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Default on Capital's Returnment Contract for Parking Business Cooperation in the Perspective of Contract Law (A Case Study of Court Decision Number 2/Pdt.G/2023/Pn Bbs)

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Abstract

An agreement creates binding commitments for the parties to fulfill its terms, and failure to do so is considered a default. In business agreements, default can occur if obligations are unmet, making a business capital return agreement essential for legal certainty. This study examines the provisions and legal consequences of default in a business capital return agreement as seen in Decision Number 2/Pdt.G/2023/PN Bbs. Using a juridical-normative approach with descriptive analytical methods, the research relies on secondary data, including primary, secondary, and tertiary legal materials analyzed qualitatively. The study reveals that default provisions are linked to three key elements: the existence of a binding agreement, the debtor's failure to perform, and the presence of fault. In Decision Number 2/Pdt.G/2023/PN Bbs, all these elements were met. The binding aspect was established as the defendant was obligated to return Rp 60,000,000.00 in business capital to the plaintiff by September 22, 2018, as per the agreed verbal term. The debtor failed to fulfill this obligation, demonstrating non-performance and delay. Fault was confirmed under Article 1238 of the Civil Code, as the defendant did not return the capital by the specified date, thus being considered negligent. The legal consequences of the default included compensation of Rp 60,000,000.00 and court costs of Rp 1,180,000.00 imposed on the defendant. This case underscores the importance of fulfilling contractual obligations to avoid legal repercussions and reinforces the role of capital return agreements in maintaining business certainty.

Keywords: Business Cooperation; Capital Returnment; Default.

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Introduction

Individuals in society depend on each other to fulfill their needs, as they are essentially social beings. The interconnectedness of these elements fosters social bonds and creates a structured society where individuals contribute to and benefit from each other's efforts, ensuring collective well-being and growth. Individuals also naturally interact and cooperate to achieve various objectives, whether for personal, social, or economic purposes. Cooperation becomes a fundamental aspect of social life, enabling individuals to work together towards shared goals. It is also an essential component of social interactions because it fosters mutual assistance and collective progress. It encourages people to pool resources, share knowledge, and support one another in achieving common objectives. Richard Sennett in *Together: The Rituals, Pleasures and Politics of Cooperation* shares that cooperation can be defined as an exchange in which the participants benefit from

the encounter.¹ Chester Barnard mentioned that the cooperation of each individuals has a purpose to eachieve common purpose.² By working collectively towards a common purpose, individuals can accomplish goals that would be difficult or impossible to achieve alone. Barnard highlighted that this sense of purpose is the foundation of effective cooperation, as it motivates individuals to contribute willingly and harmoniously within a group or organization.

Abdulsyani defines cooperation as a type of social process in which there are certain activities that are shown to achieve common goals by helping each other and understanding each other's activities.³ It can be said that cooperation involves active participation, communication, and collaboration among individuals or groups. It emphasize the importance of understanding and supporting each other's roles and contributions, ensuring that every participant's efforts contribute to the overall success of the shared endeavor. Cooperation also promotes social harmony and strengthens community bonds, as people work together with a sense of shared purpose.

This definition indicates that cooperation will be advantageous for humans if it is backed by a certain assurance, such as an agreement. An agreement is crucial because it establishes clear expectations, responsibilities, and commitments among the cooperating parties. It minimizes the possibility of misunderstandings or conflicts that may arise during the cooperation process. An agreement also provides a framework for accountability, ensuring that each party fulfills their obligations as agreed upon. This not only enhances trust among participants but also reinforces the stability and continuity of the cooperative effort. An agreement establishes a legal relationship that is binding.

An agreement is defined as a statement made by one or more people binding themselves to another person, as stated in Article 1313 of the Civil Code (hereinafter referred to as KUHPerdata). The elements that existed in Article 1313 of Civil Code are:⁴ the existence of act, the particullar act is committed by two or more parties, and the existence of an engagements between the two or more parties.⁵ Van Dunne further explains that an agreement defined as a legal relationship between two or more parties based on an agreement to cause legal consequences.⁶ The main point

¹ Richard Sennet, *Together, The Rituals, Pleasures & Politics of Cooperation* (London: Penguin, 2013).

² Chester I. Barnard, *The Functions of the Executive* (Cambridge: Harvard University Press, 1968).

³ Abdulsyani, *Sosiologi Skematika Teori, Dan Terapan* (Jakarta: Bumi Aksara, 1994).

⁴ Nizla Rohaya, Dini Bahraini Sinulingga, and Upik Mutiara, 'Challenges of Indonesian Contract Law in the Digital Business Era', *Pagaruyuang Law Journal*, 7.1 (2023), 1-15 <<https://doi.org/10.31869/plj.v7i1.4552>>.

⁵ Irawan Soerodjo, *Hukum Perjanjian Dan Pertanahan - Perjanjian Build, Operate and Transfer (BOT) Atas Tanah: Pengaturan, Karakteristik Dan Praktik* (Yogyakarta: LaksBang PRESSindo, 2016).

⁶ Munir Fuady, *Guarantee Fiduciary* (Jakarta: PT Citra Aditya Bakti, 2000).

of the article can be concluded that in an agreement, both parties commit to each other, ensuring that each party receives justice and legal certainty when the cooperation is practiced. It is also underscores the importance of mutual consent and commitment in forming an agreement, emphasizes that an agreement is not merely a casual promise but a deliberate and binding commitment that holds legal implications and protects the interests of all parties involved, safeguarding their rights and ensuring fair treatment. There are two categories of agreements: written agreements and oral agreements. A written agreement is an agreement made by the parties in writing, while an oral agreement is an agreement made by the parties orally.

Cooperation and agreements have a strong relationship that will cause an effect. As a result of cooperation that is realized in the form of an agreement, there is a legal relationship that will become a legally binding obligation. A binding, on the other hand, can be defined as a legal relationship between two or more people, based on which one party has the right to demand something from the other party and the other party is obliged to fulfill the demand.⁷ In some business scenarios, when the initial agreement is not fulfilled as expected, the parties involved may choose to create a subsequent agreement to resolve the issues that have arisen. This is often done to maintain legal certainty and to find an amicable solution without prolonged disputes. One common approach is to establish an agreement for the return of business capital, particularly in partnerships where one party has provided capital to the other. In such cases, the capital provider seeks to recover their investment due to the failure of the other party to meet the agreed-upon obligations. This follow-up agreement outlines the terms and conditions for returning the capital, including the repayment amount, timeline, and method of payment. It serves as a secondary binding contract, ensuring that the capital provider's interests are protected while also allowing the business relationship to end on clear and fair terms. This approach helps prevent legal conflicts by providing a structured resolution to the non-fulfillment of the initial agreement.

Even after establishing a follow-up agreement, there remains the possibility that the debtor may fail to return the business capital, resulting in default. According to Article 1243 of the Civil Code, three conditions must be met for default: the existence of a binding, non-performance by the debtor, and fault (either negligence or intentionality). If a breach of promise occurs, causing one party to violate or renege on the agreement, it constitutes default. The party who breaks the promise is held accountable for their failure. This is the primary focus of this research.

⁷ Subekti, *Hukum Perjanjian* (Jakarta: Intermasa, 2001).

This research will examine Court Decision Number 2/Pdt.G/2023/PN Bbs in relation to the information provided above. The plaintiffs, Amar Nuramah, Mahmud Tungke, Abd. Wahid, and Nurwakhiyati, and the defendants, referred to as Defendant I and Defendant II, are central to this case. The plaintiffs' lawsuit against the defendants is based on a claim of default due to a default. The origin of their relationship lies in a cooperation agreement for a parking service business at the Arjawinangun Regional General Hospital Palimaman Cirebon. According to the agreement, Plaintiff I, who is the wife of Plaintiff II, provided Defendant I with Rp 60,000,000.00 in business capital to run the parking service, with the understanding that Defendant I would share the proceeds. Defendant I, the husband of Defendant II and the business executor, failed to establish the parking service, resulting in a loss of Rp 60,000,000.00 for the plaintiffs. This failure led to a default. Plaintiff I sought reconciliation with Defendant I through a Return of Business Capital Agreement before Kuwu Kalisari in Cirebon District. Despite efforts to compel Defendant I to return the business capital as per the new agreement, Defendant I repeatedly refused. Consequently, the plaintiffs filed a lawsuit at the Brebes District Court through their legal representative. The Brebes District Court ultimately ruled in favor of the plaintiffs' default claim in this case.

The court decision mentioned above serves as the research medium for this study, highlighting differences from previous research. While earlier studies focused solely on defaults in cooperation agreements resolved in court, this study examines the additional step taken by the parties to secure legal certainty through a follow-up agreement. This follow-up, in the form of a return of capital agreement, was pursued by the creditor in an attempt to address the default in the initial cooperation agreement. Previous research, such as Abdul Rohman's study titled "Analisis Putusan Hakim Perkara Nomor 178/Pdt.G/2022/PN PTK Terhadap Wanprestasi Dalam Perjanjian Kerjasama Penerbitan Sertifikat Tanah," primarily analyzed judicial considerations and legal resolutions achieved within the courtroom because it is how the case ended without any follow-up agreements. In contrast, this study illustrates the dynamic approach taken by the parties involved, demonstrating their effort to seek legal certainty twice before taking it to the court. By analyzing the follow-up agreement, this research aims to show the adaptability of the parties and how the law provides mechanisms for proactive solutions in addressing defaults. Therefore, the author will make a writing with the title "Default On Capital's Returnment Contract For Parking Business Cooperation In The Perspective Of Contract Law (A Case Study Of Court Decision Number 2/Pdt.G/2023/Pn Bbs)".

Research Problems

The problems formulation in this research is as follows:

1. How are the provisions of default on a business capital return agreement in Decision Number 2/Pdt.G/2023/PN Bbs?
2. What are the legal consequences of default on business capital return agreements related to decision number 2/Pdt.G/2023/PN Bbs?

Research Methods

This article is a normative research that constructs the law as a norm or as legal research that is limited to research on secondary data or literature studies.⁸ The approaches used include the statutory approach and the case approach. The issue of default in this study in the statutory approach is seen in the aspect of the agreement, then in the case approach is seen through a case in the Brebes District Court (Central Java Province) registered in Purwokerto Number 2/PDT.G/2023/PN BBS. The specification in this article is descriptive-analytical, delineating relevant laws and regulations in conjunction with legal theories and practical enforcement practices pertinent to the issue at hand.⁹ The data in this research uses secondary data consisting of regulations and references, then analyzed qualitatively. Qualitative analysis is an examination of legal norms found in laws and court decisions, as well as social norms that develop in society. It is also used to evaluate the impact of legal matters and policy implications.¹⁰

Discussion

1. Provisions of Default on the Capital's Returnment Contract in the Court Decision Number 2/Pdt.G/2023/PN Bbs

Agus Yudha Hernoko elaborated on the vital significance of contracts within the realm of business, emphasizing their role as a legal platform wherein parties delineate their rights and obligations. He highlighted that contracts serve as tangible evidence, bestowing legal certainty and fostering symbiotic mutualism, thereby contributing to a conducive business environment.¹¹ Meanwhile, as articulated by Sri Widyawati, business collaboration entails a collective endeavor

⁸ Soerjono Soekanto and Sri Mamudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat* (Depok: PT Raja Grafindo Persada, 2022).

⁹ Sumitro R.H., *Metodologi Penelitian Hukum Dan Jurimetri* (Surabaya: Ghalia Indonesia, 1990).

¹⁰ Najamuddin Gani, 'Legal Politics and Data Protection in Indonesia: A Case Study of the National Data Center Hacking', *SASI*, 30.3 (2024), 296–309 <<https://doi.org/10.47268/sasi.v30i3.2213>>.

¹¹ Agus Yudha Hernoko, 'Keseimbangan Versus Keadilan Dalam Kontrak (Upaya Menata Struktur Hubungan Bisnis Dalam Perspektif Kontrak Yang Berkeadilan)' (Surabaya: Universitas Airlangga, 2010) <<https://repository.unair.ac.id/40106/>>.

undertaken by individuals or groups with the shared objective of attaining a common goal.¹² Contract as a lawful instrumen is needed to regulate each parties before doing a business and to guarantee legal certainty in implementing the partnership in the cooperative business.¹³ These explanations will provide the fundamental underpinning for the researcher's detailed examination and analysis. Specifically, they will be instrumental in categorizing the agreements observed between the parties as documented in Decision Number 2/Pdt.G/2023/PN Bbs, which serves as the central dataset for this research.

The served data indicates the existence of a cooperative arrangement between the Plaintiffs and the Defendants, as outlined in a Cooperation Agreement crafted in June 2016. This agreement pertained to the establishment of a Parking Service Business within the premises of the Arjawinangun Paliman Cirebon Regional General Hospital and served as the inaugural pact in a series of agreements governing the parties' interactions in cases of default. Within this initial agreement, the Plaintiffs anticipated the fulfillment of contractual obligations through the development of the agreed-upon parking business. However, it transpired that Defendant I failed to uphold its end of the bargain, particularly regarding the sharing of collaborative venture outcomes with the Plaintiffs, given the non-materialization of the envisaged parking service business. Consequently, as evidenced in data, articulated in the form of a *posita*, the Plaintiffs assert that Defendant I incurred a debt amounting to Rp. 60,000,000.00 (representing the nominal business capital) due to the non-realization of the parking business. An intriguing aspect worthy of investigation in this context is whether the execution of an agreement to reimburse business capital can effectively compel the debtor to fulfill its contractual obligations.

A capital's returnment contract is fundamentally not constrained by any specific form, as it operates on the principle of contractual freedom. This principle is enshrined in Article 1338 of the Civil Code, which affirms that parties possess the liberty to establish all the terms they agree upon or wish to apply. The term "all" in the article pertains to legal entities entering into agreements, signifying that every legal entity retains the autonomy to decide with whom they will enter into an

¹² Sri Widyawati, 'Perjanjian Kerjasama: Antara Legalitas Dan Risiko Persaingan Usaha' (Komisi Pengawas Persaingan Usaha, 2020) <<https://dokumen.tips/documents/perjanjian-kerjasama-antara-legalitas-dan-risiko-menyelenggarakan-kegiatan.html>>.

¹³ Hamdan Azhar Siregar, Otom Mustomi, and Nur Aidah, 'The Role of Cooperation Agreement in Partnership System to Improve Indonesia n Cooperative Business Competitiveness in the National Economy', *JournalNX-A Multidisciplinary Peer Reviewed Journal*, 6.6 (2020), 355–61.

agreement, encompassing both the substance and structure of the agreement.¹⁴ Capital's returnment contract serves as a secondary binding document to the primary binding governing parking business cooperation. Capital's returnment contract serves as a secondary binding document to the primary binding governing parking business cooperation, complementing the main contract by outlining specific terms related to capital reimbursement. It functions as a supplementary agreement that ensures clarity and security for both parties, thereby fostering a transparent financial relationship within the scope of the business partnership.

In Ridwan Khairandy's "Indonesian Contract Law in Comparative Perspective (Part One)," J Satrio discusses the categorization of binding, which includes primary-secondary binding, as per doctrine.¹⁵ Secondary binding refers to a contractual obligation that supersedes the primary binding agreement in instances where the latter is not fulfilled. For instance, in cases of debtor default, secondary binding may encompass compensation, interest, and associated costs.¹⁶ From the plaintiff's perspective, the existence of this agreement serves as the foundational premise for initiating legal action for breach of contract due to the debtor's failure to fulfill obligations as stipulated in the preceding agreement, namely the establishment of a parking business. Executed on August 8, 2018, at the Kalisari Village Hall Office, Losari District, Cirebon Regency, in conjunction with the village chief (Kuwu Kalisari), Plaintiff I entered into this Business Capital Return Agreement with Defendant I in good faith. The primary objective of this agreement was to seek a resolution for the return of capital invested in the parking business collaboration, which Defendant I failed to materialize, despite an initial capital injection of IDR 60,000,000.00. The outcomes of the deliberations were formalized in a Joint Statement Letter detailing the terms of the Business Capital Return Agreement, wherein Defendant I consented to repatriating the capital funds to Plaintiff I by September 22, 2018.

The contract for the return of capital, acting as a secondary binding, imposes fresh obligations on the Defendants, who initially initiated the parking business with an investment of IDR 60,000,000.00, to reimburse all the business capital supplied by the Plaintiffs. This obligation pertains to instances of default, particularly concerning the debtor's efforts in meeting this obligation.

¹⁴ Anggitariani Rayi Larasati Siswanta and Maria Mu'ti Wulandari, 'Penerapan Asas Kebebasan Berkontrak Pada Perjanjian Baku Dalam Perjanjian Kerja', *Soedirman Law Review*, 4.4 (2022), 409–20 <<https://doi.org/10.20884/1.slr.2022.4.4.221>>.

¹⁵ Ridwan Khairandy, *Hukum Kontrak Indonesia Dalam Perspektif Perbandingan (Bagian Pertama)* (Yogyakarta: Universitas Islam Indonesia, 2013).

¹⁶ Khairandy.

Fundamentally, default refers to a scenario wherein the debtor fails to meet their obligations without providing sufficient justification. This legal concept is delineated in Article 1238 of the Civil Code, which elucidates the conditions under which default occurs:

"The debtor is negligent if he with a warrant or with a similar deed has been declared negligent, or for the sake of his own engagement, if he applies that the debtor must be considered negligent by the lapse of the specified time".¹⁷

Article 1238 of the Civil Code has three main principles, which can be outlined as follows:

- a. If a binding does not have a specific time provision set by the parties, the verbal term for performance must be established through a somatie. If the debtor fails to perform within this determined verbal term, they are considered to be in default;
- b. The phrase "based on the force of the binding itself" indicates that the parties initially agreed to a verbal term, and if this term is violated, the debtor is in default;
- c. The debtor disregards the binding, which inherently allows for only one grace period for fulfilling the performance, and fails to perform any obligations within that period.

The Civil Code does not define default, but several civil law experts provide definitions. J. Satrio describes default as a situation where the debtor fails to fulfill a promise or does not fulfill it as required, and this failure can be attributed to the debtor.¹⁸ Mariam Daruz Badruzaman defines default as the debtor's failure to fulfill the promised obligations due to their own fault.¹⁹ This study will discuss the debtor's actions as a benchmark for determining whether an event constitutes a default, as it pertains to fulfilling obligations arising from an agreement.

According to civil law experts' theories on the definition of default and Article 1238 of the Civil Code, default consists of three elements: the existence of a binding, the debtor's failure to perform, and an element of fault. The analysis of these elements in the context of a capital returnment contract is as follows:

- a. Binding exist. A binding is a legal relationship (concerning property) between two individuals, where one party has the right to demand something from the other party, who is obligated to fulfill the demand.

¹⁷ Gerardus Gegen, 'Legal Aspects in The Process of Damages in Civil Courts', *Legal Brief*, 11.1 (2021), 98-105 <<http://legal.isha.or.id/index.php/legal/article/view/82>>.

¹⁸ J. Satrio, *Hukum Perikatan Pada Umumnya* (Bandung: Alumni, 1999).

¹⁹ Subekti, *Hukum Perjanjian*.

In the case of Decision Number 2/Pdt.G/2023/PN Bbs, the binding involves a legal relationship in which Abdul Wahid and Nurwakhiyati, as defendants, are obligated to repay Rp 60,000,000.00 in business capital by the agreed verbal term date of September 22, 2018, to Amah Nurahmah and Mahmud Tungke, the plaintiffs. Amah Nurahmah and Mahmud Tungke, therefore, have the right to demand this payment from Abdul Wahid and Nurwakhiyati. This legal relationship fulfills the element of binding in the case of Decision Number 2/Pdt.G/2023/PN Bbs.

- b. Debtor failed to perform. Subekti defines default as failing to fulfill a promise, fulfilling it improperly, fulfilling it late, or doing something that should not be done according to the agreement.

According to J. Satrio, the forms of default are:

- 1) In this instance, the debtor exhibits a complete failure to perform. Such non-performance may arise either from the debtor's unwillingness to fulfill their obligations or from circumstances wherein it becomes objectively unfeasible for the creditor to do so, or subjectively, where the endeavor ceases to hold significance. The debtor unwillingness to fulfill the obligations occur if the debtor intentionally refuses to perform or deliberately neglects their responsibilities. The failure to perform is due to debtor's own actions or decisions, indicating lack of intention to honor the agreement. "Subjectively" in this matter came with the scenario, even though the debtor might still be capable of performing, the performance is no longer meaningful or beneficial to the creditor. In the latter scenario, notwithstanding the creditor's willingness, the feasibility of performance diminishes.
- 2) In this instance, the debtor executes the performance erroneously. While the debtor perceives the task as fulfilled, the actual delivery deviates from the agreed terms or essentially, there is a mismatch between what was promised and what was actually delivered. For instance, if the creditor orders sugar but receives salt instead. The debtor may have completed the act of delivery but failed to provide the correct item. This discrepancy indicates that the obligation has not been properly fulfilled, as the creditor did not receive what they were contractually entitled to. Despite the debtor's effort to perform their duty, the performance is deemed unsatisfactory because it does not meet the specifications outlined

in the agreement. This type of error highlights the importance of accuracy and attention to detail in fulfilling contractual obligations to avoid disputes and ensure that both parties' expectations are met. The obligation remains unfulfilled for this situation.

- 3) The debtor delays in fulfilling the performance. They fall under the category of tardy performers if the subject of the obligation remains beneficial to the creditor. This typically applies to obligations involving goods or assets that do not lose their worth over time. For instance, money constitutes an example of such subject matter. If a debtor fails to pay a debt on the due date but eventually makes the payment, the creditor still benefits because the value of the money remains unchanged. Individuals who fail to meet deadlines are deemed to be in a state of neglect.
- c. There is an element of fault. Article 1238 of the Civil Code elucidates that a key aspect of assessing the debtor's negligence hinges on the inherent strength of the binding itself. This entails that the binding entails a specified deadline or time frame within which the debtor is obligated to fulfill the performance. Article 1270 of the Civil Code further elaborates on this aspect:

"A provision of time shall always be presumed to have been made in favor of the debtor, unless it appears from the nature of the binding itself, or from the circumstances, that the provision of time has been made in favor of the creditor."

The two articles elucidate that the provision of a specified time frame for fulfilling performance serves the debtor's interests. If, despite being afforded this opportunity, the debtor still fails to fulfill their obligations, it indicates a fault on their part. This element of fault is exemplified in Decision Number 2/Pdt.G/2023/PN Bbs, where Abd. Wahid (Defendant I) knowingly neglected to reimburse the business capital for the parking business venture to the Plaintiffs, amounting to Rp 60,000,000.00, by the agreed-upon deadline of September 22, 2018. Thus, the presence of fault is substantiated by this explanation.

2. Legal Consequences of Default on the Capital's Returnment Contract in the Court Decision Number 2/Pdt.G/2023/PN Bbs

Decision Number 2/Pdt.G/2023/PN Bbs delineates the mutual rights and obligations established through the agreement to reimburse business capital,

involving parties such as Abd. Wahid and Nurwakhiyati (debtors) and Amar Nuramah and Mahmud Tungke (creditors). In this context, the debtor's obligation entails fulfilling the commitment of reimbursing IDR 60,000,000.00 in business capital to the creditor. However, Abd. Wahid, or Defendant I, failed to meet this obligation within the agreed-upon timeframe, namely until the specified deadline of September 22, 2018, owed to Amar Nuramah, resulting in a default as per the court ruling. The occurrence of defaults alters the rights and obligations between the involved parties. Subsequently, the debtor, upon being declared in default, assumes a new obligation to willingly pay a specified sum and is mandated to permit the seizure of their assets through auction to facilitate repayment.

The seizure of assets through auction for the purpose of repayment is grounded in Article 1131 of the Civil Code, which stipulates that all of the debtor's property, whether movable or immovable, existing or acquired subsequent to the enactment of the Bankruptcy Law (Law No. 4 of 1998) or any future amendments, serves as collateral for all individual obligations. The utilization of this article reinforces the provision that, in this instance, Amah Nuramah possesses the right to pursue repayment or "verhaal rights," as per J. Satrio's interpretation, signifying the creditor's entitlement to seek repayment from the entirety of the debtor's assets. In this scenario, Amah Nuramah and Mahmud Tungke exercised this right by initiating lawsuit. The alteration of the debtor's obligations resulting from default constitutes a legal consequence that the debtor must contend with.

Article 1239 of the Civil Code governs the legal consequences of default, affirming that failure to fulfill obligations prompts the provision of compensation for cost, losses and interest incurred. This article correlates closely with Article 1243 of the Civil Code, which addresses the consequences of default and stipulates:

"Reimbursement of costs, losses and interest due to non-fulfillment of an obligation becomes obligatory, if the debtor, despite being declared negligent, continues to fail to fulfill the obligation, or if something that must be given or done can only be given or done within a time that exceeds the time specified."

Subekti in the journal "Legal Consequences of Default in Debt Agreement" by I Wayan Bandem states that the legal consequences of default are as follows:²⁰

- a. Creditors are entitled to receive reimbursement for damages incurred from debtors, often referred to as compensation;

²⁰ I Wayan Bandem, Wayan Wisadnya, and Timoteus Mordan, 'Akibat Hukum Perbuatan Wanprestasi Dalam Perjanjian Hutang-Piutang', *Jurnal Ilmiah Raad Kertha*, 3,1 (2020), 48-68 <<https://doi.org/10.47532/jirk.v3i1.168>>.

Compensation comprises three components: costs, losses, and interest. It serves as a means to recuperate losses when performance becomes unfeasible or unlikely. Therefore, compensation stands as an alternative recourse available to the creditor in such circumstances.²¹ In their legal deliberations within Court Decision Number 2/Pdt.G/2023/PN Bbs, the panel of judges did not delineate the specific type of compensation imposed on the defendant in their capacity as the debtor. In this context, researchers scrutinize the three components of compensation,²² pertaining to Court Decision Number 2/Pdt.G/2023/PN Bbs as outlined below:

1) Costs

Compensation in the form of cost reimbursement entails the repayment of all expenses accrued by one party, which are to be indemnified by the defaulting party. In Decision Number 2/Pdt.G/2023/PN Bbs, plaintiffs Amah Nurahmah and Mahmud Tungke were able to establish that they had disbursed a total of Rp 60,000,000.00 in business capital to defendants Abdul Wahid and Nurwakhayati, transferring Rp 50,000,000.00 via Mandiri Bank on June 6, 2016, and providing Rp 10,000,000.00 in cash. By detailing and substantiating the entirety of expenses in Decision Number 2/Pdt.G/2023/PN Bbs, the requirement for cost reimbursement is fulfilled.

2) Losses

According to Subekti, the notion of loss occurs when the creditor experiences harm to their possessions due to the debtor's negligence. This concept emphasizes the direct impact on the creditor's property or assets, leading to financial or material damage. For instance, in a scenario involving the sale and purchase of cattle, if the animals bought by the creditor from the debtor are infected with a disease that spreads to the creditor's livestock, the condition of loss is met.²³ However, in cases where

²¹ Aditya Fadli Turagan, 'Pelaksanaan Perjanjian Dengan Itikad Baik Menurut Pasal 1338 Kuhperdata', *Lex Privatum*, VII.1 (2019), 46-51 <<https://ejournal.unsrat.ac.id/index.php/lexprivatum/article/view/25866>>.

²² M. Al Hafiz and Sukirno Sukirno, 'Compensation in the Termination of Agreement Due to Breach of Contract', *International Journal of Multi Discipline Science (IJ-MDS)*, 7.1 (2024), 36-42 <<https://doi.org/10.26737/ij-mds.v7i1.4600>>.

²³ Subekti, *Hukum Perjanjian* (Jakarta: Intermasa, 2005).

the debtor's obligation solely involves the repayment of a sum of money, the element of loss remains unfulfilled.

3) Interests

Article 1246 of the Civil Code characterizes interest as a privilege to be received. The Plaintiff, in their petition, requested that the defendant be penalized to pay interest from October 2018 until the initiation of the lawsuit (50 months), calculated at 2% for 50 months on Rp 60,000,000.00. The interest type in this instance is moratory interest, which denotes interest mandated (as a penalty) due to the debtor's negligence or failure to fulfill their debt. Moratory interest is computed solely from the time the lawsuit is filed with the court.²⁴ In this instance, the plaintiff computes moratory interest in their petition from the time of default, rather than from when the plaintiff filed the lawsuit with the court. As per researchers' analysis, this approach does not fulfill the element of interest.

b. Cancellation of Agreement

The objective of agreement cancellation is to revert both parties to their pre-agreement status. If one party has received anything from the other party, be it money or goods, it must be returned. Requesting agreement cancellation necessitates judicial intervention and does not permit automatic annulment of the agreement by the parties, even when the debtor is evidently neglecting their obligations.²⁵ According to the author's examination, in this instance, neither party made an effort to nullify the agreement through legal proceedings, thus resulting in the absence of any legal consequence regarding its cancellation.

c. Transfer of Risks

Risk transfer is stipulated in Article 1237 paragraph 2 of the Civil Code, referring to the responsibility of bearing losses in situations beyond the fault of either party, particularly concerning the goods involved in the agreement. For instance, as outlined in Article 1460 of the Civil Code regarding sales transactions, if the seller fails to deliver the goods punctually, this negligence results in the transfer of risk from the buyer to the seller.²⁶ According to the author's analysis, a business capital return agreement is solely focused on repaying a specific monetary sum,

²⁴ Subekti, *Hukum Perjanjian*.

²⁵ Subekti, *Hukum Perjanjian*.

²⁶ Subekti, *Hukum Perjanjian*.

ensuring the creditors recovers their capital without any link to the business's performance. This clear repayment obligation provides legal certainty and avoids risk transfer, as the debtor bears all risks associated with using the capital, while the creditor is only entitled to the return of the initial amount

- d. The debtor is obliged to pay court costs if the case is brought to court

The obligation for negligent debtors to pay court costs is regulated by Article 181 of the HIR, which clearly states that the party who loses a court case is responsible for bearing all legal expenses incurred during the proceedings. This provision ensures that the financial burden of litigation falls on the party whose actions necessitated legal intervention. In the context of default cases, if the debtor is found to have failed in fulfilling their contractual obligations, they are considered the losing party and are thus required to pay the court costs. This rule reinforces the principle of accountability, ensuring that negligent parties are not only held liable for their contractual breaches but also for the legal expenses resulting from their non-compliance.

Through the author's examination, it's established that Abdul Wahid and Nurwakhiyati, as both debtors and defendants, were deemed as the losing parties due to their proven default in Decision Number 2/Pdt.G/2023/PN Bbs, thus fulfilling the requirement for charging court expenses. In data 5.3, the judge's ruling mandated the defendants to pay court costs amounting to Rp 1,180,000.00. Consequently, the imposition of court expenses emerges as one of the legal outcomes in Case No. 2/Pdt.G/PN Bbs.

Conclusion

1. The concept of default in Decision Number 2/Pdt.G/2023/PN Bbs is linked to the fulfillment of default criteria based on Civil Code Articles and civil law scholars' perspectives. These criteria include a binding obligation, the debtor's failure to fulfill it, and the debtor's fault. In this case, Abdul Wahid and Nurwakhiyati, as defendants, were obligated to repay Rp 60,000,000.00 in business capital to Amah Nurahmah and Mahmud Tungke, the plaintiffs, by September 22, 2018. They failed to do so, demonstrating non-performance. Their fault is evident from not returning the capital on time, which aligns with Article 1238 of the Civil Code on debtor negligence and Mariam Badruzaman's theory that default occurs when a debtor, due to their fault, fails to meet the agreement's terms. The nature of the default here is tardiness

in fulfilling the obligation, consistent with J. Satrio's theory, as the Rp 60,000,000.00 is still beneficial to the creditor.

2. The legal consequences faced by Abd. Wahid and Nurwakhiyati as debtors in Decision Number 2/Pdt.G/2023/PN Bbs, as per the judge's ruling, entail restitution in the form of reimbursing the business capital amounting to IDR 60,000,000.00. This obligation arises because money, serving as the performance object in this scenario, retains its utility for the creditors, aligning with J. Satrio's fundamental tenet of default theory. Additionally, Abd. Wahid and Nurwakhiyati are mandated to cover court expenses totaling Rp 1,180,000.00, as the judge deems both parties culpable of defaults, which resonates with Subekti's theory regarding the consequences of default, including the obligation to bear court costs.

Suggestion

1. As a subject of law, the community must vigilantly oversee the execution of obligations outlined in agreements with others to secure the rights rightfully due from such agreements and to prevent occurrences of default; and
2. This research aims to increase public awareness of the law, helping people understand the consequences of their actions. By doing so, they can use their legal rights more responsibly, reducing the risk of issues like those in Decision Number 2/Pdt.G/2023/PN Bbs.

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