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The Enforcement of Wanprestasi on Debt Recognition in Debt Agreements

A Case Study of District Court Decision No. 9/Pdt.G.S/2021/Pn.Srl

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ABSTRACT

An agreement is a legal act regarding the property of two parties, in which one party promises to do something, while the other party has the right to demand its implementation. Thus, the relationship arises between the two parties during the agreement. In its form, the cooperation contract or agreement is a series of words in written form that contains promises of the ability to do something. This research is normative law. A normative research initiates by conducting a search on legal materials as a basis for making legal decisions on legal cases. The approach method used is a normative juridical approach. A normative juridical approach is used to provide a qualitative analysis by analyzing the theories, legal principles and law to discussed material. This research indicated that legal consequence of wanprestasi on debt acknowledgment letter in the debt-receivable agreement is a civil lawsuit or a claim for compensation. The efforts made by the creditor is very appropriate for the party who is harmed in debt agreement. According to law, legal remedies are through non-litigation and litigation. It can be concluded that although the agreement is not specifically regulated, the agreement that provides freedom of contract makes more convenient for public to make contracts outside the agreements contained in Book III of the Civil Code.

Keywords: *Cost Reimbursement, Loan Agreement, Wanprestasi*

INTRODUCTION

Every human being need other people to interact for several reason, one of it is for meeting their need by borrowing and providing something. Borrowing means an agreement whereby one party gives certain amount of goods to other party, and they will return the same amount or the same type and quality of the goods they borrowed. The article 1754 of Civil Code stated that every human being is required to fulfill their economy, and the community must be responsive to encourage the economic growth in their daily activities. Humans are required to conduct the activities and interact with others, such as having legal relations with other parties called debts and receivables to made an agreement.

An agreement is a legal act regarding the property of two parties, in which one party promises to do something, while the other party has the right to demand its implementation. Thus, the relationship arises between the two parties during the agreement. In its form, the cooperation contract or agreement is a series of words in written form that contains promises of the ability to do something.

This contractual relationship is an agreement between the parties that made the agreement. Then, the agreement is one of the other sources of commitment since the one who made it agreed to the agreement which has been made.

In its development, the community, individuals or business entities want to increase their economic needs by funds from banks as a credit source for supporting their business growth. The implementation of funds distribution is conducted by creditors and bank as a financial intermediary to debtors requires the sufficient capital and the agreement as the legal basis for the parties (creditors and debtors). The existence of an agreement to borrow money is very necessary for the guarantor to provide a claim to repay the debt.

Unfortunately, there are still debtors who did not fulfill their obligations even though there is a loan agreement deed. Based on this phenomena, this research aims to understand the provisions that can regulate letters and deed of debt-receivable agreements, in order to find out the legal consequences of enforcing wanprestasi in PHP acknowledgment letter (a case study of district court decision No. 9/Pdt.G.S/2021/PN.Srl).

LITERATURE REVIEW

Agreements in Civil Code are regulated transparently. The agreement adjusted to what the parties think and discussed in order to realize what is summarized in agreement contents into the cooperation and agreement. An agreement is an act in which one or more people bind themselves to one or more other people (Article 1313 of the Civil Code). The definition of agreement has the following elements:

1. The legal action has legal consequences for the parties to the agreement.
2. There must be two parties (person or legal entity) facing each other and

giving a genuine statement between each other.

3. Binding has an element of promise given by one party to another, it means that everyone is bound by laws by their own will.

As the agreement has this legal relationship, the creditor and debtor in debt-receivable agreement is formed after both parties have an agreement to complement each other. Legal relationship with both parties has the rights and obligations between the parties. Wanprestasi according to Abdul Kadir Muhamad means not fulfilling the obligations in the engagement. In general, wanprestasi is the implementation of obligations that conducted not on time.

Then, this agreement is a form of unilateral legal action made by debtor to convince the creditor in debt agreement which is referred as Grosse. Grosse deed is made by the debtor in authentic form. The continuation of debt agreement between creditor and debtor which is a separate agreement can be detached from the debt agreement, thus it is considered an additional agreement to debt or principal agreement. According to Article 1 number 11 of Law No. 30 of 2004 concerning the Position of Notary, grosse deed is a deed copy of debt recognition with the head of the deed "for the justice based on God Almighty Divinity" having executive power. Then, the debt acknowledgment made by a notary at the creditor's request after the debtor is in wanprestasi of achievements he has agreed to the agreement.

RESEARCH METHODOLOGY

Types of Research

This research is normative law. A normative research initiates by conducting a search on legal materials as a basis for making legal decisions on legal cases. The analyzing laws and regulations that are directly relevant to the research's topic is done through normative legal research.¹

Research Approach

The approach method used is a normative juridical approach. A normative juridical approach is used to provide a qualitative analysis by analyzing the theories, legal principles and law to discussed material.²

Source of Law

a. Primary law

The binding materials are the Civil Code (KUHPerdata), Law No. 30 of 2004 concerning the notary position and district court decisions.

b. Secondary legal material

¹ Rissa Dwi Novita and Muhammad Abdul Razak, "Personal Data Protection in Falsification of Covid-19 Vaccination: A Juridical Review," *YURIS (Journal of Court and Justice)* 1, no. 3 (2022): 25–37.

² Pratiwi Setiawan and Wahyu Tris Haryadi, "The Child Custody Status from Unregistered Marriage: An Islamic Law on The Basis of Constitutional Court Decision," *YURIS (Journal of Court and Justice)* 1, no. 3 (2022): 1–9, <https://journal.jfpublisher.com/index.php/jcj/article/view/124>.

Legal materials that provide an explanation of primary legal materials are conducted from books, lecture notes, magazines, legal journals as well as articles related to discussed problems.

Legal Materials Collection Procedure

The collection of legal materials is conducted by studies that include primary and secondary sources relevant to the subject matter.³

Legal Material Analysis and Processing

The collected legal materials are processed and analyzed using descriptive analysis that provides a systematic, factual and accurate description of the facts and certain characteristics contained in research object.

RESULTS AND DISCUSSION

Wanprestasi

The debt agreement cannot be separated from the violations committed by one or both parties, and is categorized as wanprestasi. The agreement is closely related to the fulfillment of an achievement and parties' responsibility. In debt agreement, it is inseparable from the agreement in general as contained in Article 1313 of Civil Code which states that an agreement is the act of one or more people that binding themselves.

Wanprestasi with the term breach of contract is not conducting the obligations imposed by the contract on the party concerned. This action has consequences for suing the party who doing the wanprestasi to compensate since there is a:

1. Deliberate
2. Negligence
3. No errors

Wanprestasi is a failure to conduct an agreed promise because the debtor cannot fulfill his obligations without reasons that cannot accepted by law. There are 4 types of wanprestasi conducted by the debtor, such as:

1. Cannot fulfill his obligations;
2. Not obeying the agreement;
3. Overdueing his task;
4. Violating his task.

The determination in Article 1238 of Civil Code states that "when the debtor is negligent, if he with a warrant or with a similar deed has been declared negligent, or for his own engagement, if this is permanent, that the debtor will remain considered as negligent after the specified time has passed."

³ Suratman & Dillah. P, *Metode Penelitian Hukum* (Bandung: Alfabeta, 2015).

According to the rules of Article 1238 of the Civil Code, it has been established since when the debtor has forgotten. There are three different warnings for the debtors, such as:

1. Warning letter
2. Similiar deed
3. Inferred from the agreement itself.⁴

"The Doctrine of the Fulfillment of Substantial Performance (Substantial Performance)" in the contract is not complete means that one party does not doing their duties flawlessly, if he has substantially completed their obligations, the other party is still required to complete the duties perfectly. A party is deemed to have materially breached the contract when they considerably fail to conduct their obligations. Typically, the following basic standards are:

1. Eligibility of compensation
2. Eliminate the expected profit
3. Executed part of the contract
4. Deliberately not implementing the cons
5. Willingness to improve performance
6. Delay in conduct the achievements

Some of the sanctions are:⁵

1. Pay compensation
2. The Cancellation of Agreement.
3. Risk Diversion

The sanctions can be deliberately not applicable, when they are:

1. A compelling circumstance exists.
2. Unknown
3. Forced
4. Unknown in advance
5. Ignoring a particular party
6. Abandon his right to demand remuneration

Legal Consequences for Wanprestasi Enforcement the PP on Debts and Receivables (Case Study of District Court Decision Number 9/Pdt.G.S/2021/PN.Srl)

As was already mentioned, there will be a legal relationship between the parties to an agreement. In a debt-receivable agreement, the legal relationship between creditors and debtors is established once both parties have agreed to

⁴ Asuan, "Penyelesaian Terhadap Debitur Wanprestasi Dalam Perjanjian Gadai," *Solusi* 18, no. 1 (2020): 121–138.

⁵ Peter Baringin Marpaung Syamsul Arifin and Sri Hidayani, "Tinjauan Yuridis Akibat Hukum Terhadap Wanprestasi Dalam Perjanjian Kredit," *Jurnal Ilmiah Penegakan Hukum* 3, no. 2 (2016): 105–110.

support one another. Rights and obligations between the parties are derived from their legal relationship. In order to prevent undesirable events, the parties were essentially beforehand named in the contract.

The settlement outside the court is an alternative taken by the parties in order to resolve the dispute. The Alternative Dispute Resolution can be defined as a collection or mechanism that aims to provide an alternative or a choice of settlement method through alternative forms or arbitration in order to obtain a final decision that is binding on the parties. The Article 1 number 10 of Law NO 30 of 1999 regarding the Arbitration and Alternative Dispute Resolution stipulates that "Alternative Dispute Resolution is an institution for resolving disputes or differences of opinion through procedures agreed upon by the parties, called settlement out of court through consultation, negotiation, mediation, conciliation, or expert judgment."

In addition to legal remedies outside the judiciary, the efforts that can be conducted by creditors are legal remedies through court or litigation. As previously described, wanprestasi only occur after the debtor is declared negligent and he still does not conduct his obligations, even though he has been given a warning letter. Then, there is a need for HuPer provisions in Indonesia in terms of dispute resolution that the parties are able to choose through litigation or through the courts. Thus, a claim based on a wanprestasi must be a violation of the obligations specified in the agreement or contract. In the provisions of Article 1267 of the Civil Code, the aggrieved party can sue the negligent debtor by choosing several possible claims as follows:

1. Fulfillment of the agreement;
2. Compensation only;
3. Cancellation

The party who does this is obliged to make payments as a result of the loss suffered by harmed party in debt agreement, which is stated in Article 1243 of the Civil Code. The details of compensation include:

1. Costs, expenses that have been given by one of the parties,
2. Loss, due to damage to creditor's property caused by the negligence of the borrower,
3. Interest, in the form of profit loss which has been calculated by the creditor.

Whereas in Article 1246 of the Civil Code it is stated that compensation costs and interest by debtors may be required to replace for the losses and the profits, without reducing the exceptions and changes. However, the provisions of Article 1243-1248 of the Civil Code, are stipulated with the compensating for losses due to unlawful acts. Then, the legal relationship is formed by the existence of a cooperation contract or agreement that includes to rights and obligations, then the lawsuit is based on wanprestasi.

The claim for compensation for wanprestasi is based on the provisions of Article 1239 of the Civil Code (KUH Perdata), which states that for every debtors that does not fulfill his obligations in the engagement to do something, or not to do something, he has the obligation to provide compensation for Indemnity and Interest Fees.

The resolution of wanprestasi in debt agreements should reconciled through ADR, including Indonesian arbitration institutions that are governed by a distinct legal regulation, specifically Law No. 30 of 1999 Governing Arbitration and ADR. When an agreement for dispute resolution through alternative dispute resolution cannot be solved, the disagreement is resolved by court or litigation based on wanprestasi, specifically Article 1239 of the Civil Code.

Case Status

PT. Bank Rakyat Indonesia (Persero), Tbk Sarolangun Unit Pauh Branch, domiciled at Jl. Lintas Sarolangun-MA Tembesi Development Village, Pauh District, Sarolangun Regency, represented by Adityo Budiarno as Branch Manager of PT. Bank Rakyat Indonesia (Persero), Tbk Sarolangun Branch, on behalf of director Board based on Power of Attorney Number 15 dated 20 May 2015 completed in front of Notary Emi Susilowati, S.H., in this case granting power of attorney to 1. M. Daniel, 2. Hendri, 3 Andrie Kurniawan, 4. Agus Satria based on Special Power of Attorney Number: B.905/KCIV/MKR/04/2021 dated April 15th, 2021 which has been registered at Registrar's Office of Sarolangun District Court on May 3rd, 2021 and the Letter of Assignment No. B.904/KCIV /MKR/04/2021 dated April 15th, 2021, called the Plaintiff.

The opposite

1. Ujang Saiyo, tt in Seko Besar Village RT. 08 RW. 04, Pauh District, Sarolangun Regency, as Defendant I;
2. Jariyatin, tt in Seko Besar Village, RT. 07, Pauh District, Sarolangun Regency, hereinafter referred to as Defendant II.

The Plaintiff with lawsuit dated 15 April 2021 which was received and registered at Registrar's Office of Sarolangun District Court on 26 April 2021 in Register Number 9/Pdt.G.S/2021/PN Srl, has filed a lawsuit as:

1. The defendant do not fulfill his promise
2. Thursday, July 23th, 2015, with a written agreement with S.P.H NO. B . 49/7902/7/2015 Date 07 July 2015.
3. Defendant I & Defendant II recognized the money as a Loan/KUPEDES from the Defendant in the amount of Rp. 40,000,000, the principal and interest must be repaid by the party within 36 months from the signing of the Acknowledgment of Debt, which is July 23th, 2015 with the loan repayment schedule as follows:

Defendant I and Defendant II are required to pay the loan's principal and interest in equal monthly installments. These payments must be made in 36 (thirty-six) installments totaling IDR.1,779,200 each time (One Million Seven Hundred and Seventy Nine Thousand Two Hundred Rupiah).

The last installment payment must be paid by Defendant I & Defendant II for no later than July 23, 2018. When both of them do not fulfill their obligations because they do not conduct the provisions of Article 2 of Acknowledgment Letter Number: B.49/7902/7/2015 dated July 23, 2015.

Defendant I & Defendant II did not pay the loan installments on time and in an orderly manner since the loan disbursement that has become a overdue credit with a total liability of IDR. 37,835,737,- (Thirty Seven Million Eight Hundred Thirty Five Thousand Seven Hundred Thirty Seven Rupiah); Due to the jammed loan of Defendant I & Defendant II, the Plaintiff must experienced the loss, because the Plaintiff remain to pay the interest on public deposits which are the source of loan funds distributed to Defendants I & II. The Plaintiff opened the cost of productive reserves and he was harmed since it could not distribute any loans to the public in the amount of Defendant I/II's loan which was in arrears. For the Delinquent loans, the Plaintiffs have been billing them on a regular basis, either by coming directly to the TT as LKN or by giving SP.

1. As a result of overdue credit belonging to Defendant I & Defendant II, the plaintiff suffered a loss in the amount of the remaining principal and interest arrears that had not been paid up to the bad debt and filed a simple lawsuit in the amount of: IDR. 31,822,300,- and interest : IDR. 6,013,437,- Total: IDR. 37,835,737, - (Thirty Seven Million Eight Hundred Thirty Five Thousand Seven Hundred Thirty Seven Rupiah). With the arrears in Defendant I's installments, the Plaintiff had to write down the reserve cost of productive assets, then the Plaintiff was harmed from the bookkeeping of these costs in the amount of the arrears.

Plaintiff's Lawsuit

In a wanprestasi on debt acknowledgment letter in the debt agreement, the plaintiff through his lawsuit:

1. Accept the entire lawsuit;
2. Legalizing their Act is an obligation to the Plaintiffs. Sentencing Defendant I & Defendant II to pay in full immediately without conditions for the entire remaining loan/credit (principal + interest) to the Plaintiff in the amount of IDR. 37,835,737., when the two of them do not pay off the entire remaining credit with principal + interest to the Plaintiff, then the collateral proof of ownership of S.H.M No. 653 An. Zariatn Seko Besar Village, Kec. Pauh Kab. Sarolangun which was administered in Sarolangun on 19 September 2013 and Certificate of Ownership (SHM) No. 301 An. Trisno Seko Besar Village, Kec. Pauh Kab. Sarolangun which was administered in Sarolangun

on December 6, 2000 which was pledged as collateral to the Plaintiff was auctioned through Jambi State Property and Auction Service Office (KPKNL) to settle the loan/credit payments of Defendant I & Defendant II to the Plaintiff;

3. Declare the object of collateral with the Ownership Certificate No. 653 An. Zariatn Seko Besar Village, Kec. Pauh Kab. Sarolangun which was administered in Sarolangun on 19 September 2013 and Certificate of Ownership (SHM) No. 301 An. Trisno Seko Besar Village, Kec. Pauh Kab. Sarolangun which was administered in Sarolangun on December 06, 2000, with the land and/or building that stands on it is legal and valuable, then the confiscation of collateral (Conservatoir Beslag) is conducted for the benefit of the Plaintiff;
4. Required the Defendant I & Defendant II or anyone who controls or occupies the object of the collateral Letter of Ownership (SHM) No. 653 An. Zariatn Seko Besar Village, Kec. Pauh Kab. Sarolangun which was administered in Sarolangun on 19 September 2013 and Certificate of Ownership (SHM) No. 301 An. Trisno Seko Besar Village, Kec. Pauh Kab. Sarolangun which was administered in Sarolangun on December 6, 2000, to immediately vacate the building. Otherwise, both of them will be charged with the costs that should be received by the plaintiff.
5. Sentencing both defendant to pay court fees or when the Honorable Chairperson of Sarolangun District Court has a different opinion, the defendant has the right to ask for a fair decision (Ex Aequo et Bono).

District Court Decision No. 9/Pdt.G.S/2021/PN.Srl

1. Declaring the presence of the Party concerned;
2. Accept;
3. To declare by law that the Defendants have done the wanprestasi on the Acknowledgment Letter Number: B.49/7902/7/2015 dated July 23, 2015 to the Plaintiff;
4. Punishing the payment of remaining loan/credit amounting to IDR.37,835,737.00;
5. The defendant require to pay IDR.552,000.00
6. Refuse the rest of the claims;

The Researcher's Analysis of District Court Decision No. 9/Pdt.G.S/2021/PN.Srl

The legal consequence of wanprestasi on debt acknowledgment letter in the debt-receivable agreement is a civil lawsuit or a claim for compensation. Waprestasi means the absence of obligations and rights in the agreement that must

be implemented.⁶ The efforts made by the creditor is very appropriate for the party who is harmed in debt agreement. According to law, legal remedies are through non-litigation and litigation.

As an effort made by creditor in this case, the claim for wanprestasi is very appropriate, as well as the decision that has been taken by the Panel of Judges that stating the borrower did the wanprestasi by not fulfilling its achievements/obligations as agreed in the agreement, even the debtor has reneged. promise on the debt acknowledgment.

CONCLUSION

Debt Agreements are same as in the Borrowing agreements. Although the agreement is not specifically regulated, the agreement that provides freedom of contract makes more convenient for public to make contracts outside the agreements contained in Book III of the Civil Code. The legal consequences of enforcing wanprestasi acts in the letter of acknowledgment of debt-receivable deed are Substituting as district court decision No. 9/Pdt.G.S/2021/PN.Srl.

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⁶ M.Rizqa Anas Fawzi and Suatra Putrawan, "Akibat Hukum Wanprestasi Dalam Perjanjian Jual Beli Online Berdasarkan Undang-Undang Informasi Dan Transaksi Elektronik," *Kertha Semaya : Journal Ilmu Hukum* 8, no. 4 (2020): 645–656.