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ANALYSIS OF DISPUTES RELATED TO DEFAULTS IN DEBT AND RECEIVABLE AGREEMENTS

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ABSTRACT

The purpose is to find out and analyze the judge's considerations in making decisions regarding cases of default in debt and receivable agreements and to know and understand the responsibilities of debtors in default in debt and receivable agreements. How do judges consider when deciding cases of default in debt and receivable agreements? The aim is to find out and analyze the judge's considerations in making decisions regarding cases of default in debt and receivable agreements. as well as knowing and understanding the debtor's responsibility for defaulting in the debt and receivable agreement. The research method aims to study one or more symptoms by analyzing them and by conducting in-depth fact checks. This research is included in normative legal research. Normative legal research is also called doctrinal law. This research was conceptualized as written in statutory regulations. Considering, that of all the arguments of the Plaintiff's lawsuit and the arguments of the Defendant's denial, according to the Panel of Judges the main issue in this case is "whether the Defendant's actions relating to the agreement to the Plaintiff constitute a breach of contract or not." In connection with the analysis of the judge's considerations regarding the petitum granted in decision Number 53/Pdt.G/2023/PN.Pms, namely regarding the conditions for the validity of an agreement in Article 1320 and Article 1321 of the Civil Code.

Keywords: *Law, Default, Debts, guarantee, certificate*

1. INTRODUCTION

Humans, in order to fulfill all their life needs, must have relationships with other people around them. Basically, every day humans are always faced with all kinds of needs. In fulfilling these needs, humans form relationships with the people around them.[1] One form of relationship with the people around him is by making an agreement. Agreements in the context of civil law are referred to as Contract Law which is regulated in Book III BW concerning Engagements. Agreements made by the community are generally used to create integrity in interactions, both verbally and in writing.

An agreement is considered valid if the parties to the agreement have agreed on the main matters agreed upon. In general, an agreement will work well if the parties carry out the agreement well. The types of agreements entered into can vary, such as sale and purchase agreements, leases, debts and receivables, and so on.[2]

The activity of lending and borrowing money or debts and receivables has been carried out for a long time in social life which has recognized money as the main means of payment. Events that occur in the implementation of debt and receivable agreements, often the debt that must be paid does not run smoothly according to what has been agreed. The debtor can be deemed to have defaulted on the agreed debt and receivable agreement.

Default is not fulfilling or neglecting to carry out obligations as stipulated in the agreement made between the creditor and the debtor.[3] Default is contained in Article 1243 of the Civil Code which states that: "Reimbursement of costs, losses and interest due to failure to fulfill an obligation, only begins to be required, if the debtor after being declared negligent in fulfilling his obligation, continues to neglect it or if something that must be given or made can only be given or made within a time limit that has passed". In

[1] Nisrin, L, Analisis Yuridis Wanprestasi Dalam Perkara Utang Piutang (Studi Putusan No.6/PDT. G/2021/PN GDT*), Jurnallsth*,2022.

[2] Marpaung, J. A., Lawolo, O., & Siregar, S. A. . Tinjauan Yuridis Terhadap Perbuatan Wanprestasi Dalam Perjanjian Hutang Piutang (Studi Putusan No. 620/PDT. G/2019/PN. MDN) . *Jurnal Rectum*, 2022.

[3] Salim H.S, *Pengantar Hukum Perdata Tertulis*, Jakarta: Rajawali Pres, 2008, hlm. 180.

other words, default can also be interpreted as an act of breaking a promise carried out by one party who does not carry out the contents of the agreement, the contents or carries out but is late or does something that he is actually not allowed to do.

Related to the law of agreements, if the debtor does not do what he has promised, then the debtor is said to be in breach of contract. The debtor is negligent or negligent or breaks a promise, or also violates the agreement, if the debtor does or does something that he is not allowed to do. Sometimes it is also not easy to say that someone is negligent or forgetful, because often it is not promised exactly when a party is required to carry out the promised breach of contract.[4]

As seen in the decision of the Pematangsiantar District Court Number 53/ Pdt.G/ 2023/ which will be examined by the author, that in this decision there has been a default in the debt agreement where the defendant is guilty of committing according to Article 1238 of the Civil Code which states: "The debtor is declared negligent by a letter of order, or by a similar deed, or based on the power of the obligation itself, namely if this obligation results in the debtor being considered negligent by the passage of the specified time". That this case began with the defendant III coming to Poltak Gompuler Simangunsong's house to borrow money.

So that the actions carried out by the defendants constituted a breach of promise or breach of contract, that because this lawsuit arose as a result of the actions of the defendants who had committed an act of breach of contract against the plaintiff, then the lawsuit for breach of contract is clear and obvious according to the law.

2. RESEARCH METHODS

This research is a normative research, where normative legal research includes research on legal principles, research on legal systems, research on the level of vertical

[4] M Yahya Harahap, *Segi-Segi Hukum Perjanjian*, Alumni, Bandung,1986, hlm 45

and horizontal synchronization, comparative law and legal history. Supported by the Statute Approach.[5]

3. ANALYSIS AND DISCUSSION

3.1 Debtor's Responsibility in Debt Default Disputes Receivables

The concept of legal responsibility cannot be separated from the concept of rights and obligations because they are closely related, especially the concept of rights which emphasizes the understanding of rights in relation to the idea of obligations. While the concept of legal responsibility is related to the concept of legal obligations. That a person is legally responsible for certain activities or bears legal responsibility, which means that he can be subject to sanctions if his actions violate applicable laws and regulations.

Default can cause a result or consequence to the emergence of the rights of the injured party to sue the party who committed the default to provide compensation, so that the law is expected so that no party is harmed as a result of the default. There are several consequences of default, including:[6]

a. The obligation remains, in the event of default, the creditor can still demand the implementation of the performance from the debtor. The creditor also has the right to obtain compensation for the default committed by the debtor.
b. The debtor must pay compensation to the creditor (Article 1243 of the Civil Code).
c. The burden of risk can shift to a loss for the debtor because if the debtor breaches his promise, he must be responsible for the losses experienced by the creditor.
d. An obligation born from a reciprocal agreement can release the debtor and his obligation to provide counter-performance by using Article 1266 of the Civil Code.

[5] Soerjono Soekonto, *Pengantar Penelitian Hukum*, UI-Press, Jakarta, 2006, hlm 2.
[6] *Ibid*,, hlm.60

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Regarding the debtor's responsibility for his debts, it is regulated in the Civil Code in Article 1131 of the Civil Code, that all of the debtor's assets are bound as collateral for obligations in his achievements. This means that all of the debtor's property or assets, both movable and immovable, both existing and future, are all the responsibility of all individual obligations. The guarantee that befalls all of the debtor's assets and is given to all creditors is referred to as a general mortgage.

According to Article 1243 of the Civil Code, civil compensation focuses on compensation for non-fulfillment of obligations (breach of contract). The compensation includes: costs or expenses incurred, actual losses. As in the case stated in Decision Number: 53/Pdt.G/2023/PN Pms. In its decision, it states that the Defendant has been proven to have committed a breach of contract with the Plaintiff. So that the defendants are sentenced to return or hand over to the plaintiff the loan amounting to Rp. 100,000,000,- (one hundred million rupiah) and regarding immaterial losses by the plaintiff cannot be granted.

In the examination of evidence at the trial conducted by the Panel of Judges, the evidence submitted by the Plaintiff and Defendant was examined. And based on the examination of the evidence in the trial, the Panel of Judges has obtained a conclusion of the plaintiff and defendant, namely:

First, it is true that it was previously stated that the Defendants had committed a breach of contract (broken promise), the principal debt that has not been paid by the Defendants is Rp100,000,000.00 (one hundred million rupiah), where regarding the

[7] Bachtiar, B., & Sumarna, Pembebanan Tanggung Jawab Perdata Kepada Kepala Daerah Akibat Wanprestasi Oleh Kepala Dinas . *Jurnal Yudisial*, 2018.

interest/profit on the loan of Rp10,000,000,- (ten million rupiah) per month requested by the Plaintiff, the Panel of Judges is of the opinion that the amount of interest on bank loans applicable in Indonesia is determined by Bank Indonesia where the bank interest system is to help the community with profits shared with customers and is legally valid while the loan interest agreed upon by the Plaintiff and Defendant I is to double for individuals or usury, therefore the loan interest determined by the Plaintiff is very unfair if charged to pay the principal debt and 10% interest so that based on the principle of propriety and justice, the Panel of Judges will grant the amount of the Defendants' principal debt of Rp100,000,000,- (one hundred million rupiah) as long as it reads "ordering the Defendant to return or hand over to the Plaintiff the loan amounting to Rp. 100,000,000.00 (one hundred million rupiah).

Second consideration, that it is true regarding the Defendants' answer arguments, the Panel of Judges considers that the Defendants acknowledge the Defendants' debt to the Plaintiff in the amount of Rp. 100,000,000,- (one hundred million rupiah), this is as regulated in Article 1866 of the Civil Code which stipulates that evidence includes written evidence, witness evidence, allegations, confessions and oaths. That what is meant by confession (bekentenis confession) as in Article 1923 of the Civil Code has regulated confessions that have value as evidence, namely first a statement or information submitted by one party to another party in the examination of the case, second a statement or information submitted before a judge or in a court hearing, third the statement is an admission that what is argued or submitted by the opposing party is true, either in part or in whole.

3.2 Judge's considerations in issuing a decision on a case of default in a debt agreement.

The judge's consideration is one of the most important aspects in determining the realization of the value of a judge's decision that contains justice (ex aequo et bono) and contains legal certainty, in addition to also containing benefits for the parties concerned so that the judge's consideration must be addressed carefully, well, and carefully. If the judge's

consideration is not careful, good, and careful, then the judge's decision derived from the judge's consideration will be canceled by the High Court/Supreme Court.[8]

The judge's considerations are the things that form the basis or are considered by the judge in deciding a case. Before deciding a case, the judge must pay attention to every important thing in a trial.

Judges in examining a case also require evidence, where the results of the evidence will be used as consideration in deciding the case. Evidence is the most important stage in the examination in court. Evidence aims to obtain certainty that an event/fact submitted actually occurred, namely its truth is proven so that there is a legal relationship between the parties. In addition, in essence the judge's considerations should also contain the following matters:[9]

a. The main issues and things that are acknowledged or arguments that are not denied.
b. There is a legal analysis of the decision on all aspects concerning all facts/things proven in the trial.
c. The existence of all parts of the Plaintiff's petitum must be considered/tried one by one so that the judge can draw a conclusion about whether or not the claim is proven and can be granted/not in the verdict.

The basis for judges considerations in issuing court decisions must be based on theories and research results that are interrelated so that maximum and balanced research results are obtained in terms of theory and practice. One of the efforts to achieve legal certainty in the judiciary, where judges are law enforcement officers through their decisions can be a benchmark for achieving legal certainty.

Considering, that regarding petitum number 3 (three) the Panel of Judges is of the opinion that the Plaintiff is not the Auction Official Office that has the authority to carry out

[8] Mukti Arto, *Praktek Perkara Perdata pada Pengadilan Agama*, Pustaka Pelajar, Yogyakarta, 2004, hlm. 140

[9] *Ibid*,hlm 141

the auction, where the auction is carried out based on the principles of openness, the principle of justice, the principle of legal certainty, the principle of efficiency and the principle of accountability, therefore petitum number 3 (three) must be rejected.

Considering, that as has been considered that regarding the petitum number 4 (four) the material loss that is required for the Defendants to be paid to the Defendant is the principal debt of Rp. 100,000,000,- (one hundred million rupiah), and because the Panel of Judges has considered the interest on the agreed loan including usury, then regarding petitum number 4 (four) only sentences the Defendants to pay Rp. 100,000,000,- (one hundred million rupiah) and regarding the immaterial loss, the Plaintiff cannot detail and prove the immaterial loss in question, thus petitum number 4 (four) can be granted as long as it only sentences the Defendants to return or hand over to the Plaintiff the loan money of Rp. 100,000,000.00 (one hundred million rupiah).

Considering that as has been considered, the Plaintiff is not authorized to conduct an auction for the object of the Defendants' debt guarantee and in the Panel of Judges' considerations there is no statement that the object of the guarantee belongs to the Plaintiff, thus petitum number 5 (five) is not based on law and must be rejected.

Considering, that regarding petitum number 6 (six) in the Plaintiff's lawsuit to sentence the Defendants to pay a fine of Rp. 100,000 (one hundred thousand rupiah) every day, if the Defendants are negligent in carrying out the contents of this decision, because the a quo case is a breach of contract and the main penalty is the payment of a sum of money, therefore petitum number 6 (six) must be rejected.

Considering, that regarding petitum number 7 (seven) to declare that the decision of this case can be implemented first even though there is an Objection, Appeal, Cassation or other punishment efforts from the Defendants or other third parties (Uitvoerbaar bij Vorraad), then the Panel of Judges is of the opinion that in this case there are no special circumstances found to grant the decision immediately, namely if there is authentic evidence or a handwritten letter which according to the applicable provisions has the power of proof, or because there has previously been a decision which has definite legal force, as well as if there is a partial claim which is granted or also regarding a dispute regarding the right to own, as

based on the provisions in Article 180 paragraph (1) HIR/ 191 paragraph (1) RBg, Article 54 and Article 57 RV, SEMA Number 3 of 2000, and SEMA Number 4 of 2001, therefore according to Panel of Judges, petitum number 7 (seven) is completely without legal basis and must be rejected.

Considering that in accordance with the provisions of Article 192 RBg which states that "anyone who is defeated by the Judge's Decision is also sentenced to pay court costs", therefore the Plaintiff's lawsuit was granted in part, then the Defendants were sentenced to pay court costs.

Considering, that based on the considerations above, therefore rejects the Plaintiff's lawsuit other than and the rest.

The judge's consideration is seen from the principle of certainty and benefit in case Number 53/Pdt.G/2023/PN.Pms. The judge's decision is appropriate because it is in accordance with the definition and values contained in the principle of certainty and the principle of benefit. The judge's consideration is seen from the principle of justice in case Number 53/Pdt.G/2023/PN.Pms is appropriate because the judge decided the case by considering justice for both parties. In the decision, the Panel of Judges stated that the defendant was legally in default. So the responsibility of the decision against the debtor is to punish the defendant to punish the defendant to return or hand over to the plaintiff the loan money of IDR 100,000,000.00 (one hundred million rupiah).

4. CONCLUSION

Legal responsibility if one of the parties commits a breach of contract in the debt agreement is where the debtor incurs a legal responsibility that must be accepted, namely the debtor is required to pay compensation for the failure to fulfill the debtor's performance. The Panel of Judges has obtained legal facts and concluded that there has been a proven event of breach of contract in the debt agreement, so that the Panel of Judges in this case has issued a decision stating that according to law the Defendant has a debt to the Plaintiff.

There are 2 (two) categories of judge's considerations in deciding a case, namely the judge's considerations that are of a legal nature and the judge's considerations that are of a non-legal nature. Legal considerations are judge's considerations that are based on factors that have been revealed in the trial and have been determined by law as things that must be included in the decision. Non-legal considerations only start from the detrimental and damaging impacts.

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