

***LEGAL PROTECTION FOR INVESTORS IN LIMITED
COMPANIES IN IMPLEMENTATION COOPERATION
AGREEMENT
(Judgment Study Number 441/Pdt.G/2020/PN.MDN)***

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ABSTRACT

Legal protection aims to protect human rights and provide a sense of security to the community from threats or detrimental actions. This is emphasized in Article 28I paragraph (4) and Article 28D paragraph (1) of the 1945 Constitution which stipulates that the state is obliged to protect the human rights of citizens wherever they are. The purpose of this study is to see how legal protection is provided for investors in cooperation agreements in limited liability companies based on decision number 441 / Pdt.G / 2020 / PN. Mdn and to review what is the basis for the judge's considerations in deciding the form of cooperation agreement between investors and limited liability companies based on decision number 441 / Pdt.G / 2020 / PN. Mdn. The results of the study obtained are that the plaintiff should have the right to receive compensation in the form of financial, immaterial, and litigation costs, and can request a seizure of collateral on the defendant's assets to ensure that his rights are fulfilled. Although for some reasons, the judge had other considerations, and decided not to continue the examination of the case because the lawsuit filed by the plaintiff still had legal loopholes and was formally flawed. The author suggests that the Government and legal institutions ensure that existing legal provisions, such as Article 1338 and Article 1243 of the Civil Code, are enforced firmly and specifically regulated regarding the Investment Law, so that legal protection for investors' rights can be realized clearly and firmly, so that in the future no party will be harmed.

Keywords: *Legal Protection, Investors, Limited Liability Companies, Agreements, Achievements and Defaults*

Introduction

Legal protection aims to protect human rights and provide a sense of security to the community from threats or actions harm.¹ According to Satjipto Rahardjo, legal protection works protect someone's interests by giving him or her the power to act.² Setiono emphasized that legal protection prevents action arbitrarily by the authorities, maintaining order, and ensuring every people enjoy their dignity. This is confirmed in the 1945 Constitution Article 28I paragraph (4) and Article 28D paragraph (1) which regulates that the state is obliged to protect rights human rights of citizens wherever they are.³ Capital investment (investment) is very important to strengthen economic growth. Investments can be real investments (land, machinery) or financial investments (shares, securities). The government encourages investment through Law no. 25 of 2007 on Capital Investment to attract domestic and foreign investors, increase economic capacity, and maintain growth.

Investment cooperation requires a formal agreement to bind the parties involved. The agreement has legal force, meaning it is binding the parties who make it if the agreement is made legally in accordance with the conditions determined by law. Agreement is a form of legal relationship that has force binding law for parties entering into a legal relationship.⁴ This agreement is regulated in Article 1313 of the Civil Code and is considered valid if fulfill legal requirements. If one party does not fulfill its obligations agreed (default), then the aggrieved party has the right to demand compensation. Article 1243 of the Civil Code regulates that damages can be claimed if the party who Violates and does not fulfill his obligations even though he has been warned.⁵

1.1. Discussion

In reality, one of the parties is often negligent in implementing it agreement that will cause losses to the other party, for example The following example of a case that resulted in a breach of contract between shareholder of PT. Poly Kartika Sejahtera, Mr. Santo Sumono, and parties the defendants, namely the Kartika Cooperative Center and PT. Poly Kartika Sejahtera. Plaintiff experienced a loss of IDR 20,350,000,000 due to blocked funds and loss of monthly profit of 10% (Rp.2,035,000,000). Loss This has continued to increase since the lawsuit was registered at the Medan District Court until the decision has permanent legal force.

An initial agreement between the two parties was reached on January 30, 2020, where the share compensation value was agreed to be IDR 37,000,000,000, with portion of IDR 20,350,000,000 for the plaintiff. This collaboration should have ended on February 20 2020, butas of March 2020 the completion process had not yet been completed realized. In a letter dated March 23 2020, the defendant promised to settle obligation no later than April

2020. However, this promise was again broken, and as of June 2020 the defendant's obligations remained unfulfilled.

¹ Setiono, Rule of Law, Supremacy of Law, Master of Laws Postgraduate Program Sebelas Maret University, Surakarta, 2004, p. 3.

² Satjipro Rahardjo, Other Sides of Law in Indonesia, Jakarta: Kompas, 2003, p.121

³ Setiono, "Rule of Law", Surakarta: Master's Dissertation, Faculty of Law, Eleven University March, 2004, p.3.

⁴ Putri Marwin Tanjung, Legal Consequences of Default in Cooperation Agreements Palm Oil Plantation Manager (PT. Tepian Gayor Langkat Study), Thesis, Medan Area Faculty of Law, Medan, 2023.

⁵ Yahman, Easy Ways to Understand Default & Fraud in Contractual Relationships Commercial. Prenada Media, Jakarta, 2019. p. 80

On June 10, 2020, the defendant sent a letter stating that the January 30 2020 agreement is no longer valid and proposes a re-audit by independent public accountant. Apart from that, the defendant stated that he did not mind if the settlement is carried out through legal channels. The plaintiff assesses the defendant's actions as bad faith and an attempt to delay the fulfillment of obligations. The plaintiff filed a lawsuit at the Medan District Court with the argument that the defendant has committed a breach of contract and must provide compensation.

1.1.1. Legal Protection for Investors in Cooperation Agreements in Limited Liability Companies (PT) Based on Decision Number 441/Pdt.G/2020/PN. Mdn.

In investment activities, legal protection for investors is an important element to ensure business continuity and provide legal certainty for the parties. Every form of investment or business collaboration requires a guarantee that the investor's rights will be protected, especially when a dispute occurs or one of the parties does not carry out its obligations in accordance with the agreement. In principle, legal protection for investors involves several important aspects, namely legal certainty, compliance with the agreement, and the right to obtain compensation in case default.

In this case, the cooperation agreement between PT. Poly Kartika Sejahtera and Puskop Kartika "A" BB regulate the rights and obligations of the parties concerned profit sharing and asset management. However, a default was made by the Defendant has caused harm to investors, namely Santo Sumono (Plaintiff), who should receive share compensation worth IDR 20.35 billion along with monthly profit of 10% of that value. Delays and failures The defendant in fulfilling his obligations demonstrated a violation of the principle of legal certainty and applicable agreements. One of the key elements in legal protection for investors is there is legal certainty in the implementation of the agreement. In Article 1338 of the Book Civil Law (Civil Code), every agreement made legally deemed to apply as law to the parties involved make it. This means that the parties must fulfill the provisions that have been stated agreed in the agreement, including regarding profit sharing, asset management, and settlement of financial obligations.

In the case of PT. Poly Kartika Sejahtera, cooperation agreement agreed by the parties has explicitly regulated obligations and rights each, including the compensation that must be given to the Plaintiff. Due to the Defendant's breach of contract, namely failure to comply obligation to pay share compensation according to the agreement reached in meeting on January 30 2020, there was a violation of the principle of *pacta sunt*

servanda (the agreement must be kept). Non-compliance with this agreement results in significant financial losses for investors (Plaintiffs), who are entitled to legal protection to demand fulfillment of obligations from the Defendant. When a default occurs, the law gives investors the right to obtain compensation as a form of recovery for the losses experienced.

Based on Article 1243 of the Civil Code, default can be in the form of no fulfillment of obligations in the agreement, delays in implementation, or implementation that is not in accordance with the agreement. Investors have the right to demand three form of compensation, namely:

- 1) Material Losses: In the form of real or financial losses experienced, such as withholding share compensation of IDR 20.35 billion.
- 2) Immaterial losses: In the form of loss of opportunities to enjoy The promised profit is 10% of the investment value, namely IDR 2.35 billion per month, since February 2020.
- 3) Rights Enforcement Costs: Investors have the right to demand reimbursement of costs litigation, such as attorney's fees of IDR 100 million, as part of law enforcement efforts in court.

Thus, investors have the right to sue effective legal mechanisms to hold parties accountable the negligent. The plaintiff in this case can exercise his right to request the court issued a decision ordering the defendant to immediately fulfill its obligations, pay share compensation along with profits lost, and compensate for the litigation costs incurred by the Plaintiff. With the right to sue, investors have possible protection they get back their violated rights, because in the case In this case, the defendant was not only negligent in fulfilling his obligations, but also showing bad faith by stalling and ignoring meeting agreement.

Legal protection for investors must also be ensured fair and effective dispute resolution mechanisms. In a situation where the parties were unable to reach an agreement regarding the resolution of the dispute peacefully, legal action is the last option that can be taken resolve the dispute. Filing a lawsuit in court, such as taken by the Plaintiff in this case, is a reasonable step and it is legal to claim unfulfilled rights. The court has authority to assess existing facts, decide whether something has happened default, and determine a fair form of compensation for the party involved disadvantaged.

In this case, investors can use the principle of faith good faith in implementing the agreement, both in the negotiation process, implementation, and dispute resolution. This principle is regulated in Article 1338 paragraph (3) of the Civil Code, which requires the parties to carry out the agreement with complete honesty and sincerity. In fact, there is only bad faith from the defendant who repeatedly postponed the implementation of his obligations and even proposes a re-audit to extend

the cooperation agreement process the. The plaintiff has the right to utilize legal channels to settle that problem. In addition, the Defendant's actions did not respect the results previous meeting agreements show an attempt to avoid liability, which could worsen the legal position for the defendant. Certainty Strict laws like this are very important to maintain the agreement process cooperation between investors and limited companies, because increasingly increased investor confidence in the legal system and certainty in business world, the number of other investors will also increase who come to build collaborations with other limited liability companies in order to realize the progress of the economic system in developing countries such as Indonesia at this time.

1.1.2. The Judge's Basic Considerations in Deciding on the Form of Agreement Collaboration between Investors and Limited Liability Companies Based on Decision Number 441/Pdt.G/2020/PN. Mdn.

Decision on the lawsuit filed by the plaintiff against defendant regarding the cooperation agreement contained in the basic agreement number SPER/06/III/1993 dated 31 March 1993 and cooperation agreement number SPER/05/III/1993 dated 31 March 1993 regarding Management Capital Investment Oil Palm Covering an Area of 714.90 Ha (seven hundred fourteen point ninety hectares) in Sei Tuan, Pantai Labu District, Deli Serdang Regency, Province North Sumatra, filed by Mr. Santo Sumono against the Center Kartika A Bukit Barisan Cooperative and PT. Poly Kartika Sejahtera, with Number 441/Pdt.G/2020/PN.Mdn.

Which was given by the defendant, so here the defendant no longer has good intentions in responding to this matter. The five defendants did not provide a solution but asked the plaintiff to sell their shares to him. The six defendants agreed together to carry out a re-audit together with the plaintiff, apparently carried out the audit personally in the absence of plaintiff. In this case, the panel of judges should consider all possibilities and the existing facts, so the judge here should not only focus on the formal aspects of the lawsuit, but also pay attention to substantive justice.

CONCLUSION

Based on the results of research regarding "Legal Protection for Investors in Limited Liability Companies (PT) in Implementing Agreements Cooperation (Study Decision Number 441/Pdt.G/2020/PN. Mdn)". So it is obtained conclusion as follows:

1. Legal protection for investors is important to ensure certainty and investment sustainability. In the case of PT. Poly Kartika Sejahtera, Default occurs when the defendant fails to fulfill obligations payment of stock

compensation and profits, to the detriment of investors. The plaintiff is entitled to compensation for financial, immaterial, and litigation costs, and can request confiscation of collateral for the defendant's assets for ensure their rights are fulfilled

2. In case Number 441/Pdt.G/2020/PN.Mdn between Santo Sumono against the Kartika "A" Cooperative Center and PT. Poly Kartika Sejahtera regarding the management of oil palm plantations, the Panel of Judges decided that:
 - a. Convention Lawsuit: Rejected because it is considered premature and not has a strong legal basis (legal standing). Meeting agreement January 30 2020 which is used as the basis for the lawsuit is not final and tie.
 - b. Counterclaim: Also rejected because it is closely related to the lawsuit the stated convention is not accepted.
 - c. Final Decision: The plaintiff is obliged to pay court costs amounting to IDR 1,025,000. The judge decided not to continue examining the case because there is a formal defect.

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