Legal Analysis of Default in House Building Contract Agreement

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Abstract.

Building contracting is an act in which one party gives work to another party as a contractor to complete a building. Obstacles in practice in the field often occur so that there is a discrepancy in the agreement that has been agreed between the parties. To protect the parties, a building contracting agreement is needed so that there is a binding between the two parties. If one party cannot fulfill the performance (default) according to the agreed agreement, then the party who does not receive the performance from the other party can file an objection or even a lawsuit in court if no peace is reached between the parties. A contracting agreement is a reciprocal agreement between rights and obligations, in which there is an agreement between one party, namely the contractor, who binds himself to carry out the work, while the other party who contracts, binds himself to pay a predetermined price. With research that uses a normative legal approach, this study aims to determine the legal consequences of default for contractors in a house building contracting agreement.

Keywords: *Default; building contracting agreement dan wanprestasi.*

I. INTRODUCTION

Every legal relationship gives rise to rights and obligations for the parties involved..The obligation can be in the form of freedom to do something, to give something, and to not do something. The legal relationship that arises from the existence of the agreement is called a contract.The third book of the Civil Code does not provide a specific explanation of the meaning of an obligation, but experts provide an understanding of this obligation, including Mariam Darus Badrulzaman who defines an obligation as "a (legal) relationship that occurs between two or more people, located in the field of wealth, with one party entitled to performance and the other party obliged to fulfill the performance". while the Law of Agreement is interpreted as a set of rules that provide regulations for the implementation of an obligation.[1] In addition to the Agreement, there is also the term Agreement contained in the Civil Code (KUH Perdata). Legally, the definition of an agreement is regulated in the third book of the Civil Code concerning agreements. The Civil Code defines "An agreement as an act by which one or more persons bind themselves to one or more other persons." The making of an agreement or the implementation of an agreement has been specifically regulated in the Civil Code, in articles 1313 to 1351 of the Civil Code.[2]In a contract, there arises something that must be done by one of the parties in it which is called a performance. In a contract agreement, there is one party who contracts the work (bouwheer) with another party who is obliged to contract the work (contractor), where the first party wants a work result that is agreed to by the opposing party, for the payment of a sum of money as the contract price.

If in an agreement one of the parties is negligent or refuses to carry out its obligations, it is called a breach of contract.[3]To provide direction for growth and development in order to realize construction work results that guarantee justice in obtaining rights and obligations for both service users and service providers, Law Number 2 of 2017 concerning Construction Services is present and plays a significant role in achieving national development. The definition of Construction Services according to Article 1 paragraph (2) of Law Number 2 of 2017 is "construction consulting services and/or construction work whose activities include

assessment, planning, design, supervision and management". Meanwhile, what is meant by a Construction Contract according to Article 1 paragraph (5) of Law Number 2 of 2017 concerning Construction Services is a document of agreement/contract that regulates the legal relationship between service users and service providers related to the implementation of construction work (construction of roads, bridges, water channels, and so on.[4]A home building cooperation agreement is used to regulate the relationship between the homeowner and the contractor in building a house. This agreement creates clear obligations and responsibilities for both parties. However, it is not uncommon for there to be a breach of contract, which can lead to legal problems.

Therefore, it is important to understand the form of legal responsibility for breach of contract in a home building cooperation agreement.[5]Previously, there were various studies that discussed the work contract agreement, including Amaylia Noor Alaysia, who emphasized the principle of good faith and the responsibility of the parties related to default in a house contract agreement, and Farida Azzahra, who discussed the termination of a building contract agreement carried out unilaterally due to default.This study discusses Decision Number 807/Pdt.G/2023/PN Mdn concerning the contract agreement between the Plaintiff as the assignor and the Defendant as the contractor receiving the task at a cost of IDR 425,000,000 (four hundred and twenty five million rupiah). However, from the agreed time, the work was only 50% complete while the plaintiff had paid according to the contract price. Then the Plaintiff made a second addendum in which the Plaintiff asked to take over the housework himself with a contract price of IDR 130,000,000 (one hundred and thirty million rupiah). However, from that time the Plaintiff could not complete the work. Furthermore, the Plaintiff asked the Defendant to pay further damages for the unfinished work. For the work that had not been completed by the Defendant, the Plaintiff had made it the Defendant's debt to the Plaintiff and by signing a letter of acknowledgement of debt so that the contract agreement ended. In this case, the plaintiff asked to execute the assets in the form of land owned by the Defendant to pay for the losses on the money that had been paid by the Plaintiff. The land owned by the Defendant was used as payment for the losses suffered by the Plaintiff.In this study, the author will analyze the legal aspects of default in a house building contract and its impact on the legal relationship between the parties involved.

II. METHODS

This study uses a juridical-normative method (doctrinal research). According to Peter Mahmud Marzuki as quoted by Zulkifli, legal research is a process to find legal rules, legal principles, and legal doctrines in order to answer the legal issues faced, therefore this study includes legal principles, legal definitions, legal provisions. The approach used in this study is the conceptual approach and the statutory approach.[6]The case approach is used to analyze cases related to the issue being discussed. This approach is used because this study aims to see the validity of the contract agreement and the legal consequences if one of the parties does not fulfill the performance as agreed in the contract agreement.

III. RESULTS AND DISCUSSION

Validity in an Agreement

An agreement is an agreement between one party to bind themselves to another party to fulfill a predetermined purpose. An agreement can be made by anyone who meets the requirements in accordance with Article 1320 of the Civil Code. This article is the main key in validating the agreement, if any of the requirements are violated then the agreement is flawed. The violation of the agreement results in losses experienced by one of the parties which results in a breach of contract or unlawful act.[7] DThe nature of an agreement is very dependent on the fulfillment of the elements of validity that have been regulated in civil law. The legality aspect includes a number of criteria, including the existence of a valid agreement between

the contracting parties, the object that is the subject of the agreement, the legal capacity of the parties to enter into the agreement, as well as legitimate objectives that do not conflict with law or morality.[8]

Article 1313 of the Civil Code states that an agreement is an act in which one or more people bind themselves to one or more other people.

The conditions for a valid agreement are regulated in Article 1320 of the Civil Code, namely:

1. Agree those who bind themselves;
2. Ability to make a contract;
3. A certain thing;
4. A lawful cause

These four conditions are divided into 2 (two) groups of conditions, namely:[9]

1. Subjective Conditions

Subjective conditions are conditions related to the subjects in the agreement. Therefore, the conditions of agreement of those who bind themselves and the capacity to make an agreement must be met in making an agreement. If these conditions are not met, it will result in the agreement being canceled.

2. Objective Conditions

Objective conditions are conditions related to the object in the agreement. So the conditions of a certain thing and a lawful cause must be met in the agreement. If these conditions are not met, the legal consequences are that the agreement is null and void.Article 1320 of the Civil Code does not require that the agreement must be made in writing, but it is sufficient with evidence of agreement between the two parties and fulfilling other requirements, then the agreement is legally valid. In the agreement made by the Plaintiff and Defendant made before a Notary, thus the written evidence is perfect evidence so that the Contract Agreement Deed Number 63 dated February 22, 2022, then followed by an addendum to Deed Number: 3549 / PTTSDBT / EW / VII / 2022 dated July 5, 2022 and the second Addendum to Deed Number 3674 / PTSDBT / EW / XI / 2022 dated November 23, 2022 is legally valid.As Alyssa Adelia quoted from Melinda and Darmawan that in Article 1870 of the Civil CodeIt is stated that a notarial deed functions as a complete, strongest and most perfect evidence so that it not only guarantees legal security but also has the potential to prevent disputes and as an authentic deed that has permanent legal force, a notarial deed acts as a tool that binds the parties in an agreement and allows both to legally fulfill the obligations they hold.[10]

Default in House Building Contract Agreement

Article 1601 of the Civil Code provides an explanation of the contract agreement consisting of two parties, namely the contracting party and the contractor. The contractor or also called the contractor, is the party who binds himself to the party who contracts his work to complete the work according to the wishes of the project or work owner. The contractor or contractor is a person, company, or legal entity that is contracted or hired to do work according to the contract given to them by the owner of the work. On the other hand, the party who contracts his work is the party who binds himself to the contractor to do his work, and the owner of this work comes from a government institution or agency, legal entity, business entity, or individual.[11]According to the Civil Code, a work contract agreement is an agreement that the contractor binds himself to complete a job for another party, namely the employer, at a predetermined price.

The contract agreement in the Civil Code is complementary, meaning that the provisions of the contract agreement or the parties to the contract agreement can make their own provisions of the contract agreement as long as it is not prohibited by law and does not conflict with public order and morality.[12] Regarding the form of the contract of work, in principle it is made in writing, because in addition to being useful for the purpose of proof, it is also understood that the contract of building work is classified as an agreement that contains the risk of danger concerning public safety and building order. The agreement is also based on standard regulations

concerning the legal and technical aspects as indicated in the contract formulation.[13].There are several aspects that must be considered by the parties in making a contract of employment, namely:[14]

a. Mastery of the agreement material includes the object and terms or conditions to be agreed upon.

b. Interpretations of agreement clauses.

c. The language in the agreed agreement.

d. Relevant laws and regulations.

e. Settlement of contracting disputes.

According to Article 1238 of the Civil Code, if the debtor does not fulfill his obligations, he can be considered to be in default. This emphasizes the importance of a deep understanding of default, so that the parties involved in the contract can take steps to prevent and resolve the situation.

There are several factors that cause default in a contract of contract:

1. Project Delays:

The inability of the contractor to complete the work in accordance with the agreement that has been determined between the two parties is the main cause of default in the contract, one of which is due to technical constraints.

2. Quality of Work Does Not Match Contract:

The work results do not meet the specifications agreed between the two parties as determined.The use of building materials that do not comply with the agreed specifications can also result in price differences and losses for the homeowner.

3. Late Payments

The default does not only come from the contractor but can also come from the project owner in terms of payment which is the contractor's right.

Some forms and specific conditions for the fulfillment of default are as follows:

1. Not doing what he promised to do;
2. Carry out what he promised but didn't
as promised;
3. Did what he promised but was late

The Defendant's actions in not carrying out the work in accordance with what had been agreed or agreed upon in the Contract Agreement, Deed Number 63 dated
February 22, 2022, then followed by the Addendum to Deed Number: 3549/PTTSDBT/EW/VII/2022 dated July 5, 2022 and the second Addendum to Deed Number 3674/PTSDBT/EW/XI/2022 dated November 23, 2022, then the Defendant was declared to have defaulted.

Legal Consequences of Default in a House Building Contract Agreement

Article 1338 of the Civil Code regulates agreements that are made legally and apply as law to the parties who make them (pacta sunt servanda). This article also regulates the principles of freedom of contract and good faith in agreements.In contract law, one of the important principles that needs to be known is the principle of freedom of contract. The principle of freedom of contract means that people are allowed or free to make agreements in any form, content, type, with whom they make the agreement and are free to enter into agreements whether they are regulated by law or not yet regulated by law.[15]However, the freedom to contract is limited by several things as regulated in Article 1337 of the Civil Code, including: not prohibited by law, not contrary to morality and not contrary to public order.The principle of good faith in the principle of pacta sunt servanda in Article 1338 of the Civil Code does not only apply at the time of execution of the agreement, but also at all stages of the agreement, starting from before the agreement is executed until the termination of the agreement. In a contract of work between the service recipient and the contractor, the service recipient or (the person who

needs the building service) acts as the party giving the task by binding to pay a specified price. While the contractor acts as the implementing party who carries out a job by receiving a certain price. After the parties bind themselves to the contents of the contract of work, thus the responsibility of each arises spontaneously. Therefore, in a building contract agreement there are always rights & obligations for the parties who carry out the agreement, so they are automatically burdened with the responsibility to complete the work thoroughly.[16] In the principle of pacta sunt servanda, the state of default has legal consequences for the party that carries it out and gives consequences so that the authority of the injured party arises to sue the party that carries out the default to provide compensation until the law requires that no party suffers a loss due to the default. When bound by an agreement with a party after that the party does not carry out its responsibilities that have been explained in the agreement, so it is necessary to review the agreement agreed upon with the party.[17]

Settlement of disputes in contracting agreements according toArticle 88 paragraph 1 of Law Number 2 of 2017 concerning Construction Services states that if a dispute occurs, it can be resolved through deliberation. However, if consensus cannot resolve the problem, the parties will take the stages of dispute resolution efforts stated in the construction work contract. Legally, dispute resolution patterns can be divided into three types, namely:

1. Through the courts
2. Alternative dispute resolution
3. Deliberation

Dispute resolution through the courts is a pattern of dispute resolution that occurs between parties which is resolved by the court and its decision is binding.[18] If the contractor is unable to complete the work according to the specified time or delivers the work poorly, then upon a lawsuit from the assignor, the agreement can be terminated in part or in whole along with all its consequences. What is meant by the consequences of termination of the agreement here is termination for a future time in the sense that the work that has been completed/done will still be paid, but the work that has not been done is what is decided. With such termination of the agreement, the obligation does not stop completely as if there had never been an obligation at all, and must be restored to its original state, but in the above circumstances the assignor. If it has already been paid to the contractor for the costs that must be borne by the contractor according to the payment he received. If there is a termination of the agreement, the contractor is not only obliged to pay the fines that have been agreed upon, but is also obliged to pay losses in the form of costs, losses suffered and interest that must be paid.[19]

The judge gives legal considerations on the agreementPlaintiff and Defendant in the contract of contract. In the loss suffered by the Plaintiff, the Defendant has an obligation to pay a loss of Rp. 407,800,000 (four hundred seven million eight hundred rupiah) consisting of 50% of the cost that can only be completed from the total cost of the work, namely Rp. 425,0000,0000 (four hundred two five million rupiah) namely Rp. 212,500,000 (two hundred twelve million five hundred thousand rupiah) plus a fine of Rp. 130,000,000 (one hundred thirty million rupiah) as in the second addendum agreement, the cost of making the pool is Rp. 55,000,000.- (fifty five million rupiah), the cost of the trellis is Rp. 4,500,000 (four million five hundred thousand rupiah), making stairs is Rp. 3,000,000.- (three million rupiah) and making windows is Rp. 2,800,000.- (two million eight hundred thousand rupiah). However, the Defendant's land assets cannot be seized as claimed by the Plaintiff because in the agreement between the Plaintiff and the Defendant there is no clause for execution of the Defendant's assets in the form of land if the Defendant defaults on the said contract.

IV. CONCLUSION

A contract of contract is an agreement between the project owner and the project recipient known as the contractor. In the contract of contract, it is not uncommon for a default to occur where one of the parties in the agreement does not fulfill its obligations as agreed. Default often occurs due to delays in project completion resulting in losses for the employer.To protect the rights of the parties, clear clauses are made in the contracting agreement where the agreement is before a Notary which has legal force, where if one of the parties does not fulfill the obligations as agreed in the agreement, the provisions as in the contracting agreement will apply.

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