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JURIDICAL REVIEW OF DEFECTS MADE BY PT. PERHUTANI (PERSERO) IN THE PURCHASE OF THE BUILDING OWNED BY PT. VISI INVESTAMA PROPERTI (CASE STUDY OF SOUTH JAKARTA DISTRICT COURT DECISION NUMBER 735/PDT.GL202LLPN.JKT.SEL. JO JAKARTA HIGH COURT DECISION NUMBER266/PDT/2023/PT DKI JO. SUPREME COURT CASSATION DECISION NUMBER 1755 K/PDT/2024)

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ABSTRACT
Basically, an agreement will go well if the parties to the agreement are based on good faith, but if one party does not have good faith or does not carry out their obligations, a breach of contract will arise. A breach of contract is a condition where the debtor does not fulfill his/her performance obligations in the agreement or does not fulfill them as they should or as they should In carrying out its business activities, a Limited Liability Company cannot be separated from agreement matters, one of which is PT. Visi Investama Properti, that PT. Visi Investama Properti as the owner of the Zuria Tower Building has an agreement to sell the Building to PT. Perhutani (Persero) then the agreement is stated in a deed of agreement. The main issue of the case is regarding the breach of promise (breach of contract) committed by PT. Perhutani (Persero) in carrying out the fulfillment of legal obligations in connection with the payment of the purchase of the Zuria Tower Building which has not been paid as stated in the Decision of the South Jakarta District Court Decision Number 735/PDT.GL202LLPN.JKT.SEL. Jo Jakarta High Court Decision Number 266/PDT/2023/PT DKI Jo. Supreme Court Cassation Decision Number 1755 K/PDT/2024. The method used in this study is normative research conducted as an effort to obtain the necessary data in connection with the problem. The data used is secondary data consisting of primary legal materials, secondary legal materials and tertiary legal materials. In addition, primary data is also used as supporting secondary data legal materials. For data analysis, it is carried out using qualitative legal analysis methods. From the research results, it can be obtained results based on the consideration of the panel of judges PT Perhutani (Persero) Proven to have been negligent (breach of contract) to PT. Visi Investama Properti as stipulated in Article 3 of the deed of agreement No. 88 dated December 26, 2019 That the Legal Consequences for the Parties in the Court's Decision PT Perhutani (Persero) is obliged to pay the remaining fine for late payment of the purchase of the Zuria Tower Building amounting to Rp. 8,232,300,000, - (eight billion two hundred thirty-two million three hundred thousand rupiah)

Key Word: non-performance of contract, case study, corporate law

INTRODUCTION

An agreement is when one person promises to another or when two people promise each other to do something (Prodjodikoro, 2000). Agreements regulate the legal relationship of wealth between two or more parties, giving one party the right to obtain achievements and obliging the other party to give achievements (Harahap, 1996). In Indonesia, agreements are placed in Book III of the Civil Code, concerning agreements. Article 1313 of the Civil Code stipulates that an agreement is when one person or more binds himself to another person. The formulation of Article 1313 of the Civil Code is considered incomplete and broad because it only mentions unilateral agreements and the word 'action' also includes voluntary representation and other actions (Setiawan, 1994).

Sale and purchase agreements are not specifically regulated in the Civil Code. Article 1319 states that all agreements, whether they have a special name or not, are subject to general regulations. In the law there are two groups of agreements, namely named and unnamed agreements. Parties may make agreements that are not specifically regulated in the law. Sale and purchase is an unnamed agreement that is based on the principle of freedom of contract, but still must not violate the legal requirements of an agreement. Therefore, this sale and purchase agreement is still subject to the general legal rules contained in the Civil Code.

In a sale and purchase agreement, the time of the agreement is not expressly determined. However, according to Article 1320 of the Civil Code, a sale and purchase agreement occurs when there is a conformity of will between the Seller and the buyer (Salim, 2008). A hire purchase agreement is a free-form agreement, and if it is in writing, it occurs after signing. A written agreement can be in the form of a notarised deed or under hand, which prevents unlawful acts or defaults. The parties to the agreement are obliged to perform the obligations arising from the agreement, which are referred to as achievements. There are two possible reasons for not fulfilling the obligation, namely (Khairandy, 2013):

The sale and purchase agreement does not expressly determine when the agreement occurs. According to Article 1320 of the Civil Code, a sale and purchase agreement occurs when there is a conformity of will between the seller and the buyer (Salim, 2008). A hire purchase agreement is a free-form agreement, but if it is in writing, it occurs after signing. A written agreement also prevents unlawful acts or defaults. The parties must perform the obligations arising from the agreement. However, there are times when the debtor cannot perform his obligations due to the debtor's fault or due to force majeure. Not carrying out the debtor's obligations can be caused by the debtor's fault or due to force majeure. (Khairandy, 2013)

The agreement will take place well if it is carried out in good faith, but if one party does not carry out its obligations, default will arise. Default is when the debtor does not fulfil its performance obligations in the agreement. Default comes from the Dutch language which means bad or bad performance (Khairandy, 2013). Default can occur intentionally or unintentionally, it can occur if the debtor does not perform, performs incorrectly, or performs late. Article 1243 of the Civil Code regulates the reimbursement of costs, losses, and interest due to non-fulfilment of the agreement. The party in default can be punished by paying compensation, cancellation of the agreement, transfer of risk, or court costs. Before a person is declared in default, it must be preceded by a summons to show whether or not there is good faith in the performance of the agreement. A summons is given as a forum to declare someone in default.

Limited Liability Companies have been known since colonial times with the term Naamloze Vennotschap (NV). PT. Visi Investama Properti offered Zuria Tower to PT. Perhutani (Persero) for Rp250 billion. After negotiations, they agreed to sell at Rp195 billion as stipulated in the Deed of Sale and Purchase Agreement (PPJB). The dispute occurred because PT. Perhutani (Persero) did not fulfil its legal obligations related to repayment and compensation fines for delayed payments. This became the main issue in the case.

Therefore, the purpose of this research is to analyse the legal considerations in a default case committed by PT. Perhutani for the purchase of a building owned by PT. Visi Investama Properti. In addition, the research objectives also include analysing the legal consequences for the parties involved in the case based on the court's decision. South Jakarta District Court Decision Number 735/Pdt.Gl202llPN.Jkt.Sel. jo Jakarta High Court Decision Number 266/PDT/2023/PT DKI Jo. Supreme Court Cassation Decision Number 1755 K/Pdt/2024.

LITERATURE REVIEW

Agreement

Agreements are an important part of civil law in Indonesia (Subekti, 2010). An agreement occurs when one or two people promise each other to do something, and this creates a legal relationship between the parties to the agreement. This relationship is called an obligation, where one party has the right to demand something from the other party who is obliged to fulfil the demand. According to Article 1313 of the Civil Code, an agreement is an agreement that binds one or more people to another or more people (Muljadi & Widjaja, 2008). This confirms that an agreement involves at least two parties, with one party obliged to perform a performance (debtor) and the other party entitled to that performance (creditor). Definitions of agreements vary, but generally involve an agreement to create legal effects. Agreements can be made orally or in writing, but there must be at least one party who has an obligation to ensure the agreement is binding. Agreements are also the most important source that gives birth to obligations, as explained in Article 1233 of the Civil Code which explains that an obligation can be born from an agreement or from the law. Thus, agreements have an important role in creating legal relationships between the parties who agree and become the basis for the creation of obligations in Indonesia.

Valid Terms of Agreement

An agreement must comply with four conditions to be valid according to Article 1320 of the Civil Code. First, the parties must freely agree and agree to the subject matter of the agreement without pressure. Second, those involved in the agreement must be legally capable. Persons who are not capable of making agreements include those who are minors, placed under guardianship, or do not have permission from the law. Third, the agreement must be about a certain matter, and fourth, a lawful cause. A lawful cause means that the contents of the agreement must not conflict with the law, public order, and decency. The parties to the agreement must fulfil the subjective and objective requirements to ensure the validity of the agreement. If the objective conditions are not met, the agreement can be declared void, while if the subjective conditions are not met, the agreement can be requested for cancellation. Indonesian legal experts argue that if the objective conditions are not met, the agreement is null and void, while if the subjective conditions are not met, the agreement can be sought for cancellation. In the

event that the objective conditions are not met, the agreement can be declared null and void. In the event that the subjective conditions are not met, the agreement can be requested for cancellation. If only one of the conditions is not fulfilled, the actual agreement remains binding, but either party can legally request the cancellation of the agreement. Therefore, it is important that the parties making the agreement are legally capable persons so that the agreement can be executed properly. (Subekti, 2005).

Principles of Agreement

The principles in the law of agreements are a description of guidelines and limits for regulating, forming, and implementing agreements between parties. One of the main principles is the principle of consensualism which requires an agreement from both parties. This principle asserts that an agreement is considered valid if there is an agreement on the main matters. In addition, the principle of freedom of contract is also important in the law of agreements, which gives parties the freedom to make agreements as long as they do not violate public order, decency, and the law. The principle of good faith is also necessary in implementing agreements, which implies that agreements must be implemented in good faith. Finally, the principle of personality emphasises that a person can only represent himself in making an agreement and cannot represent other parties. With an understanding of these principles, it is hoped that the implementation of the agreement can run smoothly and in accordance with applicable legal principles. (Budi Cahyono & Ahlan Sjarif, 2008)

Elements of Agreement

In treaty law, agreements can be divided into named agreements and unnamed agreements. Named agreements are special agreements regulated in the Civil Code, while unnamed agreements are agreements that are not regulated in the Civil Code. However, this division essentially does not provide much meaning because it does not touch on a consistent concept. What is important in distinguishing the types of agreements is to determine the main elements in an agreement. The main element in an agreement is an obligation to deliver something, an obligation to do something, or an obligation not to do something with all its legal consequences.

In an agreement, there are three elements, namely essential elements, natural elements, and incidental elements (Muljadi and Widjaja, 2006). The essential element represents the provisions in the form of achievements that must be performed by one or more parties. The natural element follows the essential element of an agreement, while the accidental element is a complementary element in an agreement which is a provision that can be arranged deviantly by the parties according to the will of the parties.

The three elements in the agreement are a manifestation of the principle of freedom of contract stipulated in Article 1320 of the Civil Code and Article 1339 of the Civil Code. Thus, in making and implementing an agreement, the parties have the freedom to determine the provisions of the agreement in accordance with their mutual agreement. All of these elements confirm that the division of agreements into named agreements and unnamed agreements essentially has no significant meaning, because the most important thing is to determine the main elements in an agreement.

Types of Agreements

There are several ways to distinguish agreements in general. One of them is a reciprocal agreement that creates basic obligations for both parties, such as a sale and purchase

agreement. There are also free agreements that provide benefits to one party only, such as grants, and agreements at the expense of involving counterparty performance from the other party, such as borrowing and use. In addition, there are special agreements that are regulated and given their own names and general agreements that are not regulated in the Civil Code, such as lease purchase agreements. There are also material agreements that transfer rights to objects and obligatory agreements that bind themselves to make deliveries to other parties, such as sale and purchase agreements. There are also consensual agreements that already have binding force and real agreements that only occur after the goods that are the subject of the agreement are delivered. The latter is a special agreement, such as a liberatoir agreement that frees itself from obligations, evidentiary agreements, profit agreements, and public agreements (Badrulzaman, 2005).

The difference between consensual and real agreements is a remnant of Roman law which for certain agreements is taken over by Civil Law. So, when viewed from its nature, there are several types of agreements, namely: liberatoir agreements, evidentiary agreements, profit agreements, and public agreements that are partly or wholly controlled by public law because one party acts as a ruler, such as service bond agreements. Thus, agreements can be distinguished in various ways depending on their type and nature.

Birth of Agreement in Agreement

According to the principle of consensualism, an agreement occurs when both parties reach an agreement on the main matters that become the object of the agreement (Subekti, 2005). The conformity of understanding and will between the two parties is the key in this theory. There are several theories that can overcome this, including the theory when giving birth to the will, the theory when sending an acceptance letter, the theory when receiving an acceptance letter, and the theory when knowing the acceptance letter (Prodjodikoro, 2000). Legal experts and jurisprudence in the Netherlands favour the third and fourth theories. Wirjono Prodjodikoro also states that in general, consent must be deemed to have taken place at the time the letter of acceptance reaches the bidder's address, but the bidder is given the opportunity to prove that he could not have known the contents of the letter of acceptance at the time it reached his address. Therefore, the relevant provisions in the offer must be sufficiently clear to the party receiving the offer.

Annulment of an Obligation

There are ten things that can cause the termination of an obligation based on Article 1381 of the Civil Code. First, payment is not only limited to money or goods, but can also be in the form of services or immaterial things. Second, payment is followed by entrustment if the creditor is not willing to accept direct payment. Third, debt renewal or novation occurs when the creditor releases the debtor from the obligation to pay the debt, but makes a new agreement to replace the abolished engagement. Fourth, compensation eliminates debt between two people who owe each other. Fifth, debt commingling occurs when the creditor and debtor come together in one person. Sixth, debt exemption occurs when the creditor releases the debtor from his obligations with the debtor's consent. Seventh, the nullity of the goods that become the object of the obligation if the goods are destroyed before being handed over due to the fault of the

debtor or force majeure. Eighth, void or cancellation of an agreement can be made if the subjective conditions are not met or the content is one-sided. Ninth, the validity of a void condition if fulfilled stops the agreement and brings everything back to its original state. Finally, the lapse of time that can cause acquisitive expiration to obtain property rights to an item or extinction expiration to be released from an obligation or claim. Article 1413 of the Civil Code also regulates how to carry out debt renewal or novation. All of this shows the various things that can cause the abolition of an obligation in accordance with applicable law. (Cahyono & Sjarif, 2008)

Definition and Forms of Default

The word 'default' comes from the Dutch language which means bad performance, bad management, and bad deeds. In Indonesian, default is defined as negligence, negligence, or breach of promise in an agreement (Subekti and Tjitrosoedibio, 2008). If the debtor party violates the performance in the agreement, it is called default. This is the debtor's negligence to fulfil his obligations in accordance with the agreed agreement. Default is the debtor's non-compliance with the agreed agreement, which can be in the form of negligence or breach of promise. This is a very important matter because the parties must do what they have agreed in a legal and binding agreement.

Default can have serious consequences and must be proven before a judge if denied by the debtor. In an agreement, the debtor has an obligation to fulfil the agreed performance. Therefore, default must be established whether the debtor has committed negligence or breach of promise, and it must be proven before a judge. There are four forms of default, namely not carrying out obligations, carrying out obligations according to the agreement, being late in carrying out the agreement, and violating the agreement by doing prohibited things. (Subekti, 2010)

Legal Consequences of Default

Article 1267 of the Civil Code states that the party who feels aggrieved may choose to force the other party to fulfil the agreement, demand cancellation of the agreement, and reimbursement of costs and interest. Damages are a common claim by parties who feel aggrieved by default. Costs are generally much lower than attorney's fees and other costs associated with the trial process. Compensation consists of costs, damages and interest. Articles 1247 - 1248 of the Civil Code limit damages to losses that are foreseeable and a direct result of the debtor's negligence.

Punitive damages are also regulated by law, covering only losses that are foreseeable and are a direct result of the default. The cancellation of the agreement or the breakdown of the agreement can be requested by a judge's decision, but in practice the parties often agree to deviate from these provisions (Cahyono & Sjarif, 2008). The cancellation of the agreement aims to bring both parties back to the situation before the agreement was made. Risk transfer is the third sanction, where the risk is borne by the owner of the goods in the lease agreement. The offending party may cause the transfer of risk. (Subekti, 2010)

Payment of court costs is also a sanction for negligent debtors. The creditor can choose between fulfilment of the agreement, compensation, cancellation of the agreement, or cancellation with compensation. Do not consider the fulfilment of the agreement as a sanction for negligence, because it has become the debtor's ability. This concept is very

important to understand in cases relating to default. The legal sanctions for default are regulated in detail by the Civil Code, thus assisting in resolving disputes relating to the performance of the agreement.

Principle of Exceptio Non Adimpleti Contractus

Parties who make defaults in the agreement can be sued by other parties who feel harmed, but the party accused of defaulting can still make certain defences in order to be free from paying compensation. The defence of the party accused of default can be in the form of (1) Default occurs due to force majeure (overmacht); (2) Default occurs because the other party has also defaulted first (exceptio non adimpleti contractus); (3) Default occurs because the opposing party has waived its right to the fulfilment of the performance. (Budiono, 2010)

Basically, both parties must equally perform their obligations and receive their rights. If one party accuses the other party of default while the party itself defaults first, then that party can defend itself by filing a counterclaim called exceptio non adimpleti contractus (Andreae, 1983). The principle of exceptio non adimpleti contractus is a defence by the debtor to be released from the obligation to pay damages due to default because the creditor is also negligent. This principle applies in Indonesian treaty law. The principle of exceptio non adimpleti contractus is regulated in treaty law, and some figures consider it to be the law of jurisprudence.

Nevertheless, there are still many cases where judges grant the plaintiff's request in a reciprocal agreement on the grounds that the defendant has defaulted, even though the plaintiff has also defaulted first. This principle is reflected in Article 1478 of the Civil Code which states that the seller is not obliged to deliver his goods, if the buyer has not paid the price, provided that the seller has not authorised a delay in payment to him. Article 1478 of the Civil Code aims to ensure that there is justice where one party does not carry out its obligations as agreed, then the other party cannot be forced to carry out the obligations that have been agreed in the agreement.

Theoretical Overview

The legal theories used in this research are agreement theory and utilitarianism theory**.** Book III of the Civil Code discusses obligations, which can arise from agreements or laws. A contract actually consists of a series of promises between the parties involved. Subekti (2010) explains that a contract is an event in which one party promises the other party to do something. An agreement is a legal relationship between two parties regarding property with one promising to do and not do something, and the other party has the right to demand what has been promised (Retno Kus, 2020). The concept of this agreement is also explained by Djumadi (2004), who says that an agreement is an event in which one or more people promise to carry out something. Wyasa Putra (2017) states that contracts and agreements are the same term, where contracts refer to written or unwritten agreements that regulate commercial ties. Meanwhile, agreement is an original Indonesian term that is used as an equivalent to the term engagement born from consent.

Utilitarianism is a simple concept of how to maximise the usefulness of an action to bring benefit, gain, happiness, and enjoyment. It also aims to minimise pain, evil, and suffering. In its implementation, the judgement of an action, phenomenon, or event is based on how useful it is to the individual experiencing it. The concept of utilitarianism also calculates between happiness and suffering, where if happiness is greater then the

action has utility to society, otherwise if suffering is greater then the action has no utility. In the classical concept of utilitarianism, actions that provide benefits to society will increase happiness and reduce pain. Therefore, this concept is very thick with the calculation process between happiness and suffering resulting from actions, phenomena, or events. (Pratiwi et al, 2022)

RESEARCH METHODS

Legal research is a scientific activity that uses certain methods, systematics, and thoughts to study legal symptoms and seek solutions to problems that arise. This research involves legal research sources such as primary legal materials, secondary legal materials, and tertiary legal materials. This study uses several approaches, namely a statutory approach and a case approach to analyse and understand legal considerations in proving the elements of default. The types of data used include primary data, secondary data, and tertiary data consisting of laws and regulations, books, legal journals, and legal dictionaries. The legal material collection technique used is document study or literature study by collecting legal materials from various sources such as books, laws and regulations, scientific essays, official documents, papers, journals, newspapers, and the internet.

In addition, this research also uses the deduction method to analyse major premises (general statements) and minor premises (specific statements) in order to draw conclusions. This research will be conducted in Jakarta with locations in the South Jakarta District Library and Court as well as other resource locations relevant to this research.

RESULT AND DISCUSSION

LEGAL CONSIDERATIONS IN PROVING THE ELEMENTS OF DEFAULT COMMITTED BY PT PERHUTANI (PERSERO) FOR THE PURCHASE OF A BUILDING OWNED BY PT VISI INVESTAMA PROPERTI IN THE DECISION OF THE SOUTH JAKARTA DISTRICT COURT NUMBER 735/PDT.GL202LLPN.JKT.SEL. JO JAKARTA HIGH COURT DECISION NUMBER 266/PDT/2023/PT DKI JO. SUPREME COURT CASSATION DECISION NUMBER 1755 K/PDT/2024

Case Position

1. **Legal Standing of PT. Visi Investama Properti (Plaintiff)**
   PT. Visi Investama Properti (Plaintiff) is the owner of Zuria Tower Building, now known as Perhutani Building in South Jakarta. They entered into a Deed of Agreement containing an agreement to sell and purchase the Zuria Tower Building with Perum Perhutani (Defendant). After several price quotes, the Plaintiff and the Defendant agreed to sell the building with a staged payment agreement. However, the Defendant did not have sufficient funds to make the second tranche of payments and the PPJB Deed became void. The parties made a Deed of Cancellation to cancel the purchase, but then made a new agreement through Deed of Agreement No. 88 on 26 December 2019.

In this new agreement, the Defendant committed to make payments in 3 tranches, with the first tranche payment having already been made. However, the Defendant did not have sufficient funds for the second tranche so the Plaintiff agreed to transfer the name of the building even though the payment had not been made. Subsequently, the Buyer and Seller entered into an agreement through Deed of Agreement No. 88 to provide legal certainty regarding the timing of payment of the remaining payments for the purchase of the Zuria Tower Building by the Defendant. Although an agreement has been made, the Defendant has not fulfilled its payment obligations in accordance with the specified deadlines. The Plaintiff has the right to demand payment of the remaining repayment and penalties for delay in accordance with Deed of Agreement No. 88. If the Defendant does not perform such obligations, the Plaintiff has the right to file a lawsuit to obtain its full legal rights in accordance with Deed of Agreement No. 88.

2. **The subject matter of the case concerned the Defendant'sdefault in fulfilling its legal obligations in relation to the payment of the purchase of the Zuria Tower building and the payment of the unpaid '1 (one) month delayed payment compensation fine'.**

   The defendant has a legal obligation to pay off the purchase of the Zuria Tower Building in the amount of Rp134,950,000,000 as well as a 1-month delayed payment compensation fine of Rp600,000,000 no later than 31 January 2020. However, on 7 April 2020, the defendant only paid Rp25,000,000,000 and on 15 April 2020 Rp109,950,000,000. The defendant has also not paid the 1-month delayed payment compensation fine of Rp600,000,000 until this lawsuit was filed. The delay in payment will result in a sanction in the form of a payment penalty of 1‰ of the amount of Rp134,950,000,000 for each day of delay, with a total penalty of Rp 9,786,300,000.

   The Defendant also has an outstanding payment obligation to the Plaintiff of Rp600,000,000. Thus, the total outstanding payment obligation owed by the Defendant is IDR 10,386,300,000. A breakdown of the calculation of the Defendant's total outstanding payment obligations is as follows: (i) 1 month delayed payment compensation penalty of Rp 600,000,000 and (ii) Penalty for late payment of the purchase of Zuria Tower Building past 31-01-2020 at 1‰ per day of the value of Rp134,950,000,000 as follows: - Delay (1 February 2020 to 6 April 2020) = Rp8,906,700,000, (eight billion nine hundred six million seven hundred thousand rupiah). - Delay (7 April 2020 to 14 April 2020) = Rp879,600,000, (eight hundred seventy-nine million six hundred thousand rupiah). The total amount of fines for delays is Rp9,786,300,000, -

   Based on this description/calculation, the total payment obligation to be settled by the Defendant is Rp10,386,300,000 (ten billion three hundred eighty-six million three hundred thousand rupiah). Therefore, the defendant has been negligent in carrying out its legal obligations, and must pay its legal obligations to the Plaintiff.

3. **Efforts to Resolve Problems Through Deliberation by the Plaintiffs**

   On 3 June 2020, the Plaintiff sent a letter to the Defendant to reprimand regarding the outstanding payment obligations under the agreement dated 26 December 2019. The Defendant committed to pay a penalty for late payment of Rp4,000,000,000 and after handover there was still a remaining shortfall of Rp3,000,000,000. Although the building has been handed over and used by the Defendant, the payment obligation has still not been paid. The Plaintiff has given 2 warnings. The Defendant

only paid a fine of Rp1,554,000,000 from the total obligation of Rp10,386,300,000. This caused the Defendant to be considered to have bad faith. Therefore, the total underpayment is Rp8,832,300,000. In accordance with the legal facts, the Defendant is considered to be in default for failing to pay the penalty of Rp8,832,300,000 which is the right of the Plaintiff.

4. **Facts Relating to Other Losses Suffered by the Plaintiff as a Result of the Defendant Not Performing its Legal Obligations Pursuant to Deed of Agreement No. 88, 26 December 2019**
   On 3 June 2020, the Plaintiff sent a letter to the Defendant to reprimand regarding the outstanding payment obligations under the agreement dated 26 December 2019. The Defendant committed to pay a penalty for late payment of Rp4,000,000,000 and after handover there was still a remaining shortfall of Rp3,000,000,000. Although the building has been handed over and used by the Defendant, the payment obligation has still not been paid. The Plaintiff has given 2 warnings. The Defendant only paid a fine of Rp1,554,000,000 from the total obligation of Rp10,386,300,000. This caused the Defendant to be considered to have bad faith. Therefore, the total underpayment is Rp8,832,300,000. In accordance with the legal facts, the Defendant is considered to be in default for failing to pay the penalty of Rp8,832,300,000 which is the right of the Plaintiff.

Juridical Analysis of Legal Considerations in Proving the Elements of Default Performed by PT Perhutani (Persero) on the Purchase of Building Owned by PT. Visi Investama Properti in the South Jakarta District Court Decision Number 735/PDT.GL202LLPN.JKT.SEL. Jo Jakarta High Court Decision Number 266/PDT/2023/PT DKI Jo. Supreme Court Cassation Decision Number 1755 K/PDT/2024.

1. **Legal considerations in proving the elements of default committed by PT. Perhutani (Persero) for the purchase of a building owned by PT. Visi Investama Properti in the South Jakarta District Court Decision Number 735/Pdt.Gl202llPN.Jkt.Sel. Jo. Jakarta High Court Decision Number 266/PDT/2023/PT DKI Jo. Supreme Court Cassation Decision Number 1755 K/Pdt/2024**
   Decision of the South Jakarta District Court Number 735/Pdt.Gl202llPN.Jkt.Sel. Jo. Jakarta High Court Decision Number 266/PDT/2023/PT DKI Jo. Supreme Court Cassation Decision Number 1755 K/Pdt/2024 explained that the plaintiff disputed the late payment of the purchase of the Zuria Tower Building by the defendant. The building is located in South Jakarta and is owned by the plaintiff, who obtained it from PT. Visi Investama Property. There was an agreement between the plaintiff and the defendant regarding the purchase of the Zuria Tower Building for a total price of Rp 195,000,000,000. The repayment was made in stages. The defendant only paid for the purchase of the Zuria Tower Building after the predetermined time limit. As a result of this delay, the respondent was charged a late penalty of Rp 9,786,300,000. However, the defendant claimed that the delay in repayment was caused by the slow process of licensing the construction of the Zuria Tower Building from the Ministry of SOEs. The plaintiff also sought compensation for the costs and interest of the savings and loan co-operative (kospin) jasa loan amounting

to Rp 6,326,796,851. The court considered that the defendant had been negligent in fulfilling its agreement and was ordered to pay late fees and material damages.

However, the plaintiff's request for immaterial compensation and repurchase of the Zuria Tower Building was not granted, because the plaintiff did not prove the seriousness of other parties who would buy the building, as well as proof that the full payment had been made. The claim for compensation for costs and interest on the Kospin Jasa loan was also not granted. This was the court's decision on the case, with the granting of rights and obligations for both parties.

2. **Analysis of Legal Considerations in proving the elements of default and Unlawful Acts Committed by PT. Perhutani (Persero) for the Purchase of Building Owned by PT Visi Investama Properti in the South Jakarta District Court Decision Number 735/Pdt.Gl202llPN.Jkt.Sel. jo. Jakarta High Court Decision Number 266/PDT/2023/PT DKI Jo. Supreme Court Cassation Decision Number 1755 K/Pdt/2024**

Deed of Agreement No. 88 was validly made and applies as law to the maker so that the defendant is obliged to obey it. A valid agreement according to Article 1320 of the Civil Code must have four conditions, namely agreement, capacity, certain matters, and lawful cause. Deed of Agreement No. 88, dated 26 December 2019 has fulfilled these requirements. Article 1338 paragraph (1) of the Civil Code states that agreements made in accordance with the law shall apply as law to those who make them. However, the Defendant did not comply with the provisions of the Deed of Agreement.

According to Article 1513 of the Civil Code, the purchaser's primary obligation is to pay the purchase price in accordance with the agreement. Deed of Agreement No. 88 stipulates the payment of Rp195,000,000,000,-, which must be made in three stages. The third tranche includes the repayment of Rp134,950,000,000 along with a delayed payment compensation fund of Rp600,000,000, which must be repaid no later than 31-01-2020.

However, the Defendant did not pay the aforementioned amount of money on time. Pursuant to Article 1243 of the Civil Code, the Defendant is obliged to pay reimbursement of costs, losses, and interest due to non-fulfilment of the agreement, as he continues to fail to fulfil his obligations despite being warned.

Thus, the Defendant has committed a default due to the delay in paying the payment for the purchase of the Zuria Tower Building in accordance with the provisions in Deed of Agreement No. 88. Therefore, the Defendant must comply with its agreement and settle the payment of Rp134,950,000,000, - along with the delayed payment compensation fund of Rp600,000,000, - as agreed.

Meanwhile, the default committed by the defendant in connection with the payment of fines for late payment of the purchase of the Zuria Tower Building as stipulated in Article number 1 of Deed of Agreement No.88 dated 26 December 2019, namely Article 3 of Agreement No. 88 states that the Second Party will be subject to a fine of 1‰ of the amount of late payment in the amount of Rp134,950,000,000, -. This fine is valid for 30 days. After that, the Second Party is given a second chance for another 30 days. If still late, the First Party will take over the building. Article 1238 and Article 1243 of the Civil Code also confirm that the debtor is considered negligent when the specified time has passed. Fines, damages, and interest are required if the debtor does not fulfil the agreement despite being declared negligent. The Defendant is deemed to have defaulted due to late payment of the purchase of

the Zuria Tower Building in the amount of Rp134,950,000,000. The late payment should have been made on 31-01-2020, but was only made on 15 April 2020. The Defendant must pay a fine for the delay of Rp8,232,300,000, but has only paid Rp1,554,000,000. Thus, the Defendant is required to pay the remaining obligation to pay a penalty for delay of Rp8,232,300,000 to the Plaintiff because it has defaulted. Therefore, this case must be decided to declare that the Defendant has defaulted and is ordered to pay the remaining fine to the Plaintiff.

The position of Deed of Agreement No. 88, dated 26 December 2019 as an authentic deed made by a Notary as a Public Official. Article 1868 of the Civil Code explains that an authentic deed is a deed made by or before an authorised public official, in accordance with the form prescribed by law. There are two types of deeds made by notaries, namely relaas deeds and party deeds. Habib Adjie states that a notarial deed has a juridical character, has perfect evidentiary power, and the cancellation of the binding power of a notarial deed can only be done with the agreement of the parties whose names are listed in the deed (Tobing, 1982). Notarial deeds have the nature of written evidence, and are proven by other evidence. Notarial deeds also have outward, formal, and material evidentiary power, where each aspect of this evidentiary power must be proven in a court trial. A Notarial Deed that does not fulfil the requirements only acts as an underhand deed as long as the deed is signed by the parties. If one aspect is incorrect, then the deed only has evidentiary power as a deed under the hand or can be cancelled by a judge's decision. In this case, the position of Deed of Agreement No. 88, dated 26 December 2019 can be said to be an authentic deed, so that one party who does not fulfil its obligations can be said to be in default.

LEGAL CONSEQUENCES FOR THE PARTIES IN THE DECISION OF THE SOUTH JAKARTA DISTRICT COURT NUMBER 735/PDT.GL202LLPN.JKT.SEL. JO JAKARTA HIGH COURT DECISION NUMBER 266/PDT/2023/PT DKI JO. SUPREME COURT CASSATION VERDICT NUMBER 1755 K/PDT/2024 REGARDING DEFAULT COMMITTED BY PT PERHUTANI (PERSERO) ON THE PURCHASE OF A BUILDING OWNED BY PT. VISI INVESTAMA PROPERTI

1. Court Decisions and Enforcement

Decision comes from the word ‘putus’ which means ‘the result of deciding’. In English, the decision is the same as ‘decision or verdict’ and in Dutch it is known as ‘beslising’ or ‘vonnis’ (Yunus, 2020). Legal experts provide a definition of what is called a court decision. A judge's verdict is a statement that the judge pronounces in court and aims to end or resolve a case (Mertokusumo, 1984). The decision is the final responsibility of a judge for the case being examined (Arto, 1996).

The verdict must be fully considered so as not to be classified as an insufficiently considered verdict. Judges are accountable for their performance to the community at large. Decisions can also become jurisprudence and are one of the sources of law for judges. There are several criteria that must be met so that a decision does not contain defects. Judicial decisions must be made with the aim of maintaining a sense of justice for everyone, while still considering ethical and moral aspects. Differences in case characteristics can make court decisions vary. The Supreme Court has issued rules regarding the format of decisions in order to obtain a standardised model of the

form of decisions. This is important so that the public can more easily understand the contents of existing decisions.

Court decisions have three powers, namely binding force, evidential force, and execution force. Binding power refers to the provision that a decision that has legal force is inviolable and binding for the parties to the case. Court decisions have evidentiary power, because they are used for the purposes of appeal, cassation, and execution, and can be used as evidence by the litigating parties. Meanwhile, the executorial power of a court judgement requires the losing party to execute the judgement voluntarily, and if not, the judgement can be executed forcibly by the President of the court. Only condemnatory judgements require execution, while declaratory and constitutive judgements do not require execution.

According to Wojowarsito (Warneri, 2020), the provisions of the verdict pronounced in court cannot be different from those in writing. If there is a difference, the one pronounced in court takes precedence because the birth of a decision is from the time it is pronounced. This is in line with the Supreme Court's instruction to ensure that the draft of the judgement is finalised before it is pronounced. Similarly, in the event of a difference in the written ruling, the one contained in the minutes of the trial shall take precedence, because the BAS is an authentic deed made by the substitute clerk and judge as the source of the decision.

The difference between the ruling in the judgement and the ruling in the court record should take precedence over the ruling in the judgement. The judgement must be in accordance with the BAS made from the trial record. For the ruling, if there is a discrepancy, the ruling in the judgement should prevail. Therefore, it is clear that parties involved in the judicial process must pay attention to the provisions regarding the enforceability of court judgements to ensure that they are respected and implemented in accordance with the law.

2. The power of a final judgement (*in kracht van gewijsde)*

The term ‘decision with permanent legal force’ is often used in conjunction with the legal term inherited from the Dutch colonial era, namely in kracht van gewijsde. In kracht means strength and gewijsde means final decision, so that in kracht van gewijsde can be interpreted as permanent legal force and there are no more ordinary legal remedies. A term with the same meaning as in kracht van gewijsde is found in Article 67 of Law Number 14 Year 1985 on the Supreme Court. The definition of a decision with permanent legal force is a decision of a court of first instance or appeal against which no ordinary legal remedy has been filed within the time specified by law, and a cassation decision. (Harahap, 2008)

The time specified for a final judgement has been regulated by several laws, including Article 199 paragraph (1) of the Supplementary Regional Law Regulations (RBg.), Article 7 paragraph (1) of Law Number 20 of 1947 concerning the Subordinate Courts in Java and Madura, and Article 46 paragraph (1) and paragraph (2) of Law Number 14 of 1985 concerning the Supreme Court. The time guideline for a decision to be legally binding is fourteen days after the decision is pronounced or notified to the absent party. The time calculation starts on the next day after the verdict is pronounced or announced. If the 14th day turns out to be a holiday, the time is extended to the next working day.

In addition, there are norms that provide for an extension of time in the determination of a final judgement, such as Article 199 paragraph (2) RBg. which states that the District Court is authorised to extend the grace period up to six weeks.

Article 7 paragraph (2) of Law No. 20/1947 also provides for an extension of up to thirty days for requesters who do not reside in the caresidenan where the District Court is convened. These norms are no longer considered applicable, so that in practice they already implement the standard of uniformity or legal unity.

Based on this description, it can be concluded that a decision with permanent legal force is a decision for which no ordinary legal remedy has been filed within the time specified by law. The time for determining a final legal decision has been regulated by several laws with a guideline of fourteen days after the decision is pronounced or notified to the absent party. There are also norms that provide for an extension of time in the determination of a final judgement. However, these norms are no longer considered valid in practice.

3. **Execution as a legal consequence to the parties in the Jakarta High CourtDecision Number 266/Pdt/2023/PT DKI regarding default by PT Perhutani (Persero) on the purchase of a building owned by PT Visi Investama Properti.**

   South Jakarta District Court Decision Number 735/Pdt.Gl202llPN.Jkt.Sel and Jakarta High Court Decision Number 266/PDT/2023/PT DKI Jo. Supreme Court Cassation Decision Number 1755 K/Pdt/2024 stated that Perhutani Public Company (Perum) was found guilty in a case involving PT Visi Investama Properti. The company was ordered to pay the remaining fine for the late payment of the purchase of the Zuria Tower Building in the amount of Rp. 8,232,300,000, - (eight billion two hundred thirty-two million three hundred thousand rupiah) and the obligation of 'delayed payment compensation fine' in the amount of Rp. 600,000,000, - (six hundred million rupiah). The judge's decision gives executorial force to the Court Decision, so PT. Visi Investama Properti can make a request for execution through the South Jakarta district court. Thus, execution is a follow-up to the entire legal process of the case that has been carried out previously in terms of civil cases. The types of execution that can be carried out are: 1) Execution that makes payment of a sum of money, 2) Execution that punishes to perform an act, 3) Real execution, and 4) Parate execution. All of these types of execution aim to implement a decision that has binding legal force.

4. **Preventive efforts to prevent defaults in the sale and purchase agreement**

   Legal protection is a universal concept of the rule of law and consists of two forms, namely preventive and repressive legal protection. Preventive protection means preventing violations with the rule of law, while repressive serves to resolve disputes that have arisen. Legal protection can be interpreted as protection of legal subjects in the form of legal instruments, both preventive and repressive (Raharjo, 2003). The form of legal protection provided by the state can be preventive and punitive.

   In Indonesia, there is no specific regulation regarding preventive legal protection, but the basic principle of legal protection against government actions rests on the concept of recognition and protection of human rights. In addition, preventive efforts in preventing default in a sale and purchase agreement can be done by providing a guarantee clause. This is one form of legal protection that is important to illustrate legal principles that truly provide justice for the whole in all aspects. In the event of default, each party can seek protection that can be done by the parties, such as asking the buyer to immediately pay the price of the object of the agreement within a certain period of time or checking the existence of proof of ownership of

land rights which is the object of the agreement. Legal protection is important as an effort to provide justice for all parties involved in an agreement or legal dispute.

CONCLUSION

The verdict of the South Jakarta District Court regarding the default case committed by PT. Perhutani (Persero) against PT. Visi Investama Properti has shown that PT. Perhutani (Persero) was proven to have committed a default, which resulted in having to pay a late payment penalty for the purchase of the Zuria Tower Building of Rp 8,232,300,000 and a delayed payment compensation penalty of Rp 600,000,000 to PT. Visi Investama Properti. This case is based on deed of agreement number 88 dated 26 December 2019, in which PT. Perhutani (Persero) has violated the terms of payment within the specified time. As a result, PT. Visi Investama Properti has been granted permission by the South Jakarta district court to conduct a request for execution against PT. Perhutani (Persero).

In the court decision, PT. Perhutani (Persero) is also required to pay a fine of 1‰ of the amount of delay, which is Rp 134,950,000,- for each day of delay, for 30 days. In addition, PT. Visi Investama Properti also has the right to collect the remaining payment of Rp 8,232,300,000 from PT. Perhutani (Persero).

From the verdict, it can be seen that PT. Perhutani (Persero) has violated the agreement and committed default, resulting in fines and payment obligations that must be fulfilled. This reflects the importance of complying with the provisions contained in the agreement in order to prevent cases of default in the future.

SUGGESTION

A sale and purchase agreement must include a guarantee clause to prevent default. Legal protection is important to provide justice for all parties. If a default occurs, the seller can ask the buyer to immediately pay the price of the object of the agreement according to the specified time period. The buyer can also ask the seller to guarantee that the object of the agreement is safe and free from hidden defects. Article 1513 of the Civil Code confirms the buyer's primary obligation to pay the purchase price according to the agreement. However, if not specified, the buyer must pay at the place and time specified for delivery. The buyer can also check the proof of ownership of the land rights that are the object of the agreement to ensure the safety and completeness of the object.

REFERENCES

Books:

Akhmad Budi Cahyono & Surini Ahlan Sjarif. 2008 *Mengenal Hukum Perdata, Cet.* 1. Jakarta: CV. Gitama Jaya

Bahrussam Yunus. 2020. *Teknis Pemeriksaan Perkara Gugat Waris Bagi Hakim Peradilan Agama.* Yogyakarta: UII Press, Cetakan Pertama

Binoto Nadapdap. *2020 Hukum Perseroan Terbatas berdasarkan Undang-Undang No. 40 Tahun 2007*, Jakarta: Jala Permata Aksara

Diana R. W. Napitupulu. 2022 *Pendaftaran tanah pensertifikatan Hak atas Tanah dan Peralihannya*, Jakarta: Uki Press

Djumadi. 2004. *Hukum Perburuhan Perjanjian Kerja*. Jakarta: PT. Raja Grafindo Persada

Fockema Andreae. 1983. *Kamus Istilah Hukum Belanda-Indonesia.* Bandung: Bina Cipta

G.H.S. Lumban Tobing. 1992. Peraturan jabatan notaris (*notaris reglement*). Jakarta: Erlangga

Harlien Budiono. 2010. *Kumpulan Tulisan Hukum Perdata di Bidang Kenotariatan; Cet.* Bandung: PT. Citra Aditya Bakti.

Ida Bagus Wyasa Putra. 2017. *Hukum Kontrak Internasional The Law Of International Contract, Cet I,* Bandung: Refika Aditama

Kartini Muljadi & Gunawan Widjaja. 2006 *Perikatan Yang Lahir dari Perjanjian.* Jakarta: PT. Raja Grafindo Persada

M. Yahya Harahap. 1996. *Segi-segi Hukum Perjanjian.* Bandung: Alumni

M. Yahya Harahap. 2008. *Hukum Acara Perdata.* Jakarta: Sinar Grafika

Mariam Darus badrulzaman. 2005. *K.U.H.Perdata Buku III Hukum Perikatan Dengan Penjelasan,* Cet. 2. Bandung: Alumni

Mukti Arto. 1996. Praktek Perkara Perdata Pada Pengadilan Agama. Yogyakarta: Pustaka Pelajar

R. Setiawan. 1994. *Pokok-pokok Hukum Perikatan.* Bandung: Bina Cipta

R. Subekti. 2010. *Hukum Perjanjian cet.23.* Jakarta: Intermasa

Ridwan Khairandy. 2013. *Hukum Kontrak Indonesia Dalam Perspektif Perbandingan (Bagian Pertama).* Yogyakarta: FH UII Press

Salim H.S. 2008. *Perkembangan Hukum Kontrak innominaat di Indonesia.* Jakarta: Sinar Grafika

Satjipro Raharjo. 2003. *Sisi-Sisi Lain dari Hukum di Indonesia*. Jakarta: Kompas

Subekti & Tjitrosoedibio. 2008. *Kamus Hukum,* Cet 17. Jakarta: Pradnya Paramita

Subekti, Hukum Perjanjian, Cet. 21, (Jakarta: Intermasa, 2005) hlm. 17.

Sudikno Mertokusumo. 1984. Hukum Acara Perdata. Yogyakarta: Liberty.

Wirjono Prodjodikoro. 2000. *Azas-azas hukum perjanjian,* cet 8. Bandung : Mandar Maju.

Wirjono Prodjodikoro. 2000. *Azas-Azas Hukum Perjanjian.* Bandung: Mandar Maju

Articles/Journals:

Endang Pratiwi dkk. *Teori Utilitarianisme Jeremy Bentham: Tujuan Hukum atau Metode Pengujian Produk Hukum*?, Jurnal Konstitusi, Volume 19, Nomor 2, Juni 2022.

Retno Kus Setyowati & Asmaniar. "Pembatalan Transaksi Hak Atas Tanah Oleh Penjual Dengan Alasan Belum Lunas," *Binamulia Hukum,* Vol. 9 Nomor 1 (Juli 2020), hlm. 58-59

Electronic Resources:

Muhammad Rizaldi Warneri, S.H., LL.M.dkk. "Penelitian Format Putusan Pengadilan Indonesia: Studi Empat Lingkungan Peradilan Di Bawah Mahkamah Agung", (https://mappifhui.org/wp-content/uploads/2020/05/Penelitian-format-Putusa PengadilanIndonesiastudi- empat-lingkungan-peradilan-di-bawah-Mahkamah-Agung.pdf, accessed, 15 September 2024).