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House Construction Contracting Agreement Viewed From Civil Law Perspective

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ABSTRACT
The house construction contracting agreement is one of the named forms of agreement specifically regulated in the Civil Code. The purpose of this research is to find out about the arrangement of the house construction contracting agreement in terms of civil law. This type of research is normative with a conceptual and statutory approach. The nature of the research is descriptive analytical. The data used is secondary data consisting of primary and secondary legal materials while data analysis is carried out qualitatively. The contracting agreement is regulated in Chapter 7 A of Book III, Article 1601 b to Article 1616 of the Civil Code. Article 1601 b of the Civil Code states that a work contracting agreement is an agreement that the first party, namely the contractor, binds himself to complete a job for the other party, namely the employer. In a contracting agreement, there is one party who buys work (bouwheer) with another party who is obliged to buy work (contractor / contractor), where the first party wants a work result that is agreed upon by the opposing party, upon payment of an amount of money as a contracting price. For this reason, it is recommended that the agreement be carried out in good faith by the parties to avoid disputes.

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INTRODUCTION

Every legal relationship gives rise to rights and obligations of the parties bound in it. To achieve compatibility in the relationship, an event arises where one person promises another person to do something, which means an obligation arises from one of the parties. The obligation can be in the form of freedom to do something, to give something, and not to do something. The legal relationship arising from the agreement is called an engagement defined as a legal relationship between two people or two parties, based on which one party is entitled to demand something from the other party, and the other party is obliged to fulfill that demand.

As for juridically, the definition of an agreement is regulated in the third book of the Civil Code (KUH Perdata) concerning engagement. The Civil Code defines "Agreement as an act by which one or more people bind themselves to one or more other people." One of the principles in the agreement is the principle of freedom of contract. The principle of freedom of contract states that everyone can enter into any agreement except those that are

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contrary to law, decency, and public order. From the principle of freedom of contract, various types of agreements arise from agreements whose rights and obligations have been agreed upon by both parties. One type of agreement whose contents are based on the principle of freedom of contract of both parties is a contracting agreement. In an agreement, there is something that must be done by one of the parties in it, this is called an achievement. Agreement is a very important thing because it concerns the interests of the parties who make it (Alaysia & Muttaqin, 2023). The definition of an agreement is generally regulated in Article 1313 of the Civil Code (KUH Perdata) which states that an agreement is an act by which one or more people bind themselves to one or more other people. In each of these actions, it can give birth to evidence of the existence of rights and obligations that will bind the two parties with the aim of carrying out something that is equally beneficial for the parties participating in the agreement.

Housing and settlement is one of the basic human needs and has a very important role in the formation of human character and personality. in accordance with its basic nature, that humans are social creatures with all their needs and one of these human needs is a house1, which functions as a means of comfortable living for families and as other facilities that are included in primary needs. The right and ownership of housing is something that is difficult to separate from human existence so that housing is much sought after and housing construction continues to grow. In its construction, legal events such as a contracting agreement can occur. The contracting agreement, especially in this case, is the contracting of physical development made in the form of a written contract to carry out work in the form of a standard contract, where a contract has been prepared in advance by one of the parties by adjusting to the laws and regulations not contrary to public order and morality. The contracting agreement in the Civil Code is complementary, meaning that the provisions of the contracting agreement in the Civil Code can be used by the parties to the contracting agreement or the parties to the contracting agreement can make their own provisions of the contracting agreement as long as they are not prohibited by law and do not conflict with public order and decency (Laksmi & Munandar, 2023). This agreement is complementary, meaning that the provisions of the contracting agreement provisions in the Civil Code are also the most important part that exists in the implementation of the work. And it needs to be emphasized that the provisions of the contracting agreement in the Civil Code apply both to contracting agreements on private projects and on government projects where the government can act as a job giver (bouwheer) who cooperates with private parties as contractors (aannemer). The civilization concerns the rights and obligations of the parties. Therefore, in the implementation of the agreement, the contractor or service provider is required to use collateral, generally a bank guarantee or insurance institution to prevent risks that may occur in the future.

In practice, agreements are widely known as contracts, the two terms are not so problematic because it depends on the parties to use which term is preferred. Contract means a legal mechanism in society to protect expectations arising in the making of future semi-change agreements that vary in performance, such as the transportation of wealth (real or unreal), the performance of services and payment in money (Salim, 2021). The

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contracting agreement for development work is one form of agreement that lives in the midst of society. This contracting agreement is bound by an agreement between the parties as outlined in a standard form containing the rights and obligations of the parties (Lubis, 2024). So, the parties to the house construction contracting agreement have rights and obligations that have been written in the agreement and must be carried out in good faith so that there is no dispute.

METHOD

This type of research is normative, namely research aimed at finding and formulating legal arguments through analysis of the subject matter (Ali, 2009). Normative legal research is also called library legal research is legal research conducted by examining library materials or secondary data only (Marzuki, 2006). The approach in this research is legislation and the nature of the research is descriptive analytical, namely research that explains and describes the house construction contracting agreement in terms of civil law. Data analysis is carried out qualitatively.

RESULTS AND DISCCUSION

Agreements are generally regulated in the Civil Code, Book III on obligations, in Chapter II on obligations born of contracts or agreements. Agreement according to Article 1313 which reads: "An agreement is an act by which one or more people bind themselves to one or more other people". The definition of an agreement etymologically according to the Big Indonesian Dictionary (KBBI) is an agreement (written or oral) made by parties or more, each of which promises to obey what is an obligation in the agreement (Pusat Bahasa Departemen Pendidikan Nasional, 2020).

According to Article 1601 b of the Civil Code, a contracting agreement is an agreement by which one party, (the contractor), binds himself to carry out a job for the other party, (the contracting party), by receiving a specified price. So in the contracting agreement there are only two parties bound in the contracting agreement, namely, the first party is called the contracting party or principal, (bowheer, head of office, project leader work unit). The second party is called the contractor or partner, contractor, annemer. The contracting agreement is regulated in articles 1604 to 1617 of the Civil Code and special regulations made by the government and so on (Djumialdji, 2018). From this definition it can be said that the object of the contracting agreement is the act of a work (het maken van werk) receiving a specified price. So in a contracting agreement there are only two parties bound in the contracting agreement, namely, the first party is called the contracting party or principal, (bowheer, head of office, project leader work unit). The second party is called the contractor or partner, contractor, annemer. The contracting agreement is regulated in articles 1604 to 1617 of the Civil Code and special regulations made by the government and so on (Miru & Pati, 2020). From this definition, it can be said that the object of the contracting agreement is the performance of a work / het maken van werk. The contracting agreement is regulated in CHAPTER 7 A of Book III of the Civil Code, Articles 1601 b to

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1616 of the Civil Code, the contracting agreement is one of the agreements to perform work, in which there are three types of agreements, namely:

1. Employment/labor agreement
2. Contracting agreement
3. Service agreement.

The three agreements have in common that one party performs work for the other party by receiving wages. The difference between a work agreement and a contracting agreement and a service agreement is that in a work agreement there are elements, while in a contracting agreement and a service agreement. Regarding the difference between a contracting agreement and a service agreement, namely that in a contracting agreement in the form of realizing a certain work, while in a service agreement in the form of carrying out certain tasks that are determined in advance.

This work contracting can occur in two ways: first, the contractor only does the work, while the materials are provided / borne by the contracting party; second, the contractor does the work and also provides the materials, of course with different legal consequences. The difference in the way of contracting will affect the risk in the event of a loss beyond the fault of one party (Miru & Pati, 2020). Different types of building contracting agreements according to the way they occur include:

1. A building contract obtained as a result of an auction on the basis of bids submitted.
2. Building contracting agreement on the basis of appointment.
3. A building contracting agreement obtained as a result of negotiations between the assignor and the contractor (Miru & Pati, 2020).

Meanwhile, according to the method of determining the price, the contracting agreement can be divided into 3 (three) main forms as follows:

a. A contracting agreement with a fixed price. Here the price of the contracting has been determined with certainty, both regarding the contract price and the unit price.
b. Agreement for the execution of contracting at a lump-sum price. Here the piecework price is calculated for each unit. Here the extent of the work is determined according to the estimated number of units.
c. Agreement on the implementation of contracting on the basis of total costs and wages. Here the assignor will pay the contractor the actual amount of costs incurred plus the cost of his wages (Miru & Pati, 2020).

The risks contained in the contracting agreement are explained in several articles in the Civil Code, among others: (Miru & Pati, 2020).

1) Article 1608 of the Civil Code explains, if the contracting agreement is carried out part by part, then the work can be examined part by part as well, with the presumption that the examination has been carried out for all parts that have been paid, if the payment is made based on what the contractor has completed.
2) Article 1609 of the Civil Code, If a building that has been contracted for a certain price is partially or completely destroyed due to defects in its construction (work) or even due to the inadequacy of the land, the builder and contractor are liable for the period stated in the contract.

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3) Article 1610 of the Civil Code, if in the contracting agreement the builder or contractor has agreed to build a building by way of contracting, then the contractor is not entitled to request an increase in price, either on the grounds of increased labor wages, increased prices for building materials, or changes or additions to the building that were not included in the plan.
4) Article 1611 of the Civil Code, if the contracting party wishes to terminate the contract, even though the work has already started, the contracting party shall fully compensate the contractor for all costs incurred in carrying out the work, including the provision of expected profits.
5) Article 1613 of the Civil Code, the contractor is responsible for the actions of the people he employs. This of course means civil actions in accordance with Article 1367 BW.
6) Article 1615 of the Civil Code, if the contractors are directly responsible for undertaking to perform a work for a certain price, then the provisions on contracting also apply to them, because each of them is equal to the contractor for the work he does.

The free form contracting agreement (vormvrij) means that the contracting agreement can be made orally or in writing. However, in building contracting agreements, in principle, it is made in writing, because in addition to being useful for evidentiary purposes, it is also with the understanding that the building contracting agreement is classified as an agreement containing a risk of danger concerning public safety and building order, usually the agreement is made in writing either by deed under hand or authentic deed (notarial deed). Typically made with the form of standard agreement (Sofwan, 2014). Regarding agreements made in the form of deeds under the hand in terms of evidence, in the event that the parties who sign the agreement letter recognize and do not deny their signatures, do not deny the contents and what is written in the agreement letter, then the deed under the hand has the same evidentiary power as an authentic or official deed. The contents of the building contracting agreement generally contain details regarding: (Soeroso, 2015).

1. The extent of the work to be carried out and contains a description of the work and the conditions of the work which is accompanied by a drawing with a description of the materials, tools and workplaces needed.
2. Determination of the contracting price.
3. Regarding the period of completion.
4. Regarding sanctions in the event of default.
5. About the risk in the event of overmacht.
6. Settlement in the event of a dispute.
7. Rights and obligations of the parties in the contracting agreement.

Parties involved in the contracting agreement. The parties involved are: (Miru & Pati, 2020).

1. Service users or assignors can be individuals or legal entities, government or private institutions. The relationship between the assignor and the contractor can be in the

form of an official relationship (if the assignment is with the government) or a relationship with a work order (if the government is with the private sector).

2. Service providers or contractors, which can be individuals, legal entities, private or government. Where with the task of carrying out work according to bestek and submitting work.
3. Planner, if the assignor is the government, while the planner is also the government (DPU) then the official relationship. If the assignor is from the government/private sector and the planner is from the private sector, namely the planning consultant, then the relationship is regulated in a single service agreement or power of attorney agreement depending on the tasks performed by the planning consultant. Planners have duties as advisors or supervisory representatives.
4. Supervisor / director, in charge of overseeing the implementation of the contractor's work. Here the supervisor gives instructions, orders the work, checks the materials, when the construction takes place and finally makes an assessment of the work.
5. In addition to the parties mentioned above, in the implementation of contracting services there are also planners, namely service providers of individuals or business entities that are declared professional experts in the field of planning contracting services or construction services that are able to realize work in the form of building planning documents or other physical forms. The appointment of this planner in practice is carried out through a separate auction conducted before the auction in the context of selecting a service provider.

The right of the party contracting the work is to receive the results of the work in accordance with the agreement, while the obligation is to pay the price of the work that has been planned and made by the planner and contractor in accordance with the provisions made in the agreement. The right of the contractor/provider is to receive payment in accordance with the contract price from the party contracting the work, while the obligation of the contractor is to complete the work in accordance with the contract price from the party contracting the work. With the obligation is to plan the implementation, make bestek which is a description of the work plan and the conditions set accompanied by drawings, as well as supervise the work process by the contractor in accordance with the clauses in the agreement. The law of agreement is reciprocal in nature where the rights of one party are the obligations of the other party and vice versa. The rights and obligations of the parties must be carried out by the goods/services user and the goods/services provider in carrying out the contract. The contracting agreement can end in the following cases:

a. The work has been completed by the contractor after the maintenance period has been completed and the contract price has been paid by the contracting party.
b. Cancellation of contract of hire: According to Article 1611 of the Civil Code stated. The contracting party, if he so desires, may terminate the contract, even if the work has already begun, provided that he fully compensates the contractor for all costs he has incurred for his work and for the profit lost thereby.

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c. Death of the contractor: According to Article 1612 of the Civil Code, work ceases with the death of the contractor. Here the contractor must pay for the work that has been completed as well as the materials that have been provided.
d. Bankruptcy: In the event of bankruptcy, either from the service user who is unable to make payments, causing default or also from the contractor / contractor who is bankrupt so that he is unable to carry out his obligations.
e. Termination of the contract of hire: Termination of this contractor contract is due to default. Termination is carried out for the future, in other words, the work that has not been done is terminated, but the work that has been done will still be paid.
f. Consent of both parties: The case regarding the termination of the contractor contract is due to default in the form of rechtverwerking or relinquishment of rights (Trisnawati, 2021).

So the position of the house construction contracting agreement is inseparable from the written agreement made by the contractor and the employer who are subject to the agreement law stipulated in the Civil Code. The agreement will run well if both parties carry out their rights and obligations in good faith. As for the validity of an agreement, four conditions are required (Article 1320 of the Civil Code), namely (Subekti, 2011):

1. The agreement of those who bind themselves: The agreement of those who bind themselves is an essential principle of the law of agreements. This principle is also called the principle of consensualism which determines the existence of an agreement. the principle of consensualism contained in Article 1320 of the Civil Code implies the "willingness" of the parties to perform mutually, there is a willingness to bind themselves to each other. This willingness generates confidence that the agreement is fulfilled. Agreement is meaningless if the agreement is made on the basis of coercion, fraud or mistake.
2. Capability is required to make an agreement: Regarding capability, Subekti explains that a person is incapable if he is generally based on the provisions of the law unable to make his own agreements with perfect legal consequences. Those who are incapable are those determined by the law, namely children, adults placed under supervision (curatele), and the mentally ill.
3. A certain thing: It is intended that certain things are objects that are regulated in the credit agreement must be clear, at least determinable. So the object of the agreement must not be vague. This is important to provide assurance or certainty to the parties and prevent the emergence of fictitious credit agreements.
4. A halal cause: This means that the contents of the credit agreement must not conflict with legislation, which is compelling, disturbing / violating public order and / or decency (Subekti, 2011).

The first two conditions are called subjective conditions because they concern the people or subjects who enter into an agreement. While the last two conditions are called objective conditions because they concern the object of the agreement or the object of the legal act performed. The first two conditions are called subjective conditions because they concern the subject of the agreement while the last two conditions are called objective

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conditions, because they concern the object of the agreement. A valid agreement is recognized and given legal effect while an agreement that does not meet these conditions is not recognized by law. But if the parties recognize and comply with the agreement they made, do not meet the conditions set by the law but the agreement remains valid between them, but if at some point there is a party who does not recognize so that a dispute arises, the judge will cancel or declare the agreement void (Subekti, 2011).

The four conditions above are the main conditions of an agreement, meaning that these conditions must exist in an agreement, without this condition, the agreement is considered to have never existed or the agreement is invalid. However, with the enactment of an agreement to enter into an agreement, it means that both parties must have freedom of will. There is an agreement that an agreement has been born (Subekti, 2011). In addition, the law of agreements recognizes five important principles, namely:

1. The principle of freedom of contract: Article 1338 paragraph 1 of the Civil Code states "all agreements made legally shall apply as laws for those who make them." The principle of freedom of contract is a principle that gives parties the freedom to make or not make agreements, enter into agreements with anyone, determine the contents of the agreement / implementation and its requirements, determine the form of the agreement, namely written or oral. The principle of freedom of contract is a characteristic of the Civil Code, which only regulates the parties, so that the parties can override it, except for certain articles that are compelling in nature.
2. The principle of consensualism: The principle of consensualism can be concluded through Article 1320 paragraph 1 of the Civil Code. One of the conditions for the validity of an agreement is the agreement of both parties. The existence of an agreement by the parties will give birth to rights and obligations for them or it is also commonly called that the contract has been obligatory, namely giving birth to an obligation for the parties to fulfill the contract.
3. The principle of pacta sunt servanda: The principle of pacta sunt servanda, also known as the principle of legal certainty, relates to the consequences of an agreement. The principle of pacta sunt servanda is the principle that judges or third parties must respect the substance of the contract made by the parties, just like a law, they may not intervene in the substance of the contract made by the parties. The principle of pacta sunt servanda is based on Article 1338 paragraph 1 of the Civil Code which states "agreements made legally shall apply as law."
4. The principle of good faith (geode trouw): The provisions regarding the principle of good faith are regulated in Article 1338 paragraph 3 of the Civil Code which states "the agreement must be carried out in good faith." The principle of good faith is the principle that the parties, namely the creditor and the debtor must carry out the substance of the contract based on trust or firm belief or good will of the parties.
5. Personality principle: The principle of personality is a principle that determines that a person who will make a contract is only for the benefit of an individual. This can be seen in Article 1315 and Article 1340 of the Civil Code. Article 1315 of the Civil Code states "in general, a person cannot enter into an agreement only for his own benefit."

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The consequences of a legally made agreement are as follows:

a. Applies as law to those who make it.
b. An agreement is only valid between the parties that make it and the agreement can bind third parties if it has been agreed beforehand.
c. Consequently the parties to the agreement cannot unilaterally withdraw the consequences of the agreement made by them.
d. The agreement can be terminated unilaterally if there are reasons that the law states are sufficient for that.
e. Promise for the benefit of third parties.
f. In the implementation of an agreement must be implemented in good faith.
g. An agreement in addition to being binding for the things agreed upon also binds everything that by the nature of the agreement is required by propriety, custom, or law.
h. Consequently, if a compelling law is set aside by the parties in making an agreement, then all or certain parts of the contents of the agreement that are contrary to the compelling law become void.

The legal relationship in a house construction contracting agreement is a relationship that gives rise to legal consequences guaranteed by law or law. If one of the parties does not fulfill its rights and obligations voluntarily, then one of the parties can sue through the court. An agreement that has been agreed by the parties has a legal relationship that must be obeyed by both. This relationship gives rights and obligations to each party to make demands or fulfill these demands, meaning that there will be no agreement that binds a person if there is no certain agreement agreed upon by the parties, from the existence of this legal relationship, the responsibilities of the parties to an agreement arise (Subekti, 2011). So all the rights and obligations of the parties have been included in writing and must be implemented and obeyed in good faith to avoid default. If there is a dispute, it can be resolved based on the agreement of the parties.

CONCLUSION

The house construction contracting agreement is regulated in CHAPTER 7 A of Book III Article 1601 b to Article 1616. Article 1601 b of the Civil Code states that a work contracting agreement is an agreement that the first party, namely the contractor, binds himself to complete a job for the other party, namely the employer. In a contracting agreement, there is one party who buys work (bouwheer) with another party who is obliged to buy work (contractor / contractor), where the first party wants a work result that is agreed upon by the opposing party, upon payment of an amount of money as a contracting price. Agreements are usually made in writing by the contractor and the homeowner who are subject to the provisions of the law of agreements stipulated in the Civil Code, especially those stipulated in Article 1320 of the Civil Code which regulates the valid requirements of an agreement which must fulfill the elements of the agreement of those who bind themselves, capable, certain objects and halal causes. For this reason, it is recommended that the agreement be carried out in good faith by the parties to avoid disputes.

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https://ejournal.seaninstitute.or.id/index.php/JMS/index

REFERENCE

Alaysia, A. N., & Muttaqin, L. (2023). Analisis Penerapan Asas Itikad Baik dan Pertanggungjawaban Para Pihak Terkait Wanprestasi Dalam Perjanjian Kerja Sama Pemborongan Rumah. *Jurnal Interpretasi Hukum*, 4(3), 478–486. Retrieved from https://doi.org/10.22225/juinhum.4.3.8194.478-486

Ali, Z. (2009). *Metode Penelitian Hukum*. Jakarta: Sinar Grafika.

Laksmi, I. A. A. T., & Munandar, A. (2023). Analisis Putusan Mahkamah Agung Terhadap Perkara Wanprestasi Pembangunan Perumahan. *Private Law*, 3(1), 76–84. Retrieved from https://doi.org/10.29303/prlw.v3i1.2149

Lubis, M. F. R. (2024). Akibat Wanprestasi Dalam Perjanjian Pemborongan Pekerjaan. *Jurnal Ilmiah METADATA*, 6(1), 131–143. Retrieved from https://doi.org/10.47652/metadata.v6i1.484

Marzuki, P. M. (2006). *Metode Penelitian Hukum*. Jakarta: Sinar Grafika.

Miru, A., & Pati, S. (2020). *Hukum Perjanjian: Penjelasan Makna Pasal-Pasal Perjanjian Bernama dalam KUH Perdata (BW)*. Jakarta: Sinar Grafika.

Pusat Bahasa Departemen Pendidikan Nasional. (2020). *Kamus Umum Bahasa Indonesia*. Jakarta: PT Balai Pustaka.

Salim, H. S. (2021). *Hukum kontrak: Teori dan Teknik Penyusunan Kontrak*. Jakarta: Sinar Grafika.

Soeroso, R. (2015). *Perjanjian Dibawah Tangan*. Jakarta: Sinar Grafika.

Sofwan, S. S. M. (2014). *Hukum Bangunan: Perjanjian Pemborongan Bangunan*. Yogyakarta: Liberty.

Subekti. (2011). *Pokok-Pokok Hukum Perdata*. Jakarta: PT. Intermasa.

Trisnawati, B. (2021). Kajian Hukum Berakhirnya Kontrak Pemborongan Akibat Rechtverwerking atau Pelepasan Hak di Indonesia. *Jurnal Pembangunan Hukum Indonesia*, 3(2), 240–251. Retrieved from https://doi.org/10.14710/jphi.v3i2.240-251