abadi, on December 26, 2016 at 16.10 WIB

namely in the heavy equipment rental agreement, whether it is done in days, weeks, months and out of town depending on the renter of the heavy equipment.

2. The rental agreement for heavy equipment at CV. Barokah Abadi from the private sector is usually carried out by means of a survey first by the rental party because in this case if the tenant is a new customer and if the tenant has been around for a long time, they are not surveyed again because the rental party already knows the identity or place of residence of the old tenant, while for tenants from the company group, this is very rarely done because the rental party already knows the address of the company that will rent the heavy equipment clearly.

A legal entity is an organization, association or other community where its establishment is with an authentic deed and is treated by law as a person or as a person, a legal entity has rights and obligations, can be sued and/or can sue in court and can also have assets, its activities are in the fields of trade, industry, social and other fields in accordance with the contents (part) of its deed of establishment.<sup>12</sup>

Regarding the responsibility of this Legal Entity, there is no longer any doubt that a legal entity can also be held accountable in the criminal field. Only those who must undergo punishment are the members of the management, who carry out the violation. If the punishment is in the form of a fine, it must automatically be paid by the legal entity from its cash.<sup>13</sup>

Legal Entities (Rechtspersoon) are divided into 2 forms, namely:<sup>14</sup>

- 1) Public legal entity or Publiek Rechtspersoon is a legal entity established based on public law or concerning the interests of the public or the people or the state in general. This legal entity is a state agency and has territorial authority or is an institution formed by the authorities based on functionally by the executive or government that is given the task for that.
- 2) Private legal entity (civil) or Privaat Rechtspersoon is a legal entity established based on civil law or civil law concerning the personal interests of people in the legal entity. The legal entity is a private body established by the person for a specific purpose, namely seeking profit, social, education, science, politics, culture, arts, sports and others, in accordance with the applicable law legally.

A rental agreement is an agreement by which one party binds himself to provide another party with the enjoyment of an item, for a certain period of time, in return for payment of a price by the other party.<sup>15</sup>

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<sup>12</sup>Yan Pramadya Puspa, legal dictionary, Various sciences, Jakarta, 2008, page 97

<sup>13</sup>R. Suryatin, Loc.cit.,Page 67

<sup>14</sup>CST Kansil and Christine ST Kansil, Loc.cit. 29

<sup>15</sup>R Subekti, Loc. Cit., Page 39

In its implementation, the rental period for heavy equipment is a mutual agreement, but because of a very important right, the lessee often extends the period unilaterally, meaning that the lessee notifies the late return of the heavy equipment to the lessor by calculating the rental price. So the determination of the rental period is related to the rental price.

According to the author, regarding time limits for renting heavy equipment, the law does not regulate how to terminate written and oral rental agreements which have a certain time limit. It is best to provide appropriate termination for both parties or a termination deadline based on the heavy equipment rental agreement that has been made previously which can be done in days, weeks, months or out of town depending on the heavy equipment renter.

Furthermore, Article 1579 of the Civil Code states that "The lessor cannot terminate the lease on the grounds that he/she wishes to use the leased goods himself/herself unless it has been agreed otherwise."<sup>16</sup>

Based on the results of the interview with the owner of CV. Barokah Abadi stated that the form of agreement made in the implementation of heavy equipment rental at CV. Barokah Abadi is done in writing because it provides certainty regarding the rights and obligations of the parties in the implementation of the rental agreement so that if a dispute occurs it will help the proof process, therefore the rental agreement made in writing can be terminated by law.<sup>17</sup>

However, by law there is a difference between a written rental agreement and an oral rental agreement:

1. Written rental agreement

This is regulated in Article 1570 of the Civil Code, which states: "If the lease is made in writing, the lease ends by law if the specified time has passed without the need for any notification to that effect."

2. Oral lease agreement

This is regulated in Article 1571 of the Civil Code, which states: "If the lease is not made in writing, the lease does not end at an unspecified time, unless the other party states that he wishes to terminate the lease, taking into account the time limit required by local custom."

Based on the results of the interview with the owner of CV. Barokah Abadi said that the tenant must leave a photocopy of the KTP in the implementation of the heavy equipment rental agreement at CV. Barokah Abadi. The copy of the KTP is proof as a tenant if unwanted things happen in the implementation of the rental agreement, in addition to a photocopy of the Resident Identity Card (KTP), usually the tenant is also asked to attach a photocopy of the Driving License (SIM), and Family Card (KK). A photocopy of the identity is strong if there is a

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<sup>16</sup>Subekti and Tjitrosudibio, Civil Code, PradnyaParamita, Jakarta, 2001. Page 334

<sup>17</sup>Interview Results with the Head of CV. Barokah Abadi, on December 26, 2016 at 16.20 WIB.

default by the tenant for new customers and temporarily for old customers it is not given again because the tenant's identity is already on CV. Barokah Abadi in the old file.<sup>18</sup>

Based on the results of interviews with CV owners. Barokah Abadi regarding rights and obligations in heavy equipment rental agreements include the following:<sup>19</sup>

a) Right

The renting party has the following rights:

1. Receive a photocopy of KTP/SIM/KK from the tenant.
2. Receive guarantee from tenant.
3. Receive rent according to the agreed time.

The tenant has the following rights:

- 1) Accepting heavy equipment for rent.
- 2) Receive a guarantee of fit for use for heavy equipment from the lessor in accordance with the agreement made.

b) Obligation

1. The lessor has the following obligations:
2. Hand over the rented heavy equipment to the lessee.
3. Provide a guarantee of fit for use for heavy equipment for renters in accordance with the agreement made.

The parties who rent are:

- a) Provide a photocopy of your KTP/SIM/KK to the lessor.
- b) Providing guarantees to the lessor.
- c) Use rented heavy equipment in accordance with the purposes provided under the agreement.
- d) Pay the rental price at the agreed time.

The implementation stage is an important stage of the agreement process, both agreements made in writing. The implementation of the lease agreement in this study at CV. Barokah Abadi is made for a certain time in the form of days, weeks, months and out-of-town drops depending on the heavy equipment renter. To provide legal protection for the lessor, the lessee is charged with providing a guarantee in the implementation of the lease.<sup>20</sup>

An agreement is not required to be made in writing, except for certain

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<sup>18</sup>Interview Results with the Head of CV. Barokah Abadi, on December 26, 2016 at 16.26 WIB

<sup>19</sup>Interview Results with the Head of CV. Barokah Abadi, on December 26, 2016 at 16.32 WIB

<sup>20</sup>Interview Results with the Head of CV. Barokah Abadi, on December 26, 2016 at 16.40 WIB



agreements that specifically require certain formalities or (physical) actions. Based on Article 1554 of the Civil Code, the lessor is not permitted during the rental period to change the shape or composition of the leased goods.

In the provisions of Article 1338 paragraph (1) of the Civil Code, it is emphasized that: "Every agreement that has been legally made is binding on the parties who make it as a law between them." This agreement cannot be withdrawn or canceled by either party to the agreement, unless this is mutually desired by both parties, or based on reasons deemed sufficient by law.

According to the Owner of CV. Barokah Abadi, the guarantee given by the tenant in making a heavy equipment rental agreement at CV. Barokah Abadi carried out by individuals is such as a photocopy of KTP (Resident Identity Card), photocopy of SIM (Driving License), photocopy of KK (Family Card), and photocopy of KTM (Student Identity Card) if the heavy equipment rental at CV. Barokah Abadi is carried out by students. While heavy equipment rental from companies must provide a guarantee in the form of a complete and detailed company identity, including the company name, company owner, company address, and a photocopy of the company's deed of establishment.<sup>21</sup>

The law of guarantee is to guarantee the fulfillment of obligations that can be valued in money arising from a legal obligation. Therefore, the law of guarantee is very close to the law of objects.<sup>22</sup>

The scope of the study of guarantee law includes general guarantees and special guarantees. Special guarantees are divided into 2 types, namely material guarantees and personal guarantees. Material guarantees are divided into movable and immovable guarantees.<sup>23</sup>

Guarantees are divided into 2 types, namely:<sup>24</sup>

material guarantee (material guarantee), namely material guarantee in the sense of giving pre-emptive rights over certain objects and has the characteristic of being attached to and accompanying the object in question.

Intangible guarantee (personal guarantee), namely a personal guarantee does not provide priority rights over certain objects, but is only guaranteed by a person's assets through the person who guarantees the fulfillment of the obligation in question.

According to the owner of CV. Barokah Abadi, the use of collateral for the party renting is:

- 1) Provides rights and obligations for the lessee to obtain fulfillment of promises from the lessee if there is a default in the heavy equipment rental

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<sup>21</sup>Interview Results with the Head of CV. Barokah Abadi, on December 26, 2016 at 16.45 WIB

<sup>22</sup>Salim HS, *Development of Guarantee Law in Indonesia*, PT. Raja Grafindo Persada, Jakarta, 2008, Page 22

<sup>23</sup>Salim HS, *Ibid.*, page 8.

<sup>24</sup>Salim HS, *Op, Cit*, Page 23

agreement.

- 2) Providing encouragement to the lessee to return the rented heavy equipment in accordance with the specified agreement.
- 3) To anticipate bad intentions from the tenant.<sup>25</sup>

The owner of CV. Barokah Abadi stated that regarding the heavy equipment rental system with a driver, there is a difference in rates between renting heavy equipment with a driver or not. If the renter does not use a driver, the renter does not have to pay for the driver's services, only pays for the heavy equipment rental fee and if the heavy equipment rental uses a driver, the rate for renting heavy equipment increases because they have to pay for the driver's services of Rp. 500,000.00 per day depending on whether the renter wants to use the heavy equipment rental service with a driver and in the implementation of heavy equipment rental with a driver at CV. Barokah Abadi has many advantages, namely the driver of the heavy equipment rental can function as a tour guide who can guide the trip, not get lost and lose direction because they already know the roads they want to go to.<sup>26</sup>

The owner of CV. Barokah Abadi stated that in renting heavy equipment that is rented to the lessee must be in good condition and roadworthy, namely by checking the condition of the heavy equipment engine, electricity usually using a volt meter to check the power source, both alternator and battery, checking lights, air conditioner (AC), tires and the stability of heavy equipment which is done periodically and the lessee is obliged to maintain the condition of the heavy equipment as the heavy equipment when received by the lessee according to the heavy equipment rental agreement that has been determined previously.<sup>27</sup>

Based on the results of interviews conducted with tenants at CV. Barokah Abadi, tenants must meet the requirements that have been determined as appropriate in accordance with the contents of the heavy equipment rental agreement that has been previously determined by CV. Barokah Abadi as the owner of the heavy equipment rental.<sup>28</sup>

According to the author, in making a heavy equipment rental agreement, the lessee must fulfill the conditions that have been determined in the previous rental agreement to anticipate if the lessee commits a default or breaks a promise that could harm the lessor.

According to the owner of CV. Barokah Abadi, there is a difference in rates between the types or brands of heavy equipment that will be rented by the tenant, namely in the form of daily, weekly, monthly and out-of-town drops depending on the renter of the heavy equipment.

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<sup>25</sup>Interview Results with the Head of CV. Barokah Abadi, on December 26, 2016 at 16.50 WIB

<sup>26</sup>Interview Results with the Head of CV. Barokah Abadi on August 26, 2013 at 17.10 WIB

<sup>27</sup>Interview Results with the Head of CV. Barokah Abadi, on August 26, 2013 at 17.20 WIB

<sup>28</sup>Results of interviews with tenants of CV. Barokah Abadi

Based on the results of interviews conducted with tenants at CV. Barokah Abadi, there are differences in rates between the types or brands of heavy equipment to be rented according to the wishes of the tenant, heavy equipment rental agreements can be made in the form of days, weeks, months and out-of-town drops depending on the tenant.<sup>29</sup>

According to the author, in determining the rental price, the party renting it has been determined based on the brand or type of heavy equipment and the rental price of the heavy equipment to be rented by the lessee which has been determined by the party renting the heavy equipment.

Based on the results of the interview with the owner of CV. Barokah Abadi in the heavy equipment rental agreement, the payment of rent is made according to the agreement, namely paying the rent in advance before the heavy equipment is used and looking at the brand or type of heavy equipment to be rented depending on how many days the heavy equipment will be rented.<sup>30</sup>

Based on the results of interviews conducted with CV. Barokah Abadi tenants, in the heavy equipment rental payment system, the rental fee is paid 100% to the lessor before the heavy equipment is used by the tenant.<sup>31</sup>

According to the author, the rent paid 100% to the lessor before the heavy equipment is used by the lessee is one form of service provided by CV. Barokah Abadi to the lessee to avoid acts of default that can be committed by the lessee.

What is meant by payment is every act of fulfilling an achievement, regardless of the nature of that achievement. With this payment, the agreement between both parties is fulfilled. Of course, the party who is obliged to make payment is the Debtor. In accordance with Article 1382 of the Civil Code.<sup>32</sup>

According to Article 1382 of the Civil Code, it states that: "Every obligation can be fulfilled by anyone who has an interest, such as a person who is also in debt or a guarantor of a debt. An obligation can even be fulfilled by a third party, who has no interest, as long as the third party acts on behalf of and to pay off the debtor's debt or if he acts on his own behalf, as long as he does not replace the rights of the creditor."<sup>33</sup>

According to the author, the risk in running a heavy equipment rental business is a very important thing that must be understood by the lessor, while the lessee who borrows heavy equipment must also understand the risks that must be borne, namely things that are directly related to the implementation of the lease. To anticipate this, the rental system by conducting a survey to the lessee's house must be improved for the certainty of the lessor in the event of a default

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<sup>29</sup>Results of interviews with tenants of CV. Barokah Abadi

<sup>30</sup>Interview Results with the Head of CV. Barokah Abadi, on December 27, 2016 at 17.35 WIB

<sup>31</sup>Results of interviews with tenants of CV. Barokah Abadi

<sup>32</sup>Abd Thalib and Admiral, Op. cit., p. 184

<sup>33</sup>Subekti and Tjitrosudibio, Civil Code, PradnyaParamita, Jakarta, 2001. Page 350

by the heavy equipment lessee.

Based on the results of interviews conducted with the owner of CV. Barokah Abadi, the person responsible for bearing the risk if heavy equipment damage occurs during the rental period is the tenant.<sup>34</sup>

Based on the results of interviews conducted with CV. Barokah Abadi tenants, the tenant is responsible if there is damage to heavy equipment during the rental period, then the responsibility (risk) is entirely the responsibility of the tenant in accordance with the contents of the heavy equipment rental agreement at CV. Barokah Abadi which has been agreed upon between the two parties previously.<sup>35</sup>

According to Subekti, risk means the obligation to bear losses if an incident occurs beyond the fault of one of the parties that befalls the object referred to in the agreement.<sup>36</sup>

Article 1237 of the Civil Code states that, in the case of an obligation to provide a certain object, the object is the responsibility of the creditor since the obligation was born. If the debtor neglects to deliver it, then from the time of the neglect, the object is his responsibility.

The purpose of the article is an agreement that places obligations on only one party. But sometimes the risk in the agreement is placed on both parties, which is called a reciprocal agreement.<sup>37</sup>

If a rental agreement is in progress, if circumstances occur beyond the fault of both parties involved in the agreement, considerations need to be made to determine which party should bear the risk of the item being rented.

The risk of destruction of goods is divided into two types, namely total destruction and partial destruction of the leased object:

- a. If the goods rented by the lessee are completely destroyed through no fault of the lessee during the rental period, the rental agreement is void by law and the party who bears the risk of the destruction of the goods is the lessor (Article 1533 of the Civil Code), meaning that the lessor will repair them and bear all losses.
- b. If only part of the rented goods are destroyed, the tenant can choose according to the circumstances, to request a reduction in the rental price or to request cancellation of the rental agreement (Article 1553 of the Civil Code).

Basically, the lessee can demand both of these things, but cannot demand

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<sup>34</sup>Interview Results with the Head of CV. Barokah Abadi on December 27, 2016 at 17.45 WIB

<sup>35</sup>Results of interviews with tenants of CV. Barokah Abadi

<sup>36</sup>Subekti, Principles of Civil Law, PT. Intermedia, Jakarta, 2001, Page 144

<sup>37</sup>Subekti, *Ibid.*, page 145

compensation from the lessor (Article 1553 of the Civil Code).<sup>38</sup>

Based on the results of interviews conducted with CV. Barokah Abadi tenants, the cost of damage to heavy equipment is usually if the damage is at a light level, such as scratches on the heavy equipment, then the lessor will not ask for responsibility to the tenant, but if the damage is above Rp. 1,000,000.00-, then the responsibility for the damage to the heavy equipment is borne by the tenant in accordance with the agreed agreement.<sup>39</sup>

According to the author, damage to heavy equipment during the rental period is certainly very detrimental to both parties, for the lessee will suffer losses in the form of the purpose of renting heavy equipment not being achieved, while for the lessor is a loss in terms of material, namely the cost of damage to heavy equipment. Damage to heavy equipment can be divided into two types, namely minor damage and severe damage. In severe damage, it can be interpreted that heavy equipment has an accident.

The party responsible when the rented heavy equipment violates the law based on an interview with the Owner of CV. Barokah Abadi must be borne by the lessee with the established procedures, the management of heavy equipment at the police station is handled by the lessor, from the management, the costs incurred are charged to the lessee/lessee's family.<sup>40</sup>

Based on Article 1139 of the Civil Code, rental fees for fixed assets, repair costs that are the obligation of the lessee and everything related to the fulfillment of the rental agreement are included as receivables that take priority over certain goods.

Rights can be viewed from several aspects, namely from the aspect of the existence of the rights themselves, from the aspect of the relevance of the rights in national life and from the aspect of the relevance of the rights in social life. Viewed from the aspect of the relevance between the rights and social life, there are private rights consisting of absolute rights and relative rights.<sup>41</sup>

The difference between absolute rights and relative rights is:

1. Absolute rights can be applied to everyone while relative rights only apply to a certain person. With relative rights, third parties must respect the existing legal relationship.
2. Absolute rights allow their holders to exercise the substance of their rights through relationships with others. The flip side of this absolute right is that others may not violate the opportunities that the holder of the right has. While relative rights create demands on others to give something, do

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<sup>38</sup>Salim HS, Op.Cit., Page 62

<sup>39</sup>Results of interviews with tenants of CV. Barokah Abadi

<sup>40</sup>Interview Results with the Head of CV. Barokah Abadi, on December 27, 2016 at 17.55 WIB

<sup>41</sup>Peter Mahmud Marzuki, Introduction to Legal Science, Prenada Media Group, Jakarta, 2009, page 185

something or not do something. The flip side of relative rights is the obligation of others to give something, do something, or not do something.

3. The object of absolute rights is generally objects, while the object of relative rights is achievement, namely giving something, doing something, or not doing something. However, nowadays, what is categorized as objects is not only tangible goods, but also intangible goods, such as intellectual property rights.<sup>42</sup>

### **3.2. Settlement of Disputes Regarding Default by the Lessee in the Implementation of Heavy Equipment Leases**

One form of default by the first tenant named Agung Surya is suspected of not having good faith, namely the tenant rented heavy equipment for use for 2 (two) days by paying the rent in advance, but the rented heavy equipment was only returned after 10 (ten) days after being used by the tenant and the remaining rent for 10 (ten) days that had not been paid was difficult to collect and the tenant turned out to transfer the rental rights to another party that was not listed in the contents of the heavy equipment rental agreement without the knowledge of the owner of the rented heavy equipment and the default on the rental of heavy equipment carried out by the second tenant named Mr. Harlanto, CV. Barokah Abadi suffered a very large loss because the renter of heavy equipment had an accident and the rented heavy equipment could not be rented to another party.<sup>43</sup>

Default is not fulfilling or neglecting to carry out obligations as stipulated in the agreement made between the creditor and the debtor. In this study, it means that negligence is carried out by the debtor (lessee) in implementing the heavy equipment rental agreement with the creditor (the party who rents it).

According to Article 1239 of the Civil Code, it is stipulated that: "Every obligation to do something, or not to do something, if the debtor does not fulfill his obligations, is resolved in the obligation to provide compensation for costs, losses and interest."

Default by the lessee is essentially never desired by the lessor, but this has become a risk in itself for business actors.

Some examples of breach of contract for which compensation cannot be requested from the tenant based on the author's personal opinion are rented heavy equipment hitting someone and the person hit died, or carrying drugs in the heavy equipment.

Heavy equipment rented by the lessee if used as evidence at the Police Station. Based on the heavy equipment rental agreement at CV. Barokah Abadi which has been made between the lessee and the lessor, the lessee is obliged to pay all costs incurred for the case and also bear all costs related to damage and

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<sup>42</sup>Peter Mahmud Marzuki, *Ibid.*, p. 200.

<sup>43</sup>Interview Results with the Head of CV. Barokah Abadi, on August 26, 2013 at 18.05 WIB

administrative costs of heavy equipment at the Police Station. However, in reality, CV. Barokah Abadi resolved this issue amicably/consensually.<sup>44</sup>

According to the author, for large heavy equipment rental companies, default by several tenants may not have a negative impact on the continuity of the company, but for small companies, which generally only have 40% of the total heavy equipment leased, it certainly requires the lessor to be more selective in providing leases. This has an impact on small companies not being able to survive long in the heavy equipment rental business, especially if the heavy equipment leased is still in credit status and business competition that requires business actors to not be allowed to take a long time to decide to lease or reject leases.

The form of dispute resolution for tenants who are in default in terms of not returning within the specified time according to the management of CV. Barokah Abadi is:<sup>45</sup>

- a) The rental time is 12 hours for half a day and 24 hours for a full day of heavy equipment rental. If it is more than 12 hours, it is counted as one day's usage time or 24 hours even if the return is less than 24 hours.
- b) If the renter wants or will use the rented heavy equipment for 1 day or 2 days or more, the rental period is 24 hours multiplied by how many days the renter will rent the heavy equipment.
- c) The length of the rental period is an agreement between the parties, the heavy equipment rental agreement can be made in days, weeks, months and out of town depending on the heavy equipment renter.

The form of dispute resolution for tenants who experience default is carried out amicably or non-litigation, namely resolving cases outside the court by prioritizing a sense of togetherness and family between the tenant and the lessor.<sup>46</sup>for tenants who are in default in the event that heavy equipment is damaged due to an accident according to the head of CV. Barokah Abadi is heavy equipment entered into the workshop on the initiative of the lessor, the lessee is asked to be responsible in the form of payment of rent while the heavy equipment is in the workshop, because the cost of damage to the heavy equipment has been borne in advance by the insurance party, or by means of the administration costs borne in advance by the lessor, after the administration is completed, negotiations are held between the lessor and the lessee, so that it is possible that the administration costs are borne jointly by the lessee and the lessor.<sup>47</sup>

Legal problems in the implementation of an agreement must be resolved by the parties who made it by prioritizing a sense of justice, namely providing a wise

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<sup>44</sup> Interview Results with the Head of CV. Barokah Abadi, on August 26, 2013 at 18.07 WIB

<sup>45</sup> Interview Results with the Head of CV. Barokah Abadi, on August 26, 2013 at 18.09 WIB

<sup>46</sup> Interview Results with the Head of CV. Barokah Abadi, on December 26, 2016 at 18.10 WIB

<sup>47</sup> Interview Results with the Head of CV. Barokah Abadi, on December 26, 2016 at 18.13

solution to every problem that occurs.

Based on the results of the interview with the owner of CV. Barokah Abadi in terms of dispute resolution against default by the tenant is carried out amicably or non-litigation, namely the settlement of cases outside the court by prioritizing a sense of togetherness and family between the tenant and the party renting.<sup>48</sup>

According to the author, dispute resolution that can be resolved outside the court is limited in the sense that it can only be used for certain legal fields, namely in the civil field, this is due to the nature of civil law itself, namely concerning the legal relationship between one human being and another so that there is no public element. Therefore, if a legal event occurs that can cause losses that are only experienced by the parties and does not have a detrimental impact on society, there is no need for state intervention in resolving the dispute.

Quoted from the Court Journal,<sup>49</sup> litigation dispute resolution is a dispute resolution carried out in court, while non-litigation dispute resolution is a dispute resolution carried out outside the court. Each of these dispute resolutions has advantages and disadvantages as follows:

- 1) Dispute resolution through litigation can be said to be a dispute resolution that forces one party to resolve the dispute through the courts, while dispute resolution through non-litigation is carried out based on the will and good faith of the parties to resolve the dispute.
  - 2) Dispute resolution through litigation has an executorial nature in the sense that the implementation of the decision can be enforced by the authorized institution. While in dispute resolution through non-litigation, its implementation cannot be enforced because it depends on the will and good faith of the parties.
  - 3) Dispute resolution through litigation is generally carried out by hiring the services of an advocate or lawyer so that the costs incurred are of course greater.
  - 4) Dispute resolution through litigation must of course follow the formal requirements and procedures in court and as a result the time period for resolving a dispute becomes long. Meanwhile, dispute resolution through non-litigation does not have formal requirements and procedures because the form and procedure for dispute resolution are left entirely to the parties.
1. Dispute resolution through litigation is open, meaning that anyone can witness the trial, except for certain cases, such as immoral cases. While the confidential nature of dispute resolution through non-litigation means that only the disputing parties can attend it and it is closed to the public so that everything

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<sup>48</sup>Interview Results with the Head of CV. Barokah Abadi, on December 27, 2016 at 18.17

<sup>49</sup>Bintoro, Culture of Deliberation to Resolve Disputes, Jurnal Konstitusi Edition Vol 4 No 2, October 2012, UIR Pess, Pekanbaru, 2012, Page 238



revealed during the examination cannot be known by the public with the intention of maintaining the reputation of the disputing parties.

One form of default by a tenant who is suspected of having good intentions is that the tenant rents heavy equipment for use for 2 (two) days by paying the rental fee in advance, but the rented heavy equipment is only returned after 7 (seven) days of use by the tenant and the remaining rental fee for the 5 (five) days that has not been paid is difficult to collect.<sup>50</sup>

Default is not fulfilling or neglecting to carry out obligations as stipulated in the agreement made between the creditor and the debtor.<sup>51</sup>In this study, it means negligence by the debtor (lessee) in carrying out the lease with the creditor (the party renting out).

Default from the lessee is basically never desired by the lessor, but it has become a risk for business actors. Based on someone who once worked at a heavy equipment rental in Pekanbaru City, it was revealed that, when the heavy equipment is running; the head thinks. As a simple example, for reasons of service to consumers, it is very rare for the lessor to ask for a guarantee from the lessee for the heavy equipment being rented.<sup>52</sup>

Some examples of breach of contract that cannot be requested for compensation from the tenant based on the author's personal opinion are rented heavy equipment hitting a person and the person hit dies, or carrying drugs in the heavy equipment. From the examples presented, the rented heavy equipment will be used as evidence at the Police Station. Based on the agreement, the tenant is obliged to pay all costs incurred for the case, but in reality the lessor bears all costs related to damage and administrative costs of heavy equipment at the Police Station. It can be concluded that although the agreement has determined the burden of responsibility if something happens to the rented goods, but for one reason or another, something that was promised cannot be realized.

According to the Author, for large heavy equipment rental companies, default by several tenants may not have a negative impact on the continuity of the company, but for small companies, which generally only have 40% of the total heavy equipment leased, it certainly requires the lessor to be more selective in providing leases. This has an impact on small companies not being able to survive long in the heavy equipment rental business, especially if the heavy equipment leased is still in credit status and business competition that requires business actors to not be allowed to take a long time to decide to lease or reject leases.

The form of dispute resolution for tenants who are in default in terms of not returning heavy equipment at the specified time according to the management

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<sup>50</sup>Interview with one of the heavy equipment renters at CV. Barokah Abadi, December 30, 2016.

<sup>51</sup>Salim HS, *Contract Law - Theory and Techniques of Contract Drafting*, Jakarta, 2008, page 98.

<sup>52</sup>Interview with one of the heavy equipment renters at CV. Barokah Abadi, December 30, 2016.

of CV Citra Sarana is:<sup>53</sup>

- a) If the delay is 1 (one) or 2 (two) hours, the renter will not be subject to a fine, provided that the renter has contacted CV Citra Sarana that the heavy equipment has finished being used but is still at the heavy equipment wash, has entered the city of Pekanbaru, and so on.
- b) If the delay is 5 (five) to 12 (twelve) hours or half a day, the renter will be charged a rental fee for a rental period of 1 (one) day.

The form of dispute resolution for tenants who are in default in the event that heavy equipment is damaged due to an accident according to the head of CV Citra Sarana is that the heavy equipment is put into the workshop on the initiative of the lessor, the lessee is asked to be responsible in the form of payment of rent while the heavy equipment is in the workshop, because the cost of damage to the heavy equipment has been borne by the insurance party, or by means of the administration costs being borne in advance by the lessor, after the administration is completed, negotiations are held between the lessor and the lessee, so that it is possible that the administration costs are borne jointly by the lessee and the lessor.<sup>54</sup>

The form of dispute resolution for consumers who are in default in the case of heavy equipment being used as evidence by the police according to the Head of CV Citra Sarana based on an example that has occurred is that rented heavy equipment (as many as 2 units) was used for criminal acts so that the lessee did not want to be responsible for the cost of managing the heavy equipment as evidence at the Police Station. The cost incurred by the lessor of Rp. 15 million/heavy equipment was not reimbursed by the lessee because the lessee had undergone a criminal process, the lessor was forced to pay the management fee because if the heavy equipment was not used, the heavy equipment that should have been producing became passive.

However, it is possible that the case between the tenant and the lessor will continue after the tenant who committed the crime has completed his sentence.<sup>55</sup>

In the book *Several Reviews on the Judicial System and Dispute Resolution* by Yahya Harahap as quoted by Ahmadi Miru, several methods can be used to resolve disputes outside the court for business actors in the scope of civil law, namely arbitration, conciliation, and mediation, for reasons including:

1. Dispute resolution through the courts is very slow.

Dispute resolution through the courts is generally slow or called a waste of time due to the very formalistic and very technical examination process. In addition,

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<sup>53</sup>Interview Results with the Head of CV. Barokah Abadi, on December 27, 2016 at 18.17

<sup>54</sup>Interview Results with the Head of CV. Barokah Abadi, on December 27, 2016 at 19.00.

<sup>55</sup>Interview Results with the Head of CV. Barokah Abadi, on December 27, 2016 at 19.30.

the increasingly rapid flow of cases has resulted in the courts being burdened with a lot of work.

## 2. Expensive litigation costs.

The cost of the case in the process of resolving disputes through the courts is considered very expensive, especially when associated with the length of the dispute resolution, because the longer the dispute resolution, the more costs must be incurred. This cost will increase if the lawyer's fees are also not small.

## 3. Courts are generally unresponsive.

The unresponsiveness or unresponsiveness of the court can be seen from the court's lack of responsiveness in defending and protecting public interests.

Likewise, the courts are often considered to be unfair, because they only provide services and opportunities and freedom to "big institutions" or "rich people". Thus, criticism arises stating that "the law oppresses the poor, but the rich regulate the law."

## 4. The court decision did not solve the problem.

The court decision is considered not to have resolved the problem and is even considered to have complicated the problem because objectively the court decision is unable to satisfy and is unable to provide peace and tranquility to the parties.

## 5. The generalist abilities of judges

Judges are considered to have limited abilities, especially in the current age of science and technology and globalization because the knowledge they have is only in the legal field, while outside of that their knowledge is general and even lay. Thus, it is very impossible to be able to resolve disputes that contain the complexity of various fields.<sup>56</sup>

## 4. Conclusion

That in the implementation of heavy equipment rental at CV. Barokah Abadi, in the heavy equipment rental payment system, the rent is paid 100% to the lessor before the heavy equipment is used by the lessee and there is a special guarantee in the form of material guarantees and personal guarantees, then to ensure security in heavy equipment rental, a rental system is also made by conducting a survey to the lessee's house for the sake of certainty to the lessor if there is a default from the heavy equipment lessee. The liability of the heavy equipment renter in the event of default is as follows: In the event of a delay in returning heavy equipment, the renter will be charged an additional fee according to the amount of time of delay. In the event of damage to heavy equipment facilities caused by negligence or deliberate action by the heavy equipment renter, the renter is responsible for replacing all costs incurred for

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<sup>56</sup>Ahmadi Miru, Op. Cit., pp. 112-113.

repairing the heavy equipment. In the event of loss of any part of the heavy equipment, the renter must replace the lost equipment. In the event that heavy equipment is transferred (rented again), the renter must immediately return the heavy equipment in accordance with the agreed agreement.

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