

## **Legal Analysis of Acts of Default in Cooperation Agreements (Case Study of Decision Number 48/Pdt.G/2020/PN.Idm)**

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### **Abstract**

The agreement was born because of agreements between the parties, which gave rise to rights and obligations for the parties involved. Every agreement that is made always aspires that what is agreed upon can run as it should, but in practice there are often broken promises between the parties or what is known as default. Default is a situation where one of the bound parties is negligent or does not fulfill the obligations set out in the agreement. A debtor is declared in default if: does not do what is agreed upon in the agreement, carries out what was promised but is not in accordance with the agreement, does something that cannot be done in the agreement. In the case of the cooperation agreement between Plaintiff Puji Riyanto and Defendant I Susi Suryani and Defendant II Atoillah Dalil, this cooperation agreement was deemed to have defaulted where the defendants neglected to return the capital money and profits for the cooperation agreement to make Alfamart franchise stores. The purpose of writing this journal is to find out the consequences of default according to the Civil Code and legal settlement efforts for default. The writing method used in this paper is normative juridical. The legal consequences of default are cancellation of agreements, compensation, transfer of risks and paying court fees. Legal settlement efforts for acts of default are means of preventive and repressive legal protection.

**Keywords:** Default, Cooperation Agreement, Consequences of Default, Settlement Efforts



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### **INTRODUCTION**

Humans as legal subjects who live in groups underlie the existence of an interaction with one another. In other words, human life always involves two or more parties to obtain desires, benefits or profits. This causes both parties to become mutually bound by an agreement or agreement to give rise to legal consequences. The legal consequence is in the form of reciprocal rights and obligations between the parties. Contracts or agreements are regulated in Article 1313 of the Civil Code, namely: "An agreement is an act in which one or more people bind themselves to one or more other people".

Then regarding the legal requirements of an agreement stated in Article 1320 of the Civil Code, namely: "Agreed those who bind themselves; The ability to make an agreement; A certain thing; and a lawful cause." However, sometimes in life there are obstacles, problems and obstacles that occur as a result of the actions of one party, whether intentional or unintentional, resulting in losses or causing conflicts of interest in agreements which can result in conflicts that often occur, namely defaults. Default occurs if the achievements of an agreement that has been made are not fulfilled. In this case what is meant by default is a condition in which an obligation is not fulfilled as it should be contained in a contract agreement with the parties concerned (Hidayati, et al: 2023).

The elements in default include the existence of a valid agreement (1320), errors due to negligence and intentional actions, losses, sanctions, compensation, resulting in cancellation of the agreement, transfer of risk, and payment of court fees if the problem is brought to court. court (Sinaga & Dervish: 2023). The concept of default is a domain in civil law. Article 1243 of the Indonesian Civil Code states that the purpose of the engagement is to give something, do

something or not do something. Default usually occurs preceded by a contractual relationship. Because basically the agreement gave birth to an agreement or legal relationship that gave rise to rights and obligations for each party. Therefore, in practice it is often found that there is bad faith between one of the parties, which can be in the form of denial or negligence towards fulfilling the achievements agreed in the agreement (Hidayati, et al: 2023).

To determine when a Default occurs, the law provides a solution by subpoena (ingebrekestelling) which can be found in Article 1238 of the Indonesian Civil Code. A statement of default or subpoena is a message from the creditor to the debtor, in which the creditor notifies at the latest when he expects the achievement to be fulfilled. This requires the debtor to bear the legal consequences. So, a statement of negligence is a condition for determining the occurrence of Default (Aspani: 2023). The occurrence of a default certainly results in losses to other parties. With losses by other parties, the party that has defaulted must bear the consequences of the opposing party's demands which can be in the form of: Cancellation of the agreement; cancellation of the agreement accompanied by a claim for compensation; fulfillment of the agreement and fulfillment of the agreement accompanied by demands for compensation (Sinaga: 2014).

As in the case in Decision Number 48/Pdt.G/2020/PN.Idm regarding default in the cooperation agreement carried out by Defendant I Susi Suryani and Defendant II Atoillah Dalil against Plaintiff Puji Riyanto. In this agreement both parties agreed to work together to create an Alfamart franchise store. This cooperation agreement originated from Defendant I and Defendant II offering cooperation with the Plaintiff in the form of business capital by providing profit sharing from the modern franchised store business (Alfamart), while Defendant I and Defendant II as parties who own the place or building for the franchised modern store (Alfamart).

Whereas in the cooperation agreement between the Plaintiff and Defendant I and Defendant II there are several agreements, among others:

1. The plaintiff provided business capital of IDR 300,000,000 (three hundred million rupiah);
2. Defendant I and Defendant II will return the business capital after 6 (six) months from the capital provided by the Plaintiff (ending in March 2017);
3. Providing profit sharing every 3 (three) months in the amount of IDR 45,000,000 (forty five million rupiah).
4. If Defendant I and Defendant II are unable to return all business capital and profit sharing, Defendant I and Defendant II voluntarily submit the object of the Dispute to the Plaintiff by means of a buying and selling mechanism.

Based on the agreement that had been promised, there was negligence or broken promises by Defendants I and Defendants II who did not fulfill their obligations contained in the cooperation agreement, namely returning capital and profit sharing to the Plaintiffs. So that during a period of 3 (three) years and 3 (three) months from the due date of March 31 2017 to the end of June 2020, the Plaintiff continued to seek a way of deliberation to reach a consensus with Defendant II (Husband of Defendant I), with the aim that Defendant II can fulfill his obligations under the Cooperation Agreement by paying the return on the Plaintiff's capital and profit sharing promised to the Plaintiff, but until the time the lawsuit was registered Defendant II could not fulfill his obligations promised in the Cooperation Agreement. The Defendant remained negligent and never responded. Therefore, in this case it is certain that Defendant I, namely Susi Suryani and Defendant II Atoillah Dalil, have committed an act of default by showing bad faith by being uncooperative and continuing to avoid the Plaintiff from carrying out its obligations. From this case the purpose of writing this journal is to find out about the

legal consequences of acts of default based on the Civil Code and find out about efforts to resolve the law from these acts of default.

Based on the above background, the following problem formulation can be formulated: What are the legal consequences of default in the cooperation agreement in the case between Plaintiff Puji Riyanto and Defendant I Susi Suryani and Defendant II Atoillah Dalil according to the Civil Code? What are the legal settlement efforts for acts of default? Based on the statements that have been put forward, the objectives of this study include: To find out the legal consequences of default in the cooperation agreement in the case between Plaintiff Puji Riyanto and Defendant I Susi Suryani and Defendant II Atoillah Dalil according to the Civil Code. To find out the settlement efforts made by law for acts of default.

## **RESEARCH METHODS**

The type of research method used in this journal is normative juridical. Research with this normative juridical method examines by means of library materials or secondary data materials. The secondary data includes Scientific Works, related legal books and legal norms contained in positive law, legal principles, legal principles and reviewing statutory provisions. The data collection technique in this study was library research, namely research with literature that had been carried out by other parties by examining thoughts and opinions on relevant topics, in this case defaults in cooperation agreements.

## **RESEARCH RESULTS AND DISCUSSION**

### **Legal Consequences of Acts of Default in Cooperation Agreements**

In general, default is a situation where a debtor does not fulfill or carry out the performance as stipulated in an agreement. If one of the parties does not do what was agreed in the engagement, then the party that does not do so can be said to be in default. This default can be made due to negligence or negligence or broken promises. Or the party violates the agreement regarding doing or doing something that may not be done in the engagement (Hidayati: 2023).

Based on the Civil Code, violations of contractual rights give rise to compensation obligations based on default as stipulated in Article 1236 of the Civil Code for achievement in giving something and Article 1239 of the Civil Code for achievement in doing something. Then regarding default in Article 1243 of the Civil Code states that "Reimbursement of costs, losses and interest due to non-fulfillment of an agreement, only then begins to be required if the debtor is declared negligent in fulfilling his agreement, continues to neglect it, or if something must be given or made, it can only be given or made within the time limit that has been exceeded (Yahman: 2014)."

In the case of the case between Plaintiff Puji Riyanto and Defendant I Susi Suryani and Defendant II Atoillah Dalil entered into an agreement through a cooperation agreement entered into by both parties, then the agreement is binding as law for the parties entering into the agreement. In each agreement in the case contained:

1. The parties to the cooperation agreement are Puji Riyanto, Susi Suryani and Atoillah Dalil.
2. Agreement of the parties, in this case there is an agreement of the parties, namely cooperation in the form of business capital by providing profit sharing from the franchised modern store business (Alfamart).
3. There was an achievement in the case of this cooperation agreement, namely that the Defendant offered cooperation with the Plaintiff in the form of business capital by providing profit sharing from the franchised modern store business (Alfamart). So with the agreement of both parties, the Plaintiff gave an achievement in the form of money as business capital of

IDR 300,000,000 (three hundred million rupiah) to the Defendant. Then there is an achievement that must be carried out by the Defendant, namely returning the capital within a period of 6 (six) months and will provide a profit every three months in the amount of Rp. 45,000,000.00 (forty five million rupiah) to the Plaintiff.

4. The cooperation agreement in this case is verbal
5. There are legal terms of the agreement.
6. There is a purpose in this cooperation agreement.

According to Professor R. Soebekti, debtors who do not do what they promised are due to negligence or negligence, which is not due to force majeure, so that it can be said to be in default. In the Civil Code, it is briefly explained regarding the legal consequences that occur if there are obligations that are not fulfilled properly, therefore the party who commits negligence or negligence in terms of implementing the agreement that has been agreed upon is threatened with several sanctions or penalties. There are 4 types of punishment as legal consequences for parties who have defaulted, namely:

1. Pay compensation. Provisions regarding compensation are regulated in Article 1246 of the Civil Code which states "costs, compensation and interest, which may be claimed by creditors, consist of losses that have been suffered and profits that could have been allowed, without prejudice to the exceptions and changes referred to as below this". Compensation must be calculated on a commercial basis and must be paid in cash. In this case, before carrying out a claim for compensation, the creditor first gives a warning letter, except in certain conditions that do not require a warning.
2. Cancellation of the agreement. According to Article 1266 of the Civil Code, it states "cancel conditions are deemed to have always been included in a reciprocal agreement, if one party does not fulfill its obligations. In this case the agreement is not null and void, but the cancellation must be requested to the court. This request must also be carried out, even though the cancellation conditions regarding non-fulfillment of obligations are stated in the agreement. If the cancellation conditions are not stated in the agreement, then the judge, taking into account the circumstances, at the request of the defendant, is free to give a period of time to fulfill the obligation, but that period may not exceed one month." Then if you look at the provisions of Article 1338 paragraph (2): The creditor can ask for cancellation of the agreement. However, the cancellation of the agreement must pay attention to Article 1266 of the Civil Code, which states that the cancellation of the agreement must be carried out through the court. In addition, Article 1338 paragraph (2) can also be implemented to cancel an agreement through an agreement from negotiations between the parties.
3. Switching risks. Transfer of risk, where the obligation to bear losses if an event occurs outside the fault of one of the parties that befalls the goods and becomes the object of the agreement. The risk in question is that which occurs due to an act of god or force majeure resulting in default. In this case, the risk that was initially not transferred to the debtor becomes fully transferable to the party who defaults as a penalty for default. In this case, as contained in Article 1237 of the Civil Code "in an agreement to provide certain goods, the goods become the responsibility of the creditor since the agreement was born. If the debtor neglects to deliver the goods in question, then the goods since the agreement was made, become his responsibility.
4. Payment of court fees. This sanction can only be requested when it has been proven before a judge with a stipulation from the judge so that the debtor can pay compensation in the form of money arising from disputes in resolving disputes.



## **Settlement Efforts Made by Law for Acts of Default**

According to Satjipto Rahardjo "legal protection is an effort to protect someone's interests by allocating a human right of power to him to act in the context of his interests". In carrying out and providing legal protection, a container is needed in its implementation which is often referred to as a means of legal protection. Legal protection facilities are divided into 2 (two) types, namely: preventive legal protection facilities and repressive legal protection facilities. Based on the theory of legal protection, namely providing protection for human rights that are harmed by other people and that protection is given by law. So, if an agreement or written agreement results in a loss to the other party, the law gives the right to claim their rights through legal means to the party who feels aggrieved. Basically, legal protection consists of two forms, namely:

1. Preventive legal protection which is defined as prevention. Preventive legal protection is very significant for government actions based on freedom of action because with preventive legal protection, the government is encouraged to be careful in making decisions. The form of preventive legal protection is contained in laws and regulations in order to prevent the occurrence of a violation and to provide limitations in carrying out obligations, and
2. Repressive legal protection functions to resolve disputes that have arisen as a result of violations. This protection is the final protection in the form of imposing sanctions on violations that have been committed (Arif: 2023).

In default disputes which are included in civil cases can be resolved through two options, namely settlement through litigation and non-litigation.

1. Settlement through litigation. Settlement through litigation or commonly called settlement in court. However, based on Article 4 of Supreme Court Regulation Number 1 of 2016 concerning Mediation Procedures in Court, it requires that all civil disputes submitted to the court of first instance must first be sought for settlement through peace with the assistance of a mediator, also regulates regarding the types of cases that must be mediated in the context of mediation in court, namely all civil cases with the exception of civil cases settled through the Commercial Court, the Industrial Relations Court, objections to the decisions of the Consumer Dispute Settlement Agency, and objections to the decisions of the Business Competition Supervisory Commission (KPPU). Therefore, based on the provisions in Article 4 of Supreme Court Regulation Number 1 of 2016 concerning Mediation Procedures in Court, all civil cases or disputes submitted to the court of first instance must first seek settlement through peace or negotiations with the help of a mediator.
2. Settlement through non-litigation. Settlement through non-litigation or commonly called settlement out of court. Dispute resolution out of court is generally known as Alternative Dispute Resolution (ADR). This non-litigation settlement is the opposite of litigation, namely resolving disputes outside the court through peace and prevention of disputes with good contract designs. Dispute resolution through an out-of-court process results in a "win-win solution" agreement, ensures the confidentiality of disputes between the parties, avoids delays caused by procedural and administrative matters, resolves problems comprehensively in partnership and maintains good relations. The secrecy of this non-litigation process is the only advantage, because the trial process and even the results of the decision are not published.

The legal basis for dispute settlement outside the court is regulated in Article 1 of Law Number 30 of 1999 Concerning Arbitration and Alternative Dispute Resolution, which states that: "Arbitration is a method of settling a civil dispute outside the general court which is based

on an arbitration agreement made in writing by the parties to the dispute." Alternatives in this settlement include:

1. Negotiation. Negotiation is a way of resolving disputes through bargaining or directly to the disputing parties.
2. Conciliation. Conciliation is a settlement where the parties actively try to find a settlement with the help of a third party. Conciliation is needed if the disputing parties are unable to resolve the dispute on their own. This causes the term conciliation to be often interpreted the same as mediation, even though settlement through conciliation refers more to dispute resolution through the consensus of the parties, while third parties only act neutrally, playing an active or inactive role.
3. Mediation. Mediation is a negotiated settlement process in which an impartial and neutral outsider works with the disputing parties to help them reach an agreement by deciding.
4. Arbitration. Arbitration is a way of settling a civil dispute outside of a general agreement based on an arbitration agreement made in writing by the parties to the dispute (Article 1 Number 1 Law Number 30 of 1999 Concerning Arbitration and Alternative General Dispute Resolution).

Thus the scope of non-litigation dispute resolution includes legal actions or legal actions that can encourage people to choose a peaceful settlement of their legal issues, because the parties realize that the choice of non-litigation is the most effective, efficient and safe way to resolve their dispute.

## **CONCLUSION**

Default is a condition where an obligation is not fulfilled as it should be stated in a contract agreement with the parties concerned. The occurrence of a default certainly results in losses to other parties. With losses by other parties, the party that has defaulted must bear the consequences of the opposing party's demands which can be in the form of: paying compensation, canceling the agreement, transferring risks and financing case costs as in the case in Decision Number 48/Pdt.G/2020 /PN.Idm Regarding efforts to resolve defaults, it can be done in 2 ways, namely litigation settlement which is carried out by passing the court and non-litigation settlement.

Based on the writing of the journal that has been put forward regarding the consequences and legal settlement efforts from the default in the decision case number 48/Pdt.G/2020/PN.Idm. It is better to prevent acts of default by one of the parties, the parties who will carry out the agreement must be more thorough and careful so as not to suffer losses. By starting from the process of making a healthy agreement with good faith, and having to know the risks arising from an agreement.

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