

DEFAULT WITH FRAUD IN A DEBT AGREEMENT

Hari Panri Nst, Tri Reni Novita

Faculty of Law, Universitas Muslim Nusantara Al-Washliyah Medan

Keywords

Default,
Fraud,
Accounts Payable Agreement

Abstract. This research is about Analysis of Default with Fraud in Debt Agreements in Deli Serdang Regency, Medan City. Problem Formulation How is the difference between default and fraud in a debt agreement? What are the obstacles faced in resolving cases of default with fraud in the debt agreement? What efforts are made in resolving cases of default with fraud in the debt agreement? The purpose of this study is to determine the difference between default and fraud in accounts payable agreements. To find out what obstacles are faced in resolving cases of default with fraud in the debt agreement. To find out what efforts are being made in resolving cases of default with fraud in accounts payable agreements. The type of research used is normative and empirical legal research. The results of the study of the difference between default and fraud in accounts payable agreements are that the debtor continues to perform but is only able to pay off part of his debt to the debtor and cannot pay off all his debts to the debtor. In this case, there were several obstacles that occurred the contents of the plaintiff's special power of attorney were incomplete. In this case Defendant 1 could not complete the construction because the building permit was not issued for the land contained in the Certificate of Ownership no. 520 By the Department of Settlement and Spatial Planning Medan City. And in this case also Defendant II could not submit the Certificate of Ownership No. 520 to the plaintiff due to the absence of consent from the defendant I. The legal settlement in the case of default on the debt agreement carried out by Zulkarnai against Mr. Salim and Mrs. Devi Juliastuti was pursued through the courts. Mr. Salim and Mrs. Devi Juliastuti as defendants never attended the trial even though he had been legally and properly summoned, so the judge decided to impose a versteeek verdict on this case.

Email : aripanrinst09@gmail.com,
trireninovita@gmail.com

Copyright 2022 Fox Justi : Jurnal Ilmu Hukum

1. INTRODUCTION

Humans in their lives also do not escape the debt agreement, both in small and large amounts, in large amounts, usually carried out by the community in order to obtain loans as business capital, where the Bank as a financial institution facilitates this. Debt agreements can not only be made with banking institutions but can also be made with anyone who has the ability to do so, through a debt agreement between the lender on the one hand and the loan recipient on the other.

In this study, researchers are interested in studying the case in Deli Serdang Regency, namely regarding the decision letter number 119/Pdt./G/2020/PN Mdn in this case explaining the problems that occurred between Zulkarnain as the plaintiff against Salim and Devi Juliastuti, SH that on June 10, 2015 ago the plaintiff and defendant I agreed to make a build-up agreement by confronting Defendant II as the Notary of Deli Serdang Regency. Where the defendant wants to build 4 shop houses on the plaintiff's land with an agreement that when the building is completed the plaintiff will get 1 shop house door (ruko) with overall facilities in it and get compensation of Rp. 570,000,000 (five hundred and seventy million rupiah). Based on the description of the background, the problems that will be discussed are: a.

- a. How is the difference between default and fraud in a debt agreement?
- b. What are the obstacles faced in resolving cases of default with fraud in the debt agreement?
- c. What efforts are made in resolving cases of default with fraud in the debt agreement?

1. Problem Goal

To fulfill the requirements to complete studies at the Faculty of Law, Universitas Muslim

Fox Justi is licensed under a Creative Commons Attribution-NonCommercial 4.0 International



License (CC BY-NC 4.0)

Nusantara Al-Washliyah Medan.

- a. To find out the difference between default and fraud in accounts payable agreements.
- b. To find out the obstacles faced in resolving cases of default with fraud in the debt agreement.
- c. To find out the efforts made in resolving cases of default with fraud in accounts payable agreements.

2. METHOD

In accordance with the title of the author's research, namely: Analysis of the Difference between Default and Fraud in Debt Agreements. Based on various considerations, the authors chose research at the Medan District Court Office. Medan District Court is located on Jl. Court, Kelurahan no. 8, Central Petisah, Medan Petisah sub-district, Medan City, North Sumatra Province. The city of Medan is one of the largest cities in Indonesia with a population of 2,460,858 people and the economic level of North Sumatra grew by 3.90%, an increase compared to the previous quarter which was 3.81%.

The type of research used is by using a normative and empirical legal research approach. Sources of data obtained are from primary law, secondary law and tertiary law.

Agreement or agreement is a translation of *Overeenkomst*. Article 1313 of the Civil Code (KUH Perdata) states "an agreement is an act in which one or more people bind themselves to one or more other people". According to Subekti, "Agreement is an event where a person promises to someone else or where it promises to each other to do something".

The form or type of agreement is not regulated in detail in the law, but in the use of contract law by the community with the interpretation of the articles of the Civil Code there are different forms or types of course. In every reciprocal work there are always 2 (two) kinds of legal subjects, each of which has rights and obligations reciprocally in carrying out the agreement they made.

Each Agreement adheres to a freedom of contract, which gives freedom to enter into and determine agreements that do not conflict with the laws of morality and public order, while Article 1338 paragraph (3) of the Civil Code states that agreements must be carried out in good faith.

Default comes from the original term in the Dutch language "*wanprestie*" which means the nonfulfillment of the achievements or obligations that have been set for certain parties in an engagement, whether an engagement born of an agreement or an engagement arising out of law.

Default provides legal consequences for the party who commits and brings consequences to the rights of the injured party to sue the party who defaulted to provide compensation, so that by law it is expected that no one party will be harmed because of the default.

Fraud comes from the word *deceit* which means that according to the Big Indonesian Dictionary is an act or word that is dishonest (lie, fake, etc.) with the intent to mislead, outsmart, or seek profit. This deception itself means the process, method, deception. The crime of fraud is included (material delict) which means that for its perfection there must be consequences.

Debt in terminology means money lent from other people the obligation to pay back what has been received. Meanwhile, in terms of debt is a liability that must be paid off within a certain time. Obligation to pay off lead debt as an achievement (reward) that has been received by the debtor.

According to the Big Indonesian Dictionary, accounts payable are money that is borrowed from other people and lent to people. In terms, debt receivables are known as *Al-Qardh*. Etymologically, the word *Al-Qardh* means *Al-Qath'u* which means pieces. Thus, *Al-Qardh* can be understood as property handed over to the debtor, because the property handed over is a deduction from the property that gives debt.

3. RESULTS AND DISCUSSION

A. Differences between Default and Fraud in Accounts Payable Agreement

a. Default.

Default is the negligence of the debtor in fulfilling the achievements specified in an agreement. According to Article 1234 of the Civil Code, what is meant by achievement is someone who gives up something, does something and doesn't do something, otherwise it is considered a default if someone:

- a. Didn't do what it was supposed to do.
- a. It does what it promises, but not as promised.

Fox Justi is licensed under a Creative Commons Attribution-NonCommercial 4.0 International

- b. Did what was promised but too late.
- c. Doing something that the contract is not allowed to do.

As a result of default, sanctions can usually be imposed in the form of compensation, contract cancellation, risk transfer, or paying court fees. For example, a debtor (the debtor) is accused of committing an unlawful act, negligent or intentionally not carrying out according to what has been agreed in the contract. , if proven, then the debtor must compensate (including compensation + interest + court fees). Nevertheless, the debtor may defend himself on the grounds:

- a. Force Majeure (Overmacht/Force Majeure).
- b. The creditor's own negligence.
- c. The creditor has relinquished his right to claim compensation

b. Fraud

Fraud is an act as regulated in the provisions of Article 378 of the Criminal Code in Chapter XXV concerning Cheating. The full text of Article 378 of the Criminal Code is as follows:

Goods with the intention of profiting oneself or others unlawfully, by using a false name or false dignity by deceit, or a series of lies, moving others to hand over something to him, or fraud with a maximum imprisonment of four years.

Based on the formulation of the article, the elements in the fraudulent act are: 1. With the intent to benefit oneself by breaking the law.

- 2. Motivating people to give up something or to give debts or write off receivables.
- 3. By using one of the methods or means of deception (using a false name, false dignity, deception, a series of lies).

When the debtor is able to pay off the debt to the creditor, it can be said that he has achieved. However, if there is a traffic jam or the debtor does not fulfill its obligations to perform (pay off the debt) or does not act (break a promise on the debt) to the creditor, it can be said to be in default. That the difference lies in the debtor's intention to default. So the elements that must be met if a civil case is in the form of a breach of contract can be reported as a criminal fraud if the agreement has been made using a false name, false dignity, deception or a series of lies.

So it can be understood that the difference between default and fraud in the debt agreement is that the debtor continues to perform but is only able to pay off part of his debt to the debtor and cannot pay off all his debts to the debtor.

B. Obstacles Faced in Resolving Default Cases with Fraud in Debt Agreements

In this case, there were several obstacles that occurred the contents of the plaintiff's special power of attorney were incomplete. In this case Defendant 1 could not complete the construction because the building permit was not issued for the land contained in the Certificate of Ownership no. 520 By the Department of Settlement and Spatial Planning Medan City. And in this case also Defendant II could not submit the Certificate of Ownership No. 520 to the plaintiff due to the absence of consent from the defendant I.

C. Efforts Made in Resolving Default Cases with Fraud in Accounts Payable Agreements

In connection with the case that occurred at the Medan District Court between Zulkarnain and Mr. Zalim where Mr. Zalim was proven to have defaulted with Ownership Certificate No. 520 who wanted to build 4 (four) shop houses (shop houses) but it was known that since the agreement on June 10, 2015 it had not been implemented. the development.

Default as the implementation of obligations that are not timely or carried out according to their own rules, giving rise to the obligation for the debtor to provide or pay compensation (schadevergoeding) or in the presence of a default by one of the other parties can demand the cancellation of the agreement. applies as law for the parties who make it. Because it applies as law, the agreement is binding on the parties to obey it.

This is in accordance with Article 1338 of the Civil Code that "That the debtor is declared

negligent by a warrant or similar deed, or based on the strength of the engagement itself, namely if this engagement results in the debtor being deemed negligent by the passage of the specified time".

From the formulation of Article 1238 of the Civil Code above, it can be seen that there are two conditions when a person is considered negligent or in breach of promise.

1. In the event that a time is stipulated in the agreement, but with the lapse of that time (maturity) the debtor has not yet carried out his obligations.
2. In the event that a certain time is not determined, then the creditor has notified the debtor to carry out his obligations or achievements, but the debtor still does not carry out his obligations to the creditor.

Meanwhile, Article 1244 of the Civil Code (KUHPdata) states that "Debtors must be punished to compensate for costs, losses and interest. If he cannot prove that the non-performance of the engagement or the inaccuracy of the time in carrying out the engagement is caused by an unforeseen event that cannot be insured against him. Although there is no bad bond with him. Regarding civil compensation, it focuses on compensation due to non-fulfillment of the engagement (default).

Compensation is like,

- a. Fees or costs that have been incurred
- b. Actual loss due to damage, loss of creditor's property due to debtor's negligence
- c. Expected interest or profit.

The legal settlement in the case of default on the debt agreement carried out by Zulkarnai against Mr. Salim and Mrs. Devi Juliastuti was pursued through the courts. Mr. Salim and Mrs. Devi Juliastuti as defendants never attended the trial even though he had been legally and properly summoned, so the judge decided to impose a *versteek* verdict on this case.

4. CONCLUSION

So it can be concluded that the difference between default and fraud in the debt agreement is that the debtor continues to perform but is only able to pay off part of his debt to the debtor and cannot pay off all his debts to the debtor. In this case, there were several obstacles that occurred the contents of the plaintiff's special power of attorney were incomplete. In this case Defendant 1 could not complete the construction because the building permit was not issued for the land contained in the Certificate of Ownership no. 520 By the Department of Settlement and Spatial Planning Medan City. And in this case also Defendant II could not submit the Certificate of Ownership No. 520 to the plaintiff due to the absence of consent from the defendant I. The legal settlement in the case of default on the debt agreement carried out by Zulkarnai against Mr. Salim and Mrs. Devi Juliastuti was pursued through the courts. Mr. Salim and Mrs. Devi Juliastuti as defendants never attended the trial even though he had been legally and properly summoned, so the judge decided to impose a *versteek* verdict on this case.

5. REFERENCE

- Abdul R. Salim, *The Essence of Indonesian Business Law*". Jakarta, Kencana, 2004
Abdul R. Salim, *Business Law for Companies*, Kencana, Jakarta 2005
Ministry of Education and Culture, *Big Indonesian Dictionary*, Balai Pustaka, Jakarta, 2006
Factur Rahman, *Inheritance*, Bandung, Al-Ma'rif, 1981
M. Sudradjat Bassar, *Certain Criminal Acts*, Remadja Karya CV: Bandung, 1986
M. Yahya Harahap, *Aspects of Covenant Law*, Bandung: Alumni, 1986
Mariam Darus Badruzaman, *Compilation of Engagement Law*, PT Citra Aditya Bakti, Bandung, 2001
Moeljatno, *The Criminal Code*, Earth Literacy, Jakarta, 2011
R. Subekti, *Legal Aspects of the National Union*, Alumni, Bandung, 1984
Salim Hs, *Contract Law, Contract Drafting Theory and Techniques*" Sinar Graphic Publisher, Jakarta, 2003