


Review Legal to Agreement Borrow Borrowing Money Declared Void by Law (Case Study of Decision) Number 451/ Rev.G /2012/ Pn.Jkt.Bar)

Tomy Joshua Daily¹, Tri Reni Novita²

¹Fakultas Hukum, Universitas Muslim Nusantara Al-Washliyah, Medan, ²Fakultas Hukum, Universitas Muslim Nusantara Al-Washliyah, Medan

Article Info	ABSTRACT
Keywords: Agreement; Default; Borrowing;	Where in this case the plaintiff has been legally proven to have defaulted by not fulfilling his obligations in paying debt installments that began on November 30, 2011 until the sending of warning letters. In this case the Plaintiff did not make achievements as agreed by both parties. So that the Defendant suffered a loss caused by the Plaintiff because he was late paying his penalty. Literature review In this thesis, among others, the basic concepts of the agreement and the elements of the agreement, the legitimate terms of the agreement, the principles of the agreement, the borrowing agreement to borrow money, the null and void agreement, the General Review, and the Fiduciary Understanding. This article uses a normative juridical research method or library research and is prescriptive that focuses on formulating recommendations about the steps that must be taken in solving certain problems. The results of this study are PT Bangun Karya Lestari fulfilling the elements of default, namely the existence of an agreement, a loss, an error, and the existence of a sanction. The Panel of Judges has a position in resolving the law on disputes between PT Bangun Karya Lestari and Nine Am Ltd. In this case an agreement between English-speaking countries must follow the rules stated in Article 31 paragraph (1) of the Language Law, which means that the Loan Agreement is obliged to speak Indonesian.
This is an open access article under the CC BY-NC license 	Corresponding Author: Tomy Joshua Daily Faculty of Law, Al- Washliyah Muslim University, Medan Tomyosuaharianja@umnaw.ac.id

INTRODUCTION

Draft default hold role important in guard balance and justice between the parties involved in a agreement. When one of the party No fulfil his obligations, things the can harm party others who have fulfil his obligation in accordance with agreement said. Therefore that, it is necessary existence real and firm regulations concerning default in law civil. In doing a action law like agreement will cause existence a engagement. engagement the is the relationship that arises between second interconnected parties self where one of party own rights and other parties have obligation. Fulfillment rights and obligations from engagement the that's what it 's called with achievement. If achievement in a agreement the No can fulfilled, then will result the occurrence default (Adati, 2016).

As review to problem default said, then studies case This analyze Decision Number 451/ Rev.G /2012/ PN.Jkt.Bar Decision the to cut off case default in a agreement borrow borrow between The plaintiff acting as Debtor with Defendant as Credit. Plaintiff in matter This has proven in a way clear has do default (injury) promise) with No fulfil obligations Plaintiff in pay debt installment starts since November 30, 2011 until with sent it letter warning. In case This defendant do default Where plaintiff late do performance with fulfil his obligations as has agreed in agreement. Plaintiff late to pay installments that should be paid to plaintiff as of November 30, 2011. The plaintiff also did not carry out performance as per what has been agreed second split parties. So that defendant experience losses caused by the plaintiff Because late to pay receivables.

Terms of agreement originate from Dutch, namely *overeenkomst* and *verbintenis*. Agreement translated from the word *Toestemming* which means as *wilsovereenstemming* (conformity will / consent together). Definition agreement covers action One or more the binding party himself to other party. A agreement is connection law between two people or more, where one party obliged fulfil request party others. In addition, the agreement is incident laws involving a person who promises to another person or where two parties each other promise For carry out a (Subekti, 2010). According to Article 1754 of the Civil Code, the agreement borrowing money is an agreement in which one party give a number of the goods to be finished Because usage to party others, with condition party recipient must return goods in the same amount, type and condition. Article 1 Paragraph 7 of Regulation Government Number 9 of 1995 states that loan is provision of money or equivalent claims, based on agreement borrowing and lending between cooperatives and parties others, which requires borrower pay off his debt in term time certain as well as pay reward certain (Gaol, 2019).

With existence Incident Injury Promise according to Agreement Borrow Borrowing (*Loan Agreement*) and with sent it letter warning July 10, 2012 as has Defendant described in point 21, the Plaintiff proven has do action default to Defendant and should be Plaintiff must finish his obligations to Defendant including For pay debt main and replace all costs and interest incurred consequence action default Plaintiff to Defendant. Defendant has also tried For do execution guarantee fiduciary including to obtain determination Tenggara District Court and through West Jakarta District Court has do Anmaning to Plaintiff. However Plaintiff reject For in a way voluntary do payment. Plaintiff even do efforts For obstruct Defendant carry out his rights based on agreement Fiduciary, including submit resistance against Implementation Execution guarantee Fiduciary. Therefore That loans that are not paid off must handled with good solution use methods based on family For reach agreement or through settlement legally.

RESEARCH METHODS

Types used in study This is type method legal normative or study bibliography, which is done with researching ingredients library and only using secondary data. Data collection was carried out through collection document secondary, as well as to obtain data sources that include material relevant primary, secondary and tertiary laws with type study normative For

obtain the necessary supporting data. Research law nature prescriptive, namely research that focuses For formulate recommendation about steps to be taken taken in finish problem specific. The purpose is For produce argument, theory, or draft new that can become guide in overcome existing problems. Prescriptive means that object knowledge law covers conformity between legal norms and principles law, conformity between rule laws and legal norms, as well as conformity between behavior individual with legal norms (Hartono, 1994).

RESULTS AND DISCUSSION

Elements of Default in the Loan Agreement Between PT Bangun Karya Pratama Lestari and Nine AM Ltd

Article 1313 of the Civil Code states : “ The agreement is a action with which one person or more to tie up himself to one other person or more ”. So, an agreement was realized shaped agreement or contract nature binding and mandatory obeyed by all parties involved. In fact, as set up in Article 1338 paragraph 1 of the Civil Code, an agreement that has been made made and agreed own strength the same law with Constitution for the makers. This means that every bound party in contract the own obligation For operate Contents agreement with full not quite enough answer, as they must comply provision applicable law. Article 1315 of the Civil Code affirmed : "In general somebody No can stage engagement or agreement besides For himself ". Except for Article 1317 of the Civil Code which states : " An agreement may also be made held For interest party third, if a agreement made For self alone, or a giving to others, contains a condition kind of that ”. Agreement in Article 1318 of the Civil Code applicable for the maker, the expert his heirs, and the party receiving right from agreement the.

Default own a number of element main, among others is existence valid agreement according to law, mistakes made by the debtor Good Because negligent and also deliberate, and the emergence loss for other parties. In addition, default also gives rise to consequence law in the form of sanctions, which can in the form of payment change loss, cancellation agreement, transfer risk to debtors, as well as obligation pay cost case if problem This must completed through track law. In practice, default happen when a debtor No fulfil his obligation as has agreed in agreement, so that harm other parties involved. Therefore, that, the party who feels disadvantaged entitled submit demands, good in form cancellation agreement, cancellation accompanied by demands change loss, fulfillment agreement in accordance agreement beginning, or fulfillment completed agreement with demands change make a loss on losses experienced.

Based on the case between PT. Bangun Karya Pratama Lestari and Nine AM Ltd elements default can outlined as following :

a. The existence of a valid agreement

Second party make Loan Agreement agreement or Agreement Borrow Borrowed on July 30, 2010 between Plaintiff and Defendant. Agreement This has translated in a way official to in Indonesian by translator sworn and then called as a “Loan Agreement.” In agreement said, the Defendant give loan to Plaintiff of USD 4,999,500 (four million nine hundred and nine tens nine thousand five hundred United States dollars). As guarantee

on debt said, between Plaintiff with The defendant has made Act Agreement Guarantee Fiduciary for Goods dated 30 July 2010 Number 77 made before Popie Savitri Martosuhardjo Pharmanto, SH., Notary & PPAT in Jakarta.

b. There was an error (because negligence and intent)

Based on Article 2.1 *Loan Agreement* determine that " payment" or payment return loan along with the flowers will done as as follows : (a) 48 installments monthly amounting to US\$ 179,550 (one hundred seven tens nine thousand five hundred and fifty rupiah) per month, as meant in Appendix 1, where installment First must paid One month after loan transfer date to account Debtor as explained in Article 1 above, whereas installment the rest will follow after that ; (b) Final interest payment of US\$ 1,500,000 (one million five hundred thousand United States Dollars) which is mandatory paid on date payment final installment loan. PT Bangun Karya Lestari submitted return of loan money that has been given by PT Bangun Karya Lestari to Nine AM Ltd with method in installments, because company similar contractors with The company PT Bangun Karya Lestari has experience decline income consequence from lethargy business service contractor at the time This is in Indonesia". The case This impact big on PT Bangun Karya Lestari, which failed fulfil obligation payment of debt to Nine AM Ltd as follows set up in Agreement Borrow Borrowing (Loan Agreement), as explained in point 14. One of the proof default the is letter warning (summons) sent by Nine AM Ltd on 10 July 2012. via letter warning (summons) as Nine AM Ltd mentioned above, then based on provisions of Article 11 of the Agreement Borrow Borrowing (Loan Agreement), PT Bangun Karya Lestari stated has Injury Promise (breach of contract). With Thus, PT Bangun Karya Lestari in matter This has proven in a way clear has do Injury Promise (breach of contract), because PT Bangun Karya Lestari has No fulfil PT Bangun Karya Lestari's obligations to pay his debt to Nine AM Ltd which commenced since Nine AM Ltd's invoice dated 30 November 2011 (for payment installment 11 September 2011) until moment This with principal amount of debt in a way overall amounting to US\$ 8,083,154 (eight million eight tens three thousand one hundred fifty four United States Dollars); so with existence Incident Injury Promise (breach of contract) according to Agreement Borrow Borrowing (Loan Agreement) and with sent it letter warning (summons) dated July 10 2012 (exhibit T-6) as As Nine AM Ltd has described in point 16 above, PT Bangun Karya Lestari has been proven in a way clear has do action injury promise (breach of contract) to Nine AM Ltd, and PT Bangun Karya Lestari should finish all his obligation to Nine AM Ltd, including obligation For pay principal debt and interest, as well replace all costs incurred as consequence from action injury PT Bangun Karya Lestari's promise (breach of contract) to Nine AM Ltd.

c. There is a loss

PT Bangun Karya Lestari carries out default in Reconvention, which led to The Applicant for Cassation experienced loss. Total loss suffered The Applicant's appeal amounted to USD 8,083,154 (eight million eight tens three thousand one hundred fifty four United States dollar);

d. The Existence of Sanctions

Based on the contents of Article 7 of the Loan Agreement regarding Payment for Decrease in Collateral Value reads : " Agreement" creditors as meant in Article 3 above For accept diversion right on tool as replacement Loan interest payments based on assumptions that residual value (remaining) of the tool after used during four year is of US\$ 1,500,000 (one million five hundred thousand United States Dollars)". Calculation This referring to the assumption that every Caterpillar 777 truck in operation maximum 400 hours per month during four years of loan period. If there are the truck used exceeding the limit, the Debtor must pay USD 40 per hour to Creditors For every excess operating hours of five trucks. Payment This must implemented simultaneously with installment month next.

If happen default, the injured party entitled to cut off agreement with fulfil a number of provision law. The conditions that must be met be noticed is default must is serious violations of rights For cancel agreement Still applies, as well as termination must done in the right time, namely before the agreement process, its formation, or its implementation ongoing.

Judge's Consideration Regarding Decision Number 451/ Rev.G /2012/ PN.Jkt.Bar. Regarding Panel of Judges Rejects All the Arguments of the Lawsuit Defendant In Dispute Default Agreement Borrow Borrow

The judge decided For grant lawsuit Because agreement the No in accordance with Article 31 Paragraph (1) of the Language Law, which requires it use Indonesian in agreement. Law This applicable since July 9, 2009, so that all the agreement made after date the must use Indonesian if involving countries, agencies government, institution private national, or Indonesian citizens. If not, then agreement the considered violate Constitution Number 24 of 2009 concerning Flag, Language and National Emblem and National Anthem. In progress a case, the role of the judge in take decision very much crucial. The judge must capable review, evaluate, and consider every facts and evidence that emerge during trial. Evidence the covering document written, description witness, allegation, confession, up to oath given in front court. For ensure the decision that was made fair and responsible answer, the judge must process information the with careful, considerate aspect law, and guard professionalism and objectivity in operate his duties. In addition, the judge also has obligation For dig, understand, and follow development values law and a sense of justice in society so that decisions are taken No only in accordance with provision law, but also can accepted in a way widely by the community.

The panel of judges in his considerations explain that condition legitimate a agreement can shared become condition *Non- Essentials* and *Essentials*. Conditions *Non -Essentials* covering existence agreement between the parties For each other to tie up self as well as skills law in make a engagement. If the terms This No fulfilled, agreement the still considered There is but can canceled by the party who feels it disadvantaged. On the contrary, the terms *Essentials* in a agreement covers existence clear object as well as objective or lawful cause. If the conditions This No fulfilled, then agreement the null and void Because since beginning considered No valid. In case *Loan Agreement* between PT Bangun Karya Pratama Lestari and Nine AM, the agreement the made after Constitution Number 24 of 2009 was enforced.

However, because *Loan Agreement* the No arranged in Indonesian as required by Article 31 Paragraph (1) of the law said, then agreement This considered contradictory with law. This is show that agreement the made with prohibited causes, as set up in Article 1335 and Article 1337 of the Civil Code.

Nine AM appeals to DKI Jakarta High Court, but still lost from PT Bangun Karya Pratama Lestari. Did not receive decision that, Nine AM submitted cassation to MA. However, on August 31 2015, the Supreme Court refused application cassation from Nine AM Ltd. In the decision *Loan Agreement* No: 1572 K/ Pdt /2015, the panel of judges highlighted importance fulfillment terms and conditions law in a agreement not to null and void. One of the conditions that become base consideration is obligation use Indonesian in every agreement involving institution Indonesian private sector. Based on Article 31 Paragraph (1) of the Law Number 24 of 2009, Indonesian language must be used in agreement made by or with institution private national. Law This applicable since July 9, 2009, so that all agreement made after date the must follow provision the. In progress a case, the role of the judge in take decision very much crucial. The judge must capable review, evaluate, and consider every facts and evidence that emerge during trial. Evidence the covering document written, description witness, allegation, confession, up to oath given in front court. For ensure the decision that was made fair and responsible answer, the judge must process information the with careful, considerate aspect law, and guard professionalism and objectivity in operate his duties. In addition, the judge also has obligation For dig, understand, and follow development values law and a sense of justice in society so that decisions are taken No only in accordance with provision law, but also can accepted in a way widely by the community (Soeparmono, 2005).

Arrangement Language contract there is in Constitution Number 24 of 2009 concerning Flag, Language, National Emblem and National Anthem Article 31 which confirms that :

Paragraph (1):

"Indonesian must be used in memorandums of understanding or agreements involving state institutions, government agencies of the Republic of Indonesia, Indonesian private institutions or individual Indonesian citizens."

Paragraph (2):

"The memorandum of understanding or agreement as referred to in paragraph (1) involving a foreign party also written in the national language of the foreign party and/or English".

The Panel of Judges in its decision stated that the agreement was declared null and void by law, which means ignoring the letter from the Minister of Law and Human Rights of the Republic of Indonesia. No. M.HH.UM.01.01.35 date 28 December 2009, regarding:

According to the Minister of Law and Human Rights, the agreement in English still legitimate in a way formal based on Constitution Number 24 of 2009, except If Regulation The president who regulates matter This has published in accordance provisions of Article 40, namely " *further provisions regarding the use of the Indonesian language as referred to in Articles 26 to 39 are regulated in a Presidential Regulation.* "

The Panel of Judges stated that Regulation President No can to abort obligation use of Indonesian in agreement, as set up in Article 31 Paragraph (1) of the Law Number 24 of 2009,

because his position more low from Constitution. Likewise, letters from the Minister of Law and Human Rights no can change provision in Constitution Because the Loan Agreement was made without using Indonesian, then agreement the considered violate Constitution Number 24 of 2009 and became prohibited agreements. When the law This arranged, maybe No under consideration How development globalization will influence practice making contract international. As a result, the rules This rated not enough in accordance with condition moment this, as seen in dispute *Loan Agreement* between PT Bangun Karya Pratama Lestari and Nine AM.

Article 31 regulates that every contract involving the Indonesian side must using Indonesian. If there is party foreign, the contract must also be made in Language national party foreign the or in English. However, because Constitution Number 24 of 2009 does not set sanctions on violation, rules This Still open For various interpretation. In theory law, rules that are not own sanctions called *lex imperfecta*. As a result, the rule the nature elective (facultative) and not nature force (imperative). If there is the party that does not obey it, no will There is consequence law for party The decision to state that *Loan Agreement* the null and void considered No right and less in accordance with applicable provision. Constitution Number 24 of 2009 has start applicable since July 9, 2009, and the regulations contained therein has arranged with clear so that No cause various different interpretations. In the context of This is Article 31 of Constitution Number 24 of 2009 which regulates obligation use of Indonesian in agreement involving the Indonesian side must understood as provision law special (*lex specialis*) which excludes provision general in the Civil Code. Therefore that, in agreements made by the Indonesian side, both with fellow Indonesian citizens and with party foreign, the use of Indonesian becomes obligations that must be fulfilled obeyed.

The panel of judges at the District Court decided that PT Bangun Karya Pratama Lestari has the right to win case this. In the analysis the law, the judge stated that If a agreement No fulfil the specified conditions in regulation legislation, then agreement the potential considered null and void. One of the relevant provisions is Article 31 Paragraph (1) of the Law Number 24 of 2009, which requires use of Indonesian in agreement involving institution Indonesian private sector. Since implementation Constitution this is on July 9, 2009, every agreement made without using Indonesian is considered No fulfil condition law and can stated No valid. In the context of case This, the panel of judges considered that mismatch with provision Language in agreement the has cause agreement the contradictory with applicable law..

CONCLUSION

Dispute related *loan agreement* that uses two languages show the need settlement through repair in aspect law and awareness individuals involved in agreement. One of the solution law that can applied is revise regulation about obligation use Language in contract. Referring to discussion above, can seen that in a number of decision The Supreme Court, in particular in matter This Decision 1572 K/ Rev /2015 who decided a deed agreement borrow borrow become cancelled Because there is a number of disabled law, the Panel of Judges in court has give assessment and consideration to a number of facts and events that can result in a deed

agreement borrow borrowing that was cancelled by the court. However on the other hand, PT Bangun Karya Lestari has fulfil elements default namely existence agreement, existence loss, existence errors, and the existence of a sanctions. Opportunity For review return The Language Act is very open and able become step repair in system law. Therefore that, it is necessary existence involvement parties who have authority in do revision to law so that the rules about Language in agreement can more clear and not Again cause problem law later day. The panel of judges sat down problem and solve problem law about dispute *loan agreement* between PT Build a masterpiece Pratama Lestari and Nine AM are with look at the rules legislation Which There is And put aside principle freedom contract. dispute *loan agreement* between PT Bangun Karya Pratama Lestari and Nine AM, then can it is said principle freedom contract is A things that are not absolute. In matter This A *loan agreement* in English English must follow rule Which listed in Chapter 31 paragraph (1) Constitution Language, that is *loan agreement* the must use Language Indonesia.

REFERENCES

- Arifin, M. (2020). " *Building " Ideal Concept for Implementing the Principle of Good Faith in Contract Law.*" *Journal of Ius Constituendum*, 5(1), 66-82.
- Hall, IM, & Cahyono, AB (2023). " *Cancellation Agreement In general Unilateral Consequence Default (Study of Decisions) Courts and Comparison in Civil Law Countries.*" *Lex Patrimonium*, 2(2), 11.
- Gaol, S.L. (2019). " *Validity Borrow Borrowing Money Verbally From a Civil Law Perspective.*" *Journal Scientific Aerospace Law*, 9(2).
- Khairandy, R., & Contracting, IBDK (2003). University of Indonesia Postgraduate Faculty of Law. Patrik, P. (1986). "The principle of faith good and proper in agreement." Publishing Agency Undip.
- Pasribu, C., & Lubis, S. (2011). " *The Law of Contracts in Islam* ", Jakarta: CV. Terbit Jaya.
- R. Subekti and R. *Tjitrosudibio, Civil Code, Pradnya Paramita*, Jakarta, 2002.
- Santoso, A. (2012). *Law, morals and justice : A study philosophy law.*
- Satrio, J. (1999). " *Law of Contracts : Contracts in General.*" Alumni.
- Simbolon, NY, & Sh, M. (2022). " *Introduction Legal Science. Introduction Legal studies.*"
- Situmorang, VM (1993). " *Grosse Deed in Proof and Execution.*" *Indonesia.*"
- Mr. Suharnoko, *Law Agreement*, Preface Media, Jakarta, 2004.
- Tirtakoesoemah, AJ, & Arafat, MR (2020). " *Application of Legal Protection Theory for Copyright on Broadcasting.*" *Pena Justisia : Communication Media and Legal Studies*, 18(1).