p-ISSN: 1693-0657 | e-ISSN: 2746-1963
NORMA
https://journal.uwks.ac.id/index.php/norma

Rejection of Accident Insurance Claims by Insurance Companies

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Abstract:

Insurance is a form of compensation for the occurrence of uncertain risks and the delegation of responsibility to bear those risks. The event of this risk is uncertain because it depends on uncertainty. The transfer of risk is carried out by making an insurance agreement or insurance agreement. The first party is usually referred to as the insured. The second is the party willing to accept the risk of the first party by accepting a payment called a premium. Risk takers are often referred to as insurance companies. The research method used in this study uses a legal approach research method (statute approach) and a conceptual approach (conceptual approach). Based on the results of this study, the researcher states that the basis or cause of the rejection of an insurance agreement is because the insurance agreement is a conditional agreement, where the insurer only bears the loss suffered by the insured party following the terms of the event that resulted in the loss to the insured as agreed, by the parties in the insurance agreement. Or the insured party does not carry out its obligations to pay premiums to the insurer. The legal remedy that the insured party can take if the insurer rejects the claim is to file a lawsuit at the local District Court, as regulated in Article 23 of Law no. 8 of 1999. It can be completed through the BMAI institution.

Keywords: *Insurance; Claim; Dispute Resolution.*

Article's History:

Received:
June 14, 2021;

Peer-Reviewed:
June 21, 2021;

Accepted:
July 15, 2021;

Published:
July 30, 2021.

DOI:
10.30742/nlj.v18i2.1585

INTRODUCTION

In their nature as social beings and individual beings, humans always try to fulfill all their needs. To meet the needs of life, humans always have to face unexpected situations. This proves that humans will always be faced with the possibility of something happening in the course of their lives. This event can harm him, his family, and the people who care about him, such as accidents and others. In an extreme form or event, a state of uncertain probability that gives risk. Institutions or organizations that can accept other people's risks are insurance organizations or insurance companies. Insurance companies in their line of business openly try to offer/provide protection and hope for the future to every person or group living in the community or other organization regarding the ability to bear additional losses due to an uncertain event.

Insurance or compensation always includes the existence of a risk and the delegation of responsibility to bear that risk. The occurrence of this risk is uncertain because it depends on uncertainty. The other party who accepts responsibility and opposes the other party to give this responsibility is obliged to pay a sum of money to the beneficiary. In this regard, Abdulkadir Muhammad stated, the risks that can be insured are:

a. As far as value in money;
b. Must be a pure risk, meaning that it only has the opportunity to cause harm;
c. Losses arising as a result of the occurrence of an event that is not fixed or definite;
d. The insured must have an insurance interest;
e. Not prohibited by statutory provisions and does not conflict with and violate public order.[1]

The transfer of these risks is carried out by making an insurance agreement or an insurance agreement. The risk faced or accepted by one party by making an agreement, which is delegated to another party, namely the guarantor. There is an insurance agreement as mentioned in it; there are two parties. The insured party in question is the party that should bear the risks it faces but prefers to transfer the threats it faces to another party. The second is the party who is able and willing to accept and bear the risk experienced by the insured party through receiving payment of an agreed amount of money from the insured party, which is commonly referred to as a premium. Risk takers are often referred to as insurance companies.

Insurance companies in providing insurance claims are also not easy enough to make insurance claims. This is because so many factors can affect the difficulty of an insurance claim, the problem of the insurance claim process, and the potential for the proposed insurance claim to be rejected by the insurance company. Furthermore, insurance companies will discuss the causes of rejection of insurance claims by insurance companies when submitting insurance claims based on the insurance agreement.[2]

RESEARCH METHOD

This research is normative legal research with a statutory approach.

DISCUSSION

Insurance or coverage agreements are regulated explicitly in the Commercial Code. Therefore, this agreement is categorized as an agreement that is special and governed by special provisions. However, taking into account Article 1 of the Civil Code, the general conditions of the agreement in the Civil Code are as lex general or special rules that must not be violated or omitted as long as they have not explicitly

[1] M. Abdul kadir, Hukum Acara Perdata Indonesia (Bandung: Citra Aditya Bakti, 1990), 119.

[2] Fani Martiawan Kumara Putra, "Characteristic of Preliminary Rights For Insured in Getting Repayment of Losses on Bankrupt Insurance Companies," *Perspektif* 22, no. 2 (2017): 180–89.

been regulated in the provisions of the Criminal Code. The regulatory system used in the KUHD does not appear to be systematic enough due to improper layout and presentation, resulting in inappropriate locations. Therefore, special skills are needed to be able to carry out learning well.[3]

Article 246 of the KUHD determines that insurance is an agreement whereby the insurer has an obligation to the insured, by collecting premiums, to compensate for the loss, damage, or loss of income that may be suffered by the insured as a result of the occurrence of an unknown event or which is feared to occur.

The limit mentioned above by Emmy Pangaribuan was further developed as follows:[4] Insurance is an agreement between the insurer and the insured, in which the insurer will get a premium from the insured to compensate for losses that are not expected by the insured because the loss occurs due to loss or lack of profit that may be suffered by the insured in the event of an unexpected event.

From the limitations mentioned above, Emmy Pangaribuan further explained that an insurance or insurance contract has the following characteristics:[5]

1. Insurance is a compensation contract (shcadeverzekering or indemnities contract). Where the insurer states the ability to replace the claim because the insured suffers a loss and what is replaced by the insurer is the same as the actual damage sustained by the insured (principle of indemnity);
2. An insurance or coverage agreement is a conditional agreement. The insurer's obligation to compensate for losses is only fulfilled if an event occurs where the implementation of insurance occurs;
3. An insurance agreement or coverage is a reciprocal agreement. The insurer's liability for compensation as the insurer is expected to be equivalent to the insured's obligation to pay premiums;
4. Losses are unspecified events in which liability is involved.

Article 246 of Wetboek van Koophandel, contain 3 (three) main characteristics of the insurance agreement, which is stated as follows:[6]

1. Insurance is an agreement or indemnity agreement or an indemnity contract that is remembered by one party (the insurer) against another party (the policyholder or the insured) to repay the loss; usually the loss it may suffer;
2. Insurance can be said as a conditional agreement; in other words, the insurer bears the compensation suffered by the insured in an unpredictable situation;
3. Insurance is said to be a reciprocal agreement. This means the insurer has a guarantee with conditions given to the insured for the loss suffered by the insured.

[3] Sri Rejeki Hartono, *Hukum Asuransi Dan Perusahaan Asuransi* (Jakarta: Sinar Grafika, 2001), 90.
[4] Emmy Pangaribuan, *Hukum Pertanggungan Dan Perkembangannya* (Yogyakarta, 1990), 22.
[5] Ibid.
[6] P.L. Wery, *Hoofzaken van Het Verzekeringsrecht* (Deventer: Kluwer B.V, 1984), 7.

Furthermore, P.L. Wery, still in the same book, argues that 2 (two) other characteristics of an insurance agreement, although not regulated in the same article (namely in 246 KUHD) a different theme, namely the provisions contained in article 257 and 258 KUHD, are as follows:[7]

1. Insurance is a consensual agreement that can arise after a contract is made, namely a contract without a form;
2. Insurance has a unique nature: trust, mutual trust between the parties who determine the agreement itself.

The provisions in Article 246 of the KUHD, which regulates the limits of insurance contracts, are the main elements of the regulatory system for insurance contracts. The article regulates a legal relationship by using certain conditions that must be fulfilled in an agreement to be referred to as an insurance contract. The unique nature stipulated in Article 246 of the KUHD is used as the basis of an insurance contract, complementing other important principles as regulated further in the KUHD. The principles referred to above are additional principles for insurance contracts held in articles 250, 251, 253, 257, 258, 266, etc., from KUHD.

Chapter X deals with several types of insurance in the same book, including fire risk coverage for unharvested agricultural products and life insurance. The second book is regulated about insurance against the dangers of the sea and the dangers of slavery in Chapter IX and Chapter X concerning insurance against the risks in transportation on land, rivers, and inland waters.

Insurance contracts have unique properties and characteristics compared to other contracts and need to be studied and studied more deeply to understand them fully. The main difference between insurance contracts and other agreements lies in the performance of the service. In general, the parties' achievements in other agreements can be carried out together immediately and simultaneously. Thus, creditors and debtors can simultaneously do other work. That way, it can be immediately known who has succeeded and who has not so that the parties' position can be learned, for example, in contracts of sale, lease, transportation, etc. However, in contrast to insurance contracts whose primary purpose is an agreement to provide protection and compensation, the mechanism is not as simple as other agreements.[8]

There is a time gap in the insurance agreement to carry out the performance between the I/Insurer and the II/Insured party's achievements. The hole in question occurs because the insurer's achievements still have to depend on a "certain uncertain event/condition," which is also a requirement in the insurance agreement, namely an economic loss suffered by the insured caused by the occurrence of the uncertain event Therefore, even though the performance of the second party/insured has been perfectly

[7] Ibid., 8.

[8] Fani Martiawan Kumara Putra, "Urgency of Notary Engagement as a Limitation on the Freedom of Contracts on the Pre-Project Selling Events," *Perspektif* 24, no. 2 (2019): 101–17.

implemented, the first party/insurer/insurance company cannot immediately carry out its performance perfectly if the event agreed upon between the parties does not/ has not occurred. So one achievement cannot be directly and simultaneously carried out reciprocally with the other party's investment because it is still dependent on an uncertain event. Due to its unique nature, the insurance agreement requires a more thorough study by paying attention to certain interrelated moments that do not always occur together. The first momentum is when the insurance agreement occurs and is valid, while the second momentum is when the insurance agreement is implemented. These two momentums have a reasonably long-time gap of up to one year following the termination of the contract (for example, in fire insurance). Even the events that were agreed upon did not happen at all. (In this case, the insured does not suffer a loss at all, so the insurer's tangible achievement of paying compensation does not need to occur.[9]

These circumstances typically give color and character to insurance agreements, so this agreement requires a different study and approach to other types of payrolls. In addition, the insurance agreement, even though in absolute terms it only concerns the parties, can ideally involve the interests of the broader community since the object of the insurance agreement concerned has an essential meaning for the wider environment. So basically, an insurance contract is a contract with precise characteristics that will provide its advantages compared to other agreements.

Article 255 of the Commercial Code states that as proof of the existence of an insurance agreement is the existence of a policy. Still, according to Article 257 of the Commercial Code, an insurance contract is evidence, but without an insurance policy, an insurance contract has been made when the insurance policy is closed. Moreover, the insurance agreement since it was made has the right to bind both parties as a mandatory law according to Article 1338 paragraph 1 of the Civil Code, that all valid agreements apply as law for those who carry it out, while Article 1338 paragraph two of the Civil Code states that the contract cannot be terminated without the agreement of both parties or for reasons determined by law article 1266 of the Civil Code. The provisions of article 1266 of the Civil Code are described in advance as follows:

The void condition is considered to always exist in a reciprocal agreement, as long as one of the parties does not carry out its obligations. The agreement is not null and void in such a case, but the judge must request the cancellation. This request must also be fulfilled, even if the non-performance condition of cancellation is provided for in the agreement. For example, suppose the terms of cancellation are not stated in the agreement. In that case, the judge may, on a case-by-case basis, be free, at the request of the defendant, for a specific time to continue to fulfill his obligations, but this period will not be exceeded by a month.

[9] Wery, *Hoofzaken van Het Verzekeringsrecht*, 92.

According to article 1266 of the Civil Code, there are controversial issues between these verses if you look closely. Article 1266 paragraph 1 of the Civil Code states that the terms of termination always exist in a reciprocal agreement if one party fails to fulfill its obligations or becomes bankrupt. Thus, according to the provisions of article 1, a default is a condition of the void. However, in article 1266, paragraph 2 of the Civil Code, the agreement is not automatically null and void by law if there is a default. Still, it must be requested for cancellation by the judge. As a result, the provisions of Article 1266 of the Civil Code are, of course, controversial.

Article 1266 of the Civil Code concerning the conditions for revocation relating to prohibitions in an agreement are revoked unilaterally unless agreed otherwise by both parties or for specific reasons. Article 1338 paragraph 2 of the Civil Code. Unilateral termination of the contract can be carried out because the Power Purchase Agreement violates Article 1266 of the Civil Code.

To see the problem of applying clauses other than those regulated in Article 1266 of the Civil Code, you must consider each case on a case-by-case basis. For example, in cases involving commercial agents and consumers, there is a need for legal protection for consumers against unilateral actions by commercial agents without a court decision. However, there must be legal certainty for the parties to respect their rights and obligations in the case between a business entity and a business entity.

Insurable Interest is an absolute requirement to make an insurance contract. If there is no insurable interest, the insurance contract becomes invalid or void. As stated by Chris Parsons, David Green, and Mike Mead (1995), Insurable Interest is "Legal insurance rights arising from the economic relationship between the insured and the insured subject recognized by law." Therefore, it is a legal right to take insurance coverage for the relationship between the insured and financial purposes. a person can be interested in in the insured object if that person suffer a loss due to the loss or damage to the insured entity.[10]

The necessity of insurable interest Insurance contracts are intended to have an insurable interest to prevent insurance from becoming a game. But unfortunately, bad things happened to the object in question.[11] Concerning the responsibilities of business actors, in this case, the insurer is regulated in the Law on Insurance Business, Number 40 of 2014. In other words, Article 31 of the Insurance Law stipulates as follows:

1. Insurance business actors, whether agents, brokers, or business entities, are expected to apply all expertise, prudence, and accuracy when providing services or dealing with policy owners, insured persons, or participants;
2. Insurance business actors, both agents, brokers, and business entities offer 2 (two) conventional and sharia insurance products;

[10] Kun Wahyu Wardana, *Hukum Asuransi-Proteksi Kecelakaan Transportasi* (Bandung: Mandar Maju, 2009), 31.

[11] Joko Trilaksono, *Perlindungan Hukum Pemegang Polis Asuransi Terhadap Kendaraan Bermotor Dalam Angkutan Penyeberangan*, n.d., 30.

3. Business actors in the insurance sector, whether agents, brokers, or business entities, need to process claims and complaints through a system that is fast, accessible, and impartial;
4. Insurers, sharia insurers, reinsurers, and sharia reinsurers take or must take steps that can delay claims or payments, resulting in delays in claims or expenses;
5. As referred to in paragraph (3), the new rules for handling claims and complaints are processed quickly, easily accessible, and impartially regulated in the provisions of the Financial Services Organization Rules.

Of course, the number of claims from insurance consumers does not mean that insurance companies routinely violate consumer rights. Insurance consumers are also vulnerable to fraud by presenting inaccurate and complete facts (misrepresentation), which in principle can influence the insurance company's decision to accept or not accept the risk proposed by the insured or determine the amount of premium. You need to know that the dispute needs to occur, and the trigger can come from the insurer or the insured for effective legal documents and dispute resolution mechanisms. Law Number 8 of 1999 concerning Consumer Protection is a legal instrument that can handle and resolve disputes.[12]

Sri Rejeki provides a method on how to detect insurable interests using the following metrics:[13]

1. The extent to which the insured's a relationship with the subject/object of the insurance policy until the occurrence of the agreed event;
2. Events that have occurred did they result in loss or not.

There is an application of this insurable Interest that can be different by looking at the type of insurance.[14]

1. *Life Assurance.* Everyone has an insurable interest that is not limited to themselves, and in theory, anyone can insure for any amount of coverage. However, a person's ability to pay premiums will restrict the amount of coverage desired. In addition to people who have an insurable interest in you, someone who lives in a husband-wife relationship may also have an insurable interest as your life partner. A husband can guarantee his wife;
2. *Property insurance.* Insurable interest Property insurance is relatively easy to determine using the property approach. Property owners will inevitably suffer losses if their property is damaged or destroyed. Associated with part or joint owners, partial ownership of an asset can guarantee the exclusive right. This does not mean that the insurance company will also be fully compensated for loss or damage to property. The amount of compensation received is always adjusted to the percentage of damaged joint property. For example, the Trustee

[12] Ibid., 31.
[13] Hartono, *Hukum Asuransi Dan Perusahaan Asuransi*, 100–101.
[14] Wardana, *Hukum Asuransi-Proteksi Kecelakaan Transportasi*, 34.

may insure the entire amount of the property entrusted to him even if he was only partially interested. In the event of a request, the excess of specific interests must be transferred to other parties who have the same interests;

3. *Hak Tanggungan* Hak Tanggungan are prevalent in home buying transactions. Hak Tanggungan is a written delivery of real estate law as collateral for paying a debt provided that the delivery is canceled at the time of payment. Both parties have an insurance interest;
4. *Executor & Trustee.* Executors and Trustees establish in writing the title of property as security for the payment of a debt provided that the surrender is canceled at the time of payment. For stakeholders, they have an insurable interest in the entrusted property.
5. *Bailees.* Bailee is the person who is responsible for other people's belongings given to him, whether loaded or not. Pawnshop owners, laundry owners, and workshop owners are examples of items provided by Bailee owners (pawnshops, laundry items, repair shops), each of which has its responsibilities;
6. *Agents.* The principal or employer has an insurable interest in his agent and can insure on his behalf.
7. *Marine insurance.* British law provides actual limits on the interests that can be insured in Article 5 of the Marine Insurance Act of 1906. This provision states that in the interests of the insured, the insured enjoys the security of his property and is liable for losses if the property is destroyed or broken.

Violation of the principle of honesty does not necessarily become the fault of the insured. For example, if the insured does not know that he is sick, then the insurer is obliged to check the insured's health condition. Thus, if there are future health problems that the insured does not meet the policy's requirements, it can be avoided. In addition, the insured provides false or unfaithful information because the insured's fraud can be known. Therefore, in addition to rejection due to a violation of the principle of good faith or the provision of false information, denial of a claim is also caused by non-compliance with the insurance policy provisions.[15] The insured or policyholder must avoid claim rejection; for various reasons, claims can be rejected.[16]

Regarding insurance claims, it is regulated in several regulations, namely Article 23 Paragraph (1) Government Regulation of the Republic of Indonesia Number 1992 as amended by Government Regulation Number 39 of 2008 concerning the second amendment to Government Regulation Number 73 of 1992 as follows: "Insurers or reinsurers prohibited from taking actions that can cause delays in settlement of claims,

[15] Aditama Setya Prakoso, "Polis Asuransi Jiwa Sebagai Alat Bukti Penuntutan Klaim Dalam Perjanjian Asuransi Jiwa (Studi Di PT Asuransi Jiwasraya Semarang Timur)," *Diponegoro Law Journal* Vol. 5 (2016): 9.

[16] Hilda Yunita Sabrie, "Pembayaran Klaim Asuransi Jiwa Akibat Tertanggung Bunuh Diri," *Jurnal Yuridika* Vol. 26 No (2011): 42.

or not taking steps that can result in delays in settlement and payment. Considering the description above, it can be explained that in an insurance contract, the rights and obligations of the parties that arise are called redemption rights and responsibilities. The existence of this defect gives the injured party the right to file a lawsuit based on the fault to the District Court or resolve it without litigation, primarily through BMAI or BPSK.

CLOSING

Conclusion

The basis or cause of the rejection of an insurance agreement is because the insurance agreement is a conditional agreement, where the insurer only bears the loss suffered by the insured party following the conditions of the event that resulted in the loss to the insured as agreed by the parties in the insurance agreement. Or the insured party does not carry out its obligations to pay premiums to the insurer.

Recommendation

Legal experts and the government should form rules that specifically regulate insurance agreements and proper protection for both the insurer and the insured.

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Joko Trilaksono. *Perlindungan Hukum Pemegang Polis Asuransi Terhadap Kendaraan Bermotor Dalam Angkutan Penyeberangan*, n.d.

M. Abdul kadir. *Hukum Acara Perdata Indonesia*. Bandung: Citra Aditya Bakti, 1990.

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p-ISSN: 1693-0657 | e-ISSN: 2746-1963
NORMA
https://journal.uwks.ac.id/index.php/norma

Legal Analysis of Universitas Wijaya Kusuma Surabaya Tower II Building Construction Agreement Between Wijaya Kusuma Foundation and PT Sinar Waringin Adikarya

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Abstract:

In this study, researchers used the title Legal Analysis the Implementation of the Tower II Building Construction Agreement Wijaya Kusuma Surabaya University with PT SINAR WARINGIN ADIKARYA. This research was conducted To find out and analyze: Rights and Obligations of each party in the Towering Contract (Construction Contract) of Tower II Building, Universitas Wijaya Kusuma Surabaya, the form of the responsibilities of each party in the contracting contract (Construction Contract) Tower II Building, Universitas Wijaya Kusuma Surabaya, if one party makes a mistake. From the results of the analysis conducted in this study, the researcher states that: Rights and obligations must be carried out by each party as stated in the work implementation agreement as contained in Attachment to the work implementation agreement Number: 597/WK/XII/2017, as stated in Article 3 of the agreement when referred to as a second party's obligation it means the right of the first party, among others, to carry out the work carefully, accurate and complete responsibility by providing experts and other personnel, materials, equipment needed for the implementation of the work. The responsibilities that must be carried out in this work implementation agreement must be guided by the provisions of the agreement as referred to in the Attachment to the work implementation agreement Number: 597/WK/XII/2017, namely contained in article 4, article 6, article 7, article 8, and article 11. .

Keywords: *Agreement; Construction; University.*

Article's History:

Received:
June 9, 2021;

Peer-Reviewed:
June 21, 2021;

Accepted:
July 15, 2021;

Published:
July 30, 2021.

DOI:
10.30742/nlj.v18i2.1586

INTRODUCTION

Human development has been around for centuries. Development is an effort to create prosperity and welfare because it can be said that the law relates to chartering and buildings as old as human civilization. If the building was erected by someone else, then the basic principles of law, contracting and building can be applied even though the form is straightforward.

The realization of a just and prosperous society based on Pancasila and the 1945 Constitution of the Republic of Indonesia, development activities both in physical and non-physical development play an essential role in the welfare of the Indonesian nation. The development of the physical sector in Indonesia is in the form of construction of

projects, both facilities and infrastructure in the form of construction and rehabilitation of roads, bridges, ports, irrigation, waterways, university buildings, residential buildings, hospitals, as well as government and private offices. The development is carried out both at the center and in the regions; this is very closely related to the principles of justice and equity as one of the principles of national development.

The development of contracts regarding the construction of the building is very rapid and complex, so the law of contracting continues to develop throughout the ages until now. However, all people must enjoy the results of development as a manifestation of increasing welfare both physically and mentally in a just manner and achieving prosperity. Likewise, if development can succeed, it depends on the participation of all people, meaning that development is carried out by all people equally by all levels of society. "The National Long-Term Development Plan (RPJP) as regulated in the Law of the Republic of Indonesia Number 17 of 2007 is a national development planning document which is a description of the objectives of the establishment of the Government of the State of Indonesia as stated in the Preamble to the 1945 Constitution of the Republic of Indonesia in the form of vision, mission and direction of national development for the next 20 years covering the period from 2005 to 2025".

Development in the physical field is currently developing in line with the needs of society, advances in science and technology. Therefore, physical development such as school buildings, toll roads, hospitals, and others is an object of the building contract law. Law Building contract agreement in the legal system is one element of building law (bouwrecht). The building has a broad meaning, namely: everything that is built on a plot of land. Building law is the entire set of laws and regulations relating to buildings, including establishment, maintenance, demolition, delivery, civil and public.

In Indonesia, these physical development projects are carried out by the government, domestic and foreign private sectors. Although in its implementation, only a tiny part is handled by the government, the rest is highly expected the participation of the private sector, both as investors and as contractors. In carrying out the work, the contractor works with a job chartering system. This makes the contractor referred to as a partner because the contractor is equated with co-workers. Based on the origin of the work, the chartering of work can be divided into two types of contracting agreements:

1. Work contracting agreements sourced from the government for the procurement of goods and services are carried out through an auction process as regulated by Presidential Decree Number 80 of 2003 concerning Guidelines for the Implementation of Government Procurement of Goods/Services;
2. A Contracting work agreement originating from the country is obtained directly due to a contract between the assignor (state) and the contractor (private).

The wholesale work originating from the state and carried out by the construction service company (contractor) must be done in an agreement and or contract that

can bind both parties in outline; the Indonesian civil law order provides the most comprehensive opportunity for the community to make agreements. About anything according to its purpose. As the provisions of Article 1338 of the Civil Code reads as follows that every contract created by the parties can be validly the same as the law for the parties who make it.[1]

Auctions/tenders, which are regulated in Article 17 of Law Number 18 of 1999, as amended by Law of the Republic of Indonesia Number 2 of 2017 concerning Construction Services, Tenders/auctions are a series of activities to provide goods and or services needed balanced and meet the requirements, based on specific regulations determined by the relevant parties. This auction/tender can be participated by all construction service providers (contractors) who meet the public tender requirements with post-qualification or who have passed the pre-qualification. However, the description of construction agreements/contracts in Indonesia today still positions the Service Provider weaker than the Service User. In other words, the position of the Service User is more dominant than the position of the Service Provider.

This is due to an imbalance between the limited number of construction work/ projects and many service providers/contractors. Service users/parties who buy out the goods can choose the service provider to be given a tender/project with many service providers. After the auction/tender is carried out and the winner is selected, the service user issues a letter of appointment for the service provider. Finally, an agreement is made between the two parties in a work charter agreement (construction contract).[2]

According to Law Number 40 of 2007 concerning Limited Liability Companies (from now on referred to as UUPT), Article 1 number 1 states that Limited Liability Company is a legal entity which is a capital partnership established based on an agreement, conducting business activities with authorized capital which is entirely divided into shares and shares. Therefore, please comply with the requirements stipulated in this law and its implementing regulations.

PT SINAR WARINGIN ADIKARYA as a company engaged in construction services in the city of Surabaya, in terms of this agreement as a party related to the construction work with the foundation, of course, we see that there is a legal relationship between PT SINAR WARINGIN ADIKARYA (contractor) and the job contracting foundation. The legal relationship between the two parties is a civil law relationship so that both parties have the same legal position and position in the contract agreement.

In the implementation of the agreement between PT SINAR WARINGIN ADIKARYA and the employer, it has been going well. However, in reality, there are some differences in interests in the field related to the accountability of the parties. Problems that often arise are related to the time limit for completing the contract. As a

[1] Fani Martiawan Kumara Putra, "Urgensi Batasan Atau Pengendalian Asas Kebebasan Berkontrak Pada Peristiwa Pre Project Selling," *Perspektif* 24, no. 1 (2019): 30–36.

[2] Djumialdji, *Hukum Bangunan* (Jakarta: Rineka Cipta, 1996), 21.

result, the contractor, namely PT SINAR WARINGIN ADIKARYA, has not been able to complete the work, which will hinder the completion of the work carried out. In addition, problems can also arise from the building contractor, namely the Wijaya Kusuma Foundation, regarding the completion of payments that have been scheduled as agreed, especially in the building contracting agreement, which has been completed with all of the agreed timeframes. Still, the building contractor has not fulfilled its obligation to pay what has been obtained or agreed.

This is very likely to happen because the construction work obtained by PT SINAR WARINGIN ADIKARYA tends to be based on the trust of the building contractor to PT SINAR WARINGIN ADIKARYA because of the relationship that has been well established. These differences in interests have become a problem between PT SINAR WARINGIN ADIKARYA and the building contractor, namely the Wijaya Kusuma Foundation.

It is impossible always to follow the existing laws and regulations in making and implementing the contractual agreement. Sometimes the contracts that are made, the form and content are not following the standards of contract making. Therefore, in its implementation, there is also the possibility of breach of contract/default.[3] So if there is one of the parties, there is a default in implementing this chartering agreement. Recognizing the importance of solving this problem, the author will discuss implementing the building contract work agreement, the Rights, Obligations and the Respective Responsibilities of Tower II Universitas Wijaya Kusuma Surabaya Building Construction Contract Parties

RESEARCH METHOD

This research is normative legal research with a statutory approach.

DISCUSSION

Before agreeing, in general, the parties first enter into negotiations. At this stage of the talks, the material from the agreement is discussed by the parties, specifically regarding the work agreement for building construction held by the party providing the work. This auction procedure is more commonly known as the stage that precedes the occurrence of the agreement. If the chartering is carried out through an auction, several processes will be passed, including:

1. Notification/announcement in general or in a limited way regarding the existence of a job auction, an explanation of the work following the job requirements;
2. Pre-qualification, qualification and post-qualification requirements for contractors;

[3] H. Nazarkhan Yasin, *Mengenal Kontrak Konstruksi Di Indonesia* (Jakarta: Gramedia Pustaka Utama, 2003), 245.

3. Fulfilment of guarantees that are guaranteed in building contracting, tender guarantees, implementing guarantees, down payment guarantees, maintenance guarantees, development guarantees, guarantee contracts, and guarantee disbursement;
4. The auction includes a public auction, a limited auction and the method of determining graduation.[4]

After the process is complete, the winner and the employer then make a building construction work agreement, the contents of which regulate the main points of work in detail and the conditions for implementing the work. Through a negotiation system, the selection of contractors is not carried out by a particular tender. Still, the party providing the building construction work negotiates directly with the contractor and can be selected to carry out the work in question. This negotiation procedure is informal.[5]

In terms of this form of negotiation, we can see freedom of contract as an essential principle in the agreement. Negotiations that show a balanced position are between the employer and the contractor. Negotiations in the chartering agreement are an initial agreement but are not yet a contractual agreement. Therefore, after the negotiation stage, the parties will put it in a written contract that contains details of the rights and obligations, the terms of work and the period of implementation of the building construction work agreement, and other matters deemed necessary by the parties.

Based on Article 1 point (8) of Law Number 2 of 2017 concerning Construction Services, it is stated that the construction work contract is the entire contract document that regulates the legal relationship between service users and service providers in the implementation of construction services. Therefore, the construction work contract is made separately according to the stages in the construction work, which consists of a construction work contract for planning work, implementation and supervision work.

According to the provisions of Article 39 of Law Number 2 of 2017 concerning Construction Services, the parties participating in the construction agreement consist of service users and service providers. The service user is the owner or employer who uses construction services, while the service provider is the construction services provider. (General Provisions of Law Number 2 of 2017 concerning Construction Services) Construction work contracts are subject to applicable laws in Indonesia. Their form can follow the development of needs and are carried out according to the provisions of laws and regulations. Based on Government Regulation No. 29/2000, construction work contracts are distinguished based on Article 23 paragraph (6) of Government Regulation No. 29 of 2000 concerning the Implementation of Construction Services, namely:

[4] Sri Soedewi Maschjun Sofyan, *Hukum Bangunan Perjanjian Pemborongan Bangunan* (Jogyakarta: Liberty, 1982), 8.

[5] Munir Fuady, *Kontrak Pemborongan Mega Proyek* (Bandung: Citra Aditya Bakti, 1998), 175.

1. The form of compensation, which consists of a lump sum, unit price, additional fees for service fees, a combination of lump sum and unit price, or an alliance;
2. The period of execution of construction work, which consists of a single year, or multiple years;
3. How to pay for the results of work, namely according to the progress of work or periodically.

In Article 47 paragraph (1) of Law Number 2 of 2017 concerning Construction Services, it is stated that: A construction work contract must at least include a description of:

1. The parties clearly state the identity of the parties;
2. Job formulation, containing a clear and detailed description of the scope of work, work value, unit price, lump sum, and implementation time limit;
3. The period of coverage contains the implementation and maintenance period, which is the responsibility of the Service Provider;
4. Equal rights and obligations, containing the rights of service users to obtain construction services and their obligations to fulfil the agreed terms, as well as the rights of service providers to obtain information and compensation for services as well as their obligations to carry out construction services;
5. The use of construction workers, containing the obligation to employ certified construction workers;
6. Method of payment, containing provisions regarding the obligations of service users in making payments for the results of construction services, including guarantees for payments;
7. Default contains provisions regarding liability if one of the parties does not carry out the obligations as agreed;
8. Settlement of disputes, containing provisions on procedures for resolving disputes due to disagreements;
9. Termination of construction work contracts, containing provisions regarding termination of construction work contracts arising from non-fulfilment of the obligations of one of the parties;
10. Forced circumstances, containing provisions regarding events that arise against the will and ability of the parties that cause harm to one of the parties;
11. Building failure, containing provisions concerning the obligations of service providers and/or service users for building failures and the period of responsibility for building failures;
12. Protection of workers, containing provisions regarding the obligations of the parties in the implementation of occupational safety and health as well as social security;
13. Protection of third parties other than the parties and workers contains the obligations of the parties in the event that causes loss and/or death;

14. The environmental aspect contains the obligations of the parties in fulfilling the provisions concerning the environment;
15. Guarantees for risks that arise and legal liability to other parties in the implementation of construction work or as a result of building failures; and
16. Construction dispute resolution options.

An agreement is an event where one person promises to another person or where the two people promise each other to carry out something. From this event, a relationship arises between the two people, which is called an engagement.[6] Based on Article 1320 of the Civil Code, the conditions for a valid agreement are:

1. Agree on those who bind him;
2. Ability to Make an Agreement;
3. A Certain Thing;
4. A Non Prohibited Cause.

Two conditions, (a) and (b), are subjective conditions and (c) and (d) are objective conditions. Accordingly, the Deed of Agreement which both parties have agreed to write in the deed are: [7]

1. In connection with the following information, on Tuesday the nineteenth of December in the year two thousand and seven, we, the undersigned, agreed to implement the building construction work. The parties explain that they have mutually agreed and agreed to agree with the deed at this moment by using the terms and conditions in the following article and its attachments;
2. Whereas the second party undertakes to carry out the construction work of the office building and stage IV lectures at the Universitas Wijaya Kusuma Surabaya following the work plan and conditions (RKS) and carried out at the place of duty according to the provisions;
3. That the parties intend to put their intentions and intentions into this deed.

Conditions (c) and (d) are objective conditions in which the object listed in the agreement must exist and be lawful, halal in question is not against article 1337 BW, namely a cause is prohibited, if it is prohibited by law, or if it is contrary to decency excellent or public order, as stated in Article 12. Therefore, the objects of the agreement made by the first and second parties that are written in the agreement deed are:

1. A plot of land directly owned by the Wijaya Kusuma Foundation covering an area of approximately 1,083 M2 located at Jalan Dukuh Kupang Barat I/31 East Java Province, Surabaya City, Dukuh Pakis District;
2. The land is the property and property of the first party, which can be proven by a deed that has been made previously;
3. Buildings will be built according to the nature and provisions of the law;

[6] Subekti, *Hukum Perjanjian* (Jakarta: Intermasa, 1987), 1.

[7] Fani Martiawan Kumara Putra, "Characteristics of Notary Deeds for Transactions Through Electronic Media," *NORMA* 17, no. 3 (January 14, 2021): 1–14, https://doi.org/10.30742/nlj.v17i3.1091.

4. The second party undertakes at the expense of the first party to build an office building and stage IV lectures at Universitas Wijaya Kusuma Surabaya on land owned by the first party.

Accountability of the parties in the contracting agreement for the implementation of work must be considered to get the building construction work as expected by the parties. The responsibilities imposed on the first party in the work implementation agreement include the provision of land or land whose legal certainty is guaranteed; provide adequate financing following the agreement; this is following article 4 paragraph (2) of the Work Implementation Agreement Number 597/WK/XII/2017 concerning the Value of Work and Payment Methods, namely: Payment of the value of work in paragraph (1) of this article is carried out in stages following the work performance that has been completed. Approved/ratified by the first party with the following details: a. Advance payment is paid 10% of the work price after the second party submits a written application accompanied by a down payment guarantee (from a state bank or other financial institution determined by the minister of finance). The down payment guarantee is valid until the full refund of the advance is paid off. b. The following term/instalment is paid every month with minimum progress of 6% and deducted from the refund of advances and retention following the progress submitted. Payment of each instalment is carried out within a maximum period of 7 (seven) working days after all requirements and receipts are received by the first party and transferred to the account of PT. Sinar Waringin Adikarya, through Bank Rakyat Indonesia; ensure that there are disturbances related to the implementation of development work, this is as stated in Article 6 of the Work Implementation Agreement Number 597/WK/XII/2017 concerning work added and less, as follows: (1) deviations and/or changes which are additions or reductions of work, are only considered valid after receiving a written order from the first party by clearly stating the type and details of the work. (2) the calculation or reduction of work is carried out based on a price agreed by both parties if it is not listed in the price list for the work unit. (3) The existence of additional work cannot be used as a reason to change the time of completion of the work, except with the written approval of the first party.

Furthermore, Article 7 of the Work Implementation Agreement Number 597/WK/XII/2017 concerning Fines and Compensation Paragraph (4) states that: The amount of compensation that the first party must pay for late payment is the amount of interest on the value of the late payment bill, based on the interest rate on the value of overdue claims based on the prevailing interest rate at that time according to the provisions of Bank Indonesia or compensation can be given following the provisions in the employment agreement document.

Likewise, the responsibility of the first party must provide field supervisors, as stated in Article 8 of the Work Implementation Agreement Number 597/WK/XII/2017

concerning Field Supervisors, namely: (1) In supervising the implementation of work, the first party appoints a team of directors as consultants for the work supervisor. construction of office buildings and lectures Phase IV (Green Tower II) Universitas Wijaya Kusuma Surabaya. The liability that the second party must carry out can be explained as follows:

1. In line with Article 1 of the Work Implementation Agreement Number 597/WK/XII/2017, regarding the scope of work, paragraph (1) states that: the second party must carry out the construction work of office buildings and lectures phase IV (Green Tower II) Universitas Wijaya Kusuma Surabaya following the work plan and conditions (RKS) and carried out at the place of duty following the provisions;
2. If the second party neglects its responsibilities, the second party is responsible for the imposition of fines that must be paid to the first party. This is as stated in Article 7 of the work implementation agreement Number 597/WK/XII/2017, paragraph (1) which states that: Fines are financial sanctions imposed on a second party, paragraph (2) states that: If the second party after obtaining written warning 3 (three) times in a row and ignoring the obligations as stated in terms of the contract, every time the second party carries out activities, the second party must pay a negligence fine of 1 0/00 (one per mil) of the price of the work, with a maximum a fine of 5% (five percent) of the contract price;
3. Second-party liability must provide experienced workers in carrying out building construction work. This is as stated in Article 8 of the Work Implementation Agreement Number 597/WK/XII/2017 paragraph (2), namely: the second party must determine the full-time work of experienced personnel following the work carried out and must notify in writing the first party, and the first party has the right to refuse workers who do not meet the requirements;
4. The second party is responsible for all payments for stamp duty and taxes. This is following Article 11 of the Work Implementation Agreement Number 597/WK/XII/2017, which states that: the stamp duty and taxes incurred, with the existence of this work agreement, are the burden and responsibility of the second party. The form of responsibility from the first party is absolute and is an obligation that should not be countered. If it is not implemented, it will hinder the implementation of development.

CLOSING

Conclusion

That the rights and obligations that must be carried out by each party as stated in the work implementation agreement as contained in the Attachment to the Work Implementation Agreement Number: 597/WK/XII/2017, as stated in Article 3 of the

agreement, when referred to as the obligations of the second party, it means as the right of the first party, among others, to carry out work carefully, accurately and responsibly by providing experts and other personnel, materials, equipment needed for the implementation of the work. And that the accountability that must be carried out in this work implementation agreement, the parties must be guided by the provisions of the agreement letter as referred to in the Attachment to the Work Implementation Agreement Number: 597/WK/XII/2017, which is contained in article 4, article 6, article 7, Article 8 and Article 11.

Recommendation

It is intended that the parties who agree should be obliged to comply with the applicable laws and regulations before the parties agree so that there is no prohibition from the authorities.

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p-ISSN: 1693-0657 | e-ISSN: 2746-1963
NORMA
https://journal.uwks.ac.id/index.php/norma

Construction Of Heritage Rights and Citizenship Status Differences in Indonesia

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Abstract:
The high mobility of the population from one country to another, contributes to citizenship transfer. Likewise, Indonesian Citizens (WNI) who, for reasons of education, employment, and other preferences, choose to become Foreign Citizens (foreigners). However, the transfer of citizenship does not necessarily eliminate the ties of blood with the family. For example, in Inheritance in the form of land, a Foreign Citizen, referred to as a WNA, can inherit land rights in Indonesia due to the first two things, a foreign citizen born because of a mixed marriage. And both foreign citizens as a result of naturalization can be understood as a change in the citizenship status of the Indonesian population. Therefore, Indonesia's current construction of inheritance rights within the framework of inheritance regulation (which is part of civil law) is still dualistic and pluralistic. This is inseparable from the legal history of the enactment of civil law in Indonesia.
Keywords: *Construction; Inheritance; Citizenship.*

Article's History:
Received:
February 25, 2021;
Peer-Reviewed:
June 21, 2021;
Accepted:
July 15, 2021;
Published:
July 30, 2021.
DOI:
10.30742/nlj.v18i2.1587

INTRODUCTION

The mobility of the population causes the transfer of citizenship from one country to another. Transfer of citizenship in Indonesia can occur for work, education, or other reasons that make Indonesian citizens (WNI) choose to become foreign citizens (WNI). This transfer of citizenship in practice will not eliminate blood ties to families in Indonesia.

Based on the concept in International Civil Law, the difference in nationality between the parties in a legal relationship will cause inheritance problems. Inheritance is the process of transferring or passing on assets from one generation to the next. The regulation of inheritance law is regulated in the second book Burgelijk Wetboek (BW), which is related to the law of objects.

Everyone can become heirs and have the right to Inheritance to get an equal share of Inheritance, regardless of nationality or gender (whether male or female). Based on this statement raises the following problems: the construction of inheritance rights due to nationality differences in Indonesia.

RESEARCH METHOD

This research is normative legal research with a statutory approach.

DISCUSSION

General principles of international civil law in inheritance arrangements. In regulating inheritance rights, it refers to the provisions of the principles of International Civil Law, in this case, the Indonesian National Civil Law, to determine which legal provisions apply, of course, requires status. As for the general principles in international civil law, which are the principles of General International Civil Law, namely:[1]

a. Article 16 Algemeen Bepalingen van Wetgeving. (Personalia Statute). This article regulates the status, and the national law of each individual regulates the legal authority of a person. Therefore, this provision applies the principle of national law of the citizen concerned (lex patriae principle).
b. Article 17 Algemeen Bepalingen van Wetgeving. (Statute of Realia). This article regulates fixed objects. The applicable principle (lex resitae) applies to the country's legal provisions where the object is moving.
c. Article 18 Algemeen Bepalingen van Wetgeving. (Lex Loci Actus). This article regulates how the law should be enforced when determining the status and legality of every act or every legal relationship (which contains foreign elements). In this article, the provisions stipulate that a legal act committed is subject to compliance in the law where the act is committed (Locus Loci Actum).

In Civil International Law, determining the process of Inheritance can occur automatically or automatically, without legal action of the heir. However, this can be done through legal actions on the part of the heir while he is still alive, that is, can use a legal act that the heir carried out while he was still alive, accompanied by writing a testament or will.[2]

Principles of Inheritance Law

Article 830 Burgelijk Wetboek (BW) also states something similar: that Inheritance can only occur because of death. Every human being has the right to inherit from each other, as for the elements of Inheritance, namely, the presence of an heir, the existence of an heir, and the existence of an inheritance.[3] Heirs, who are said to be heirs, are parties or people entitled to receive the heir's Inheritance, either because of kinship or because of will. Inheritance in the form of land, a foreign citizen, referred to as a foreigner, can inherit rights to land in Indonesia due to the first two things, foreign citizens born due to mixed marriages. And the two foreign citizens, as a result of carrying out legal naturalization actions, naturalization can be understood as a legal

[1] Bayu Seto Hardjowahono, *Dasar-Dasar Hukum Perdata Internasional* (Bandung: Citra Aditya Bakti, 2006), 73–75.
[2] Purnadi Purbacaraka, *Sendi-Sendi Hukum Perdata Internasional* (Jakarta: Rajawali, 1983), 57.
[3] Zainuddin Ali, *Pelaksanaan Hukum Waris Di Indonesia* (Jakarta: Sinar Grafika, 2008), 81.

act in the form of changing the citizenship status of Indonesian citizens to become foreigners or vice versa. In the event of a difference in nationality between the heir and the heir, this does not cause death or loss or prevent a person from obtaining the right to inherit someone as the heir of the heir.[4]

This is in line with Article 852 Burgelijk Wetboek (BW), which is as follows: "Children or all their descendants, even if they are born from other marriages, inherit from their parents, grandparents, or all their blood relatives. then in a straight line upward, with no difference between male or female and no difference based on first birth." In Private International Law, Inheritance is entirely regulated by the law of the person who leaves the property (heir), both movable and immovable property, which concerns parts of Inheritance (erfportie), regarding legitimacy, division and division and so on.[5]

There are several principles and theories in Civil International Law to determine how the applicable legal provisions in inheritance issues, for example:

1. The principle of lex rei site or lex site, namely explaining that if the object of Inheritance is permanent, the process of inheriting such fixed objects must be regulated based on legal provisions from the place where the object is located;
2. The principle of lex patriae, lex domicile, explains that: if the objects that are the object of Inheritance are movable, the legal process of inheriting those objects can be subject to the legal rules Inheritance from where the heir becomes a citizen. Country of permanent domicile at the time he passed away;
3. The law where the heir is domiciled or a citizen of the country at the time of the making of the testament;
4. The law of the place where the heir resides or becomes a citizen of the country when he dies.[6]

This means that land has its status in international civil law. The law on this land remains unchanged if the land is held by people who are generally subject to other laws.[7] This is also in line with the Indonesian national law, the Civil Code, which is related to the provisions of the Material Law, known as the principle (droit de suite), which is always following the object (droit de suite), that material rights always follow the object, in the hands of any located object.

The land is an inheritance that is classified as immovable property. The process of ownership or transfer of acquired land rights can be a complex problem. This is, of course, related to the Inheritance of land obtained from generation to generation. In the case of land as an object of Inheritance, in general, the designation of land rights is

[4] Amandeo Tito Sebastian, "Hak Ahli Waris Warga Negara Asing Atas Obyek Waris Berupa Saham Perseroan Terbatas Penanaman Modal Dalam Negeri," *Ad'Adl* X (2018): 150.

[5] Sudargo Gautama (Gouw Giok Siong), *Hukum Antar Golongan Suatu Pengantar* (Jakarta: Ichtiar Baru Van Hoeve, 1993), 87–88.

[6] Bayu Seto Hardjowahono, *Dasar-Dasar Hukum Perdata Internasional*, 285.

[7] Sudargo Gautama (Gouw Giok Siong), *Hukum Antar Golongan Suatu Pengantar*, 88.

classified according to the type of utilization/use, as well as the legal subject that will become the owner, can be classified as follows:[8]

a. Hak Milik, which is complete and robust right to land, is inherited, can only be granted to single Indonesian citizens, except for certain legal entities, whose utilization can be adjusted to the designation of land in the area where the land is located;
b. Business Use Rights, which are land rights to seek the use of land that is given directly by the state, for a specific period / limited time, which can be granted either to Sole Indonesian Citizens or Indonesian Legal Entities (established according to law Indonesia and domiciled/domiciled in Indonesia);
c. Building Use Rights, which are rights to land to establish and own / own buildings on land that is not his own, for a certain period, which can be owned either by single Indonesian citizens or Indonesian legal entities (which established according to Indonesian law and domiciled/domiciled in Indonesia);
d. Hak Pakai is the right to land to use clan or collect the results and land owned by other people directly controlled by the state, which is not leasing or land processing, which can be granted for a certain period of time to a single person Indonesian citizen. Indonesian legal entities (which are established according to the provisions of Indonesian law and domiciled / domiciled in Indonesia), foreign citizens domiciled / domiciled in Indonesia, and foreign legal entities with a representative office in Indonesia.[9]

Construction of inheritance rights due to differences in nationality.

According to the fourth edition of the Big Indonesian Dictionary, construction is the arrangement and relationship of words in a sentence or group of words. Therefore, the meaning/meaning of a word is determined by the construction in the sentence or group of words.[10] The word construction is a concept that is quite difficult to understand. It is agreed that the word construction has various interpretations/interpretations, cannot be defined singly, and is very dependent on the context. The definition of construction is as follows, namely as a meaning that is related/related to a sentence or group of words that is in a word in a language study/review. Construction can also be defined as the arrangement/series (model, layout) of a building. In inheritance rights, humans as legal subjects, in essence, have a right to transfer their rights over land to other humans. Thus, the transfer of land rights is a legal act.[11]

[8] Irma Devita Purnamasari, *Kiat-Kiat Cerdas, Mudah Dan Bijak Memahami Masalah Hukum Waris* (Bandung: Mizan Pustaka, 2014), 157.

[9] Kartini Muljadi dan Gunawan Widjaja, *Seri Hukum Harta Kekayaan, Hak-Hak Atas Tanah* (Jakarta: Prenada Media Group, 2008), 25–26.

[10] Hasan Alwi, *Kamus Besar Bahasa Indonesia Edisi Keempat* (Jakarta: Balai Pustaka, 2007).

[11] Ilyas Ismail dan Mahdi Syahbandir Nurlalila, "Kepemilikan Tanah Hak Milik Yang Dikuasai Bersama Warga Negara Indonesia (WNI) Dan Warga Negara Asing (WNA) Yang Diperoleh Berdasarkan Warisan Di Provinsi Aceh," *Syah Kuala Law Journal* 2, no. 2 (2018): 258–75.

Currently, the regulation of inheritance law (part of civil law) in Indonesia is still dualism and pluralistic. This is inseparable from the legal history of the enactment of civil law in Indonesia. Before Indonesia's independence, as a result of Dutch colonial rule, the legal politics of the Dutch East Indies government at that time, as outlined in Articles 131 and 163 Indische Staatregeling (IS), there were legal classifications and population classifications.

Based on these provisions, the European Civil Law (Burgerlijk Wetboek) was enacted in Indonesia based on Staatblad No.23 / 1847 for the Erapa Group, Customary Law for the Bumiputra Group (Indigenous Indonesians) and Customary Law for the Foreign Eastern Group, respectively. During its development, the Burgelijk Wetboek (Civil Code) was applied to the Foreign East and was given the possibility for the Bumiputra Group to submit voluntarily (gelijkstelling) to the Burgelijk Wetboek (BW) and Customary Law, including their inheritance law. Furthermore, in the development of Islam, Islamic law was enforced in certain areas, especially those used to distribute Inheritance. Thus there is a pluralism of inheritance law systems that apply: the Western Inheritance Law System, the Customary Inheritance Law System and the Islamic Inheritance Law System.

The transfer of land rights in this study is a transition due to legal events, namely death. Therefore, in customary law communities, the process of transferring rights to the land environment from the heir to the heir is also known. The transfer of rights over land is a legal event that results in the transfer of rights and obligations to someone, which can have a permanent nature or may also be temporary.

However, regarding the transfer of land rights from the heir to the heir who has a different nationality, there are restrictions related to the transfer of land rights, namely limiting the ability to have rights, in this case, namely citizenship, according to Article 9 paragraph (1) of Law Number 5 In 1960 regarding the Principles of Agrarianism, it was stated that only Indonesian citizens (WNI) could have an entire relationship with the earth, water and space. This is further reinforced in Article 21 paragraph 1 according to Law Number 5 of 1960 concerning Agrarian Principles; only Indonesian citizens can have property rights. But, on the other hand, this shows that foreigners who are domiciled in Indonesia can be granted Use Rights as stated in Article 42 of Law Number 5 of 1960 concerning Basic Agrarian Affairs.[12]

This difference in citizenship can occur because of naturalization or mixed marriages between Indonesian citizens (WNI) and foreign citizens (WNA). That causes children who are born to have different nationalities. Therefore, the day when the child reaches the age of 21, according to Article 6 paragraph 3 in conjunction with Article 21 of Law Number 12 of 2006 concerning Citizenship, must choose one of the

[12] Irma Devita Purnamasari, *Kiat-Kiat Cerdas, Mudah Dan Bijak Memahami Masalah Hukum Waris*, 183.

nationalities. In that case, there will be differences in citizenship between parents and children, but this does not result in the loss of the inheritance rights of children with different nationalities, following Article 852 BW.

When viewed in terms of Inheritance in Indonesian civil law, it is stated that: every heir has the right to what has been inherited to him regardless of his citizenship status. This is in line with Article 852 Burgelijk Wetboek (BW), which is as follows: "Children or all their descendants, even if they are born from other marriages, inherit from their parents, grandparents, or all their blood relatives. then in a straight line upward, with no difference between male or female and no difference based on birth".

Judging from other inheritance laws that apply in Indonesia, namely Islamic law, children have the right to inherit from their parents' Inheritance, whether they belong to them or their property rights attached to these objects. However, children who have the right to inherit here are only children who are Muslim. This is as simple as Article 171 letters (c) and (d) Compilation of Islamic Law (KHI).

Government Regulation Number 24 of 1997 concerning Land Registration is an implementing regulation of the Law of the Republic of Indonesia Number 5 of 1960 concerning Agrarian Principles, which stipulates that to realize legal certainty in any transfer of rights to land due to Inheritance, registration of transfer of rights is due to Inheritance regarding a land parcel that has been registered, must be submitted by the recipient of the right to land or ownership rights to the apartment unit concerned as Inheritance to the Land Office, as stated in Article 42 of Government Regulation Number 24 of 1997. Accompanied by a certificate of rights concerned, a death certificate of a person whose name is recorded as the right holder and a certificate of proof as an heir, in which a certificate of proof of being an heir is proven by a deed made by and in front of the sub-district head or notary or the Heritage Hall, based on population class

In case of registration of transfer of rights due to Inheritance regarding unregistered land parcels, it is carried out by sporadic land registration for the first time. But, on the other hand, this shows that Government Regulation Number 24 of 1997 concerning Land Registration requires registration of transfer of rights due to Inheritance to provide legal protection to the heirs and for the sake of orderliness in the administration of land registration so the data stored and presented is up to date.[13]

CLOSING

Conclusion

Inheritance in the form of land, a foreign citizen, referred to as a foreigner, can inherit rights to land in Indonesia due to the first two things, foreign citizens born because of a mixed marriage. And both foreign citizens as a result of naturalization can

[13] Boedi Harsono, *Hukum Agraria Indonesia: Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi Dan Pelaksanaannya*, 10th ed. (Jakarta: Djambatan, 2008), 519.

be understood as a change in the citizenship status of Indonesian citizens to become foreigners or vice versa. In the event of a difference in nationality between the heir and the heir, this does not cause death or loss or prevent a person from obtaining the right to inherit. Currently, the construction of inheritance rights is still guided by the regulation of inheritance law (which is part of civil law) in Indonesia, which is still dualism and pluralistic. This is inseparable from the legal history of the enactment of civil law in Indonesia. Before Indonesia's independence, as a result of Dutch colonial rule, the legal politics of the Dutch East Indies government at that time, as outlined in Articles 131 and 163 IS, there were legal and population classifications.

Recommendation

It is aimed at the government to make regulations related to the many rules of inheritance rights for Indonesian citizens because they are still related to civil aspects that exist in the territory of the Republic of Indonesia. The plurality of inheritance rules that exist in Indonesia makes it difficult to find a golden thread between citizenship and the civil aspect of a person to obtain actual items from Inheritance.

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p-ISSN: 1693-0657 | e-ISSN: 2746-1963
NORMA
https://journal.uwks.ac.id/index.php/norma

Legal Consequences for Creditors Caused by Forced Withdrawal of Fiduciary Objects

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Abstract:

The researcher used the title Legal Consequences for Creditors Caused By Forced Withdrawal Of Fiduciary Objects. The formulation of the problems that arise includes, among others: what the creditor can take legal actions if the debtor does not pay the debt when it is due and what are the legal consequences faced by the creditor for the debtor's legal action related to the forced withdrawal of the object of fiduciary security by the creditor, The form of this research method is normative legal research, so in this study, an approach to legislation along with views and doctrines in legal science is analysed which is then analysed against the application of Law to resolve legal issues in this study. From the result the analysis carried out in this study, the researcher states that: as a result of the creditor executing the object of fiduciary security by force when the debtor defaults, it can be subject to criminal sanctions contained in Articles 335, 365, and 368 of the Criminal Code related to using coercion and physical violence and in Article 3 paragraph 1 of the Regulation of the Minister of Finance of the Republic of Indonesia Number 130/PMK.010/2012 which also imposes sanctions on financial institutions that do not register the object of guarantee at the fiduciary guarantee registration office. As for the things that underlie the parties to take legal action, namely: the creditor wants the debtor's obligations to be carried out correctly to pay off his debt. In contrast, the debtor wants to get protection against the forced withdrawal of the object of the guarantee carried out by the creditor.

Keywords: *Security; Execution; Fiduciary.*

Article's History:

Received:
June 3, 2021;

Peer-Reviewed:
June 21, 2021;

Accepted:
July 15, 2021;

Published:
July 30, 2021.

DOI:
10.30742/nlj.v18i2.1588

INTRODUCTION

Fiduciary guarantees describe the guarantee of trust in the relationship between one person and another so that a sense of confidence in that person grows to further provide their property as collateral to the place they owe.[1] On the other hand, if the object of the debt guarantee is immovable property, then the collateral must be in the form of a mortgage (currently there is collateral right) where the thing of the security is not given to the creditor but is always in the power of the debtor.[2] However, even though the debt guarantee qualifies as private property, the creditor may not be

[1] Munir Fuady, *Jaminan Fidusia* (Bandung: Citra Aditya Bakti, 2000), 3.
[2] Ibid.

interested and may be reluctant to submit the proceeds to the creditor regardless of the transfer of the funds. Therefore, when the goods are handed over to the creditor, there is a new guarantee that the object is movable. Still, the power over the thing does not pass from the debtor to the creditor, which is a fiduciary guarantee.

The Fiduciary Guarantee Institution has been known to the public based on the Law of the Republic of Indonesia No. 42 of 1999 concerning Fiduciary Guarantee, Article 1, which states that fiduciary is the transfer of ownership rights to objects based on trust, but what is transferred is still with the owner of the object.[3]

The existence of this fiduciary Law must meet public demands for fiduciary guarantee agreements as a means to support commercial activities and encourage legal certainty for all parties involved.[4] Law Number 42 of 1999 in Article 1 concerning Fiduciary Guarantees says regulates restrictions on the transfer of fiduciary property rights based on trust, and objects whose ownership rights are transferred remain under the debtor's control.

What is meant by the trust is that something that is a guarantee is still under the debtor's authority; this problem is what the creditor fears when the debtor turns out to be in default. Thus, like other debt guarantee agreements, such as pawns, mortgages, or mortgages, fiduciary agreements symbolize an asesoir agreement.[5]

The form and nature of this guarantee can explain that a great demand or guarantee from the debtor is an essential condition of a credit agreement. In-depth analysis of debtors includes:[6]

1. (*Character*)
2. (*Capacity*)
3. (*Capital*)
4. (*Collateral*)
5. (*Condition of economics*).

However, it is necessary to guarantee legal protection for creditors who provide loans by recognizing the needs of the growing business world and providing capital. Then through this Fiduciary Guarantee Law, the Indonesian government seeks to summarize it in the Fiduciary Guarantee Law.

This means that thanks to Law No. 42 of 1999, a registered fiduciary guarantee protects the creditor's position because the creditor has legal contracts to collect the issued credit. Fiduciary arrangements believe that the principle *droit de suite* is a fiduciary guarantee that obeys wherever the security object is located.[7]

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[3] Fani Martiawan Kumara Putra, "Pendaftaran Online Jaminan Fidusia Sebagai Suatu Fasilitas Kredit Dengan Potensi Lemahnya Perlindungan Kreditor," *Perspektif* 24, no. 2 (2019): 95–105.

[4] Gunawan Widjaja, *Seri Hukum Bisnis, Jaminan Fidusia* (Jakarta: Raja Grafindo Persada, 2001), 5.

[5] Munir Fuady, *Jaminan Fidusia*, 19.

[6] Suharno, *Analisa Kredit* (Bandung: Djambatan, 2003), 13.

[7] Gunawan Widjaja, *Seri Hukum Bisnis, Jaminan Fidusia*, 126.

This is some basis for building trust:[8]

1. The fiduciary holder is only the holder of the guarantor, not the actual owner;
2. The right of the fiduciary holder to enforce the collateral only exists if the debtor is in default;
3. If the debt has been paid off, the goods deposited must be returned to the original owner;
4. If the income from the auction of fiduciary goods exceeds the amount owed, the remaining payment must be returned to the fiduciary giver.

In addition, for the transfer of rights to be effective in the construction of this fiduciary Law, the following requirements must be met:[9]

1. The agreement is zakelijk.
2. Has the title of transfer of rights.
3. The person who surrenders the property has the right to control the property.
4. Specific delivery methods, namely the constitutum posessorium for materialized movable goods or the method cessie for accounts payable.

Fiduciary needs to be registered because it will be considered weak for this fiduciary Law if it is not registered. In addition to triggering doubts about the Law of fiduciary guarantees, it does not fulfil the element of publicity when not registered, so it isn't easy to control. And things can arise that are not desirable, for example, re-fiduciary without the understanding of creditors.[10] In addition to the Fiduciary Guarantee Act and other applicable laws, to ensure the security of creditors and debtors, a fiduciary agreement is included in the notarial deed for large loans, where the creditor is calm for the sake of the evidence stated in the notary deed.[11] Therefore, it is worth to analyze about legal consequences faced by the creditor related to the forced withdrawal of the fiduciary security object.

RESEARCH METHOD

Research can run well, and the truth must be accounted for with a suitable methodology. Research methods can be understood as moral processes and procedures for solving problems encountered in research. The steps taken should be clear and well defined to avoid over-interpretation. This is a normative legal research with statute approach.

DISCUSSION

In addition to the trust factor, finance companies that provide credit to debtors must also be based on a written credit agreement, and are generally bound by a

[8] Munir Fuady, *Jaminan Fidusia*, 4.
[9] Ibid.
[10] Ibid.
[11] H. Tan Kamelo, *Hukum Jaminan Fidusia* (Bandung: Alumni, 2014), 25.

notarized contract, thus guaranteeing legal certainty. If the debtor or creditor fails to carry out his obligations, it can be said to have violated the contract. Therefore, although it is a debtor's default in terms of fiduciary guarantees, if the debtor fails to carry out the contents of the agreement or fails to carry out the promised things, the debtor has broken the contract bears all the legal consequences.[12]

UUJF does not use the default but uses breach of contract; the debtor's bankruptcy has critical legal consequences, so it must be regulated in advance in a fiduciary agreement.[13] If the debtor denies that there was no default during the Execution of the deal, it must be proven by a court hearing.

A debtor who breaks his promise is usually because the debtor cannot fulfil his obligation to pay off debts/credit instalments. Finally, the creditor carries out a confiscation on the object of the fiduciary guarantee and must pay the debtor's interest, fees, and court fees.

In the matter of fiduciary guarantees, the provision of a period of time and a written agreement is critical if there is no agreement at the beginning of the limit until when the debtor must finally fulfil the predetermined achievements, and at that time it can be extended until when without any default or breach of promise.

Default is a situation in which a person fails to perform the obligations required by Law. Therefore, a breach of contract is the result of a failure to enter into a legal agreement. There are four forms of breach of contract, namely:[14]

1. Not doing something that is agreed to be done;
2. Keep promises, but not as promised;
3. Doing something that has been agreed upon but not on time;
4. Doing something according to the agreement is prohibited in the contract.

If it is associated with bad credit, there are three types of behaviour referred to in default, as follows:

1. The debtor is unable to pay off instalments and credit interest.
2. The debtor pays part of the loan instalments and interest;
3. The debtor pays the instalments and interest after the agreed period ends.

A written warning is given to a debtor stating that the debtor has fulfilled his obligations at the specified time; if the debtor fails to carry out his duties at that time, the debtor is declared guilty or in default. An express warning can be issued in a formal or informal form. The written notice is formally given by the ruling district court and is called a *sommatie*. Informal written warnings, such as written letters, telegrams, or delivered to debtors via creditors accompanied by receipts, that is called *ingebreke stelling*.[15]

[12] Fani Martiawan Kumara Putra, "Utilization Of Debt Collector Services In Debt Secured With Fidusia In Pandemic Period After The Verdict Of The Constitutional Court No. 18/PUU-XVII/2019," *Perspektif* 25 Nomor 2 (2020).

[13] H. Tan Kamelo, *Hukum Jaminan Fidusia*, 237.

[14] Ibid.

[15] Abdulkadir Muhammad, *Hukum Perdata Indonesia* (Bandung: Citra Aditya Bakti, 2000), 204.

Therefore, if the debtor breaks his promise or defaults and experiences terrible credit, so that in a credit agreement with a deposit guarantee so that in Article 29 of Law Number 42 of 1999 concerning Fiduciary Guarantees, the creditor can carry out executions on objects that are used as fiduciary collateral through implementing the executorial title following the objectives in Article 15 paragraph (2) by the fiduciary recipient or creditor.

In Article 29, paragraph (1) of the Fiduciary Guarantee Law, it is stated that the debtor agreement usually includes a master and final agreement. Therefore, if the parties fail to fulfil the debtor's promise, it will be resolved immediately.[16]

The default here can be in the form of the debtor failing to fulfil its repayment obligations within the due date of debt collection or failing to meet the master agreement and guarantee agreement commitments, even though the debt itself has not matured. If the debtor and creditor are two different people, the debtor's promise will be broken; of course, there is a master agreement, and the creditor's promise violates the guarantee agreement.

If the agreed maturity date between the two parties has passed, then after the due date, a fine can be imposed, and a warning will be given two times a week; the first warning is generally soft if the first warning is ignored, then the creditor will give a second warning that is firmer than before, and when the second warning does not provide a settlement and the debtor is still not responsible, a third warning will be given by giving two options to pay or be sued.

Execution is an ongoing action of all civil procedural laws. Therefore, the legal basis for Execution is an inseparable part of implementing the rules contained in the HIR or RBG. This includes guidelines for applying the rules that refer to the statutory arrangements specified in the HIR and RBG. Related to the Execution of a fiduciary object, then we will look at the execution procedure in Article 15 paragraph (2) of the Fiduciary Law, the Fiduciary Guarantee Certificate, following the objectives in paragraph (1) has the same enforcement power as a court decision that has already been issued, have permanent legal force.[17]

The creditor's right to directly implement the debtor's default is carried out within the time limit allowed by Law, without or before asking for court intervention; this is in the debtor's interest to not pay too many fees to take a long time. However, suppose the debtor does not actively enter into a debt relationship that can be recorded. In that case, the creditor has the right to use the debtor's assets as collateral to demand the Execution of his receivables (right of recovery, right of Execution).[18]

To execute creditors, requesting assistance from parties who have the authority to secure the Execution of fiduciary guarantees. If there is no security from the authorities,

[16] J. Satrio, *Hukum Jaminan Hak Jaminan Kebendaan Fidusia* (Bandung: Citra Aditya Bakti, 2000), 319.
[17] *Ibid*, h. 10
[18] Sri Soedewi Maschoen Sofwan, *Hukum Perdata: Hukum Benda* (Yogyakarta: Liberty, 2000), 31.

the debtor may conduct anarchic actions beyond the limits. It can run smoothly, safely, orderly, and can be accounted for.

Fiduciary Execution with Executional Title Following the provisions of Article 29 Paragraph 1 letter an of the Fiduciary Law so that the Execution of a fiduciary guarantee object can be carried out based on *Grosse* fiduciary guarantee certificate or with an executive title, following the provisions in Article 15 Paragraph 2 the fiduciary guarantee certificate has the power of Execution which is similar to a court decision which has permanent legal force.

This fiduciary guarantee certificate has the same enforcement power as decisions from courts that have permanent legal force. Because they have the passion "Demi Keadilan Berdasaekan Ketuhanan yang Maha Esa".

This Fiduciary Guarantee Certificate can be enforced by itself; it does not have to wait for the implementation of a court decision because its power is not different from that of a court that has permanent legal force. Based on the fact that the fiduciary recipient automatically carries out the principal of the collateral that is deposited without waiting for a decision.

Following Article 29 Paragraph 1 letter b in conjunction with Article 15 Paragraph 3 of the Fiduciary Law, through the Law of the Fiduciary Law, the creditor (fiduciary recipient) gives the right or power to sell the collateral which is entrusted with his control (execution parate) to obtain repayment. The debt.

This means that the creditor (fiduciary recipient) does not need to ask the chairman or bailiff of the district court concerned to ask the auction office for help in carrying out the principal of the fiduciary guarantee for public sales or auctions.[19]

But there are stages of executing the auction through the first court procedure by submitting a case application whose purpose is to determine if there is no application letter then the Execution cannot be carried out, a warning which is the initial stage of the execution process by calling the debtor if the debtor does not come then the chairman of the court issues a letter of determination to carry out the confiscation according to the procedures regulated in Article 197 HIR or 208 RBg.

As long as the conditions are met, the fiduciary guarantee can also be implemented by selling the fiduciary object in hand. Based on the Fiduciary Law No. 42 of 1999 Article 29, the requirements for a fiduciary to be carried out under the hands are as follows:

1. Following the agreement between the debtor and the creditor who is entrusted with it;
2. If the highest price that benefits both parties is achieved through selling under their hands;

[19] Fani Martiawan Kumara Putra, "Benturan Antara Kreditor Privilege Dengan Kreditor Preferen Pemegang Hipotek Kapal Laut Terkait Adanya Force Majeure," *Perspektif* 18, no. 1 (2013): 32–45.

3. The fiduciary giver and/or recipient shall notify the party concerned in writing;
4. Announced it at least two newspapers scattered in the area;
5. The sale is executed one month after receiving written notification.

For matters relating to public auctions, it is regulated that performance guarantee agreements made following applicable regulations must go through public auctions or public auctions. However, the facts prove that this general sale procedure cannot run smoothly and has caused significant losses to creditors. Especially debtors, because of the high general selling costs, which are burdensome for both debtors and creditors, there is a low selling situation.

Therefore, in practice, to obtain a high price, there are often cases where the Execution is carried out through selling at a low price with the highest price agreed upon by the prospective buyer (i.e. debtor and creditor).[20]

Based on the descriptions of the creditor's legal efforts in dealing with debtors who are in default, the authors formulate that there are several ways to take legal action from creditors, namely by ascertaining whether the debtor is in breach of contract or not because the fiduciary guarantee law does not recognize default but is a breach of contract, if the debtor denies that there is no breach of contract in the implementation of the agreement, this matter will be proven in court.

It is hoped that with a persuasive approach, the problem can be resolved without resolving it through legal channels if the compelling approach does not produce results so that the creditor can carry out the Execution of fiduciary collateral objects through various ways, namely carrying out direct executions themselves because in Law No. 42 of 1999 Article 15 concerning guarantees fiduciary, the creditor who registers the fiduciary guarantee to the fiduciary registration office, gets the executive power no different from a court decision.

Fiduciary Eigendom Over Dracht or Transfer of ownership rights based on beliefs based on community needs. People need credit or loans whose collateral is movable objects. Still, movable objects used as collateral remain in the control of the recipient of the facility because the collateral is used to continue their business every day. Given the significant and increasing demand from the business world for the availability of funds to meet the legal requirements for this guarantee, which was issued by Law no. 42 related to fiduciary collateral in 1999. Article 1 of the "Fiduciary Law" stipulates: "fiduciary collateral is collateral for movable goods, including tangible and immovable objects, especially for buildings that cannot be burdened with collateral which is specified in Law No. 4 regarding Mortgage Rights in 1996. The given fiduciary is a dependent who pays certain debts in which the position is offered, prioritizing the fiduciary recipient to other lenders.[21]

[20] Sri Soedewi Maschoen Sofwan, *Hukum Perdata: Hukum Benda*, 36.
[21] Gunawan Widjaja, *Seri Hukum Bisnis, Jaminan Fidusia*, 3.

The main instruments of fiduciary based on the definition above are:

1. The loan used to pay the debt is a fiduciary guarantee;
2. A certain amount on debt guarantee;
3. The object of a fiduciary grant is a tangible object, movable or a thing with no shape or an object that cannot move, especially a building that cannot be freed—the right of protection where the fiduciary creditor controls the thing used as collateral;
4. Preferred rights or preferential rights aimed at specific lenders with other lenders are fiduciary grants that provide;
5. Ownership rights, collateralized goods are transferred to the lender based on trust, but the object is still in possession of the owner of the goods.

Fiduciary collateral objects are tangible, movable objects or objects with no shape or objects that cannot move, especially buildings that cannot be burdened—the right of protection where the object used as collateral is controlled by the fiduciary creditor. Preferred rights or preferential rights aimed at specific lenders with other lenders are fiduciary grants that provide.

Fiduciary collateral appears from the date the fiduciary guarantee is recorded in the fiduciary register book, the date of birth and coincides with the fiduciary collateral is very meaningful because as a marker and proof of the emergence of special rights and creditor rights as the person in charge of the fiduciary, the lender who receives the fiduciary collateral has a prioritized position concerning with the collateral submitted.

If the priority has not occurred, then the fiduciary collateral has been sold or confiscated by another party, & the fiduciary collateral cannot be forced. Therefore, the lender loses the priority of the collateral deposited, and the lender only enjoys or shares his rights with other creditors at the same time. At the same time.[22] The positive perspective of using the person in charge of the deposit is that the procedure is more manageable, flexible, and faster and reduces costs.

The fiduciary collateral guarantee between the recipient of customer financing and the party providing financing as a financing facilitator is inseparable from the customer financing contract. To provide legal firmness to finance companies, it is necessary to register a fiduciary guarantee, for that in 2012 the RI Minister of Finance has set a policy regulation No. 130 of 2012 concerning Registration of Fiduciary Guarantees, which is official for Financing Companies that provide consumer financing related to implementing fiduciary guarantees. Financial service institutions that deviate from their responsibilities in fiduciary registration will receive warnings, freeze business activities or revoked business licenses, etc. What is regulated in Article 3 paragraph 1 of the RI MENKU regulation no. 130/PMK.010/2012

[22] Rudyanti Dorotea Tobing, *Hukum Lembaga Pembiayaan, Asas Keadilan Dalam Perjanjian Pembiayaan* (Yogyakarta: Laksbang Presindo, 2017), 115.

Warning sanctions can be given a maximum number of 3 times in writing, valid for 60 days. If the finance company has registered the guarantee before the expiration of the warning period, the Minister of Finance withdraws the warning. If the third warning time is over, but the financial institution does not register for the fiduciary guarantee, the Minister of Finance will freeze the business license.

The sanction for termination of business activity is notified to the financing service business entity in writing no later than 30 days from the date of issuance of the notification of termination of business activity. During the ending of business activities, the financing service business entity registers a fiduciary guarantee, and MENKU withdraws the sanction of terminating business activities. If the termination period of business activities has been completed, but the financing business entity does not register for a fiduciary guarantee, the Minister of Finance will impose a sanction for withdrawing its business license.

Loan recipients can take legal steps to withdraw objects used as collateral in customer financing agreements that require the financing business entity to show a fiduciary guarantee legality letter issued by the fiduciary registration office. Suppose the financing business entity is unable to provide a fiduciary guarantee legality letter. In that case, the loan recipient does not need to give the loan because the financing business entity has no right to seize or take the collateral. Suppose the financing business entity can issue a fiduciary guarantee legality letter. In that case, the next step taken by the loan recipient is to apply a controlling attitude to the re-trading (auction) activity of the collateral object.

The issuance of these rules is for the smooth, safe, orderly and orderly Execution of fiduciary collateral activities and with a sense of responsibility to provide a sense of security for fiduciary creditors, fiduciary debtors and the public from actions that can cause loss and damage to both life and property. Most of the agreements with leasing business entities when taking cars use coercion and physical violence, which violate Articles 335, 365, and 368 of the Criminal Code. In addition, leasing business entities often use a debt collector to confiscate goods by force against bad loans in fiduciary agreements.

Debt collectors often confiscate goods by force on behalf of the leasing business entity. Leasing business entities provide loans to customers who own a vehicle but pay it off through credit. However, the trend in its application is that debt collectors rarely act according to existing norms but violate laws and regulations in the form of threats, intimidation, physical and mental contact in the form of violence. Sometimes the work of debt collectors is not as sporty as what the leasing dealer wants. Sometimes to collect debts in the form of vehicle instalments, they commit acts of violating existing regulations & harming the borrower who is being collected.

CLOSING

Conclusion

Legal efforts from the creditor due to the debtor not paying the debt when it is due, namely by making persuasive efforts whose aim is to resolve what is at issue between the debtor and creditor through non-legal channels so that the debtor who is in default is willing to pay it off, but if the persuasive approach does not work, the creditor takes action by using debt collector service. Debtor somehow become harmed because of the way of the collaateral object being taken, by using violence. Therefore debtor can report to the police for the act of confiscation by the creditor and can file a lawsuit to the court with the decision of the Constitutional Court No. 18/PUU-XVII/2019.

Recommendation

Legal remedies shall be done by filing a lawsuit in court to ensure and request legal assistance based on wanting to execute the object of the debtor's guarantee and the creditor can also execute the object of the fiduciary security directly because, in Article 15 of the fiduciary guarantee law, the fiduciary guarantee certificate as referred to has executorial power, therefore there no need to use the debt collector services.

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Putra, Fani Martiawan Kumara. "Benturan Antara Kreditor Privilege Dengan Kreditor Preferen Pemegang Hipotek Kapal Laut Terkait Adanya Force Majeure." *Perspektif* 18, no. 1 (2013): 32–45.

———. "Pendaftaran Online Jaminan Fidusia Sebagai Suatu Fasilitas Kredit Dengan Potensi Lemahnya Perlindungan Kreditor." *Perspektif* 24, no. 2 (2019): 95–105.

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Suharno. *Analisa Kredit*. Bandung: Djambatan, 2003.

p-ISSN: 1693-0657 | e-ISSN: 2746-1963
NORMA
https://journal.uwks.ac.id/index.php/norma

Case Review of Surabaya District Court Decision No. 672/ Pdt.G/2016/PN.Sby about Unlawful Sale and Purchase Agreement of Land and Building

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Abstract:

The research, entitled Case Study of Surabaya District Court Decision No. 672/Pdt.G/2016/PN.Sby about Unlawful Sale and Purchase Agreement of Land and Building aims to find out whether or not Dirk Tatipata is said to have defaulted on the Sale and Purchase Agreement (PPJB) of land, which he did with Ronald Sanjaya, how the legal protection for Dirk Tatipata as the party who was harmed by the decision of the Surabaya District Court, This is normative legal research, Based on the results of the study, it can be concluded that legally, it is clear that Dirk Tatipata does not have high bargaining power and is a seller of land and buildings on Jl. Sleep No. 103 that has been done in front and signed by Notary Anita Lucia Kendarto, S.H., M.Kn. with several letters/deeds. Thus, legal resistance is still being carried out by carrying out a lawsuit in the land and building dispute case at the Surabaya District Court, and ending his defeat coupled with a penalty of trial fees and payment for his unlawful actions harmed Ronald Sanjaya as the legal owner of the land and buildings.

Keywords: *Agreement; Against the Law; Unlawful Sale.*

Article's History:

Received:
June 17, 2021;

Peer-Reviewed:
June 21, 2021;

Accepted:
July 15, 2021;

Published:
July 30, 2021.

DOI:
10.30742/nlj.v18i2.1589

INTRODUCTION

The land is an essential thing in human life. Therefore, most Indonesian people live from an economy that depends on land to live or work. In addition, the rapid growth of Indonesia's population, causing the need for land or land to increase and ultimately causing land prices to be higher, especially in urban areas. Soil is part of the earth, which is called the earth's surface. Land meant here does not regulate land in all aspects but only handles one aspect, namely land in a juridical sense called land rights.

As regulated in Law Number 5 of 1960 concerning Basic Agrarian Regulations or better known as the Basic Agrarian Law, referred to as (UUPA). In Indonesia, there have been two legal systems regarding land. Namely, Land Law based on Customary Law and Land Law based on Western Law contained in the Burgelijk Wetboek from now on referred to as BW.[1]

[1] Fani Martiawan Kumara Putra, "Pembatalan Sertipikat Hak Atas Tanah Karena Cacat Administratif Serta Implikasinya Apabila Hak Atas Tanah Sedang Dijaminkan," *Perspektif* 20, no. 2 (2015): 101–17.

To own land can be through buying and selling, which is usually done through a sale and purchase agreement. The sale and purchase agreement has been regulated in the Civil Code where Article 1458 (Civil Code) reads: "The sale and purchase are considered to have taken place between the two parties when they have reached an agreement on the goods and the price, even though the goods have not been delivered or the price has not been paid."

According to Article 1457 of the Civil Code, it is stated that the sale and purchase of land is an agreement with which the sale binds him (his heart promises to hand over the land in question to the buyer who attaches himself to pay the seller the agreed price). However, sometimes it can run not according to the deal that all parties expect in an agreement.

In mid-2015, the Plaintiffs as to the heirs of Endang Hartini, the wife of Dirk Tatipata (Plaintiff I) and the biological mother of the three daughters between Endang Hartini and Dirk Tatipata, were named Andriana Oknova (Plaintiff I's First Daughter) (called Plaintiff II), Wisye Christina Tatipata (Plaintiff I's Third Daughter) (referred to as Plaintiff III), Meutia Expertise Tatipata, (Plaintiff I's Second Daughter) (referred to as Plaintiff IV). The three daughters of Plaintiff I intend to seek a business capital loan, starting with Plaintiff II meeting Brother Radit as an intermediary and introducing Defendant I to offer a business capital loan.

Before getting to know Defendant I, Plaintiff II first knew Mr. Radit (a confidant of Defendant I). Mr. Radit conveyed the agreement for a business capital loan with a total disbursement of Rp. 6,375,000,000,- (six billion three hundred seventy five million rupiah). Then it was agreed on the calculation of interest and loan repayments in full with the Pre-Contract between the Plaintiffs and Defendant I with the following details: Total working capital of Rp. 7,648,000,000,- (seven billion six hundred and forty-eight million rupiah) minus 15%, then the Plaintiffs received Rp. 6.500,000,000, - (six billion five hundred million rupiah). The second month the Plaintiffs had to pay the interest-only with a calculation of Rp. 382.400.000,- (three hundred eighty-two million four hundred thousand rupiah). Furthermore, the Plaintiffs at the time of returning the business capital must pay Defendant I in full in the amount of Rp. 7,648,000,000,- (seven billion six hundred forty eight million rupiah). It was agreed on the Pre-Contract that a total return of Rp. 7,687,500,000,- (seven billion six hundred eighty-seven million five hundred thousand rupiah) plus a fee that the Plaintiffs have not paid in the amount of Rp. 440.000.000,- (four hundred and forty million rupiahs), so that the total is Rp. 8,127.500.000,- (eight billion one hundred twenty-seven million five hundred thousand rupiahs).

The business capital loan was made on December 16, 2015, with a Sale and Purchase Association (IJB) concept at Notary Anita Lucia Kendarto, S.H., M.Kn. (Defendant II), having its office at Ruko Office Par B-1 Number 5, Jl. Darmo Boulevard

Hill, Surabaya. When reading the nominal value signed by Plaintiff I and Defendant I, I was Rp. 2.800,000,000,- (two billion eight hundred million rupiahs).

On April 1, 2016, Plaintiff II visited Notary Anita Lucia Kendarto, S.H., M.Kn. (Defendant II), to request a copy of the Sale and Purchase Agreement (IJB), Plaintiff II felt that there were other irregularities in the Sale and Purchase Agreement (IJB), including First, the Sale and Purchase Agreement (IJB) Number 75, which Defendant II readout with a nominal value of Rp. . 2,800,000,000, - (two billion eight hundred million rupiah) but in the Sale and Purchase Association (IJB) it is written Rp. 4.500,000,000, - (four billion five hundred million rupiah). Second, a loan that uses the concept of a Sale and Purchase Agreement (IJB) with several payments, while in the editorial, the Sale and Purchase Agreement (IJB) is stated as a Down Payment and settlement of the sale and purchase of a house when in fact there is no sale and purchase agreement between the parties. Plaintiff and Defendant I. Third, in the Sale and Purchase Agreement (IJB), there is an absolute power of attorney clause as stated in Article 4 of the Sale and Purchase Association (IJB) Number 75, which reads:

"The First Party hereby authorizes the Second Party, for and on behalf of the First Party with a Deed of Power of Attorney dated today, the next number is drawn up before me, the Notary. The Deed of Power in question is an inseparable part of this agreement. Therefore it cannot be revoked or becomes null and void, and is granted by releasing all legal regulations that determine the causes for the termination of a power of attorney".

Concerning the explanation above, this study will review the case of the sale and purchase of land and buildings on Jl. Sleep No. 103 City of Surabaya between Plaintiff Dirk Tatipata's family and Defendant Ronald Sanjaya.

RESEARCH METHOD

This is normative legal research with a statute approach.

DISCUSSION

Legal Facts

The Surabaya District Court handled the legal case with Decision Number: 672/Pdt.G/2016/PN. Sby is a case between the Plaintiffs and the Defendants consisting of:

1. Plaintiff I: Dirk Tatipata, 80 years old (Land and building seller);
2. Plaintiff II: Andriana Oknova, 55 years old (Plaintiff I's first daughter);
3. Plaintiff III: Wisye Christina Tatipata, 52 years old (Plaintiff I's third daughter);
4. Plaintiff IV: Meutia Expertise Tatipata, 54 years old (2nd daughter of Plaintiff I).

The case handled by the Surabaya District Court was a case between Dirk Tatipata (Plaintiff I), who originally intended to develop a family company business by guaranteeing a Certificate of Ownership (SHM) Number: 4218 NIB. 12.01.06.05.05655,

covering an area of 490 M2, located on Jl. Sleep No. 103, Petemon Village, Sawahan District, Surabaya on behalf of the rights holder Dirk Tatipata.

In the mediation process at the Surabaya District Court, the Defendants had good intentions. Still, the Plaintiffs did not show their goodwill to resolve this case through mediation following the applicable laws and regulations.

The Mediator Judge stated that the mediation process failed because it was seen from only Plaintiff II, who was present at the initial mediation meeting, but never attended the next mediation meeting even though he had been appropriately summoned 2 (two) times in a row without valid reasons from 3 (three) times of summons for mediation. The Panel of Judges who examined, tried, and decided this case not to accept the Plaintiff's claim who did not have good intentions, thus could be used as one of the reasons in the Judge's decision.

Legal Considerations

At the trial on Thursday, December 1, 2016, the mediator Judge became the examining Judge, asking the Panel of Judges who examined, tried, and decided the case not to accept the Plaintiffs' claims due to formal defects. In the main issue, the following items were found:

1. Defendant expressly rejects all the arguments of the Plaintiffs;
2. Certificate of Ownership (SHM) Number 558 (Surat Ukur Number 1372 of 1988) on behalf of Plaintiff I to Certificate of Ownership (SHM) Number 4218 (Surat Ukur Number 00833 of 2015) on behalf of Defendant I on March 18, 2016, is valid and legal;
3. The Plaintiffs' arguments stating the debts are fabricated and untrue;
4. On December 16, 2015, the Sale and Purchase Binding Agreement (PPJB) Number 75, Power to Sell Number 76, and Employment Agreement Number 77 were made. Defendant paid in full the entire sale and purchase of the house.

Legally, it is clear that Dirk Tatipata does not have high bargaining power and is a seller of land and buildings on Jl. Sleep No. 103 that has been done in front and signed by Notary Anita Lucia Kendarto, S.H., M.Kn. with several letters/deeds, namely:

1. Sale and Purchase Binding Agreement (PPJB) Number 75 dated December 16, 2015, made and signed before Notary Anita Lucia Kendarto, S.H., M.Kn;
2. Authorization to Sell Number 76, dated December 16, 2015, made and signed before Notary Anita Lucia Kendarto, S.H., M.Kn;
3. Employment Agreement Number 77, dated December 16, 2015, was made and signed before Notary Anita Lucia Kendarto, S.H., M.Kn;
4. Deed of Sale and Purchase (AJB) Number 99/2016 dated March 2, 2016, drawn up and signed before Notary Anita Lucia Kendarto, S.H., M.Kn.

Thus, legal resistance is still being carried out by carrying out a lawsuit in the land and building dispute case at the Surabaya District Court, and ending his defeat coupled

with a penalty of trial fees and payment for his unlawful actions harmed Ronald Sanjaya as the legal owner of the land and buildings.

CLOSING

Conclusion

The binding sale and purchase agreement (PPJB) of land between Mr. Dirk Tatipata and Mr. Ronald Sanjaya on December 16, 2015 Number 75 is valid and binding with a Power of Attorney to Sell Number 76 dated December 16, 2015, Employment Agreement Number 77 dated December 16, 2015, which were all drawn up and signed before Notary Anita Lucia Kendarto, SH, M.Kn. Also equipped with the Sale and Purchase Deed (AJB) Number 99/2016 dated March 2, 2016, made and signed before Notary Anita Lucia Kendarto, S.H., M.Kn. Dirk Tatipata Brother is said to have committed an unlawful act on the Land Purchase Agreement (PPJB), which he did with Ronald Sanjaya since the agreement was made on December 16, 2015, until the Surabaya District Court decision on June 18, 2017, still has not carried out its obligations to vacate the land. And the building. In legal protection for Mr. Dirk Tatipata as the losing party in the lawsuit, Ronald Sanjaya proved a Letter/Deed of Sale and Purchase dated March 2, 2016.

Recommendation

For the community in carrying out legal actions, the author recommends that they be careful in carrying out lawful activities such as making any form of agreement to study article by article in the contract. It is not easy to file a lawsuit, as the author raised if the initial goal is to obtain business capital by guaranteeing a Certificate of Ownership (SHM), but what is carried out in the legal process is a sale and purchase. A lawsuit is filed, then as the initial owner and has made a sale before a Notary, of course, he does not have rights to the land and buildings.

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p-ISSN: 1693-0657 | e-ISSN: 2746-1963
NORMA
https://journal.uwks.ac.id/index.php/norma

Implementation Of the Notary's Duties and Positions Regarding the Presence of the Appeaser Refers to Decree Number 65/33-III/ PP-INI/2020 Dated March 17, 2020

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Abstract:

Concerns about Covid 19 by notaries in doing the Deed. This study aims to examine the Implementation of the Notary Position in Doing Deeds Before and during the Covid-19 Pandemic Period, and to Assess Obstacles in the Duties of Notary Positions in Doing Deeds during the Covid-19 Pandemic Period). The type of research used by the author is descriptive type research. Descriptive research is a problem-solving procedure investigated by describing or describing the current state of the subject and object of research based on existing facts. The results of the research in the Assignment of Notary Positions in Doing Deeds Before and during the Covid 19 Pandemic Period differed from the difference in the health protocol and the presence of the appeasers based on SK Number 65/33-III/ PP-INI/2020 dated March 17, 2020, regarding the matter referred to In the main point of the letter, the Central Management of the Indonesian Notary Association (PP-INI) and all of its staff expressed concern over the massive development of the spread of Covid-19 which directly affected the implementation of the duties of a Notary public in providing services to the public and in this regard, this PP urges all members to follow the health protocols set by the government to overcome the spread of Covid-19.

Keywords: *CoronaViruses; Notary; Decree.*

Article's History:

Received:
May 23, 2021;

Peer-Reviewed:
June 21, 2021;

Accepted:
July 15, 2021;

Published:
July 30, 2021.

DOI:
10.30742/nlj.v18i2.1590

INTRODUCTION

Notaries are given authority by legislation as in Article 1, number 1 of Law Number 30 of 2014 concerning Notary Positions, as amended by Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Positions (UUJN). A Notary is a public official authorized to do authentic deeds and has other authorities in this Law or based on other laws[1]. Furthermore, Article 15 paragraph (1) of the UUJN stipulates: "The Notary has the power to do an authentic deed regarding all acts, agreements, and stipulations required by laws and/or desired by the interested parties to be stated in an original deed, guaranteeing the certainty of the date of doing the Deed. , keep the Deed, provide Grosse, copies, and quotations of the Deed, all of which are as long as the making of the Deed is not assigned or excluded to other

[1] Kelik Pramudya, *Pedoman Etika Profesi Aparat Hukum* (Yogyakarta: Pustaka Yustisia, 2010), 69.

officials or other people stipulated by Law. A Notary is a public official authorized to do an authentic deed regarding all actions, agreements, and provisions required by laws and/or desired by the interested parties to be stated in a genuine act.[2]

In contrast, other officials are only exceptions." An authentic deed contains the concept of truth where the original Deed proves that the parties have explained what is written in the Deed and that what is described in the Deed is true. An authentic deed can also have perfect evidentiary power because it has three proving forces, namely external, formal, and material. Article 1868 of the Civil Code states: "An authentic deed is a deed made in the form determined by law by or in the presence of a public official authorized to do so at the place where the deed was done." Many fields of work in the world have been affected by the Coronavirus (Covid-19) pandemic due to the need to maintain physical distance to prevent the spread of the virus. All that can be done remotely by going online at home, leaving only work that really can't be done from home, who still have to work outside. All work, including the implementation of the position of a Notary in the current Covid19 pandemic conditions, occupational safety, and health, is one of the essential factors that can affect employee productivity. The risk of contracting the Covid-19 outbreak from clients may occur because the Covid 19 health protocol is not going well. This, of course, can have an impact on employee productivity levels. For this reason, Notaries must be safe by doing preparations by using health protocols as appealed by the central, provincial, and regional governments. That way, the Notary will prepare the steps or prerequisite documents for completeness of the business; this is intended in the process of concluding agreements, transactions, and payment of tax contributions to the parties considering that many government offices are still on holiday[3].

As regulated in East Java Governor Regulation Number 16 of 2020 concerning Guidelines for Large-Scale Social Restrictions in Handling COVID-19 in each work area Through the meeting, the Head of the Regional Office of the Ministry of Law and Human Rights, together with the meeting participants agreed to coordinate with the Provincial Government East Java related to Notary office operations, among others, so that Notaries / Land Deed Making Officials (PPAT) during the PSBB period can still do deeds and can still open offices following the provisions of the PSBB SOP with a maximum of 5 people, maintain a distance, wear masks, gloves for as long as possible. The Notary's office keeps no crowds. Notaries are held, or their presence is required by the Rule of Law to help and serve the community who desperately need authentic written evidence regarding the circumstances of legal events or actions. On a basis like this, those appointed as notaries must have the spirit to serve the community. For

[2] Fani Martiawan Kumara Putra, "Characteristics of Notary Deeds for Transactions Through Electronic Media," *NORMA* 17, no. 3 (January 14, 2021): 1–14, https://doi.org/10.30742/nlj.v17i3.1091.

[3] Abdul Ghofur, *Lembaga Kenotariatan Indonesia, Perspektif Hukum Dan Etika* (Yogyakarta: UII Press, n.d.), 14.

this service, people who feel a Notary has helped them following the duties of their position can provide an honorarium to the Notary. Therefore a Notary means nothing if the public does not need it[4].

Notaries, as public officials who carry out the profession in providing legal services to the public, need protection and guarantees to achieve legal certainty. Promises of security and guarantees of achieving legal certainty for implementing the duties of a Notary have been regulated in Law Number 30 of 2004 concerning the Position of a Notary. However, several provisions in the Law are no longer following legal developments and the needs of the community, so that changes need to be made, which are also intended to further emphasize and strengthen the duties, functions, and authorities of Notaries as officials who carry out public services.[5] Basically, a Notary is a public official who also has a role as a public official. Therefore the problem formulated is how can a Notary carry out his duties and positions during the COVID-19 virus pandemic.

RESEARCH METHOD

This research is normative, which means that this research examines the side of the legislation itself, not researching social phenomena due to existing legislation. The approach method used in this research is the statutory approach. Therefore, this discussion will refer to the Law.

DISCUSSION

Article 1 point 1 of Law Number 2 of 2014 concerning Amendments to Law number 30 of 2004 Notary Position (UUJN) defines a Notary as a public official authorized to make authentic deeds and other authorities as referred to in UUJN. The definition given by the UUJN relates to the duties and authorities carried out by a Notary. This means that a Notary has the duty as a public official and has the authority to make authentic deeds and other authorities regulated by UUJN.[6] Notaries, as public officials who carry out the profession in providing legal services to the public, need protection and guarantees to achieve legal certainty. Therefore, promises of security and guarantees of achieving legal certainty for implementing the duties of a Notary have been regulated in Law Number 30 of 2004 concerning the Position of a Notary. However, several provisions in the Law are no longer following legal developments and the community's needs, so changes need to be made, which are also intended to further emphasize and strengthen the duties, functions, and authorities of Notaries.[7]

[4] Munir Fuady, *No Profesi Mulia (Etika Profesi Hukum Bagi Hakim, Jaksa, Advokat, Notaris, Kurator, Dan Pengurus)* (Bandung: Citra Aditya Bakti, 2015), 133.

[5] Liliana Tedjosaputro, *Etika Profesi Dan Profesi Hukum* (Semarang: Aneka Ilmu, 2003), 93.

[6] Ghofur, *Lembaga Kenotariatan Indonesia, Perspektif Hukum Dan Etika*, 14.

[7] Habib Adjie, *Sanksi Perdata & Administratif Terhadap Notaris Sebagai Pejabat Publik* (Bandung: Refika Aditama, 2008), 32.

As positions and professions that have a Code of Position Ethics, Notaries have obligations that must be carried out both based on laws and regulations that specifically regulate Notaries, namely UUJN and other laws and regulations that must be obeyed by notaries, for example, Law Number 40 the Year 2007 regarding Limited Liability Company. The authorities appoint notaries for the public interest. The Law gives the jurisdiction of a Notary in the public interest not for the benefit of the Notary himself but for the benefit of humankind who use his services to carry out legal actions in the form of making authentic evidence. According to the Big Indonesian Dictionary, notaries have restrictions that are defined as orders (rules) that prohibit an action. With the prohibition for notaries, it is intended to guarantee the interests of the people who need the services of a Notary, and bans for Notaries in carrying out their positions are regulated in Article 17 of the UUJN, namely:

1.` Running a position outside the area of the office;
2. Leaving the site of the office more than 7 (seven) working days;
3. Concurrently as a civil servant;
4. Together serving as a state official;
4. Concurrently serving as an advocate;
5. Concurrently serving as a leader or employee of a state-owned enterprise, regional-owned enterprise, or private enterprise;
6. Concurrently serving as Land Deed Making Officer and/or Class II Auction Officer outside the Notary's domicile;
7. Become a Substitute Notary;
8. Perform other work contrary to religious norms, decency, or propriety that can affect the honor and dignity of the position of a Notary.

Suppose the Notary is found to be in violation. In that case, he will receive a sanction in the form of a written warning if he gets a problem that is classified as mild and can be handled by the regional administrator or local wilayah administrator. On the other hand, suppose you have a slightly more severe problem. In that case, you will receive a warning, namely temporary dismissal, where the notice is addressed to a Notary who has legal issues which are judged by the Regional Government or Regional Government as tarnishing the duties and positions of the Notary and can carry out the responsibilities and roles of a Notary after the Decree has been issued. Suppose a Notary has serious problems, for example. In that case, a Notary who has been sentenced to 5 years or less will receive a reward in the form of a respectful dismissal and can be reappointed to continue his duties and Notary position, while for a Notary who commits tax evasion and commits a criminal offense that is not commendable, namely murder, will be punished with dishonorable dismissal and not being able to continue the duties and positions of a Notary until the end of his life. Of course, a Notary who is a professional requires a rule of professional ethics.

The position of the code of ethics for notaries is critical, not only because a Notary is a profession, but also because of the nature and nature of the work of a Notary that is oriented towards legalization so that it can become the main legal foundation regarding the status of the property, rights, and obligations of a client who uses the services of the Notary[8]. Therefore, in carrying out his duties, a Notary must adhere to the code of ethics for the position of a Notary professionalism.[9]

A deed is a form of a written agreement. According to Subekti, the Deed is not a letter but must be interpreted as a legal act, derived from the word after which in French means action, meaning that a Deed is a form of the existence of a lawful act, or a Deed is a legal act itself.[10] Article 1 paragraph (7) states that a Notary Deed, from now on referred to as a Deed, is an authentic deed made by or before a Notary according to the form and procedure stipulated in this Law. Article 1 paragraph (8) (9) (10) states that the Minutes of Deed is the original Deeds that include the signatures of the appeasers, witnesses, and Notaries, which are kept as part of the Notary Protocol. A copy of the Deed is a verbatim copy of the entire Deed. At the bottom of the composition of the Deed, the phrase "given as a COPY of the same sound. Deed Quotation is a word-for-word quote from one or several parts of the Deed, and at the bottom of the Deed quote the phrase "given as a quote. Article 1 paragraph (12) (13) that the Notary Position Formation determines the number of Notaries needed in a Regency/City. Notary Protocol is a collection of documents that are state archives that must be stored and maintained by a Notary according to the provisions of the legislation.

CLOSING

Conclusion

WFH conditions and social distancing will undoubtedly limit the implementation of the duties of a Notary; therefore, in this situation, several alternatives can be taken, including the following: Rearrange the schedule for signing the Deed with the appeasers until conditions allow. Recommend other Notary partners whose needs will enable them to carry out their positions. For agreements, actions, or meetings according to the laws and regulations, the documents can be made private so that the clause "will be made/restated in an Authentic Deed immediately after the Covid-19 emergency is revoked by the Government".

Recommendation

During the Covid 19 pandemic, Notaries must be wise in applying the Health Protocols used to sign or realize the appeasers so that no one is harmed or infected

[8] Fuady, *No Profesi Mulia (Etika Profesi Hukum Bagi Hakim, Jaksa, Advokat, Notaris, Kurator, Dan Pengurus)*, 133.

[9] Suhrawardi K. Lubis, *Etika Profesi Hukum* (Jakarta: Refika Aditama, 2008), 35.

[10] Subekti, *Pokok-Pokok Hukum Perdata* (Jakarta: Intermasa, 2005), 29.

with Covid 19. In this regard, we urge all members to follow the health protocols set by the government to overcome the spread of Covid-19. In particular, the appeal for Work From Home (WHF) and implementing social distancing. The implementation of the WFH is not a violation of Article 17 of Law 30/2004 concerning the Position of a Notary as amended by Law 2/2014 regarding the prohibition to leave the area of the office for more than seven consecutive working days without a valid reason.

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p-ISSN: 1693-0657 | e-ISSN: 2746-1963
NORMA
https://journal.uwks.ac.id/index.php/norma

Pandemic as Reasons to Avoid Pre-Project Selling Default: Law Refinement to Provide Justice and Supports Business Activities in Covid19 Era

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Abstract:
The study, Pandemic as Reasons for Debtors to Avoid Default: Law Refinement to Provide Justice and Supports Business Activities in Covid19 Era, aims to find out and analyze the problems of default that occurred during this Covid19 pandemic, especially in the Pre-Project Selling event. Failure to make achievements can occur not only because of economic constraints, but also because of limited tools and personnel during the pandemic. This means that failure to make achievements is not only on the developer's side, it can also be from the buyer's side, while the disputes that occur are not those that have a low nominal, therefore cases often end up in court. This is a normative research with a statutory approach. The results obtained from this study are that the judge who decides the case can at least provide a legal smoothing on the state of default during this Pandemic, so that justice can be realized and will also support business activities.
Keywords: *Pre-Project Selling; Pandemic; Default.*

Article's History:
Received:
April 20, 2021;
Peer-Reviewed:
June 21, 2021;
Accepted:
July 15, 2021;
Published:
July 30, 2021.
DOI:
10.30742/nlj.v18i2.1591

INTRODUCTION

Humans are related to each other reciprocally which can also lead to a legal relationship. Legal relationship is a relationship between one party and another party that causes legal consequences, including trade.

Problems that are often faced in relation to housing development, especially in urban areas, are caused by population growth that continues to increase, while land supplies are very limited. The price of land is quite high and the location of the land is not possible where it is needed to build houses in large numbers using relatively small land. The situation as mentioned above, at this time also began to develop residential development with a housing system. This is based on the idea of efficient use of the land needed to build the residence, by using a system of more than one floor, and it is necessary because it is a good housing business strategy.

The more widespread development at this time, followed by the increasing number of business actors engaged in the housing sector. Developers or developers are business actors who provide residential units, whether in the form of one house or like

an apartment. The more people who need houses, the more residential units that must be offered to consumers, inevitably this situation forces the marketing department or property agents to actively offer these residential units that will be or have been built. As a consequence of the increasingly competitive free market, various marketing strategies continue to be developed and implemented, all of which are done so that all residential units that have been built or sold quickly for additional capital for developers, the investment value invested will return immediately and are expected to immediately get a profit.

The marketing strategy that is currently often applied by developers, or residential property agents, is to offer residential unit sales with a "pre project selling" sales pattern or strategy, namely sales made before the property development project begins. This strategy is by offering residential units of flats/apartments or housing through various property exhibitions, either individually or collectively, to consumers, by showing pictures or brochures of designs for future residential forms, while the physical buildings offered by the developer are currently or even not built yet.

Not all sales with the pre-project selling method run smoothly, there are often obstacles, namely delays in development, or incompatibility with what is being offered, delays in the process of transferring land rights, and even criminal events. Currently, the potential for the buying and selling process to run smoothly with pre-project selling is getting bigger. In fact, in the field, there have been several reports of the failure of developers in realizing housing that is sold using the pre-project selling method. This is due to the impact of the Covid19 Pandemic, which is not only about the developer economy, but also the availability of workers, as well as other things.

The pandemic that is happening in Indonesia and in other countries at this time is the corona virus disease 2019 (hereinafter referred to as Covid-19) where the Covid-19 pandemic has been determined by Presidential Decree of the Republic Indonesia number 12 of 2020 concerning the determination of non-natural disasters spreading corona virus disease 2019 (Covid-19) as a national disaster. The presidential decree stated that non-natural disasters caused by the spread of Covid-19 have an impact on increasing the number of victims and property losses as well as having implications for broad socio-economic aspects in Indonesia. The World Health Organization (WHO) has declared Covid-19 as a global pandemic on March 11, 2020. This Covid-19 pandemic has hit almost the entire world to date and is growing quite rapidly in transmission. The COVID-19 pandemic has had a tremendous impact on human life, namely the impact on health that is very serious and can cause death, in addition to the health impact it also has an impact on the economy of the entire country.

The economic impacts include delays in the production process, due to the increasing scarcity of raw materials, especially those originating from imports, which were stopped, the cessation of the tourism, entertainment and hospitality and aviation

industries due to social restrictions and regional closures, as a result of which there were many reductions in employees which led to temporary layoffs of employees, there are even layoffs (hereinafter referred to as layoffs) so that it can lead to a decrease in income and an increase in unemployment as well as an increase in crime.

Of course, with a situation like this, there will be parties who are harmed, be it the developer, or the buyer. Of course, with a nominal that is not small, then of course the settlement is often carried out until the trial. The judge, in this case, is demanded for his wisdom in deciding such cases fairly, and the authority of his decision can support similar business activities with similar problems.

RESEARCH METHOD

This research is a normative legal research with statutory approach.

DISCUSSION

Default will not exist without Achievement, which achievement is the object of the law of engagement. Engagement law is a law that regulates legal relations between legal subjects with one another in the field of civil law (property law where one party has the right to an achievement (creditor) and the other party is obliged to provide achievements (debtor). There are elements of engagement law including:

Legal relationship. The purpose of the legal relationship here is the bond between the parties which is intended to give birth to legal consequences, matters and obligations arising from the relationship are regulated by law. In carrying out the obligations in the engagement, legal assistance may be requested if necessary.

Legal subject. The legal subject can be in the form of a creditor, which means that the creditor is the party entitled to the achievement. The creditor can be said to be an active party because the creditor has the right to the debtor's achievements and the creditor can take certain actions against the debtor who does not want to fulfill his obligations, in terms of assets in legal subjects, namely creditors, there are material rights to achievements and the authority to realize these rights. through a lawsuit. The legal subject can also be a debtor, which means that the debtor is the party who is obliged to provide achievements, the debtor can also be said to be a passive party because he has an obligation to provide achievements.

Civilization (wealth). In civil law, according to legal science, the first regulates people, the second regulates family, the third regulates assets, the fourth regulates inheritance, while according to BW, book I regulates people; book II regulates objects; book III regulates engagement; book IV regulates evidence and expiration. Which is where the law governing assets is contained in Books II and III BW. This means that in the engagement there is a legal relationship that gives rise to rights and obligations that have economic value/money value. In other words, if the debtor's obligations are

not fulfilled, the creditor can get compensation in the form of a certain amount of money.

Achievements. Achievements according to Article 1234 BW are giving something, doing something, and not doing something.

The law of engagement as regulated in Book III BW (Article 1233-1864) is still valid today, because there is still no new law regarding the law of engagement. CHAPTER I-IV, regulates the general provisions of the engagement in Articles 1352 and 1354 BW. Article 1235 BW states that in every agreement to give something, it is contained in the obligation of the debtor to surrender the object in question and to take care of it as a good housewife, until the time of delivery. This article describes a consensual agreement (which was born at the time of reaching an agreement) whose object is goods, where from the moment the agreement is reached, the person who is supposed to deliver the goods must continue to take good care of the goods as it is appropriate to maintain their own property as well as take care of his other belongings, which will not be handed over to others. The obligation to take good care lasts until the item is handed over to the person who must receive it. Or it can be interpreted by surrendering into the ownership of others to be enjoyed or controlled by others. For example, if A buys a motorbike from B, then A has to pay money to B for the price of the motorbike (gives something with money), and B gives the motorbike to A (gives something with a motorbike).[1]

Doing something in an engagement which is always related to legal subjects, not legal objects. That is, it means to do the act as stipulated in the engagement. So the form of achievement here is to do certain actions. In carrying out this achievement the debtor must comply with what has been determined in the engagement. The debtor is responsible for his actions that are not in accordance with the provisions agreed upon by the parties. However, if these provisions are not agreed upon, then herein applies the appropriateness or appropriateness measure that is recognized and applies in the community. This means that one should act as a good worker. In this case, every positive achievement that is not in the form of giving something and is usually related to a certain profession, for example, if someone A is a motorcycle buyer and B is a motorcycle seller, where one time A bought a motorcycle at shop B for 15,000,000. A and B have an agreement where A will buy a motorbike with a motorbike price of 15,000,000 then B will deliver the motorbike to A's house. The next day A pays the motorbike to B for 15,000,000 and B delivers the motorbike to A.[2]

The commitment not to do something is still a form of achievement and must be fulfilled. The party concerned is burdened with a prohibition to perform a certain legal act. If the person concerned as the debtor is prohibited from taking certain legal actions

[1] Moch. Isnaeni, *Hukum Perikatan* (Surabaya: Revka Petra Media, 2017), 155.
[2] Ibid., 181.

so that the other party (creditor) does not suffer losses. In other words, for the creditor it is the right to demand that something not be done or to prohibit others from doing something, while for the debtor it is an obligation not to do something. From this statement we can take an example, namely if someone A is a motorcycle buyer and a B is a motorcycle seller, where one time A bought a motorcycle at B shop for 15,000,000. A and B have an agreement in which A will buy a motorbike with a motorbike price of 15,000,000 then B will deliver the motorbike to A's house. The next day A has paid the motorbike to B for 15,000,000 but B has not sent the motorbike to A.[3]

The object of the engagement is the achievement as described above (giving something, doing something, not doing something). Debtors in providing their achievements have the following conditions of achievement:

1. The object of the engagement (achievement) must be certain or can be determined (Article 1320 sub 3 BW);
2. The object of the engagement must be permitted (according to Article 1337 BW). Will not cause an engagement if the object is contrary to decency, public order or prohibited by law;
3. There is no achievement requirement that it should be possible to fulfill; s**ubjectively impossible** (In this case, the debtor may not fulfill his obligations, for example, a paralyzed person is ordered to drive. The engagement can be null and void). **Objectively impossible** (In this case the object of the engagement is impossible to fulfill, for example, someone is ordered to take the planet Pluto).

Default is an abbreviation of wan which means disability and achievement (giving something, doing something or not doing something). Default can also be referred to as an achievement that is not given by someone who has an obligation to provide his achievements. The legal basis for default is contained in a contrario of Article 1234 BW, therefore default is not giving something, not doing something, doing something that is prohibited, being late in fulfilling something which has been agreed.

As explained that the achievement must be fulfilled by the debtor but a reasonable grace period is needed with an agreement that includes a deadline for achievement if the agreement does not include a performance deadline then the default does not occur by law, but in its development there is a time limit for the achievement of the agreement as well. may not necessarily bring the debtor into a state of default. Another important element is the granting of a subpoena to the debtor and all depends on the type or content of the agreement itself. Summons are divided into 2, namely:

1. Summons are given at least two (2) times because if the first summons does not reach the person concerned and when the summons has been given twice there is no response at all, legal action can be taken;
2. In accordance with the decision of the Supreme Court of the Supreme Court

[3] Ibid., 184.

No. 852/K/Sip/1972, the subpoena is only given one (1) time, if it can be filed in court, then the court issues a summons which according to the Supreme Court is already a subpoena.

The subpoena can be used if:[4]

1. The debtor does not fulfill the performance at all. This means that the debtor does not fulfill the obligations that have been agreed upon by the other party to fulfill his obligations in an agreement or does not fulfill his obligations that have been stipulated by law in the engagement. The debtor does not fulfill his performance, it can be said that the debtor did not give something or did nothing;
2. ` The debtor fulfills his performance but does not comply with the agreement. This means that the debtor carries out or fulfills his obligations that have been agreed upon by other parties in accordance with the law, but what is given by the debtor is not appropriate according to the quality specified in the agreement;
3. Debtors are not punctual or late in fulfilling achievements. This means that in the agreement a time, place and price has been stipulated, but the debtor carries out his obligations and fulfills his achievements late or exceeding the time limit set by the parties in the agreement, a statement is needed stating that the debtor is negligent / subpoena. If a subpoena has been issued, the debtor can be charged with compensation.

There are several circumstances that do not require a negligent statement or subpoena, including:

1. If the agreement is specified;
2. The debtor refuses to fulfill;
3. The debtor admits that he was negligent;
4. Fulfillment of achievements is impossible;
5. Fulfillment of achievement no longer matters;
6. The debtor does not fulfill the performance as it should.

As it has been understood that default is essentially an act committed by the debtor in the form of not performing as an obligation, so that the creditor does not get his rights and that is clearly a loss. Default itself can be caused by two things, namely:

1. This type of default that is carried out intentionally is still divided into two types, namely: (a). Totally on purpose; (b). Default due to negligence.
2. Default due to overmacht or force majeure.

Regarding the intentional default, the legislators have arranged it coherently and clearly, where the form of achievement is stipulated in Article 1234 BW and that achievement must be fulfilled as confirmed by Article 1235 BW. With a default, it means that performance as an obligation was not fulfilled and this is clearly a wrong

[4] Ibid., 207.

act. According to Indonesian law, whoever is at fault must take the risk, then the risk must be borne by the wrong party, namely the debtor who has defaulted. The risk is explained by Article 1236 BW which is obliged to pay compensation, fees and interest.[5]

This can also be seen from the stipulation of Article 1243 BW which confirms that reimbursement of costs, losses and interest due to non-fulfillment of an engagement, then becomes obligatory if the debtor after being declared negligent in fulfilling his engagement, continues to neglect it or if something that must be given or a grace period is made. which has been exceeded, which in that article determines that the reimbursement of costs, losses and interest by the debtor can only be made, after the debtor declares negligence because it does not fulfill the contents of the engagement. In an agreement either to surrender or to do something has been determined with a time limit, then with the passing of the time limit for fulfilling obligations for the debtor, the debtor can immediately be said to be in default, because the passing of the grace period to fulfill the obligations of a debtor is considered negligent to fulfill his achievements. As for what is meant by negligent in the provisions of Article 1238 BW, it is determined that: "The debtor is negligent, if he has been declared negligent by a warrant or with a similar deed, or for the sake of his own engagement stipulates that the debtor will continue to be considered negligent with the passage of time. which have been specified".

If a debtor has been warned by the creditor or has been expressly billed for his promise, as explained above, then if he still does not carry out his achievements, then the debtor can be said to be in a state of default and against him he can be treated with juridical sanctions as a legal consequence thereof.

In general, many people think that default is part of an unlawful act (genus specific). This assumption seems to be true at first glance, but when it is to be written down in the form of a written claim, it is not permissible to mix the two together because it will lead to errors which in the end will obscure the purpose of the lawsuit itself. There are some very principal differences between default and unlawful acts. The principal difference is:[6]

Source

1. Default arises from agreement. This means that in order to postulate that a legal subject has defaulted, there must first be an agreement between the two parties as stipulated in Article 1320 BW;
2. Acts against the law are born because the law itself determines. This is as referred to in Article 1352 BW.

The emergence of the right to sue

1. In default, a process is required, such as a statement of negligence (inmorastelling,

[5] Ibid., 208.

[6] Wiryono Prodjodikoro, *Perbuatan Melanggar Hukum* (Bandung: Sumur, 1992), 53.

negligent of expression, interpellatio, ingeberkestelling). This is as referred to in Article 1243 BW which confirms that the engagement is intended to give something, to do something, or not to do something, or if it turns out that in the agreement there is a clause that says the debtor is immediately deemed negligent without requiring a summons or warning;

2. This is reinforced by the jurisprudence of the Supreme Court No. 186 K/Sip/1959 dated July 1, 1959 which states that if the agreement explicitly determines when the fulfillment of the agreement, according to law, the debtor cannot be said to have failed to fulfill his obligations before it is stated to him in writing by the creditor;
3. In an unlawful act, the right to sue can be carried out without the need for a subpoena. Once an unlawful act arises, at that time the injured party can directly sue it (action, claim, rechtvordering).

Claims for compensation (compensation, indemnification).

1. In default, the calculation of compensation is calculated from the time the negligence occurred;
2. This is as stipulated in Article 1237 BW, regarding the cost of compensation itself is regulated in Article 1246 BW.

Starting from the opinion above, regarding unlawful acts, legal rights and obligations must be considered based on the law (wet), so the act must actually violate the rights of others or be contrary to its own legal obligations given by law. Thus, breaking the law is the same as breaking the law.[7]

Based on this study, if it is related to buying and selling using the pre project selling system, whether its position is only as an order agreement, or it has been tied to PPJB, then if one of the parties, be it the developer or the buyer, is in default, a claim can be submitted to the court, because the claim is in a civil case, then the party who defaults can be held accountable in the form of compensation.

This claim must be a claim for default, it must not be a lawsuit for violating the law, because this is based on an agreement between the parties, not an order agreement or PPJB, but an agreement between the buyer and the developer when there is an agreement and fulfills the principle of consensualism.

Agreement is defined as a legal relationship between two or more parties based on an agreement to cause legal consequences. So according to not only see the agreement solely, but must be seen previous actions or actions that preceded it. These actions include:

1. The stage before the agreement, namely the existence of an offer and acceptance;
2. The agreement stage, namely the adjustment of the statement of will between the parties and the stage of implementing the agreement. This means that

[7] Abdul Kadir Muhammad, *Hukum Perikatan* (Bandung: Citra Aditya Bakti, 1990), 144.

the principle of consensualism has been fulfilled in this agreement, and the emergence of legal consequences (growth/disappearance of rights and obligations).

This principle of consensualism is in accordance with Article 1458 BW which stipulates that buying and selling has occurred between the two parties immediately after they have reached an agreement on the goods and the price even though the goods have not been delivered and the price has not been paid.

Sometimes achievements cannot be made or are hindered due to a certain thing, this can be in the form of natural disasters and so on. As at this time, many countries have been affected by COVID-19, one of which is Indonesia. Covid-19 has a very fast transmission rate, the higher the risk of death for someone with a weak immune system, meanwhile the anti-virus that has not been found has forced a number of countries and governments to take policies that have legal implications. This policy is a lockdown or social distancing policy, an example of a lockdown or social distancing activity, namely maintaining a distance between people.

This has disturbed many business people, many companies or people who cannot keep their promises or cannot carry out their obligations. In other words, many contracts, agreements, business transactions or activities have been delayed due to the spread of the COVID-19 outbreak. In a covid-19 pandemic like this, many companies are reducing their workers or laying off workers in order to fulfill the call from the president, which is absolute, to reduce crowds in one place in order to minimize someone who is infected with the covid-19 virus or can reduce the existing virus. In conditions like this, it adds to the burden of many workers who have been laid off, because the workers who have been laid off have dependents to pay for credit for the goods, they have purchased from creditors prior to the COVID-19 pandemic.

In this situation, a dispute that has entered the realm of the Court, then of course one of the parties can easily enter a state of default as long as a subpoena has been given, or there is no need to be given a summons but it has been confirmed when the last time is. Judges can actually easily give a decision on the basis of the considerations and the theory of default above.

However, in order to support business activities, and the realization of justice for the changing reality of the situation, the Judge must of course make legal refinements. Legal refinement in Dutch is called rechtsverfijning, which comes from lema fijn which means smooth. Prof. Sudikno Mertokusumo prefers the term legal narrowing. Legal narrowing is not an argument to justify the formulation of laws and regulations. If it is not formulated subtly, then the formulation in the legislation is too broad.[8]

Legal refinement is often seen as the opposite of analogy. According to its purpose, the law must not settle a case unfairly or not according to social reality.

[8] Sudikno Mertokusumo, *Penemuan Hukum: Sebuah Pengantar*, 4th ed. (Yogyakarta: Liberty, 2006), 71.

However, sometimes judges cannot apply a written provision because if it is applied it will cause injustice. In this case, the judge is forced to remove the case from the regulatory environment, and then settle the case according to the rules that he made himself. The act of issuing that is what Utrecht calls legal refinement.[9]

Refinement or narrowing of the law is needed because often the scope or scope formulated in the legislation is too broad. Judges need efforts to narrow the scope so that it can be applied to concrete events. Utrecht called the legal refinement 'perfecting the legal system' or 'intending to fill an empty space in the statutory system'[10]

Mochtar Kusumaatmadja and B. Arief Sidharta stated that legal refinement is carried out if the application of written law as it is will result in extreme injustice so that written legal provisions should not be applied or applied differently if justice is to be achieved.[11]

For example, based on jurisprudence (Supreme Court Decision No. 639K/Sip/1972 dated February 26, 1973) then one of the heirs can file a lawsuit to ask for his share of the inheritance. This means that the heir must ask for the determination of the heir and the determination that the disputed property is an inheritance that has not been divided. At present the closed nature of a village can be said to no longer exist because of the influence of wandering life. Many of the original inhabitants of a village have moved to other places to earn a living with the result that families often break up so that it is no longer known where each of them is located. This state of modern society raises the need for a rechtsverfijning that allows legal protection to maintain the integrity of the inheritance".[12]

Based on the description above, it can be understood that in this case the judge can refine the law by adjusting to the current pandemic situation, for some cases of default in which the fulfillment of achievements is basically hampered due to the pandemic and the limited space for movement due to government regulations, the pandemic situation can be used to dismissed the claim of default. However, not all default situations can be countered by postulating a pandemic. This is where the judge's authority and wisdom are needed.

CLOSING

Conclusion

Property sales based on the Pre-Project Selling method are very popular and widespread, therefore even during the Covid19 pandemic, this activity is still rampant, but even before the pandemic period this activity often encountered problems which

[9] E. Utrecht and Moh. Saleh Djindang, *Pengantar Dalam Hukum Hukum Indonesia*, 10th ed. (Jakarta: Ichtiar Baru, 1983), 223.

[10] Ibid.

[11] Mochtar Kusumaatmadja and B. Arief Sidharta, *Pengantar Ilmu Hukum, Suatu Pengenalan Pertama Ruang Lingkup Berlakunya Ilmu Hukum* (Bandung: Alumni, 2000), 119.

[12] Chaidir Ali, *Yurisprudensi Hukum Acara Perdata Indonesia*, 1st ed. (Yogyakarta: Nur Cahaya, 1999), 131.

included default events, as well as during the Covid19 pandemic. , the potential for default is greater considering not only the problem of funds, but also the willingness of the workers, as well as some restrictions imposed by the Government. The dispute has a greater potential to be resolved through litigation, therefore the Judge in this case can make legal refinements by adjusting to the current pandemic situation, for some cases of default in which the fulfillment of achievements is basically hampered due to the pandemic and the limited space for movement due to government regulations, the situation is pandemic can be used to dismiss a default lawsuit. However, not all default situations can be countered by postulating a pandemic.

Recommendation

Preferably in the agreement made by the parties, it has also been emphasized in a clause, regarding certain concessions given to each party carrying out their achievements during this pandemic, so that in this case, the Judge is easier to smooth the law.

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