Diterima : 06 Februari 2025
Disetujui : 18 Februari 2025
Dipublis : 01 Maret 2025
Hal : 272-278

http://journal.unmasmataram.ac.id/index.php/GARA
Jurnal Ganec Swara Vol. 19, No.1, Maret 2025
ISSN 1978-0125 (*Print*);
ISSN 2615-8116 (*Online*)

DEFAULT IN UNSECURED DEBT AND RECEIVABLES AGREEMENT (WANPRESTASI DALAM PERJANJIAN UTANG DAN PIUTANG TANPA JAMINAN)

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ABSTRAK

Melalui perjanjian utang piutang antara pemberi pinjaman dan penerima pinjaman, maka dapat tercipta perjanjian utang piutang dengan siapa saja yang mempunyai kapasitas untuk itu, tidak hanya lembaga keuangan saja. Dengan mengkaji informasi yang diperoleh dari studi literatur, buku, makalah, dan peraturan perundang-undangan mengenai permasalahan yang dibahas, metodologi penelitian normatif digunakan dalam penelitian ini. Data primer, sekunder, dan tersier digunakan dalam penelitian ini. Hasil penelitian ini membuat kesimpulan bahwa, seperti halnya penyelesaian perkara perdata lainnya, penyelesaian wanprestasi diatur oleh hukum acara perdata. Ini berarti bahwa dalam proses penyelesaiannya, dapat dikenakan ganti rugi atau sita jaminan jika diperlukan. Tujuan dari penelitian ini adalah untuk mengetahui konsekuensi dari kegagalan dalam perjanjian hutang piutang tanpa jaminan serta prosedur yang digunakan untuk menyelesaikan kegagalan tersebut. Kesengajaan dan lemahnya iman menjadi faktor yang menyebabkan terjadinya wanprestasi dalam suatu perjanjian. Tanpa jaminan, wanprestasi dalam perjanjian utang piutang dapat diselesaikan baik di pengadilan maupun di luar pengadilan.

Kata kunci: *Perjanjian; Prestasi; Jaminan;Hutang Piutang*

ABSTRACT

Through a debt and receivables agreement between a lender and a loan recipient, a debt and receivables agreement can be created with anyone who has the capacity for it, not only financial institutions. By examining information obtained from the study of literature, books, papers, and laws and regulations regarding the problems discussed, normative research methodologies are used in this study. Primary, secondary, and tertiary data were used in this study. The study's findings lead to the conclusion that the civil procedure legislation governs default settlements, just like it does for the settlement of other civil matters. This means that in the process of settlement, damages or collateral seizure may be imposed if necessary. This study's goal is to determine the repercussions of a breach in an agreement involving unsecured debt and receivables as well as the process that was employed to fix the issue. Intentionality and weakness of faith are factors that cause a breach of a covenant. Without guarantee, default in a debt and receivables agreement can be settled both in court and out of court.

Keyword: *Agreements; Performance; Guarantees;Debts Receivable*

INTRODUCTION

Compared to the past, when humans only needed food and shelter to survive and their families, human needs in today's developing society will become more complicated. Education will develop from time to time according to the general development of the environment. This is because education is an ever-changing process. In social interactions, people are often faced with the problem of their limited ability and desire to meet their needs and desires. One must provide assistance to others when urgent and very forced needs arise. The Civil Code's Article 1754 declares that:(Simanjuntak, 2009)

An arrangement known as borrowing occurs when one party lends another a certain quantity of used items with the understanding that the other party would return the same quantity of products in the same condition and kind. Often, people use debts, also known as credit, to provide loans to other parties to conduct economic transactions (Samsidar, Syamsurianto, Achmad Abubakar, Halimah Basri, & Muh. Azka Fazaka Rifa'i, 2024). People often use

debts and receivables to lend money to others. However, the term "credit" is more commonly used for purchases and banking transactions that are not paid in cash.

People experience debt and receivables agreements in their daily lives, both in small and large amounts. These agreements are often made by the community to receive loans as business capital supported by banks as financial institutions (Utami, 2024). Debt and receivables agreements are not limited to banking institutions; it can be done with anyone who has the ability to do so, through a debt-receivables agreement between the lender on the one hand and the borrower on the other.

As an integral part of the process of human life, the law performs its duty in living life, forming various regulations that govern the human life system. Book III of the Civil Code is often the regulation that governs agreements in the realm of agreements (Salim, 2017). But as time went on, the rule either grew unsuitable or was unable to satisfy community demands. As a result, the laws that govern people's lives must be adjusted to be more in line with the changes that occur in various aspects of life. If two parties agree to do something, an agreement is usually also referred to as an agreement. It is possible that consent and agreement are the same. Where an agreement, also called Overeenkomsten, is "an agreement between two or more parties regarding the property of their property, which aims to bind both parties" (Fernatha, 2021)

The Civil Code's Article 1338 states that "all consents lawfully made shall be valid as law to those who make them." The agreement cannot be revoked unless both parties agree or for legally mandated reasons (Jabalnur, Ruliah, & Haris, 2024). The contract must be carried out honestly. The legal concept known as the "guarantee law", pertains to the establishment of laws and rules governing collateral that govern the protection of creditors' receivables from debtors.

The term "default", which comes from Dutch, is the etymology of "default". This shows that neither the agreement nor the law is followed in fulfilling the responsibilities outlined in it (Aziz & Yasarman, 2022). In a situation where a debtor is deemed to have failed to fulfill his duties intentionally or negligently, it must be determined whether the debtor committed a default. There are two reasons why the obligation is not fulfilled, namely:(Shabrina, 2020)

1. Due to mistakes made by the debtor, either intentionally or unintentionally.
2. The debtor is not guilty in this case due to force majeure.

Formulation of the Problem

The problems in this study are: how does the law of default have an impact on unsecured debt and receivables agreements and how is the process of resolving failures in unsecured debts and receivables?.

Purpose of the Problem

The researcher's reason for doing the study is to find out how the law of default has an impact on unsecured debt and receivables agreements and to find out how failures in unsecured debt and receivables agreements are resolved.

Research Benefits

This study has the benefit of giving a broad picture of the real status of the law in society, or will show in which direction the law must be built in accordance with changes in society. This research can be used as an additional source of research to develop several scientific concepts that will help the development of civil law, especially in terms of agreements, defaults, and debts and receivables. as a source of information for all relevant and academic parties to increase knowledge of civil law in this matter, especially with regard to agreements, achievements, debts and receivables, and guarantees.

METHODS

Normative juridical research is the kind that is employed, which means that the research studies existing rules or standards related to the issue in question. This study uses the nature of descriptive research. Research on the status of research subjects related to certain phases of their lives leads to normative legal research, that is, a type of legal writing that is based on the nature of normative legal science, that is, to ascertain the legal ramifications of the elements that contribute to the unsuccessful completion of receivables agreements and unsecured debts, as well as the methods involved. This research uses qualitative methods to analyze data, and the focus is to gain an understanding of issues related to social life based on complex and detailed situations from the real world. The main questions that will be answered in the preparation of this thesis are answered qualitatively by first obtaining qualitative data methodically, then analyzing the material to provide the right response. In addition, analysts conduct a descriptive analysis of the data collected to provide a thorough picture of the facts and symptoms of defaults on

debt agreements and unsecured receivables from a legal point of view. And finally, to answer the formulated problem, draw conclusions by inductive method.

RESULT AND DISSCUSION

Simply an agreement recognized by law is called an agreement. In the business world, this goal is very important. They determine many transactions such as the sale and purchase of goods, land, credit, insurance, transportation, company formation, and also regarding labor. The translation of "overeenkomst" is "consent", "Consent is an act in which one or more persons bind themselves to one or more persons," in accordance with Civil Code Article 1313. Subekti defines an agreement as a situation in which two people make a commitment to one another or to one another (Subekti, 2005)

Considering the restrictions outlined in Article 1313 of the Civil Code concerning the definition of agreements, civil law experts generally believe that the idea of agreements in Article 1313 of the Civil Code is insufficient, too broad, and flawed in many ways (Taufik Hidayat Lubis, 2022). This is not enough because it only discusses unilateral agreements. This is too broad because it can include marriage vows, which are family law activities that can result in agreements. The fact that it is subject to its own rules makes it special. Therefore, The Civil Code's Law III does not immediately address illegal activity, even though there is no element of consent in this unlawful act.

An agreement, also called verbintenissen, is a legal relationship or rechtbetrekking that is regulated and legalized by law. An agreement that covers the legal relationship between an individual and an entity is within the legal environment. That is why the legal relationship in the agreement is different from the relationship that can arise by itself in the family property. As regulated in inheritance law, the legal relationship between the child and his parents' wealth arises in the legal relationship of family wealth. other than the agreement (Zahra et al., 2025). A binding agreement must have at least one party who has obligations. Otherwise, the agreement is considered non-binding.

According to Civil Code, paragraph (1) of Article 1338: "All agreements that are legally entered into are valid as law for those who make them" (Setiawan, Sutrisno, & Firdaus, 2020). The freedom of contract concept states that the law is never related and there is no need to know the reason behind the making of the agreement; What is important is that the actions promised by the parties to the agreement do not contain elements that are contrary to the law, decency, or public order. From a legal point of view, contract law is a legal phenomenon that always appears in social life. It is undeniable that contract laws differ from each other because the agreements that apply in society have unique characteristics. Agreements have different forms or types.

There is no law that specifically stipulates the form of this agreement, but there are several types of agreements, as stated in the Civil Code article. Each reciprocal work has two legal subjects, each with the right and obligation to execute the agreement. Article 1320 of the Civil Code stipulates the following conditions that must be fulfilled for an agreement to be deemed valid: (Samudra & Hibar, 2021)

1. Acknowledge those who bound themselves.
2. Capable of signing a pact
3. In relation to a certain issue
4. A cause that is halal.

It is possible for one of the parties to each agreement not to implement or fulfill the content of the agreement that they have agreed to. One party is considered in default if they do not do what they promise or fulfill the obligations set out in the agreement. In other words, the party did not do what was promised in the agreement. Default is defined as the inability or failure to fulfill the duty under the agreement between the debtor and the creditor. The creditor's power to pursue damages for expenses, losses, and interest incurred due to the bond's non-fulfillment is a crucial outcome. According to the law, One significant effect of the bond's non-fulfillment is that the creditor has the right to pursue damages for the expenses, losses, and interest it incurs.

In the event that the debtor is found to have failed to keep his word, he will only have to pay compensation and interest for not fulfilling the promise, continuing to ignore it, or if the deadline for something has passed. In a situation where a person is deemed negligent or negligent to perform his duties, it must be determined to determine whether the debtor is liable for the breach. In most cases, one party to the agreement will suffer a loss as a result of the other party's inability to perform a task. Granted, the party who suffered the loss did not want it, but if that happened, they could only try to make the loss as small as possible.

As a party that suffers losses due to failure, the other party can choose between various options, such as;(Dimpudus, 2021)

1. The aggrieved party demanded the implementation of the agreement
2. The aggrieved party seeks compensation
3. The aggrieved party demanded the implementation of the agreement accompanied by compensation

4. The aggrieved party demanded the cancellation of the agreement
5. The harmed party requested that the contract be terminated and that they be compensated.

A consequence will definitely occur if a breach or breach of promise occurs in an agreement, namely:(Dirkareshza, Taupiqqurrahman, & Azaria, 2021)

1. The alliance remains. If the debtor fails to fulfill the promise, The right to insist that the promise be carried out remains with the creditor. In addition, in the event that the action is delayed, creditors may demand payment. Therefore, if the debtor completes his achievements on schedule, then the creditor will benefit.
2. Compensation must be paid by the debtor, according to Article 1243 of the Civil Code.
3. If an obstacle arises after the debtor defaults, the debtor's loss becomes the new burden of risk, unless the creditor makes a major mistake or an unintentional act. Thus, compelling circumstances are not allowed for the debtor.
4. Article 1266 of the Civil Code allows creditors to avoid providing counter-merit if the warning results from a mutually beneficial arrangement.

For parties who do not fulfill their promises, even if they have been agreed, there are various forms of consequences. Here are the types of defaults ;(Febiyanti, Darmoko, & Dr.Karim, 2020)

1. Default in the form of not fulfilling achievements.
2. Default in the form of being late in fulfilling achievements.
3. Default in the form of not being perfect meets achievements.

Determining whether a debtor is deemed to have not completed the agreement is extremely challenging. This is due to the fact that when an agreement is made, the parties frequently fail to decide when it should be put into effect. Breaking a promise does not happen by itself, even in agreements or engagements that set a time to complete achievements. To find out if the debtor is not fulfilling the obligation, you just need to follow the agreement. The person did not fulfill the agreement if he committed the prohibited act.

In the science of treaty law, the doctrine of the fulfillment of substantial achievements—meaning that even if one party does not carry out its accomplishments thoroughly, it is still a form of unfulfilled achievement. Nonetheless, if he had achieved significant results, then others should also achieve the same results. A party is considered not to have materially implemented the agreement if it has not substantially carried out its achievements.

The Civil Code's Third Book, Chapter ThirteenDebts and receivables, which are equivalent to lending and borrowing arrangements, are discussed in the Civil Code. The Civil Code's Article 1754 makes it rather evident that; A deal whereby one party delivers another a certain quantity of outdated items in exchange for the other party returning the same quantity of the same kind and condition of products. The term "borrow-borrow" refers to this agreement (Sinaga, Chander, & Yasid, 2021)

The most basic requirement is that we understand what debt and receivables are, as specified in Civil Code Article 1754, which governs the interpretation of agreements pertaining to debt and receivables. A debt is an obligation, either directly or indirectly, to pay money arising from a contract or legislation, which the debtor must comply with. The creditor may take it from the debtor's assets if it is not paid (Akbarudinoor, Arifin, & Havidi, 2022). However, receivables are a promise made by creditors to debtors to get certain money, goods, or services. The creditor has the right to get the funds from the debtor's assets if the debtor is unable to satisfy it.

Debts and receivables usually mean giving something to someone with the promise that he will return it for the same value. One type of transaction that can be carried out at all levels of society, both in conventional and contemporary society, is debts and receivablesAs a result, these transactions have existed and been understood by humans since the beginning of human relations on our planet. Every action related to a business must go through an initial process, known as an "akad". Akad is an agreement made deliberately by two or more people, with their respective agreements, before the agreement occurs. Obligations resulting from previous transactions that must be settled in the future with cash, products, or services are called debts. Debt is divided into two, namely;(Rosita & Gantino, 2017)

1. Current obligations or short-term debts
2. Extended-Duration Debt

Not all collateral can be collateralized by banking or non-bank institutions, however, certain eligible items can be collateralized. A collateral must meet the following criteria:(Setiono, 2018)

1. Can help those in need in obtaining credit easily;
2. Does not reduce the ability of credit seekers to continue their business;
3. Giving assurance to the creditor that the guarantee can always be used and can be cashed out easily to pay off the creditor's debt.

In the absence of a principal agreement (debts and receivables), a guarantee gives the creditor assurance that the debtor will carry out its responsibilities, which can be assessed in monetary terms arising from an agreement. In essence, the guarantee agreement is an accessory. Principal and accessory agreements are the two main categories of material agreements (Siregar, Putra, Daeli, & Fa, 2024). An agreement to obtain a credit facility from a financial

institution, both banking and non-bank, is known as a principal agreement. The principal agreement, according to Rutten, is an agreement that has its own basis for its existence (welkezelfanding een negen van berstaan recht) (Achmad & Indradewi, 2024).

The law of guarantee has several important principles that must be known, namely : (Mulyana Pasaribu, Hanifah, & Bahmid, 2022)

1. The Pulicitet Principle, which means that every right, including dependent rights, fiduciary rights, and mortgage rights, must be recorded. The Office of the Regency/City National Land Agency handles registration; the Office of the National Land Agency handles dependent's rights; the Office of the Department of Law and Human Rights handles fiduciary; and the registration and re-registration officer handles ship mortgage to inform the third party that the collateral is being encumbered.
2. The principle of Specialitet, that is, Fiduciary Rights, Dependents, and mortgages are only applicable to bundles of commodities registered in a particular individual's name;
3. Dependents' inalienable rights, fiduciary, mortgages, and the indivisible debt concept does not apply to the division of pawns.
4. The idea behind bezitstelling, means that the pawnbroker has collateral;
5. Horizontal foundations, that is, soil and structures are not integrated. The application of state property and land use rights demonstrates this. The dependant or the person in question owns the structure, but someone else has the right to utilize the property;
6. The Schuld and Haftung principle, that is, each individual is responsible for their debts, which can be paid for by providing wealth, both movable and immovable, if necessary to pay off such debts;
7. The principle of trust, that is, every person who gives a debt to another person must believe that the debtor will fulfill his achievements in the future;
8. Moral principles, namely that everyone is obliged to fulfill their promises (strengthened as legal norms);
9. The principle of creditorium paruness, that is, a person who has several creditors, then the position of the creditors is the same;
10. The principle of balance, namely that each creditor obtains its receivables in balance with the receivables of other creditors;
11. The general principle is that there are equal rights of creditors over the debtor's assets.

Basically, not all collateral can be guaranteed by banking institutions or non-bank financial institutions; However, the guarantee can be guaranteed if certain conditions are met. A collateral must meet the following criteria: (Nagita Pujiastuti Djafar, Nirwan Junus, & Mohamad Taufiq Zulfikar Sarson, 2023)

1. Can help those in need in obtaining credit easily;
2. Does not reduce the ability of credit seekers to continue their business;
3. Giving assurance to the creditor that the guarantee can always be used and can be cashed out easily to pay off the creditor's debt.

Thus, the doctrine of the exception not fulfilled agreement is no longer valid if significant achievement of the agreement in question has been implemented, a doctrine that states that if one person does not do something, others can do it too.

CLOSING

Conclusion

Based on what has been said above, this study reaches the conclusion that intentionality and bad faith are the causes of agreements that do not go well. The debtor has a legal obligation that must be recognized if one of the parties fails in the debt and receivables agreement. This obligation is to compensate other parties for the failure to implement it.

Suggestion

The parties to the agreement must fully comprehend its terms as well as each party's rights and responsibilities in order to prevent carelessness or failure that results in one of the parties failing to fulfill its duties. The community must form agreements that comply with applicable laws and regulations, comprehend the terms, and abide by them in order to prevent legal issues. In the event of a default, it should be resolved first out of court or through deliberation. Because, through the legal system in court, it will require many processes, which can take a long time and incur a lot of costs for the parties.

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