

# Efforts to Settle the Defendant's Liability in Fulfilling Obligations Due to Default in the Study of Decision Number 418 K/Pdt/2021

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**Abstract.** This research examines the defendant's responsibility in fulfilling obligations due to default in a contract, using case study Decision Number 418 K/Pdt/2021. Through a juridical normative method and statutory approach, the analysis focuses on how default, when one or both parties fail to perform, causes losses in agreements governed by Book III of the Civil Code. The study aims to enhance understanding of the responsibilities of parties involved in agreements, contributing to better contract compliance.

**Keywords:** Agreement, Default, Responsibility, Court Ruling

## 1 Introduction

Humans as social creatures, in society are always encouraged to do something for the continuity of association between individuals and other individuals. In ensuring the continuity of association and life, humans often enter into agreements between individuals and individuals, individuals and legal entities, and so on. Nowadays, agreements are commonplace for some people to carry out, ranging from simple agreements to agreements contained in contracts.

A legal relationship between two or more parties is established by an agreement to produce a legal effect. That agreement is known as an agreement[1]. In actuality, defaults are frequently encountered in agreements or contracts. Default results from the existence of a contractual relationship. A legal agreement that serves as a safeguard and specifically governs the legal relationship between private and civil interests. Consequently, an agreement must satisfy the criteria for agreement validity outlined in Article 1320 of the Civil Code [2].

In the Burgerlijk Wetboek (BW), which was subsequently translated into the Civil Code (KUHPer) by Prof. R. Subekti, SH, and R. Tjitrosudibio, the law of agreements is regulated in Book III concerning Engagements. This section contains wealth laws regarding rights and obligations that apply to specific individuals or parties. The fulfillment of the conditions established in the Civil Code for the validity of an agreement or contract, which is presently referred to as a contract, is inextricably linked to its existence: 1. The existence of an agreement between the parties involved; 2. The capacity to enter into an agreement; 3. A specific matter;

and 4. For a halal reason[3]. An agreement becomes legally obligatory for the parties involved upon the fulfillment of the four conditions for its validity.

The 'spirit' and 'breath' of a contract or agreement, freedom of contract, implicitly implies that the parties are presumed to have a balanced position when they contract. Consequently, it is anticipated that a balance and equitable contract will be reached between the parties. Nevertheless, in practice, there are still numerous standard contract models (standard contracts) that are perceived as unbalanced, biased, and unjust. Many experts have expressed the opinion that the following stages must be followed in the formation of a contract: agreement of the parties, formation of the contract, review of the contract, negotiation of the making/drafting of the contract, signing of the contract, implementation, and resolution of any disputes that may arise.[4]

Both parties are undoubtedly motivated to accomplish objectives in an agreement; however, it is not uncommon for defaults to transpire. Achievement is derived from the Dutch word "prestatie," which denotes the precision of a pledge to fulfill the terms of an agreement. Conversely, default or breach of promise denotes inadequate achievement. Default occurs when one of the parties fails to fulfill their obligations under an agreement [5].

The law of the agreement also refers to acts that damage others as default, which is the failure to comply with the content of the agreement that has been mutually agreed upon by the two parties, the creditor and the debtor. Agreements establish legal relationships and connections in the form of rights and obligations. Consequently, the content of article 1338 paragraph (1) of the Civil Code is essentially in accordance with an agreed-upon matter in the form of a binding agreement.

Agreements can be classified into two categories: written and informal agreements. A written agreement is a contract that is executed by the parties in the form of a written document, such as an authentic deed or a deed under hand. An unwritten agreement is a verbal agreement between the parties that is merely the result of their agreement.

In essence, the act of establishing a covenant is not restricted by a specific format. The form of the agreement is not explicitly addressed in the Civil Code. Each participant to the agreement is free to negotiate an agreement, whether it be in writing or orally. Freedom of contract is a principle that grants the parties the autonomy to enter into agreements with or without third parties. In this instance, the oral agreement remains legally binding on the parties; however, the parties will encounter challenges in substantiating it in the event of a dispute.

Thus, preferably an oral agreement, it would be better if an agreement or agreement, was written in the form of a contract. Basically, an agreement and a contract are the same, what distinguishes a contract with an agreement is, a contract is an agreement that is written in writing, or simply a contract is a written agreement. So in terms of proof, the contract has strong legal force when compared to an oral agreement.

Nowadays, it is not uncommon to find two or more people who have bound themselves in an agreement that has been outlined in the form of a permanent contract to commit an injury to achievement (default). In civil law, breach of contract is a legal event that often occurs and is a source of dispute between the parties involved in an agreement or contract.

The term "default" originates from the Dutch language and denotes inadequate performance. Negligence, forgetfulness, injury to promises, and failure to accomplish their obligations in the agreement are all examples of default, as defined by the Legal Dictionary[6]. Default is a condition in which the debtor is unable to fulfill the agreement's requirements as a result of negligence or error[6]. The term "default" refers to the situation in which the parties who are expected to achieve do not satisfy their expectations[6]. A poor achievement is a term used to describe a situation in which the debtor or one of the parties to an agreement fails to fulfill their obligations as agreed. Default is a form of poor performance in which the parties fail to execute their obligations in accordance with the terms of the agreement that has been established. Default can occur either due to negligence or intentionality from a party who does not fulfill its obligations. Default committed by a debtor who is negligent in his promise can occur in several forms, namely: the debtor does not do or does not carry out what he has promised or is willing to do, the debtor does not do or does not carry out what he has promised or is able to do, the debtor carries out what he has promised, but it is late from the predetermined time or expires, and the debtor commits an act that according to the agreement is not allowed to be done.

Furthermore, the responsibility of the defendant in fulfilling obligations as a result of default can be found in Decision Number 418 K/Pdt/2021. In this decision, the author will conduct an analysis related to how the responsibility of the defendant should be in fulfilling the decision from the judge. Thus, it is hoped that there will be no default by the parties who agree to implement the agreement, and make the contract agreement a law that binds the parties concerned in accordance with article 1338 of the Civil Code.

Based on this background, the following formulation of the problem was obtained: How to Resolve Liability for Default in Decision Number 418 K/Pdt/2021 and How to Fulfill the Obligations of the Parties for Default in Decision Number 418 K/Pdt/2021.

The purpose of this study is to find out the Efforts to Settle Liability for Default in Decision Number 418 K/Pdt/2021 and to find out the Form of Fulfillment of the Parties' Obligations for Default in Decision Number 418 K/Pdt/2021.

## **2 Method**

The research methodology employed in this investigation is normative juridical. The normative juridical research method is a method of conducting literature law research that involves the examination of secondary data or library materials. This research was conducted on secondary legal materials which include laws and regulations, decisions, and legal theories as well as documents related to the problem.

## **3 Results and Discussion**

### **3.1 Efforts to Settle Accountability for Default in Decision Number 418 K/Pdt/2021**

An "agreement" is defined as "an act in which one or more persons bind themselves to one or more other persons" in accordance with the formulation of article 1313 of the Civil Code. Subekti provided an explication of the agreement, which he defined as "an act by which one or

more persons bind themselves to one or more persons" in accordance with the interpretation of article 1313 of the Civil Code. Furthermore, Subekti stated that "an agreement is a legal relationship between two or more individuals, through which one party has the authority to request something from the other party and the other party is obligated to comply." [7]

Initially, the presence of a binding agreement for the parties involved; The four requirements that ascertain the validity of an agreement, as delineated in Article 1320 of the Civil Code, are: the capacity of the parties to enter into a contract; a stated object; and a lawful cause (*causa*). The subsequent conditions pertain to the validity of an agreement: contract, proficiency, a particular issue, and permissible legal justifications.

An agreement within an agreement is fundamentally a consensus or arrangement among the concerned parties. An individual is considered to have provided his assent if he genuinely wishes for the result of the agreement. Although an agreement may be regarded non-existent or contain legal defects if the following circumstances occur, namely:

- a. Coercion (*dwang*) is the initial category. In this scenario, any act or threat that is an abuse of authority by one of the parties, specifically a threat that is intended to ultimately compel the other party to relinquish rights, is a violation of the law. As a result, the agreement is void.
- b. Second, fraud (*bedrog*). Fraud is a form of deception. The agreement is explicitly canceled due to deceit, as stated in Article 1328 of the Civil Code. The deceived party does provide a statement in accordance with their will in the event of fraud. However, the deception intentionally directs their will to something that is contrary to their actual will, which is the correct action if there is no fraud.
- c. Third, Error or Deviation (*dwaling*). Here, one or more parties have an incorrect understanding of the object or subject of the agreement. There are two types of errors. Initially, a "error in person" occurs when a contract is executed with a renowned artist, but the agreement is subsequently executed with an obscure artist solely because they share the same name. Secondly, a "error in substance" is a blunder that pertains to the attributes of an object. For instance, an individual may acquire a painting of Mona Lissa, only to discover upon his or her arrival at the individual's residence that the painting is a counterfeit or imitation of Mona Lissa.

"Everyone is capable," as stated in Article 1329 of the Civil Code. Then, Article 1330 also specifies that there are specific individuals who are incapable of entering into agreements, including: First, those who are immature; Second, those who are placed under custody; and Third, women in marriage (although women in marriage are now considered legally competent following the promulgation of Law Number 1 of 1974, article 31 paragraph (2)). An adult may be unable to reach an accord if the individual in question is placed under guardianship (*curatele* or *conservatorship*).<sup>b</sup>

A person may be placed under the supervision of another individual if they are insane, ignorant (*onnoozelheid*), frequently becomes uncontrollable (*razernij*), weak-minded (*zwakheid van vermogens*), or wasteful. Therefore, such an individual may cause themselves damage by failing to exercise their common sense. A person who has been declared insolvent is also unable to fulfill specific obligations. An individual who has been declared insolvent is required to enter

into an agreement regarding their property. He is permitted to engage in activities that disclose his bankruptcy, provided that the curator is informed.

The existence of a specific object (een bepaald onderwerp) is the third condition for the agreement's validity. An agreement must be subject to an object (zaak) that can be at least ascertained in terms of its essence, as per Article 1333 of the Civil Code. A specific object is necessary for the establishment of an agreement. A specific subject matter (certainty of terms) must be the focus of an agreement, which pertains to the rights and obligations of both parties. We are able to at least determine the category of products that are intended in the agreement.

The fourth criterion for the agreement's legitimacy is the presence of a lawful *halal* cause. The term *kausa*, originating from the Dutch words *oorzaak* and *causa*, does not signify an occurrence that prompts an individual to engage into a covenant; instead, it refers to the purpose and substance of the agreement. In a sale and buy agreement, the content and goal of the transaction are that one party seeks ownership of an item, while the other party seeks monetary compensation. The Civil Code's Article 1335 Jo 1337 declares a cause to be prohibited if it constitutes a violation of public order, morality, or the law. A cause is deemed to be in violation of the law if the cause in the agreement in question is in violation of the applicable law.

The specified requirements about the subject and goal of the agreement are adequate. The first and second terms are compatible with the subject of the accord or subjective phrases. The objective conditions or subject of the agreement align with the third and fourth criteria. The differentiation between the two terms is pertinent to the concepts of null and void (*nieteg* or *null* and *ab initio*) and the nullability (*vernietigbaar* = voidable) of an agreement.

If the requisite conditions of the agreement are unmet or if the agreement is rendered null and void by law, it is considered as never having occurred. The agreement in question will continue to be valid as long as the subjective conditions are not satisfied or if the court has not canceled the agreement. General Provisions of the Agreement :

a. Summons

The term "sumasi" or "statement of negligence" is a translation of "ingebrekerstelling." Summons are governed by the Civil Code's articles 1238 and 1243. Summons are a form of reprimand issued by the debtor (creditor) to the debtor (debtor) in order to ensure that the agreement is fulfilled by the two parties. The summons arises because the debtor does not meet his achievements, as promised. There are three things that happen to summons, namely[8]: First, the debtor performs the wrong achievement, for example, the creditor receives a basket of apples should be a basket of oranges. Second, the Debtor does not fulfill the performance on the promised day. Failure to meet achievements can be distinguished into two types, namely slowness in implementing achievements and not giving achievements at all. The reason for not carrying out achievements at all is because achievements are impossible to carry out or because the debtor blatantly refuses to give achievements. Third, the achievements carried out by the debtor are no longer useful to the creditor after the promised time has passed.

b. Default

The relationship between default and summons is extremely close. Default is the inability to fulfill or neglect to carry out obligations as outlined in the agreement between the creditor

and the debtor. The term "default" is used to describe a new debtor who has received a summons from a creditor or bailiff. If the summons is disregarded, the creditor is entitled to pursue the matter in court. The court is responsible for determining whether the debtor is in default. The following are the four consequences of default: First and foremost, the alliance continues to exist. Subsequently, the delinquent is required to provide compensation to the creditor. Third, the debtor's loss becomes the responsibility of the creditor if the obstacle arises after the debtor defaults, unless the creditor is guilty of intentional misconduct or make a grievous error. Fourth, the creditor may absolve himself of the obligation to provide counterachievement by utilizing article 1266 of the Civil Code if the bond is the result of a reciprocal agreement.

c. Compensation

Compensation is justified by two factors: default and illicit conduct. A form of compensation that is assessed to the individual who has caused harm to the aggrieved party is compensation for unlawful acts. Compensation for default is a form of compensation that is assessed to debtors who fail to adhere to the terms of the agreement between the creditor and the debtor, as opposed to compensation that is derived from an error.

d. Force Circumstances

The provisions on overmacht (force majeure) can be seen and read in article 1244 of the Civil Code and article 1245 of the Civil Code. Article 1244 of the Civil Code reads: "The debtor shall be liable to recompense for damages and interest unless he can demonstrate that the failure to fulfill the covenant or the mistake in timing was due to an unforeseeable circumstance beyond his control, regardless of his lack of bad faith. Furthermore, in article 1245 of the Civil Code, it reads: "No reimbursement is available for costs, damages, or interest if the debtor is impeded from fulfilling an obligation or from refraining from a forbidden action due to compelling circumstances or coincidence." This provision grants the debtor the flexibility to avoid reimbursing costs, damages, and interest, specifically: Firstly, the occurrence of an unforeseen event prior to the obligation. Secondly, the occurrence of coincidence and/or. Third, persuasive circumstances.

e. Risk

The doctrine of risk is referred to as *resicoleer* in legal theory. *Resicoleer* is a teaching that entails the obligation of an individual to sustain the loss in the event of an occurrence that is not the fault of one of the parties and affects the object of the agreement. This instruction is initiated by an overmacht. Unilateral and reciprocal agreements may be implemented in accordance with this instruction. A unilateral agreement is a type of agreement in which one party is actively involved in the accomplishment of objectives, while the other party is passive. A reciprocal agreement is a contract in which both parties are obligated to fulfill the terms of the agreement [8].

In essence, both Agreements and Contracts are the same thing, as they involve an agreement between one party and another party regarding a specific issue. The primary distinction between a contract and an agreement is that a contract is a written agreement.

Contract discussions are closely tied to the freedom of contract principle, which let the parties to decide on the terms and structure of the agreement. Article 1338 of the Civil Code

illustrates that all contracts adhering to legal standards are deemed valid for the parties concerned. The agreement can only be rescinded by mutual consent or for legal grounds. Moreover, approval must be conducted in good faith.

Despite the fact that the principle of freedom of contract allows the parties to form a contract, a contract must satisfy the conditions for its validity in order to be considered legally binding.

1. In accordance with the provisions of Article 1320 of the Civil Code

In the formation of a contract, adherence to the stipulations of Article 1320 of the Civil Code is essential, which delineates four conditions for the validity of an agreement: First, the presence of mutual consent among the parties; Second, the capacity of the parties to enter into an agreement; Third, the specification of a definite subject matter; and Fourth, a lawful cause (causa). The first and second clauses represent subjective circumstances for contract formation, whereas the third and fourth provisions denote objective conditions for contract formation.

2. Matters stipulated in the contract

A contract is considered to be in compliance with the most effective contract-making practices, both domestically and internationally, if it includes the following:

1. A title that accurately represents the nature of the agreement reached;
2. An opening that includes the date of the agreement's creation and execution;
3. The identity of the parties and information regarding their positions in the contract;
4. An explanation of the background and rationale behind the contract;
5. The words of the agreement serve as an introduction that connects the preamble and content of the contract.

6. Content is the collection of terms and conditions that contain the rights and responsibilities of the parties involved. It consists of the following components :

- a. Essentials denote the core elements that must be included in a contract. Examples encompass events, commodities, price structures, and temporal intervals.
- b. Naturalia, pertaining to subjects not covered in the contract or situations where the parties have not obligated themselves beyond the provisions of laws and regulations, shall be regulated by those laws and regulations. Examples encompass installations, financial obligations, and delivery systems..
- c. Axientalia, which are objects that will bind the parties if they are pledged. Examples of these terms include the entire agreement, intellectual property, confidentiality, breaches and penalties, governing law, dispute resolution, correspondence, force majeure, termination, assignment, waiver, severability, and representations and warranties..

7. The closing statement indicates that the parties comprehended and were cognizant of the implications of executing the contract, as well as the quantity of duplicate agreements that were executed.

8. Signatures and seals.[9]

In the event of a dispute related to the contract, based on our practice, there are two ways that can be taken, including:

- 1) Dispute resolution through the court (litigation);

- 2) Dispute settlement outside the court, commonly known as "Alternative Dispute Resolution," encompasses methods such as consultation, negotiation, mediation, conciliation, expert evaluation, and arbitration..

Nonetheless, the dispute resolution procedure to be utilized is the one stipulated in the contract. A contract is typically structured to address problems via negotiation or consensus within a mutually established timeframe. If talks and consensus discussions fail within the designated timeframe, the parties will settle the disagreement through a mutually chosen procedure, such as arbitration or litigation.

It is essential to recognize that arbitration is the favored approach for resolving disputes involving confidential information. The arbitration trial procedure occurs in a closed and confidential setting, so reinforcing the nature of the confidential material.

### **3.2 Actions Said to be Default, Reasons, Consequences, and How to Deal with Them**

Default always starts from the existence of a contractual agreement. Contracts serve as a tool that specifically regulates legal relationships between personal interests, especially in the civil context when making contracts. In business practice, there are often legal conflicts when the parties carry out agreements. This conflict arises when one party fails to fulfill its obligations and the other party does not accept its rights. Solving this problem is not easy, often protracted, and takes a long time. In order to obtain their rights, they often have to go through a court process that results in a verdict that has permanent legal force (In Krach Van Gewijsde). Basically, an agreement or contract is a legal act in which an agreement is made by the parties involved, which automatically gives rise to obligations between them.

Default refers to the condition in which an individual neglects or fails to meet the duties stipulated in the agreement between the creditor and the debtor. The creditor may seek restitution for the expenses, damages, and interest incurred due to the breach of the covenant. Before the debtor is obligated to provide compensation, the law mandates that the debtor be declared in a state of negligence (ingebrekestelling). Article 1243 of the Civil Code dictates that the debtor is liable to compensate for expenses, damages, and interest arising from the failure to fulfill an obligation only if the debtor persists in neglecting the obligation after being deemed negligent or if a time-sensitive obligation is not met [10].

A state of default occurs when a creditor issues a notice or notification to the debtor concerning the final deadline to meet their commitments. If the debtor exceeds the deadline, he is deemed to have defaulted (breached the agreement). Default or breach of promise denotes an action in which the debtor fails to meet their responsibilities as stipulated in the agreement. Default transpires when obligations are not fulfilled punctually or fail to meet the requisite criteria, as explained by M. Yahya Harahap in his book "Characteristics of Default and Fraud Crimes". In addition, he also explained that a debtor who is entangled in default, will be considered negligent if he does not carry out his obligations in accordance with what he should or in a proper way. Default is basically related to the problem of negligence and disagreement in the performance of obligations.[11]

Default itself has several types of reasons for its occurrence, namely as stipulated in Book III of the Civil Code, which consists of:



- 1) Not performing at all: For example, Ayu and Dimas have an agreement where Ayu must send Dimas' products to Niva. However, in its implementation, Ayu never sent the product to Niva.
- 2) Carrying out achievements, but not as they should: For example, Arta and Gayatri make an agreement where Arta will make a special shirt for Gayatri with a specific design. When Gayatri received the shirt, the design was not in accordance with what had been agreed. So, even though Arta had made the clothes, the design didn't live up to the agreement.
- 3) Carrying out achievements, but not on time: For example, Ayu and Niva make an agreement where Ayu must complete the construction of a house for Niva by a certain date. However, when the agreed date arrived, Ayu had not completed the construction of the house.
- 4) Performing acts prohibited in the contract: For example, Dimas and Gayatri have a business cooperation agreement where Gayatri is not allowed to leak confidential company information. However, after the agreement was signed, Gayatri leaked the confidential information to other parties.

In general, the consequences of default refer to the legal consequences that arise when a debtor (debtor) fails to fulfill his obligations in accordance with the agreement that has been agreed with the creditor (entitled party). Here is an explanation of the four main consequences of default, Here are four common consequences of default:

1. Fixed Engagements Prevail:

The legal relationship between creditors and debtors remains despite the occurrence of default.

2. Debtors are obliged to pay compensation:

The debtor must provide compensation to the creditor in accordance with the provisions of Article 1243 of the Civil Code (Civil Code).

3. Transfer Risk to Debtor:

The risk of loss passes to the debtor if an obstacle or obstacle occurs after the default. However, this does not apply if the loss is caused by a major mistake or gap on the part of the creditor. In this situation, the debtor cannot make excuses with compelling circumstances.

4. Exemption of Creditor Liability:

In accordance with Article 1266 of the Civil Code, the creditor may be excused from its obligation to provide counterperformance if the engagement is derived from a reciprocal agreement.

The debtor is required to compensate creditors for incurred losses (Article 1243 of the Civil Code); the annulment of the contract necessitates compensation payment (Article 1267 of the Civil Code); and if the debtor's default results in creditor losses, there are four categories of sanctions or legal repercussions for defaulting debtors. The transfer of risk to the debtor upon default (Article 1237, Paragraph 2 of the Civil Code) and the obligation to cover case fees if litigated before a court (Article 181, Paragraph 1 IR) are both relevant.

**a. Debtors are Required to Pay Compensation to Creditors (Article 1243 of the Civil Code):**

The debtor is obligated to compensate the creditor if it fails to fulfill its obligations in accordance with the agreement. Costs, losses, and interest that accrued as a consequence of default are included in this compensation. The Indonesian law also specifies specific compensation regulations to safeguard debtors from creditors' unreasonable demands. There are two articles in the Civil Code that safeguard debtors in the event of compelling circumstances, namely :

1. The Civil Code's Article 1244 underscores the obligation of the debtor to provide compensation unless he can demonstrate that the failure to fulfill the agreement was the result of unforeseen circumstances and cannot be attributed to him, or unless there is evidence of evil faith.
2. Article 1245 of the Civil Code emphasizes that there is no compensation if the debtor is hindered by compelling circumstances or unintentional events that make him unable to fulfill his obligations.

There are three consequences of force majeure, namely:

1. According to article 1244 of the Civil Code, the debtor is not obligated to provide compensation.
2. The risk burden remains constant, particularly in transient coercive situations.
3. The creditor is not entitled to the fulfillment of achievements; however, it is also exempt from the obligation to submit counter-achievements for the sake of the law, with the exception of those specified in article 1460 of the Civil Code.

Then in articles 1247 and 1248 of the Civil Code, it has been explained that there are two limitations on damages, namely:

- a. Foreseeable losses when making an agreement.
- b. Losses that are a direct result of default.

All of these losses must be directly resulting from default, and they include costs, losses, and interest (kosten, schaden en intressen). According to Article 1248, the damages, costs, and profits that may be pursued shall not exceed the losses that are a direct consequence of the default, even if the agreement is not fulfilled as a result of the debtor's deception.

**b. Cancellation of Agreement (Article 1267 of the Civil Code):**

The agreement is deemed invalid upon the occurrence of a default, which is referred to as the cancellation or collapse of the agreement. For instance, if an individual guarantees to deliver an item but fails to do so, the agreement is promptly rendered null and void. The objective of the annulment of the agreement is to restore both parties to the state in which they were prior to the signing of the agreement. This implies that any item that has been received, regardless of whether it is in the form of money or products, must be returned. In other terms, the agreement is regarded as nonexistent. According to Article 1266 of the Civil Code, the condition of cancellation is always present in a reciprocal agreement when one of the parties fails to fulfill its obligations. Nevertheless, there is a requirement to request the revocation of the agreement through the court, regardless of whether the conditions for cancellation are

provided in the agreement. The judge has the discretion to grant the defendant a period of time, which should not exceed one month, if the condition of nullification is not specified.

The judge has the complete authority to determine whether or not the agreement should be canceled in the event of annulment. The judge has the authority to evaluate whether the default is severe enough to render the agreement invalid. The judge may deny the request for cancellation of the agreement if the debtor's negligence is deemed to be trivial, despite the fact that the creditor may be entitled to collect damages. The judge's decision is constituent, not declarative, which implies that the agreement's cancellation is only legitimate if it is determined by the judge.

**c. Risk Transfer (Article 1237 Paragraph 2 of the Civil Code):**

Risks associated with reciprocal agreements are not explicitly addressed by the Civil Code. The principle of propriety is the foundation of risk settlement, which entails that the party that fails to execute its obligations is responsible for the risk. The consumer is responsible for the risk associated with the purchase and sale of specific goods, as stated in Article 1460 of the Civil Code, despite the fact that the goods have not yet been transferred. Nevertheless, the risk is transferred from the buyer to the seller in the event that the seller is tardy in delivering the products. Since the sale and purchase agreement has been finalized, the buyer is responsible for the risk associated with the products sold, as stated in the article. The seller is deemed to have committed a default if the products are not delivered on time.

**d. Payment of Case Fees in the Event of a Court Case (Article 181 Paragraph 1 HIR):**

The losing party is always responsible for the cost of the case, as stipulated in the civil procedure law. It is probable that the debtor will incur losses in the event of default. Consequently, the judge will determine that the debtor is responsible for all costs associated with the case.<sup>1</sup>

Default, which is the failure of one party to fulfill the obligations of an agreement, can be resolved through two primary channels: litigation (through the court) or non-litigation (out of the court).<sup>1</sup>. Litigation (Court):

Litigation is a dispute resolution process that involves the courts. This process begins by filing a lawsuit for default with the competent court. The main steps in default litigation include:

- 1) Registration of Lawsuit, namely the party who feels aggrieved submits an official lawsuit to the competent court in accordance with the applicable legal provisions.
- 2) Case Fee is before the lawsuit can be processed, the party who files the lawsuit usually has to pay the case fee for the lawsuit.

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<sup>1</sup> Dalimunthe, D. (2017). Akibat Hukum Wanprestasi Dalam Perspektif Kitab Undang-Undang Hukum Perdata (Bw). *Jurnal AL-MAQASID: Jurnal Ilmu Kesyariahan dan Keperdataan*, 3 (1), 12-29.

- 3) Court Hearing: After the lawsuit is registered, the court will set a hearing schedule to try the case. The hearing will consider the evidence submitted by both parties and hear legal arguments from each side
  - 4) Court Decision i.e. the Court will give a ruling that determines whether a default occurred, and if so, what the legal consequences are including whether the agreement is canceled or corrected, as well as whether there is an obligation to pay damages.
2. Non-Litigation (Out of Court):
- Non-litigation refers to various methods of dispute resolution that do not involve the courts. Some common approaches in non-default litigation settlement include:
- 1) Negotiation is the parties directly involved negotiating to reach an agreement without involving a third party.
  - 2) Mediation is in the settlement of default involving a neutral mediator who helps the parties reach an agreement. The mediator does not make decisions but helps facilitate communication and negotiations.
  - 3) Arbitration Where the parties agree to ask a neutral arbitrator to hear their arguments and issue a binding award.
  - 4) Institutional Settlement In this case, some organizations or institutions have internal procedures for resolving disputes, such as an ombudsman or dispute resolution committee that can be accessed by the parties involved.

The decision to pursue litigation or non-litigation is contingent upon a number of factors, such as the complexity of the dispute, the cost, the time required, the desire to maintain positive relationships, and the necessity of asserting rights effectively. Each approach has its own advantages and disadvantages, and it can be selected based on the requirements and interests of each party involved in a default dispute.

### **Case Study of Decision Number 418 K/Pdt/2021**

Identity of the Parties:

1. Plaintiff : PT. Dini Usaha Mandiri was represented by Ahmad Saepudin as President Director.
2. Defendants: 1. DR. H. Wahidin Halim, M.Si, as the Governor of Banten; 2. Drs. H. Nandi Mulya S, M.M., as Head of the Banten Province Regional Financial and Asset Management Agency; 3. Regional Secretary of Banten Province.
3. Petitioner of Cassation: 1. DR. H. Wahidin Halim, M.Si, as Governor of Banten; 2. Drs. H. Nandi Mulya S, M.M., as Head of the Regional Financial and Asset Management Agency of Banten Province.
4. Cassation Respondent : PT. Dini Usaha Mandiri was represented by Ahmad Saepudin as President Director.
5. Cassation Respondent: Regional Secretary of Banten Province.

Positional/Chronological Cases :

Initially, the Defendant entered into a contract agreement with the Plaintiff related to the Procurement of NICU Supporting Facilities for the Banten Provincial Hospital, and the Procurement of Neurosurgical Supporting Facilities for the Banten Provincial Hospital, to the

Plaintiff where after the contract agreement was implemented, one of the parties, namely the Defendant, committed a breach of promise which then the Plaintiff filed a lawsuit to the court. Then in the first decision, the judge stated that he had accepted and granted the lawsuit of the Plaintiff / PT. Early Independent Business for all. Then after that, the Defendant also filed an exception which was basically about the Lawsuit that was obscure (obscur libel) and the Plaintiff's Lawsuit was misaddressed (error in persona), but the judge rejected the exception from the Defendant in its entirety. Then after that, the Defendant filed an appeal to the court on April 15, 2019, but the judge rejected the cassation in its entirety.

**Object of the Agreement:**

Procurement of NICU Supporting Facilities for Banten Provincial Hospital, and Procurement of Neurosurgical Support Facilities for Banten Provincial Hospital.

**Analysis of the Verdict:**

An agreement is a legal relationship between two or more parties, in which each party has rights and obligations that are derived from the agreement's existence. The Agreement or written agreement (contract) between the Plaintiff and the Defendant in this case, which is an event where a person promises to carry out a thing from which a legal relationship arises between the two legal subjects called an engagement, is the source of the engagement. In the aforementioned instance, the Defendant has committed a default, which is defined as the failure to fulfill the obligations that were stipulated in the agreement. Additionally, Article 1243 of the Civil Code (KUHPer) regulates default, which stipulates that the debtor is obligated to reimburse costs, losses, and interest resulting from the non-fulfillment of an obligation if the debtor is still obligated to fulfill the obligation, or if the delivery or completion of a required item is contingent upon the passage of time beyond the specified time. One of the prerequisites for the implementation of development is the procurement of government products and services. The state revenue and expenditure budget/regional revenue and expenditure budget is responsible for financing the procurement of government goods/services. Contractors execute construction projects pursuant to contractual obligations. The agreement is executed by a government agency that has been designated to bond the implementing party of construction services with the government. The government will be represented by a Commitment Making Officer (hereinafter abbreviated as PPK). The government or the committee/officials have prepared the contract document for the procurement of goods/services. The contract is a legal agreement between the provider of goods/services and the user of goods/services in the procurement of goods/services. The contract is a component of the selection document for the provider of goods/services, which includes more specific provisions that are binding on the parties. Law Number 2 of 2017 concerning Construction Services has replaced Law No. 18 of 1999 in regulating the construction services industry. Construction Services are a construction consulting service and/or construction labor, as defined in Article 1 number 1 of the Construction Services Law. In the event of a default, the position of the contract is of paramount importance, as both parties in this construction service are in the same position. Meanwhile, the Construction Work Contract is a comprehensive contract document that governs the legal

relationship between Service Users and Service Providers in the execution of Construction Services, as stated in Article 1 number 8 of the Construction Services Law. Legal conflicts frequently arise in the context of business relationships where parties engage into an agreement. The process of resolving this phenomenon is difficult, protracted, and time-consuming. Ultimately, the matter is resolved in court, necessitating a judge's decision that has enduring legal force (Krach Van Gewijsde). In the event of a default in the construction agreement between PT. Dini Usaha Mandiri, the Plaintiff, and DR. H. Wahidin Halim, M.Si, the Governor of Banten; Drs. H. Nandi Mulya S, M.M., the Head of the Banten Province Regional Financial and Asset Management Agency; and the Regional Secretary of Banten Province, the Defendant.

In this case, the Judge gave a ruling that the Defendants had committed acts of breach of promise (default), granted the Plaintiff's lawsuit in part, and rejected the cassation application from the Defendants.

And the author personally agrees with the verdict that has been handed down by the judge, because the judge in imposing his verdict has fulfilled one of the legal principles, namely "The verdict must be accompanied by reasons", which is the principle that all court decisions must contain information or arguments that are used as the basis by the court in deciding a case. In addition, the Judge's decision that the Defendants have committed this act of breach of promise (default) is substantiated by existing evidence that demonstrates that the Plaintiff has completed the work in accordance with the contract, specifically the Procurement of Supporting Facilities for the Banten Provincial Hospital, and has prepared a Minutes of handover of the results of the work. However, the Plaintiff has not received the remaining payment that the Defendant is obligated to pay. This decision has been confirmed by the Judex Facti decision from the Banten High Court. Additionally, the Judge's decision to deny the Defendants' cassation application was predicated on Judex Facti's ruling from the Banten High Court. The Judge's decision in this default case can be deemed to be justified and in compliance with the provisions of extant laws and regulations, as evidenced by the arguments presented above.

Therefore, the defendant is obliged to fulfill its responsibilities as a result of the default that has been committed. And if the defendant does not fulfill the responsibility of the default that has been committed, the plaintiff has the right to sue back to court.

#### **4 Conclusion**

An agreement in accordance with Article 1313 of the Civil Code is a contract in which one or more individuals commit themselves to another or more individuals. Subekti clarified that an agreement is a legal relationship that confers rights and obligations upon the parties involved. Article 1320 of the Civil Code establishes four prerequisites for the agreement's validity: agreement, competence, specific matters, and halal legal causes. Summons, default, damages, compelling circumstances, and hazards comprise the agreement's general provisions.

A written agreement that encompasses an agreement between two or more parties is referred to as a contract. The principle of freedom of contract enables the parties to establish the content and structure of their agreement, provided that it is implemented in good faith and does not violate the law. The title, opening, identity of the parties, background, content with terms and conditions, and concluding with a seal and signature are all components of a well-written contract.

Default occurs when an individual neglects or fails to fulfill the obligations outlined in the agreement. The primary repercussion of default is that the creditor is entitled to compensation for the costs, losses, and interest that have been incurred. There are numerous causes of default, including the failure to perform the achievement, the performance of the achievement but not to the expected standard, the failure to complete the achievement on time, and the performance of acts that are prohibited by the contract. The debtor is obligated to pay compensation, the covenant remains valid, the risk is transferred to the debtor, and creditors' liabilities are exempted. These are among the legal consequences of default. In an effort to resolve defaults, litigation and non-litigation can be employed. The courts are involved in the litigation process, whereas non-litigation involves negotiations, mediation, and arbitration. The decision to pursue litigation or non-litigation is contingent upon the complexity of the dispute, the cost, the time required, the desire to preserve good relations, and the necessity of effectively enforcing rights.

The Defendant is responsible for fulfilling the obligation to pay the remaining unpaid to the Plaintiff in accordance with the contract for the procurement of NICU and neurosurgery support facilities at the Banten Provincial Hospital, based on the judge's decision in case number 418 K/Pdt/2021. The judge rejected the Defendant's appeal and upheld the decision of the Banten High Court which stated that the Defendant had defaulted, supported by evidence that the Plaintiff had completed the work according to the contract and deserved to receive payment. Therefore, the Defendant is obliged to fulfill this responsibility, and if not, the Plaintiff has the right to file a reclaim to ensure its rights are met.

To prevent default, ensure that each agreement is made with clear and detailed provisions, so that all rights and obligations are understood by all parties. Background verification of the parties to whom the agreement will be made is important to ensure their capacity. Use a written contract that includes all requirements and obligations, and set a realistic implementation schedule. Good communication between all parties, establishing dispute resolution mechanisms such as mediation or arbitration, and conducting periodic monitoring and evaluation of the implementation of the agreement can detect potential defaults early. The granting of summons in the event of a delay or minor violation allows the negligent party to correct the mistake. Consultation with legal experts on complex business agreements ensures all legal aspects are met. Finally, running the agreement in good faith, maintaining honesty, and commitment to the agreement helps prevent default and maintain trust between the parties.

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