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Juridical Analysis of Investor Default Cases with CV Business Entities Related to Cooperation Agreement Letters (Decision 55/Pdt Gs/2022/PN Sby)

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Abstract
Basically an agreement is made based on negotiations by the parties, but using standard clauses. One of the default cases that occurred was decided by the Surabaya District Court at the First Level Court with case number 55/Pdt GS/2022/PN Sby. The lawsuit was filed because the Defendant, namely CV AL-FAYYADH, had defaulted on the Plaintiff who is an investor/financier. The method in this study uses normative juridical methods. defaults made by CV AL-FAYYADH did not carry out achievements in payment. The dispute resolution process between CV AL-FAYYADH and Investors used the negotiation route based on Article 6 paragraph (2) of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution by producing a new agreement or renegotiation and of course with a favorable agreement before going through the courts.
Keywords: Default, agreement, and CV

INTRODUCTION

Law is currently developing rapidly in the era of globalization. Law is a representation of the society where the law is applied. If the law originates from the spirit of the law-making community itself, namely the Indonesian legal community, then the law that applies in Indonesia will be effective. One of the fields of law that has developed along with the development of society is contract law. The rapid business activity in contemporary society and fast relations between the government and other parties are the main drivers for the development of contract law. Both the federal government and local governments have the legal authority to initiate civil legal actions in addition to public legal actions. As a result, the government is bound by the provisions of the civil law currently in effect. The principle of freedom of contract, which includes the freedom to make or not to make an agreement, enter into an agreement with anyone, choose the terms of the agreement, including its implementation and terms, and choose whether the agreement will be made orally or in writing, is another factor that contributes to the growth and development of contract law.

Basically an agreement is made based on negotiations by the parties, but by using standard clauses, the contents of the agreement have been determined unilaterally by the business actor. In the Civil Code, in making an agreement, the types of contracts are known, such as buying and selling, exchange, leasing, agreements to do work, civil partnerships, legal entities, grants, goods deposit, borrowing, lending, power of attorney, permanent or perpetual interest. chance agreements, debt guarantees and peace. An agreement is born from a legal relationship that occurs between two parties who have agreed that one party has the right to demand something from the other party. The party entitled to sue is called the creditor (debtor), while the party who is obliged to fulfill the claim is called the debtor (debtor). Article 1233 of the Civil Code stipulates that every engagement is born either by agreement or agreement, or by law. Therefore, an engagement legal relationship can occur because of an agreement or agreement between the two parties who are bound to carry out the agreement.

However, it is undeniable that broken promises often occur between the parties bound by the contract by not carrying out the rights and obligations that have been agreed between the two parties (Putri: 2018).

One of the default cases that occurred was decided by the Surabaya District Court at the First Level Court with case number 55/Pdt GS/2022/PN Sby. The lawsuit was filed because the Defendant, namely CV AL-FAYYADH, had defaulted on the Plaintiff who is an investor/financier. A limited partnership or in Dutch Commanditaire Vennootschap is a partnership with one or more limited partnerships. Commander in Chief (Commanditaire Vennootschap), abbreviated as CV, is an association founded by one or more persons who are responsible for the whole in the first place (complementary partners). , and one or more people as loan sharks. Article 7.13.3.1 paragraph 1 of the BW Nederland draft states that CV is a general partner who openly manages a company in which there are one or more full partners (gewone vennoten) or one or more silent partners (commanditaire vennoten). In ordinary companies, these limited partners are not known, but each partner must provide the same income (inbreng), while CV distinguishes between limited partners (silent partners; passive partners; sleeping partners) and additional partners. (work partners); passive partner; permanent partner; administrator; work partners). Differences between partners have consequences for differences in the responsibilities of each partner.

1. Limited partnerships are partners who are not responsible for the management of the company, these partners only invest capital (money or goods) in the company and have the right to take shares and property of the company if the profit is in accordance with the value of the company. He also suffered the same loss with the interest.
2. Complementary Partners are management partners who are responsible for the operations of the partnership up to the extent of their personal assets.

As the agreement stated in the Cooperation Agreement (Musyarakah Agreement). Another name for Musyarakah is Syarikah or Syirkah. According to the language, Musyarakah means "al-ikhtilath" which means mixing or integrating. The meaning of mixing is that someone mixes his property with other people's assets in such a way that it is difficult to distinguish between one part and another. Etymologically Musyarakah is smelting, mixing or unification. Musyarakah means partnership cooperation or in English means partnership. According to the DSN-MUI fatwa, musyarakah is financed based on a cooperation agreement between two or more parties for a particular business entity, in which each party contributes funds provided that profits and risks are shared according to the agreement.

Therefore, it can be interpreted that musyarakah is the cooperation of two or more people in a particular business where both parties donate money jointly, with profits and losses determined in accordance with the agreed agreement. The Defendant promised and convinced the Plaintiff with a series of words that this collaboration would bring benefits and the Defendant promised to provide compensation for profits and capital that had been deposited so that the Plaintiff was moved to want to become a financier/investor. Since the signing of the a quo agreement, the Defendant has not provided any reports regarding the work or financial statements even though several times have been requested by the Plaintiff and against the Cooperation Agreement (Akad Musyarakah) Number: 102 / AF / XI / 2018 dated 01 October 2018, the Defendant only returned the capital on the Plaintiff's investment without ever providing profit sharing compensation of 50% of the net profit as referred to in Article 3 in the Agreement.

Because the Defendant has committed an act of default, the Plaintiff has the right to terminate the agreement and demand settlement of obligations in full immediately without

having to wait for the due date. In this case, the cancellation must be requested by the judge. This request must be made even if the cancellation conditions for non-fulfillment of obligations are specified in the contract (Swari: 2013). If the conditions are not stated in the contract, the judge may, according to the circumstances, at the request of the respondent, set a deadline for the possible fulfillment of his obligations, which cannot exceed one month Article 1266 of the Civil Code. According to the provisions of Article 1267 of the Civil Code, in connection with the debtor's negligence, the debtor can choose conditions related to his rights in the form of: Contract Implementation; Performance and Compensation; Compensation only; Contract termination; and Contract Termination and Compensation.

The plaintiff also sent subpoenas I, II and III, but the defendant did not respond. If there is no specified time limit for carrying out the delivery, the creditor deems it necessary to reprimand the debtor, so that he can fulfill his obligations. This warning is also known as sommatie (challenge). During the grace period for the provision of certain services, the debtor defaults after the specified time expires. The challenge should be in writing, stating what is required, why, and when the service is expected to occur. This is useful for creditors when they want to sue the debtor. In this process, the subpoena serves as evidence that the debtor has indeed committed a negligent act (Koto & Faisal: 2021).

In this case, the Defendant should be punished to immediately fulfill his obligations to the Plaintiff in the amount of Rp. 195,500,000 (its description is Rp. 70,500,000, - and a profit sharing of 5% or Rp. 50,000,000, - of net profits; and compensation profit sharing of 50% of net profit or IDR 75,000,000). The Defendant stated that the Defendant's economic condition which was going through bankruptcy resulted in the director's economy also failing. The Defendant's business conditions for the two projects which experienced losses plus the Covid-19 condition since 2020 made the Defendant face obstacles in quickly returning the Plaintiff's remaining capital, so that the Plaintiff should or naturally if the Plaintiff also received an impact. The judge granted part of the plaintiff's claim in a decision issued at the convention on November 10, 2022, rejected the plaintiff's claim for the other part, and rejected the defendant's counterclaim in its entirety. Problem Formulation: What is the legal position of CV in default? What are the efforts to protect investors who are harmed when a default occurs?

RESEARCH METHODS

The method in this study uses normative juridical methods.

RESEARCH RESULTS AND DISCUSSION

Legal Position of CV in Default

According to Article 19 of the Criminal Code states that CV is a company to run a company that is formed by one person or several corporations who are responsible for the whole (slider responsibility) on one party, and one or more people as capital providers (geldscheeter). on the other hand. In the provisions of Article 19 of the Criminal Code states:

1. A company that releases money, which is also called a limited liability company, is established between one person or several participants who are responsible for the entirety of one party, and one or more people who release money on the other party.
2. Thus it is possible for a company to be at the same time a company, a firm to the firm participants in it and a limited liability company to the moneylender.

Limited partnership (CV) is not regulated separately by law, either by the Civil Code or by the Criminal Code, but the arrangements refer to the provisions of the Maatschap Civil Code and corporations, including Articles 19, 20, 21 and 30 (2) and 32 of the Criminal Code. There

are two types of partners in limited partnerships, namely partners who work (active) in firms called general partners and partners who do not work (passive) in firms called limited partners. Complementary partners are partners who manage partnerships so that third parties are aware of these partners. On the other hand, only third parties deal with active shareholders, because only active shareholders are responsible for their personal funds, whereas limited partners do not manage the company, but only behind the scenes, ie. Partners passively don't just provide capital to finance the company. The responsibility of the limited partnership for the company's obligations to third parties is limited to the capital invested in the company. This limited liability company is not personally responsible as a whole as complementary partners, and active and passive partners, each of which generates income in the form of money, goods or work (physical or mental) due to joint financing. This means that profits and losses are shared between the operating partner and the limited partnership, although the liability of the limited partnership is limited to the capital that can be attributed under article 20(2) of the Criminal Code to the unmanaged limited partnership. CV, even if he has the right. If the limited partnership is considered as an additional shareholder, then personal responsibility is for the whole. Professor Sukardono uses the term depositing money because it means the transfer of ownership of the capital in question to a general partner, i.e. it cannot be recalculated in the operation of the GmbH, but only then does the company continue to exist after the division. , all things being equal it becomes profitable. During the company's activities, the limited liability company is only entitled to its share of profits, but must also pay its share of losses incurred. This is done with the hope that the management of the company will be co-financed by other shareholders (Faizal: 2017).

Of course, the provisions of Maatschap apply, as long as they do not conflict with the specific provisions of the criminal law mentioned above. It is known that the legal status of CV is static - according to civil law (KUHPerdata and KUHD). The same in the cellular space - in full compliance with civil law (civil and criminal law). CV is a legally recognized business entity. There are 2 types of partners contained in the CV, namely general partners and limited partners. General partners have full responsibility for CV's business activities and have obligations for CV's debts and liabilities, while Limited partners are only responsible for the amount of capital invested. Judging from several aspects, the legal position of CV, among others:

1. Existence: CV is a legally recognized business entity, so of course CV has a clear legal standing. CV can also carry out various types of business activities, have rights and obligations, and can be legally sued.
2. Rights and obligations: of course, the rights and obligations of this CV are regulated in the laws and regulations that apply in Indonesia which include the right to do business, pay taxes, and comply with applicable laws and regulations.
3. Responsibilities: CV's debts and obligations are fully accounted for by the general partner, while in terms of the amount of capital invested it is the responsibility of the limited partner. So, this shared responsibility is in accordance with the previously agreed agreement.
4. Taxes: paying taxes is an obligation for every person and business entity. Then the CV is of course obliged to pay taxes in accordance with the applicable laws and regulations

In addition, the permits and licenses required by CV for doing business must also comply with the applicable provisions. As previously said, CV is a form of business entity that is recognized in Indonesia, so CV is legally responsible for the actions that have been taken. In cases of default committed by CV AL-FAYYADH, CV can be legally processed and held accountable before the law. This is where the general partner in the CV must be responsible because it is part of their obligation to manage the business and can be held personally

responsible for the obligations and debts of the CV. However, it is different with limited partners who cannot be held personally responsible for the debts and obligations of the CV because limited partners are only responsible for the capital contributions they have provided. However, if the limited partners are involved in managing the business and also in acts of default, then they can be held personally liable in terms of the agreements previously made. The point is that in CV default cases, the legal provisions that apply can vary because it all depends on each agreement that has been made between the CV and other parties as well as the laws and regulations that apply therein (Moertiono: 2019).

Default has a lot of influence on conditions, especially for debtors. Defaults on CVs can disrupt supply chains and productivity (John & Goodman: 2014). Cases of default affect all areas of business such as customers becoming reluctant to buy products, employees losing motivation to work and this can also affect the psychology of managers and business owners (Ia: 2017). When a CV will experience a high risk of possible default, managers who are about to retire tend to take action and even be involved in CV pension management to protect the pension they will receive from the possibility of CV default.

Many researchers have observed the associated risk of default. Default risk has a relationship with the size of the book-to-market (BM) CV where small CVs have a greater default risk than large CVs. When there is an increase in debt maturities in the future, the possibility of default is also greater, especially in Pacific Basin countries (Australia, South Korea, Malaysia, Singapore and Taiwan), it is known that the risk of default affects or is influenced by various factors. . This shows that Default Risk can influence or be affected by various types of quantitative and qualitative variables.

Default is a threat to every CV. Such as the bankruptcy case that befell OneTel, one of the largest telecommunications CVs in Australia in 2001. According to a study by Monem (2011), OneTel's bankruptcy occurred due to a lack of internal financial regulation, including weaknesses in internal structures and processes, audit quality, and management oversight boards. commissioner, Cases that befell CV were often associated with problems with CV's internal financial regulatory mechanisms that were bad so that at that time many reforms were carried out in existing activities. Default in Indonesia is not the last few years. There have been many CVs that have defaulted in Indonesia for various reasons. Such as the Tiga Pilar Sejahtera Food Tbk (AISA) default case that occurred behind AISA's subsidiary related to several problems, the fraudulent practice of selling rice carried out by PT Indo Beras Unggul and PT Jatisari Sri Rejeki related to the rice case which disrupted CV's cash flow in paying CV's debt . PT Sunprima Nusantara Payments (SNP Finance) which was declared unable to pay interest on bonds (in this case medium term notes/MTN) that were due to the detriment of various parties, both investors and banks that became creditors, was suspected of out of sync financial reports between OJK, investors and CV. Financial reports are an important matter that should be questioned, because in the audited financial reports it can be seen that CV was able to pay off its bond debt. But in reality what happened was CV failed to pay (Sihombing: 2017).

Seeing the background of the various default cases that have befallen CVs other than the CVs previously described, what needs to be underlined is that there are problems in terms of existing financial arrangements. The legal case that befell CV shows that there is agency risk that occurs due to differences in responsibilities between CV owners and CV managers (Agency Theory by Jensen and Meckling, 1976). CV manager, in this case the manager must not apply bad CV financial arrangements that affect CV policy. The existence of a risk agency results in the emergence of asymmetric information between CV owners and managers so that CV owners will have suspicion of managers and this will affect the movement of cash flows. Then the possibility of default increases if cash flows decrease in value or there are unstable cash flow

movements, that one result of information asymmetry is that CV's financial arrangements are not implemented properly so that CV's financial arrangements can affect the risk of default (Zainuddin: 2021).

In Indonesia, the assessment of the implementation of CV financial arrangements on CV is still very rare. One of them was carried out by the Indonesian Institute for Financial Arrangements (IICG) which conducted a survey on the implementation of financial arrangements in Indonesia which was named Perception Index (CGPI) financial arrangements. However, very few CVs participated in this survey due to its voluntary nature, so that even though IICG has provided invitations to participate, only a few CVs have tried it. In fact, information about financial arrangements is very important to find out how much influence financial arrangements have on the risks that will be experienced by CVs, especially the risk of default.

Indonesia is a country that is very suitable for research related to financial regulatory mechanisms with default risk. That management affects the possibility of default from management decisions that affect cash flow so that it also affects CV owners, all of which are managed in the CV financial regulatory mechanism. There have been many studies on the effect of CV financial arrangements on other CV risks such as bankruptcy and financial difficulties. Researching the mechanism of financial arrangements for financial distress in Australia which examines the composition of the board of commissioners with bankruptcy risk CV. Some of the same research also discusses the duality of the CEO, that someone who has a position on the board of directors and also the board of commissioners has a lot of influence on the bankruptcy of CV.

Still, very few studies examine the effect of CV financial arrangements on default risk. There are two findings regarding the effect of CV's financial arrangements on the risk of default. It was first stated by Schultz et al., (2017) which stated that there was no effect between financial arrangements and the risk of default. Meanwhile, Ali et al. (2018) found that financial arrangements have an effect on determining Default Risk. What's interesting about the researchers is that there are differences in results caused by differences in data and methods used that affect research results even though they are carried out in the same country (Lubis: 2022).

Schultz et al., (2017) uses data from large-cap CVs, financial regulatory variables such as Board Structure, Director and Executive Remuneration, and Ownership Structure, as well as the variables Risk of Default, Probability of Default and Distance to Default. While Ali et al. (2018) uses all CV data which is divided into three capitalization categories, namely small, medium and large, by using financial regulation variables, Variable Quality of Financial Arrangements and Default Risk, Probability of Default, Distance to Default, and Credit Default Swap.

An agency relationship is described as a written agreement between one or more capital owners (principals) and a third party known as a manager (agent) to carry out certain tasks for the principal. In practice, between owners and managers of course have their own interests so that conflicts of interest arise. Differences in interest in the theory of agency relations will cause agency problems. This Agency Problem is a complicated problem because if it is not handled it will interfere with CV's performance and can even bring the CV to the brink of bankruptcy. For this reason, a method is needed to reduce agency problems which, when viewed from the theory of agency relations, is called agency costs. Thus, agency cost is the amount of supervision costs incurred by the principal, the amount of bonding costs incurred by the agent and the amount of residual losses (Kwak, et al: 2018).

Monitoring costs are costs incurred by the owner and are usually in the form of incentives given to the manager so that the owner can pressure and supervise the manager to work

according to the wishes of the owner. However, this method certainly will not always be profitable. If the manager gets what he wants is greater than the monitoring costs incurred by the owner then this method will not be optimal. Therefore, a solution is needed so that this problem does not become a burden, especially for capital owners. There is no definite terminology about the quality of CV's financial arrangements. But in general when talking about this, what is seen is the application (best practice) of CV financial arrangements in accordance with regulations made by CV or government regulations where the CV is located. Improving the quality of financial arrangements in fact CV is close to the standards of financial arrangements that should be. CVs with high-quality CV financial arrangements are defined as CVs that have CV financial regulatory standards set by the government.

The concept of Default Risk has a fairly broad meaning. Default is a condition where the debtor cannot pay the interest and principal of the debt on time or when fulfilling several provisions in the bond contract. In case of default, bondholders can make claims against the bond issuer's assets to cover their principal. Meanwhile, Default Risk is the risk that debt holders will not receive interest and loan principal at maturity. CV management should provide information about the possibility of default. CV's default risk is contingent on CV's future cash flows being sufficient to cover its debts. When CV experiences a decrease in the value of movement or cash flow becomes unstable (Maria & King: 2004). In the framework of agency theory explained, in modern CV there is a separation between ownership and control of CV which causes information asymmetry problems between management and CV owners. In this case, managers have information that is not owned by shareholders. The existence of information asymmetry will lead to a moral hazard where managers have their own interests and transfer CV wealth to themselves and sacrifice stakeholders. Selfish manager behavior will increase agency risk to shareholders thereby reducing the expected value of future cash flows and causing increased cash flow volatility. Thus, the risk of default that occurs will also increase in a CV (Monem: 2011).

Information asymmetry is one result of poor CV financial arrangements. In CVs with better CV financial arrangements, managers should be closely supervised, thereby reducing information asymmetry and increasing the effectiveness of managerial decision making. Effective managerial decisions are more likely to increase expected cash flows and reduce cash flow volatility, thereby reducing the likelihood of default risk.

Efforts to Protect Investors Who Are Lost When a Default Occurs

There are several forms of protection for parties affected by default in Indonesian law, namely:

1. Contract agreement: sanctions or penalties can be determined by the parties. If there is a loss, it can be in the form of payment of compensation or fines.
2. Court: if it cannot be resolved through amicable means, then the aggrieved party can file a lawsuit at the court of justice. Compensation and sanctions obtained by the aggrieved parties will be in accordance with what has been regulated by law.
3. Insurance: so that the aggrieved parties can protect themselves in the form of financial protection, the parties can buy insurance.
4. Collateral: in order to obtain certainty that the negligent party is fulfilling its obligations, the aggrieved party may request a guarantee in the form of an advance payment or performance guarantee.

The importance of protection for the parties in order to obtain certainty and security when doing business or making cooperation agreements, so as to reduce losses due to

negligence of one of the parties in fulfilling the agreement. In investment activities carried out by Dr. Renny Oktafia, S.E., M.EI as an investor or financier at CV AL-FAYYADH, based on trust in promising and convincing words from CV AL-FAYYADH and with legal certainty based on the Investment Law as the legal basis for investors . Therefore, investment activities must comply with the principle of legal certainty in the existing laws in Indonesia. The state has an obligation to guarantee security, certainty and protection for every investor. As in Article 4 paragraph (2) point b of the Investment Law it is written "The government will guarantee legal certainty, business and business security for investment from the process of obtaining permits until the end of investment activities in accordance with statutory provisions (Law No. 25: 2007). As stated in the opening of the 1945 Constitution, Indonesia itself is a constitutional state with high ideals. The paradigm of the Indonesian legal system is essentially a system consisting of interrelated components or elements to achieve goals that are also imbued with the Pancasila philosophy. Protecting all or all of its citizens from bad deeds that can harm society is one example of a concrete step in implementing the noble ideals that are the mandate of the state. The role of law is to protect human interests, and for this to happen, law must be applied in a professional manner. Normal, calm, and organized law enforcement can take place. Law enforcement must be used to enforce laws that have been violated (Mansyur & Rahman: 2015).

Abdulkadir Muhammad defines default as non-performance of the terms of the engagement, including engagements arising from legal engagements and contractual engagements. Whether the agreement is made verbally or in writing, or in the form of an official deed or private agreement, default is an action based on an agreement. If a person is not subject to contractual obligations, then he cannot be said to have committed a default. Article 1320 BW, which regulates the four conditions for the validity of a contract or agreement, outlines the conditions for the validity of a contract or agreement in relation to contracts or agreements. These requirements are: Agree to those who are bound; Ability to enter into agreements; A certain thing; and Reasons that are lawful/permissible.

The first two conditions are called subjective conditions, because they relate to the subject of the contract/agreement, while the last two conditions are called objective conditions, because they relate to the object of the contract/agreement. By not fulfilling the subjective conditions, then the status of the contract/agreement can be removed. In order for a contract/agreement to be valid, there must be two wills that reach an agreement or consensus. By the word agreement, it is meant that between the interested parties there is an agreement of will, meaning that what one wants is also wanted by the other party, or their will is "the same", that is, what they want is the same on the contrary, one receives his rights and the other others carry out their obligations. George W Paton in his book, mentions that the will is "real" and not the will that is "stated". Thus the will must be notified to the other party, whether delivered verbally or in writing, and even in sign language or secretly, an agreement can occur as long as there is an agreement (Dewi: 2022).

The second requirement, the ability to take legal action is generally measured by the age of adulthood or old enough, said to be an adult for those who are 21 years old based on Article 1330 BW. Meanwhile, on the other hand, using the standard age of 18 years as the basis for Article 47 jo. Article 50 of Law Number 1 of 1974 concerning Marriage. The third condition is the existence of a certain matter, meaning what has been agreed upon, the rights and obligations of both parties. If a dispute arises, then at least the type of goods referred to in the agreement must be determined, that the goods were already in the hands of the debtor at the time the agreement was made, this is not required by law, nor does the amount need to be stated as long as it can be calculated or determined.

The fourth circumstance is an acceptable excuse. because that's what the contract says. The possibility of misunderstanding when making decisions should not be present in this justification. Even though the agreement adheres to the principle of freedom of contract, not everything can be guaranteed. If what is promised is something that is contrary to law, then the agreement is void. For example, if there is a clause prohibiting the sale and purchase of cannabis, then the agreement is void. The owner of the goods only releases the right to use and benefit from the goods when the goods are leased; the lessee retains title to the object. Failure to implement the agreement results in a delay from the agreed time schedule or non-performance. In the event of default, the debtor (tenant) must pay compensation (schade vergoeding) or be forced to do so. Or the other party can ask for the agreement to be terminated if one of the parties defaults. It is clear that the tenant violates the rights of the owner/tenant when he fails to fulfill his obligations on time or in a proper manner (Arsawan: 2022).

Errors here are errors that result in losses. If there is evidence of negligence or intentional harm to the debtor, which can be held accountable to him, then the loss can be borne by him (the debtor). The difference between negligence and intent is that negligence occurs when the debtor should have known or should have suspected that his actions or behavior would result in a loss. Deliberation occurs when the loss is intentional and desired by the debtor. A person is said to be at fault in an event if he can prevent an unfavorable outcome by acting differently or not acting at all, and the loss is attributable to him. The environment and circumstances that existed at the time the event occurred must be considered in all of this. In this case, the debtor cannot say for sure whether a loss will occur or not, but as a reasonable person, he must be aware of or be able to calculate the possibility of such loss. Therefore, failure in this case can be associated with the concepts of “avoidable” (could have done or behaved differently) and “foreseeable” (would have resulted in a loss). It is difficult to say someone is in default because it is often not certain when a party must carry out the promised performance. In accordance with Article 1238 of the Civil Code, a subpoena (gebreke stelling) is sufficient to declare a debtor in default.

Theoretically, a person can be declared in default if he does not perform an achievement as promised or performs an achievement but is not in accordance with or less than what was promised. Meanwhile, an unlawful act (onrechtmatige daad) is an unlawful act that occurs because of an act committed by a person who because of his mistake causes harm to other parties and the rules that are violated are generally accepted regulations and these regulations are sometimes made without the involvement of the violator. Actions against the law are not based on an agreement as stated in the agreement such as default (Maheswari: 2021). The problem with the cooperation agreement (musyarakah contract) that the author raised that occurred in this case was the emergence of negligence regarding the agreement that occurred in the cooperation between the investor and the CV business entity as outlined in the musyarakah contract. In implementing this cooperation agreement (musyarakah contract) it cannot be carried out as it should, because of the negligence of the CV business entity which does not keep its promise by sharing profits according to the agreement, causing losses to investors. These things require strict arrangements regarding technical juridical aspects that need to be improved and developed in practice (Salim: 2008).

Based on the agreement between the parties, all parties want to be responsible for carrying out their obligations. An agreement is a legal relationship whose performance or obligation must be met. If the performance is not fulfilled according to the agreement, then it is considered a default. However, there are still many business actors who have not achieved the achievements as stated in the contract agreement. Work contracts are made in the form of documents known as work contract documents. These documents relate to the activities that

are the object of the agreement. According to its form, the agreement is a series of agreements that contain promises or commitments, both written and oral. If the debtor does not fulfill the agreement, then it is considered a default. Defaults fail to fulfill or neglect to carry out the obligations specified in the agreement between the creditor and the debtor. Negligence in construction work is often caused by delays in execution or not carrying out work until it is not completed on time. This resulted in delays in the use of the project. Employers must warn and provide sanctions against contractors who are responsible for carrying out work in the form of fines or termination of the contract. Several cases also occurred where employers or service users defaulted, for example in delays in payment of achievements made by service providers or contractors promptly and flawlessly. Service providers must first submit a bill accompanied by calculation data regarding service user bills.

Each contract must be agreed upon by the parties. The term agreement is translated into Dutch overeenkomst or contract (English). Article 1313 of the Civil Code reads: Agreement is an act by which one or more parties bind themselves to one or more persons. In essence, the agreement is an agreement made by the parties to the agreement. The parties agree to bind themselves to each other whether to give something, do something or not do something (Natawidjana & Siti Nurasiyah: 2009).

According to Article 1606b of the Civil Code, a contract is an agreement by which the contract giver binds himself to carry out a job for another party (the contract giver) by accepting a price for contract work that one party wants the result of a work agreed upon by the other party is submitted within a predetermined period of time by receiving a sum of money as a result of a job. Violation is one of the errors in the implementation of the contract or is called default. The debtor is declared negligent if he does not fulfill his achievements, reaches them late, and performs but not as he should. However, default only occurs if the creditor declares his negligence to the debtor. The results of the default are as follows: Permanent bond; The debtor must pay compensation to the creditor (Article 1243 of the Civil Code); The risk burden is transferred to the debtor's loss; and If the agreement is born from a reciprocal agreement, then the creditor can release himself. The term default comes from the Dutch language, namely wanprestatie which means non-fulfillment of achievements in an engagement, both agreements born from the agreement of the parties and agreements born from the governing law. In this case default has several meanings, including broken promises, broken promises, not keeping promises, etc.

Investors again collect requirements through the finance department to CV. AL-FAYYADH However, there was no follow-up on this term bill, then after a warning the Investor gave a subpoena to CV AL-FAYYADH because it was deemed to have defaulted on the Investor. In dispute resolution, the parties should prefer dispute resolution through non-litigation channels such as negotiation, mediation or arbitration. Default disputes can be resolved through two options, namely litigation and non-litigation. Litigation dispute resolution options can be through the courts. The procedures and processes follow the provisions of the Criminal Procedure Code. Non-litigation dispute resolution can be through arbitration (institutional or ad hoc) or alternative dispute resolution (consultation, negotiation, mediation, conciliation). Dispute resolution options must be stated in the agreement. Dispute settlement is set forth in the arbitration agreement. In this case, the court has no authority to adjudicate disputes as stipulated in Article 3 of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. Out of court dispute resolution can be taken for binding activities and implementation problems. The dispute consists of 3 (three) parts as follows:

1. Pre-contractual disputes occur before the contractual agreement and are in the bargaining process stage.

2. Contractual disputes are disputes that occur during work.
3. Post-contract disputes occur after many years.

Settlement of disputes that cannot be resolved by deliberation/consensus can be resolved through settlement through court and lead to dispute resolution through arbitration. In the event of a contract dispute or dispute during the ongoing work implementation, the settlement of the dispute can be carried out through the following channels: Consultation Line; Negotiation Route; Mediation Pathway; Way of Conciliation; and Lines of legal opinion by arbitral institutions.

After being declared negligent or in breach of contract by CV AL-FAYYADH, investors then took various steps to confirm CV AL-FAYYADH. The warning letter has been sent three times. Finally, the investor gave a subpoena to CV AL-FAYYADH and was considered negligent and in default because he did not pay the terms agreed in the contract agreement. After waiting for good faith that did not come from either the representative or the leadership of CV AL-FAYYADH from Investors sent a letter to CV AL-FAYYADH stating that they would take this case to court because of the potential for fraud. After the letter was sent, CV AL-FAYYADH should have contacted the investor and asked to meet to discuss this matter. So that the dispute resolution process between CV AL-FAYYADH and Investors can use the negotiation route based on Article 6 paragraph (2) of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution by producing a new agreement or renegotiation and of course the results that benefit both parties dispute. Finally, after meeting to discuss the resolution of the dispute between CV AL-FAYYADH and the Investor, it was renegotiated with a renegotiation agreement which contained CV AL-FAYYADH would immediately pay the term to the Investor with a note that prior to termination of employment, CV AL-FAYYADH provided a guarantee. Furthermore, this agreement was made in writing and signed by both parties to the dispute, not forgetting to be witnessed by witnesses, namely a notary and six other witnesses, three witnesses representing both parties. From the description above, the dispute resolution process can actually use the negotiation route based on Law Number 30 of 1999 concerning Alternative Dispute Resolution (Syuhada: 2019).

CONCLUSION

Based on the discussion and analysis above, it can be concluded that: defaults committed by CV AL-FAYYADH did not carry out achievements in payment. The achievement that must be made is to make payment of terms, but until implementation, there is no payment of terms from CV AL-FAYYADH. Efforts made by the Investor by visiting the CV AL-FAYYADH office to confirm the continuation of the payment period that should have been paid by CV AL-FAYYADH. The dispute resolution process between CV AL-FAYYADH and Investors used the negotiation route based on Article 6 paragraph (2) of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution by producing a new agreement or renegotiation and of course with a favorable agreement before going through the courts . outcome for both parties to the dispute. CV AL-FAYYADH has a deadline to make payments to Investors which is an advantage for CV AL-FAYYADH to get additional time. And Investors benefit from collateral as collateral until CV AL-FAYYADH makes a presentation to Investors, namely making payments according to the agreed nominal. Things that need to be considered when entering into a contract agreement include conducting a background check on the company or business partner and conducting a draft analysis of the contract that was signed together. Check from chapter to article, and what will happen in case of default will be understandable. The rights and obligations of each party entering into a contractual agreement.

Suggestions for CV AL-FAYYADH must carry out its obligations to Investors because Investors have fulfilled their obligations to CV AL-FAYYADH. Investors should check the background of the company or business partners before signing a cooperation contract to minimize the occurrence of defaults, such as what happened between CV AL-FAYYADH and investors. It is hoped that the parties involved in this work must comply with and understand the rule of law without harming what has been mutually agreed upon. The goal is to reduce the degree of legal compliance. Furthermore, these rights and obligations will be fulfilled adequately in accordance with what is expected by the parties.

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