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LEGAL ANALYSIS OF THE POSITION OF THE SERVICE BOND AGREEMENT BETWEEN THE COMPANY AND EMPLOYEES (CASE STUDY OF BREACH OF PERFORMANCE LAWSUIT OF PT FL TECHNICS INDONESIA AGAINST INDRA KURNIAWAN IN THE DECISION OF THE TANGGERANG DISTRICT COURT NUMBER 1000/PDT.G/2023/PN TNG)

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ABSTRACT
The tort case between PT FL Technics Indonesia and Indra Kurniawan centered on the violation of the service bond agreement that had been agreed by both parties. Based on this agreement, the company provided an opportunity for employees to attend training courses, with the obligation for employees to undergo service bonds according to a predetermined duration. However, the employee violated his obligation by resigning before completing the service bond period, resulting in an obligation for the employee to reimburse the training costs incurred by the company. This research uses a normative approach, which aims to analyze legal aspects based on relevant regulations and documents. The data sources used consist of primary, secondary, and tertiary legal materials, as well as primary data as support. The qualitative juridical analysis method is used to assess the collected data. In this case, the service bond agreement is not considered a work agreement, so disputes arising related to this agreement fall under the jurisdiction of the District Court, not the industrial relations court. Based on the Tangerang District Court Decision Number 1000/PDT.G/2023/PN TNG, Indra Kurniawan was proven to have committed a default, which requires him to be responsible for the breach of obligations arising from the agreement.

Key Word: Non-performance of contract, case study, corporate law, service bond agreement

INTRODUCTION
Sudikno Mertokusumo (20023) says humans are social creatures who cannot live alone. They live in groups and have interests that need to be fulfilled. With cooperation between humans, their wants and needs can be met and protected. Humans form socio-economic relationships to fulfill their life needs. This is an effort to fulfill physical and psychological needs as social beings.

Agreement is an event where one person promises to another or two people promise each other to do something (2000). Agreement or verbintenis implies a wealth law relationship between two or more parties that gives one party the right to obtain achievements and obliges the other party to give achievements (M. Yahya Harahap, 1996). In Indonesia, agreements are placed in Book III of the Civil Code on engagements. Article 1313 of the Civil Code stipulates that an agreement is an act that binds one or more people. According to R. Setiawan (1994), the definition of Article 1313 of the Civil Code is incomplete, and he adds the words “or mutually bind themselves” to Article 1313 of the Civil Code.

There are two types of agreements, namely written and oral. Written agreements are made in written form, while oral agreements are made in oral form between the parties. There are three forms of written agreements, namely: agreements that only bind the parties in

it, agreements that only require the signature of a notary to legalize the signatures of the

parties, and agreements made with a notary in the form of a notarial deed. Agreements that only bind the parties in it must have evidence if denied by a third party. The notary's testimony is only to legalize the signatures of the parties and does not affect the legal force of the contents of the agreement. An agreement in the form of a notarial deed is perfect evidence for the parties and third parties (Salim H.S, 2010).

Agreements are the most important source of obligations and are generally born from agreements or laws (R. Subekti and R. Tjitrosudibio, 2004). An agreement cannot be revoked except with the consent of both parties or for reasons recognized by law. Agreements must be carried out in good faith and are binding on both parties to the agreement. Every agreement must be made voluntarily by both parties. Obligations arising from the agreement must be carried out in accordance with the obligations of each party. However, there are times when the debtor cannot carry out his obligations due to the debtor's fault or force majeure. Such obstructions may occur due to the debtor's fault or due to force majeure beyond the debtor's ability. Achievements in the agreement can be performed either by agreement, law, or propriety and custom.

The agreement will be successful if it is carried out in good faith, but if there is one party who does not fulfil his obligations, a default will occur. Default is a situation where the debtor does not fulfil its obligations in the agreement. Workers/labourers are one of the important indicators in the progress of a company. The better the industrial relations in a company, the more likely the company will progress. Conversely, disharmonious industrial relations will make the possibility of the company's progress lower. Therefore, regulations relating to the employment relationship between workers/labourers and employers must be considered properly. A Work Agreement is the basis for the establishment of an employment relationship between the employer and the employee. Workers/labourers do not have the same position as employers due to social, economic and educational differences, so they cannot determine their own wishes in the employment agreement.

Service bond agreements are not regulated in Law No. 13/2003 on Labour. According to Yogo Pamungkas (2009), a service bond agreement is usually a further civil agreement after an employment agreement, which regulates the education and training of workers. A similar opinion was expressed by Umar Kasim, who stated that a service bond agreement is a civil agreement with civil consequences. Usually, service bond agreements contain compensation or payment of compensation if the employee defaults, and prohibit employees from moving to work for similar companies or opening businesses that can become competitors.

PT FL Technics Indonesia (the Company) filed a lawsuit for default against Indra Kunrniawan (the Employee) for violating the Service Bond Agreement between the two. The employment relationship started on 28 June 2016 and in 2017, they signed a Service Bond Agreement number 003/COT/ATD/2017. The Company gave the Employee the opportunity to attend training courses on the condition that the Employee underwent a 3-year Service Bond. However, prior to the expiry of this period, the Employee resigned. As a result, the Employee is required to reimburse the training costs incurred by the Company in accordance with the Agreement.

Service bond agreements are contentious in legal practice. When there is a dispute related to its implementation, the question is whether it falls into industrial relations disputes or general civil disputes that are resolved in the district court. This research aims to understand the legal position of service bond agreements between companies and employees in Indonesia as well as dispute resolution if one party defaults.

LITERATURE REVIEW

Agreement

Agreement or Verbintenis is a property law relationship between two or more people that gives one party the power of rights and obliges the other party to fulfil the performance. Agreement is part of the civil law applicable in Indonesia. Therefore, the legal relationship in the agreement is not a relationship that can arise by itself, but has been regulated and legalised how the relationship is. In an agreement, there are two parties, namely the party obliged to perform (debtor) and the party entitled to the performance (creditor). An engagement is a relationship between two parties, in which one party has the right to demand something from the other party, and the other party is obliged to fulfil that demand. Agreements result in obligations or achievements from one or more people to one or more other people. The formulation in Article 1313 of the Civil Code confirms that an agreement results in the existence of another person, so that the obligation or achievement will always have two parties involved, namely the debtor and the creditor.

Obligation born from Agreement

Agreement is a legal relationship between two or more parties, based on an agreement to cause legal consequences. This is explained by several legal experts such as Sudikno Mertokusumo (1996), Prof. Wirjono Prodjodikoro (1973), M. Yahya Harahap and R. Setiawan (Akhmad Budi Cahyono and Surini Ahlan Sjarif, 2008), J. Satrio (1999), and R. Subekti (2005). A binding agreement must have at least one party who has an obligation. The most important source that gives birth to an obligation is an agreement, which is regulated in Article 1233 of the Civil Code. There are two types of obligations, namely obligations from agreements and obligations from the law. Acts done in accordance with the law and acts against the law are examples of obligations born from the law. The difference between agreement and obligation is that agreement is one of the sources of obligation. Meanwhile, the law of engagement is complementary, consensual, and obligatory.

Subject and Object of Agreement

The subject of the agreement can be an individual (natural person) or a legal entity (legal person, recht person). While the object of the agreement is an achievement, which can be in the form of giving something, to do something, or not to do something. Agreement has the meaning of a legal relationship of wealth or property between two or more people that gives one party the right to obtain an achievement and at the same time obliges the other party to fulfil the achievement. (Sri Soesilowati Mahdi, Surini Ahlan Sjarif and Akhmad Budi Cahyono, 2005)

Elements of an Agreement

An agreement has elements such as essentials, naturalia, and incidentals. Essential elements include provisions that regulate the performance to be performed and things that distinguish one agreement from another. For example, a sale and purchase agreement has an essential element in the form of an obligation that requires the delivery of property and payment of price. Natural elements are definite elements that exist after the essential elements are known. For example, in a sale and purchase agreement there must be an obligation of the seller to cover the property from hidden defects. Accidental elements are complementary provisions that deviate from the Civil Code or provisions that the parties make according to their wishes. This element is not an achievement that must be

carried out but a rule made by the parties according to freedom of contract. The open system in book III of the Civil Code and the principle of freedom of contract allow the parties to make these provisions. (Kartini Muljadi and Gunawan Widjaja, 2003)

Conditions for the Validity of an Agreement

Article 1320 of the Civil Code sets out four conditions for the validity of an agreement: agreement, capacity to enter into an agreement, a certain matter, and a lawful cause. Agreement must occur without coercion, mistake, or fraud. The person making the agreement must be capable of entering into legal relations, unless the law states otherwise. Women who were previously declared incapable of making agreements are now given the same rights as men. Legal entities must also fulfil certain requirements. The object of the agreement must be clear and determinable, and must be in accordance with the applicable provisions. The cause of the agreement must be lawful, not violating the law and decency, and not contrary to public order. If the subjective conditions are not met, one of the parties can ask the judge to cancel the agreement, while if the objective conditions are not met, the agreement is null and void (Subekti, 2005).

Principles of Agreement

The law of agreement regulated in the provisions of Book III of the Civil Code contains the principle of freedom of contract and several other principles that must be considered by the parties making an agreement. These principles include the principles of consensualism, freedom of contract, good faith, personality, completeness, pacta sunt servanda, legal certainty, appropriateness, and balance. The principle of consensualism regulates that an agreement is born from an agreement or conformity of will between the parties who make it (Budiman NPD Sinaga, 2009). The principle of freedom of contract gives freedom to the parties to make, enter into, determine the content and form of the agreement (A. Qirom Syamsudin Meliala, 2010). The principle of good faith refers to propriety and fairness so that the implementation of the agreement is required to be carried out in good faith (Sri Soesilowati Mahdi, Surini Ahlan Sjarif and Akhmad Budi Cahyono, 2005). The principle of personality prohibits a person from binding himself on his own behalf or asking for the establishment of a promise than for himself (R. Subekti, 2005). The principle of completeness allows parties to make their own rules if they wish to make an agreement based on this principle (Djumadi, 1992). The principle of pacta sunt servanda states that the agreement applies as law to the parties who make it, so they must comply with everything stated in the agreement. The principle of legal certainty states that an agreement cannot be revoked other than with the agreement of both parties or for reasons stated by the law as sufficient for that. The principle of propriety regulates that an agreement is not only binding for things that are expressly stated in it, but also for everything that, according to the nature of the agreement, is required by propriety, custom or law. And finally, the principle of balance requires both parties to the agreement to fulfil and implement the agreement.

Forms of Agreement

Agreements can be made orally or in writing. Oral agreements occur when promises are spoken without being written down, usually occurring in everyday life in simple relationships. Meanwhile, a written agreement is called a contract and can be made in the form of an authentic deed or a deed under hand. An authentic deed is prescribed by law and made by a public official, while a deed under hand is made by the interested party

with a signature as proof of consent. Written agreements can be used as evidence in disputes between the parties involved (I Ketut Oka Setiawan, 2021).

Named and Unnamed Agreements

A named agreement is an agreement that has a special name and is regulated in the Civil Code. Examples are sale and purchase, exchange, lease, grant, and profit and loss agreements. Meanwhile, unnamed agreements are agreements that are not specifically regulated in the law but are commonly found in everyday life. Examples of unnamed agreements are simulation agreements, co-operation, profit sharing, and others. Named agreements have specific regulations in the Civil Code and have special names, while unnamed agreements are not specifically regulated in the law. Named agreements are often used in everyday life and have arrangements that have been determined in law (Mariam Darus Badrulzaman, et al, 2001).

Meanwhile, unnamed agreements do not have special regulations in the law but have specific names and are commonly found in society. Thus, named and unnamed agreements have differences in their legal arrangements, but both still have an important role in everyday life and are actively carried out in society (Mariam Darus Badrulzaman, et al, 2001).

Cancellation and Annulment of Agreement

Cancellation and invalidation are two things that can cause the end of an obligation. To determine whether an agreement is valid, it must fulfil the validity requirements of the agreement, which are divided into subjective validity requirements and objective validity requirements. The provisions of Article 1320 of the Civil Code regulate the validity of an agreement, but do not explain the application of cancellation and annulment. Absolute cancellation occurs if the objective conditions of the agreement are not met, so that the agreement is considered to have never existed and does not bind any party. Cancellation of an agreement can be done if one of the parties is involved in oversight, coercion, or fraud when making an agreement. In addition, cancellation can also be made if one of the parties is incapable or does not have the authority to take certain legal actions. Articles 1446 to 1450 of the Civil Code regulate the right to apply for cancellation of an agreement. In addition, there are several other reasons for cancelling an agreement, such as the non-fulfilment of the requirements stipulated by law, or the fulfilment of the void condition in the type of conditional agreement. The legal effect of cancellation and annulment of an agreement is that all property and persons are restored to the same status as before the agreement was made. In addition, the enactment of a void condition as a cause of termination of the obligation is regulated in Article 1265 of the Civil Code.

Achievement and Default in an agreement

Achievement is the existence of a legal object or something that is bound so as to give birth to a legal relationship (Abdulkadir Muhammad, 1978). According to Article 1233 of the Civil Code, obligations are born from contracts and laws, both written and unwritten. Achievement according to Article 1234 of the Civil Code can be in the form of giving something, doing or not doing an act. Default occurs if obligations are not fulfilled by the debtor to the creditor, which means that the implementation of obligations is not in accordance with the agreement or not on time (Handri Raharjo, 2009). Default can cause losses in an agreement and for the debtor can be disputed.

Definition and Forms of Default

Default comes from the Dutch language, which means poor performance or breach of promise. In English, default is called breach of contract, which means the non-performance of obligations properly imposed by the contract (Lukman Santoso Az, 2016). This can happen either intentionally or unintentionally. Default can be in the form of not fulfilling achievements, performing imperfect achievements, being late in fulfilling achievements, and doing what the agreement prohibits to do (Salim HS, 2008). Default occurs due to force majeure or fault of the debtor, either intentionally or negligently (Abdulkadir Muhammad, 1978). The forms of default are not fulfilling or performing the performance, fulfilling the performance but not as promised, and fulfilling the performance but not in accordance with what has been promised. Default can also mean fulfilling the performance but not on time, not fulfilling the performance, and fulfilling the performance imperfectly.

Determining default is not easy because the circumstances of the agreement are not always clear. The law provides a solution with the determination of default, where the creditor notifies the debtor when to fulfil the performance. Article 1238 of the Civil Code states that the debtor is negligent if there has been a summons. Forms of subpoenas include warrants from judges, notary deeds, and determination in the agreement. Thus, the creditor can determine the time of default from the beginning of the agreement.

The legal consequences of default are four. First, the obligation remains. Second, the debtor must pay compensation to the creditor in accordance with Article 1243 of the Civil Code. Third, the risk shifts to the debtor's detriment and the creditor can free himself from his obligations by using Article 1266 of the Civil Code. Fourth, the legal responsibility of the party who has committed default is in the form of payment of losses, cancellation of the agreement, risk transfer, and court costs. The compensation incurred must be calculated based on the value of money and the cancellation of the agreement must be requested to the judge. The legal consequences of default on a lease purchase agreement are the same as other agreements. However, although the agreement is void by itself, the Civil Code Article 1266 paragraph 2 states that the legal consequences of default are not null and void but must be cancelled by a judge.

Compensation in civil law can arise due to default in an agreement or due to an unlawful act. If someone is negligent in performing their obligations and has been declared in default, losses will arise. In accordance with the Civil Code, the debtor must pay compensation for costs, losses, and interest after being declared in default. Compensation consists of costs, losses, and interest. Costs include all costs that must be incurred, such as notary fees, accommodation costs, and travel. Loss is the reduced value of the wealth of the injured party. Interest is the profit that should have been earned by the debtor. There are 4 kinds of interest: conventional, moratoire, compensatoir, and multiple (Handri Raharjo, 2009).

In addition, there are several models of compensation for default. First, the compensation specified in the agreement, which is if the form and amount of compensation have been written in the agreement before the default occurs. Second, expectation compensation, which is in the form of compensation for the loss of expected future profits. Third, reimbursement of costs, which is compensation in the form of reimbursement of all costs incurred by one party that must be paid by the other party. Fourth, restitution, namely returning all added value in its original form that has been received by one party. Fifth, quantum meruit, which is to return the price of the added value that has been received. And finally, the implementation of the agreement, where the injured party can demand

the implementation of the agreement even though it is late, with or without compensation. (Munir Fuady, 2014)
Basically, compensation in civil law is considered based on losses arising from default and can be realised through several models of compensation mentioned above. However, this must be adjusted to the agreement in the agreement and refers to the provisions stipulated in the Civil Code.

Employment Agreement
The definition of a work agreement/labour agreement as stated in Article 1601 letter (a) of the Civil Code is as follows: '*A labour agreement is an agreement by which one party, the worker, binds himself to be under the orders of the other party, the employer, for a certain time, to do work by receiving wages*'. A work/labour agreement is an agreement between a worker/labourer and an employer that regulates the working conditions, rights, and obligations of the parties. The worker binds himself to work and receive wages, while the employer binds himself to employ workers and pay wages. There are differences between employment agreements and agreements to perform other work, such as work contracting agreements and agreements to provide certain services/work. In work contracting agreements, the main thing is the result of the work and the fee to be paid. Meanwhile, in a service agreement, the party receiving the work will perform the work/service in accordance with their abilities without the need for instructions from the party providing the work. Thus, a work agreement binds both parties firmly and is different from other forms of work agreements.

Employment Relationship
An employment relationship is a legal relationship between an 'employer' and an 'employee' based on a work agreement that involves the elements of work, wages, and orders. The absolute requirement of a labour agreement is the existence of the elements of work, wages, and orders in a cumulative manner. If one of these elements is not fulfilled, the agreement will not give birth to an employment relationship. For example, the relationship between doctors and patients, insurance agents and companies, lawyers and clients, taxi drivers and companies, and online drivers and app companies. The elements that must be present in every employment agreement between employers and workers are work, wages, and orders. The work must be performed by the worker himself, but may be represented or substituted with the consent of the employer. Wages are received in the form of money in return for work or services performed by the worker. If a person performs work without the purpose of earning wages, the relationship is not an employment relationship. The worker must submit to the employer's orders in carrying out the work. Command is synonymous with position, where employers are in a higher position and have the power to determine what workers can and cannot do. If the positions of the two parties are equal, then the relationship is more appropriately referred to as co-operation. According to Prof. Mr. M.G. Rood, the work contained in the employment agreement must be performed by the worker. However, the worker may be represented or replaced with the consent of the employer. Wages are received in the form of money in return for the work or services performed by the worker. The worker must be subject to the employer's orders in carrying out the work, where the orders constitute the employer's ability to determine what the worker may and may not do.

Elements of an Employment Agreement

A work agreement must fulfil four main elements, namely the existence of work that must be done by the recipient of the work individually, the existence of a relationship under orders that makes the recipient of the work dependent on instructions or directions from the employer, the existence of wages in return for the work performed, and the existence of a time to perform the work agreed upon (Djumadi, 1992). Wages can be given in the form of money or non-money, and must meet the needs of the worker or labourer. The government also sets a minimum wage to ensure the necessities of life. In terms of occupational health, working time limits are also taken into account as overtime pay, and workers have the right to rest with replacement pay. General principles relating to wages include the principle of non-discrimination, the principle of 'no work no pay', and the prohibition of wage expenditure. Deductions from wages must also be agreed with the worker and may not exceed 50%. The time element can differentiate between a fixed-term employment agreement (PKWT) and an indefinite-term employment agreement (PKWTT). In non-permanent contracts, the time of a particular event or the length of time required to complete the work is determined, whereas in permanent contracts, time is not bound by the agreement. This also relates to the time required to complete the work or the time associated with the result of the work, certain events, or travel or activities. Therefore, a work agreement must fulfil these elements to be valid under the law.

Form of Employment Agreement

A work agreement is an agreement between a worker and an employer that regulates work and wages. The agreement can be made orally or in writing, but in the case of a Fixed Term Employment Agreement (PKWT), it is required to be made in writing in Indonesian language and Latin letters. A work agreement does not have to be made in writing, but in its development, proof in court requires written evidence of a work agreement (R.Subekti, 2005). Article 51 of Law No. 13 of 2003 on Manpower allows work agreements to be made in writing or orally, but employers are obliged to make a letter of appointment for the worker concerned if the agreement is made orally or not in writing.

Content of Employment Agreement

Work agreements between workers/labourers and employers must comply with Law No. 13 of 2003 on labour. A written work agreement must include information such as company name, address, type of business, name of worker/labourer, gender, age, address, position/job, place of work, amount of wages, method of payment, terms of employment, start and duration of the agreement, place and date of the agreement, and signature. Work agreements must not conflict with company regulations, collective labour agreements, or applicable laws and regulations. Each party must have 2 (two) copies of the work agreement that have the same legal force, giving 1 (one) to each party.

Principles of Unidroit

The Unidroit Principles are a set of principles developed by the International Institute for the Unification of Private Law with the aim of providing general guidelines in international commercial contract law. The principles aim to provide flexible and uniform rules to facilitate international trade as well as resolve cross-border contractual disputes. Some of the basic principles in the Unidroit Principles include freedom of contract, good faith and fair dealing, legal certainty, balance between rights and obligations, non-discrimination, contract performance, termination, and dispute resolution. These

principles do not supersede a country's national law, but can be used in drafting contracts or resolving disputes in jurisdictions that allow it.

Theoretical Review

The legal theories used in this research are justice theory, legal certainty theory, and legal responsibility theory. Justice theory is a philosophical concept about the understanding and implementation of justice in social, political, and economic aspects. Some well-known theories include John Rawls (justice as fairness), Utilitarian (utilitarian justice), Robert Nozick (libertarian justice), Communitarianism (communitarian justice), Feminist Justice, and Islamic Justice Theory. John Rawls' theory of justice is based on the principle of freedom and the principle of difference, with the concept of the "veil of ignorance" to ensure impartiality in making social rules. Utilitarian justice theory is based on the principle of greatest benefit, with the happiness or well-being that results for the greatest number of people considered a just action or policy. Robert Nozick's theory of justice emphasises individual property rights and freedom from state interference, rejecting the concept of wealth redistribution. Communitarianism's theory of justice emphasises the importance of social and cultural context in determining justice, with the values of justice inseparable from the identity of the community in which they grow. Feminist justice theory highlights gender injustice and discrimination against women and other marginalised groups, with a focus on creating gender equality in various fields. In the Islamic perspective, justice is strongly emphasised in the Qur'an and hadith, covering individual and social aspects as well as human relationships with God, not only limited to law, but also covering economic and social aspects. Each theory of justice has a different approach in its understanding and application, depending on the underlying social, political and philosophical context.

Legal certainty theory is a concept in legal science that emphasises clarity, order and certainty in the application of law. It aims to create stability in society with definite and clear rules. Some important elements in legal certainty theory include clarity of rules, consistent enforcement, predictability, and transparent procedures. Thus, individuals governed by the law can know their rights and obligations and plan their actions accordingly. The main goal of this theory is to protect individual rights and prevent injustice through clear and reliable rules.

Theories of legal liability are concepts that govern when and how a person or entity is legally responsible for their offences or omissions. There are several theories in legal liability, including the Theory of Fault which holds a person liable only if they make a mistake. The Theory of Absolute Liability does not require proof of fault and states that a person can be liable simply because their actions resulted in harm. The Vicarious Theory of Liability allows a person or entity to be responsible for the actions of others, especially in employment relationships. The Risk Theory states that a person or entity is liable for creating or controlling certain risks, even without direct fault. The Objective Liability Theory focuses on the effect of an act rather than the motive of the actor. Finally, the Contract Theory makes contracting parties liable for breach of contract if they fail to fulfil their obligations. These theories can be applied in various areas of law such as civil law, criminal law, and administrative law.

RESEARCH METHODS

Research method is the main approach used to achieve the goals set in scientific studies. This research method includes various techniques and approaches, such as research

specifications, research approaches, types and sources of data, data collection techniques, and data analysis techniques. This research method also includes normative juridical research with descriptive research properties. The data used is primary data obtained directly from the first source as well as secondary data found in the literature. This research also uses primary, secondary, and tertiary legal materials as data sources. Data collection techniques were carried out through inventory, identification, grouping, data compilation, and literature study. In addition, this research also involves data analysis by organising data in a structured series and certain categorisation and descriptive analysis. This research will be conducted in Jakarta and located in the Library and other resource locations related to the research. This research aims to develop new arguments, theories, or concepts that can be used by legal practitioners in addressing the problems faced in the cancellation of company dissolution.

RESULT AND DISCUSSION

The Position of the Service Bond Agreement Between the Company and the Employee in the Decision of the Tanggerang District Court Number 1000/PDT.G/2023/PN TNG Between PT FL Technics Indonesia and Indra Kurniawan

Case Position

1. **The Plaintiff and the Defendant are Parties to a Cooperation Agreement for Investment in Professional Development Number 003/COT/ATD/2017, dated 12 April 2017.**

   PT Avia Technics Dirgantara (FL Technics Indonesia) has a working relationship with Indra Kurniawan as Certifying Staff Category A&P since 28 June 2016. They have a Cooperation Agreement for Professional Development Investment Number 003/COT/ATD/2017, which provides Indra Kurniawan with the opportunity to attend training courses. The course aimed to develop Indra Kurniawan's professional qualifications and was paid for by PT Avia Technics Dirgantara. However, Indra Kurniawan neglected his obligations by resigning before the end of his three-year service bond, so PT Avia Technics Dirgantara demanded that he reimburse the training costs that had been incurred. Indra Kurniawan did not show good faith in responding to the summons from PT Avia Technics Dirgantara, so on 20 August 2019, PT Avia Technics Dirgantara officially stated that Indra Kurniawan had defaulted on the signed agreement. Therefore, PT Avia Technics Dirgantara has a legal interest to sue Indra Kurniawan to reimburse the training costs that have been incurred by the company.

   The Plaintiff's Principal gave three warning letters to the Defendant, but they were ignored. The Plaintiff again gave three warning letters to the Defendant to fulfil its obligations under the Agreement. However, the Defendant still did not make a good faith effort to reimburse the costs of the Training Course and the Service Trip. The Defendant breached the terms of Articles 1 and 2 of the Agreement.

   The Defendant must reimburse all training course fees and official travel expenses paid by the plaintiff due to the default. Up to the time the lawsuit was filed, the Defendant had not reimbursed these costs. The value of damages shall be calculated using the exchange rate on 8 July 2019, i.e. €1 = Rp15,880.72. The total cost to be paid by the Defendant is €10,229 or equivalent to IDR162,443,885. Training course

fees of €9,860 or equivalent to IDR156,583,899 and official travel costs of €369 or equivalent to IDR5,859,986. Thus, the total costs to be paid by the Defendant are IDR162,443,885.

2. **The Defendant has committed a default by failing to fulfil their obligation to serve for 3 (three) years at the Plaintiff's office.**
   The Plaintiff claimed that the Defendant had agreed to serve a 3-year Service Bond at the Plaintiff's office based on the agreement they made. The training agreement between the two is considered binding law. The validity of this agreement is based on four conditions, namely the existence of an agreement, capacity to make an agreement, certain matters, and a lawful cause. Both parties have an agreement as evidenced by the signatures on the agreement, and have the necessary legal capacity. The specific matter and lawful cause in the agreement were also fulfilled. The Plaintiff felt that the Defendant had breached the agreement by not fulfilling the obligation to undergo a 3-year service bond at the Plaintiff's office in accordance with the contents of the agreement. Therefore, the Plaintiff requested that the Defendant be obliged to undergo the Service Bond in accordance with the contents of the agreement made and requested compensation in the amount of the loss caused.
   The Plaintiff asserts that the Defendant had a responsibility to work at the Plaintiff's Office for 3 years based on a Service Bond. However, the Defendant resigned and never came to the office after 8 July 2019. The Plaintiff tried to meet and send a letter to the Defendant but received no response. As a result, the Plaintiff suffered material and immaterial losses, including training course costs, official travel costs, and loss of potential employment with an estimated loss of IDR 2 billion. The Plaintiff also claimed moratoir interest of 6% per annum on the material losses suffered. This is based on Articles 1243 and 1250 of the Civil Code. Thus, the Plaintiff has a legal basis to demand that the Defendant pay the moratoir interest because the Defendant did not fulfil the engagement and has an obligation to reimburse the costs incurred by the Plaintiff.

The Position of Service Bond Agreement Between the Company and Employees in the Case of Default Lawsuit of PT FL Technics Indonesia Against Indra Kurniawan in the Decision of the District Court of Tanggerang Number 1000/PDT.G/2023/PN TNG.

1. **Legal considerations of the panel of judges on the position of the service bond agreement between the company and the employee in the case of PT FL Technics Indonesia's default lawsuit against Indra Kurniawan in the decision of the Tanggerang District Court Number 1000/PDT.G/2023/PN TNG.**
   The decision of the Tanggerang District Court Number 1000/PDT.G/2023/PN TNG discusses the legal considerations of the panel of judges regarding the default lawsuit filed by the plaintiff against the defendant. The panel of judges first considered the basis on which the plaintiff filed a default suit and the validity of the agreement between the plaintiff and the defendant. Based on Article 1320 of the Civil Code, agreement, capacity, a certain matter/object and a halal cause are the conditions for the validity of an agreement. After considering the evidence of the Professional Development investment cooperation agreement No. 003/COT/ATD/2017, the panel of judges concluded that the validity of the agreement had been fulfilled.
   Furthermore, the panel of judges considered the terms of default according to Articles 1238 and 1234 of the Civil Code. There was evidence showing that the defendant

committed default because he did not fulfil his obligations in accordance with the service bond agreement. There was also evidence of a warning letter (subpoena) submitted by the plaintiff to the defendant regarding the payment of its obligations.

The judges also considered whether the respondent should pay for the vocational training costs incurred by the plaintiff. Under the agreement, the respondent was to reimburse all costs incurred if he resigned before the end of the training period. Taking into account the evidence of the respondent's resignation and the unheeded summons, the panel of judges found that the respondent should pay the training costs.

However, the panel of judges rejected the plaintiff's claim related to immaterial damages of Rp 2,000,000,000 and moratoir interest of 6% per year, because it was not supported by sufficient evidence. Similarly, the plaintiff's claim related to the confiscation of security over the defendant's property was also rejected because it was not carried out during the trial. Regarding the plaintiff's claim related to the implementation of the decision despite the appeal, cassation, or verdict, the panel of judges stated that the conditions for the implementation of the decision were not fulfilled based on Article 180 HIR. Thus, the panel of judges decided to partially grant the plaintiff's claim and determine the defendant as the losing party to pay the court costs incurred in this case.

2. **Analysis of the Position of Service Bond Agreement Between the Company and Employees in the Case of Default Lawsuit of PT FL Technics Indonesia Against Indra Kurniawan in Case Number 1000/PDT.G/2023/PN TNG**

The cooperation agreement for professional development investment number 003/COT/ATD/2017 dated 12 April 2017 was a separate agreement from the employment agreement number 27/VI/EMP-ATD/2016 dated 28 June 2016 between the Plaintiff and the Defendant. The investment agreement did not include the employment agreement as the basis, reason, and background for making the agreement. In terms of content and purpose, the investment agreement is an ordinary civil agreement that is not related to the employment agreement.

Cooperation Agreement for Professional Development Investment No. 003/COT/ATD/2017 dated 12 April 2017 is an agreement that is subject to the Civil Code and is not subject to Law Number 13 Year 2003 on Manpower as last amended by Law Number 6 Year 2023 on the Stipulation of Government Regulation into Law Number 2 Year 2022 on Job Creation into Law (‘Law Number 6 Year 2023’). The consequence of the implementation of the service bond agreement itself must refer to the provisions of the Civil Code, so that dispute resolution is handled in the District Court and not in the Industrial Relations Court. The service bond agreement is a pure civil agreement that is subject to the provisions of the Civil Code. Thus, dispute resolution of disputes over service bond agreements is the authority (absolute competence) of the district court, and not the authority (absolute competence) of the industrial relations court.

Service Bond Agreements between companies and employees based on legal certainty theory have a strong foundation in Indonesian civil law. Some important aspects of the theory of legal certainty that are relevant are the validity of the agreement, certainty in rights and obligations, conformity with laws and regulations, and employee protection guarantees. The service bond agreement must clearly regulate the rights and obligations of both parties, and be in accordance with the provisions in the Indonesian Labour Law.

Thus, the Service Bond Agreement according to the theory of legal certainty has an important position because it helps create legal clarity and security for both parties, ensuring that the applicable rules are followed and the rights and obligations of the parties are protected fairly and proportionally. Service bond agreement is a form of named agreement that provides rights and obligations or a real realisation of the objectives agreed upon by both parties by determining the limits of fulfilment of the agreement clause based on their agreement as well.

The service bond agreement agreed by the company and employees fulfils the legal requirements of an agreement according to Article 1320 of the Civil Code. The agreement formulated in the agreement will legally bind the parties who make it with the force of a law. Thus, the parties will obey it legally and convincingly based on the clauses agreed upon. So, if the agreement is not fulfilled, it can be declared as a breach of promise (default).

As such, the Service Bond Agreement is not an employment agreement as referred to in the provisions in the dispute over the dispute over the service bond agreement is the authority (absolute competence) of the district court, and not the authority (absolute competence) of the industrial relations court. This is in accordance with the principle that the rule of law should be clear, predictable, and consistent in its application, so that the individuals and companies involved can know their rights and obligations.

Legal Effects and Dispute Resolution of Service Bond Agreement in the Decision of the District Court of Tanggerang Number 1000/PDT.G/2023/PN TNG Between PT FL Technics Indonesia Against Indra Kurniawan

1. **Legal Responsibility as a consequence for parties proven to have committed Default in a Service Bond Agreement in the Decision of the Tanggerang District Court Number 1000/PDT.G/2023/PN TNG**

   Hans Kalsen (2006) explains that legal liability is a responsibility, a person can be sanctioned for actions that violate norms. Legal responsibility is divided into individual, collective, fault-based, and absolute liability. Responsibility in the legal dictionary can be interpreted as liability and responsibility. Legal responsibility has its source in various laws and regulations.

   Legal responsibility in the realm of public law such as state administration and criminal law, as well as in private law such as civil law, has certain mechanisms if obligations are not fulfilled or prohibitions are violated. The theory of responsibility in unlawful acts is divided into responsibility due to intentional unlawful acts, due to negligence, and due to acts without regard to fault.

   Every individual has an interest in having freedom of movement, and to achieve this, protection from the law is required. Legal liability arises when contractual or non-contractual obligations are not fulfilled. Legal liability depends on the nature of the legal relationship that establishes civil rights.

   The exercise of legal rights and obligations always demands legal responsibility. Every office holder has freedom of action, but his freedom is limited by the will of the authoriser that has been agreed upon and obliged to be carried out. In other words, the obligations of the parties that have been determined in an agreement are a causa that gives birth to responsibility.

As a consequence of the agreement of the service bond, if there is a default, the party who did it must be responsible. This is proven in the Decision of the Tanggerang District Court Number 1000/PDT.G/2023/PN TNG that Indra Kurniawan (Defendant) has committed a default.

2. **Execution as the implementation of execution as a legal consequence for parties proven to have committed default in a Service Bond Agreement in the Decision of the Tanggerang District Court Number 1000/PDT.G/2023/PN TNG**

The decision of the Tanggerang District Court Number 1000/PDT.G/2023/PN TNG partially granted the Plaintiff's claim. At that time, the Court stated that Indra Kurniawan (Defendant) committed an act of default for violating the provisions of Article 1 and Article 2 of the Cooperation Agreement for Professional Development Investment Number 003/COT/ATD/2017, dated 12 April 2017. Therefore, the Defendant was ordered to pay the costs of training and business trips that had been incurred by the Plaintiff. In addition, PT Avia Technics Dirgantara (FL Technics Indonesia) can make a request for execution against the Defendant, because the decision has permanent legal force, and the Defendant did not file an appeal.

In talking about execution, it is good to see the opinions of legal experts such as Ridwan Syahrani, Sudikno Mertokusumo, M. Yahya Harahap, and Soepomo. They state that execution is the realisation of the obligation of the defeated party to fulfil the performance that is the right of the winning party, as stated in the Court's decision. Execution law regulates the means and conditions used by state instruments to help interested parties execute the Judge's decision.

Execution can only be carried out against a Judge's decision that has permanent legal force, namely a decision that is no longer possible to be challenged by legal remedies of verset, appeal, or cassation (M. Yahya Harahap, 1988). In addition, execution can be carried out against decisions that are given a clause that can be implemented first (uitvorbaar bij voorraad), even though an appeal or verset is requested against the decision. Only condemnatoir decisions can be requested for execution, while constitutief and declaratoir decisions do not need to be forcibly implemented by state instruments.

The types of execution include the execution of a judgement that punishes to pay a sum of money, the execution of a judgement that punishes to perform an act, and real execution that involves the vacating of a fixed object. In Indra Kurniawan's case, because he did not file an appeal, the verdict in favour of PT Avia Technics Dirgantara (FL Technics Indonesia) is legally binding. Thus, PT Avia Technics Dirgantara (FL Technics Indonesia) can make a request for execution against the Defendant to pay the costs that have been incurred by the Plaintiff.

Preventive Efforts to Settle Service Bond Disputes Between Companies and Employees with the Application of the Principles of Freedom of Contract and the Principles of Balance

The principle of freedom of contract in English literature is referred to as “Freedom of Contract” or “Liberty of Contract” or “Party Autonomy” is a universal principle, meaning that it is adopted by treaty law in all countries. This principle is also defined as the right of individuals to determine something specifically according to their wishes in their legal relationships, as long as it does not conflict with public order. Freedom of contract has the meaning of positive freedom of contract, where the parties have the freedom to make binding contracts that reflect the free will of the parties, and negative freedom of contract,

which means that the parties are free from an obligation as long as the binding contract does not regulate the contract.

The principle of freedom of contract in Europe was known long before the 19th century, pioneered by philosophers. However, freedom of contract has limitations that require a balance between freedom and justice. Although the principle of freedom of contract has an important role in contract law in both civil and common law, it no longer appears as the freedom of contract that developed in the 19th century. Freedom of contract must be applied with limitations and based on the basic purpose of a contract and follow the principles of good faith and propriety. A number of countries around the world have placed restrictions on the principle of freedom of contract through legislation and court decisions. The principle of freedom of contract is applied in Indonesian law based on three legal systems, namely Customary Law, Islamic Law, and Western (Dutch) Law. In Indonesian law, freedom of contract derives from all three. (Ridwan Khairandy, 2013)

Related to fairness, the principle of balance also has a very close relationship with the principle of good faith. The principle of good faith is not only required during the execution of the Agreement, but also during the making of the agreement and even during the negotiations that precede the birth of the contract. In the common law legal system, the doctrine of unconscionability applies, which provides the possibility for a judge to ignore part of an agreement or even the entire agreement itself if that part of the agreement or the entire agreement is deemed to cause consequences that are contrary to conscience. The notion of individualism adopted by Western law is considered incompatible with Pancasila, because Pancasila emphasizes the whole of humanity. In this case, social justice based on Pancasila does not see justice only to Indonesian individuals, but to the whole of humanity. In relation to the nature of justice in the Agreement, several scholars have expressed their thoughts on contract-based justice.

Overall, the principle of freedom of contract in law has complex aspects and is related to the principles of justice, balance, good faith, and propriety. In its application, freedom of contract needs to be combined with balance and justice in order to provide fair benefits for all parties involved in an agreement.

The principle of freedom of contract is a principle that exists in the legal system of engagement and treaty law in the world, but currently there are many restrictions on its validity. The underlying philosophies are liberalism and individualism, which view all people as equal before the law and individual freedom as a human right. The principle of freedom of contract provides equal opportunities for all people to become parties to an agreement. However, this principle is mainly utilized by those involved in economic transactions. Freedom of contract is necessary for society, especially in economic traffic, but without restrictions, supervision, and balance, this principle will only burden weak parties. There needs to be a new rule of law to overcome this injustice. In the Indonesian treaty law system, freedom of contract has many positive impacts, but it can also lead to unbalanced agreements which in turn can have far-reaching implications for social and economic justice. If freedom of contract is unrestricted and unchecked by the law, then only the party in a strong bargaining position gains the maximum benefit, while the party in a weak position gets weaker. Courts have an important role in invalidating or modifying unfair contracts, with the aim of restoring the balance between the parties involved in the Agreement. In conclusion, the principle of freedom of contract actually has broad implications in the economic activities of society, so there needs to be strict restrictions and supervision by the government in order to realize social and economic justice.

Cancellation of unequal agreements on the grounds of the use of circumstances has also been accepted and applied internationally, such as in the provisions set out in the UNIDROIT Principles. Article 3.10 of the UNIDROIT Principles allows a party to invalidate all or part of an individual term of a contract if the contract or term gives an unlawfully excessive advantage to one of the parties. The court may also modify the contract or term to conform to reasonable commercial standards of fair dealing. The element is based on the existence of an excessive and unjustified advantage caused by an unequal bargaining position, the nature and purpose of the contract, and other factors that give rise to the right to rescind or modify the contract. The excessive advantage must exist at the time of contracting, and must be unauthorized. Factors worth noting in this context are unfair advantage, the nature and purpose of the contract, and the general provisions set out in Articles 3.14-3.18 of the UNIDROIT Principles. Court intervention either through adjustments to clauses or terms in an Agreement or court intervention through annulment of an Agreement are means by which the balance between the parties to an unfair and unequal Agreement can be restored, and have been accepted in other countries such as the Netherlands and internationally. Although there are no express provisions governing court intervention in Indonesia, the courts have several times applied such intervention in order to restore justice and balance in a Treaty. Due to the lack of laws and regulations governing the obligation to pay attention to, accommodate and apply the principle of balance in a Treaty in Indonesia, court intervention is one of the solutions that can be used in order to restore balance in a Treaty.

CONCLUSION

Tangerang District Court Decision Number 1000/PDT.G/2023/PN TNG shows that the service bond agreement has an important role in the default lawsuit between PT FL Technics Indonesia and Indra Kurniawan. Aspects that need to be considered in assessing the position of this agreement include the agreement itself, the default lawsuit, the applicable legal basis, the court decision, and the legal consequences for the employee and the company. In this case, the company may have had an agreement that required Indra Kurniawan to work for a certain period of time in exchange for the training fees provided. The default lawsuit occurred because Indra Kurniawan was deemed to have breached the agreement by quitting before the end of the agreed period. The court will assess whether the conditions of validity of the agreement were met in this service bond. The court's decision will consider whether Indra Kurniawan actually defaulted, whether the agreement was valid, and the rights and obligations of both parties in accordance with the agreement. This case is important because it emphasizes the importance of drafting service bond agreements that are clear, legal, and fair to both parties. For employees, this is an important lesson to understand their rights and obligations before signing a service bond agreement. Thus, the position of the service bond agreement in this case depends on the validity of the agreement and whether or not the employee violates it.

SUGGESTION

A service bond agreement must fulfill its legal elements, such as agreement, capacity, clear object, and lawful cause in accordance with Article 1320 of the Civil Code. In the case of PT FL Technics Indonesia against Indra Kurniawan, it is important to examine the agreements and obligations of both parties as well as evidence of breach if there is a claim of default. The indemnity clause needs to be examined as to whether it is fair and proportionate, and in accordance with the principles of justice in civil law. The court will

also consider whether the agreement reflects the balance of rights and obligations between the company and the employee.

To prevent legal consequences from disputes over service bond agreements, agreements need to be detailed and clear, including including default clauses and sanctions and settlements. It is important that every detail regarding the obligations of both parties is explicitly stated to prevent potential legal problems that may arise if one party defaults.

In the case of PT FL Technics Indonesia and Indra Kurniawan, these suggestions can be taken to avoid legal problems that may arise if one of the parties defaults, as well as to ensure that the service bond agreement fulfills the necessary elements under civil law. Thus, the position of the service bond agreement in the case can be carefully considered so as not to cause legal disputes in the future.

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