

Corporate Legal Responsibility of Defaulting Flats Developers

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Abstract. The Flats Developer Corporation is the subject of a crime, it raises issues related to accountability in criminal law. That is, whether the legal entity can be blamed for the actions of the legal entity, whether intentional or unintentional due to negligence. Because, however, we still adhere to the principle of "no crime without fault" (Geen straf zonder schuld). All legal subjects, both humans and legal entities, can make an agreement that creates an agreement between parties that is binding for the parties who approve as stipulated in Article 1338 of the Civil Code. In the agreement, there are always two subjects, namely the party who is obliged to perform an achievement and the party entitled to an achievement. In fulfilling an agreement based on a contract made by the parties, it is not distinctive for the debtor (customer) to neglect to carry out his obligations or not to carry out an achievement, this is what is called a state of default. Default has crucial consequences in which it must be known in advance whether it is true that the parties to the agreement have defaulted or not.

Keywords: Legal accountability; Corporations; Developers; Default.

1. Introduction

The Republic of Indonesia is an established state (rechtsstaat), to be specific a state in which all perspectives and conduct, and activities, whether committed by the specialists or by its residents, should be founded on regulation.[1] Law and order points fundamentally to give legitimate insurance to individuals. Philipus M Hadjon expressed that legitimate security for individuals against government activities depends on two standards, specifically the guideline of common liberties and the guideline of a law and order.[2]

Acknowledgment and security of basic liberties have an essential spot and can be supposed to be the objective of a law and order. As an outcome of a law and order state, there should be ensures for state organizations as a device of state government to have the option to run the public authority and regulation. Adroitly, legitimate insurance for individuals for government activities incorporates preventive lawful assurance and oppressive lawful security. In preventive lawful security, individuals are permitted to submit protests (inspraak) or conclusions before an administration choice gets a conclusive structure.[3]

Today partnerships assume an undeniably significant part in individuals' lives, particularly in the financial area. Questions in the past about setting organizations as subjects of criminal regulation that can carry out criminal demonstrations and simultaneously can be considered responsible for violations have moved. The doctrine that colored the Dutch WetVan Strafrecht

(KUHP) of 1886, namely "Universitas delinquere non-potest" or "societies delinquere non potest" (legal entities cannot commit criminal acts), has undergone changes in connection with the acceptance of the concept of functional actors (functional Daderschap).

According to Rolling, "the perpetrators of the offense included corporations into the Daderschap functioneel (functional actors) because corporations in the modern world have an important role in economic life which has many functions, namely as employers, producers, price fixers, foreign exchange users, and others. [4]

Based on this, namely that the corporation is the subject of a crime, this raises problems related to accountability in criminal law. That is, whether the legal entity can be blamed for the actions of the legal entity, whether intentional or unintentional due to negligence. Because, however, we still adhere to the principle of "no crime without fault" (Geen straf zonder schuld). In this regard, can corporations have reasons that can abolish punishment, as is the case with human legal subjects? Because in practice it is not easy to determine whether there is a corporation's fault or not, it turns out that in its development, especially concerning corporate criminal responsibility, there is a new view, or a slightly different view, that especially the responsibility of legal entities, the principle of guilt does not apply. So that criminal liability which refers to the doctrine of strict liability (absolute/strict liability) and vicarious liability (responsibility imposed on another person/substitute liability) which in principle constitutes a deviation from the principle of error (mens rea), should be taken into consideration in the application of corporate liability in criminal law. Therefore, this principle is that corporations are accountable to individuals.

Criminal acts by corporations that can be committed in the economic and financial fields are included in criminal acts in the economic sphere which can be called crimes in the economic field or economic crimes. Formulating an economic crime must pay attention to the following elements:[5]

1. Economic crimes are committed in the context of business and legal activities.
2. Economic crimes violate the interests of the state and society in general, not just individual victims.
3. Also included in the case of criminal acts in the business environment against other companies or individuals.

All legal subjects, both humans and legal entities, can make an agreement that creates an agreement between parties that is binding for the parties who agree as stipulated in Article 1338 of the Civil Code. In the agreement, there are always two subjects, namely the party who is obliged to perform an achievement and the party entitled to an achievement. In fulfilling an agreement based on an agreement made by the parties, it is not uncommon for the debtor (customer) to neglect to carry out his obligations or not to carry out an achievement, this is what is called a state of default.

Mariam Darus Badruzaman said that if the debtor "because of his mistake" does not carry out what was agreed upon, then the debtor is in default or default. Said because the mistake is very important, because the debtor did not carry out the performance what was promised was not at all because of his fault.[6] This default has important consequences so it must be known in advance whether it is true that the parties to the agreement have committed a breach of contract or not. The default that will be raised in this research is the default case of the Flats Developer.

The rules regarding apartments are regulated in Law Number 20 of 2011 concerning Flats, hereinafter referred to as the Flats Law because apartments are a type of flats. However, in this law, there is no specific understanding of what is meant by an apartment. Article 11 point (1) of Law No. 20 Concerning Flats states that:

Flats are multi-story buildings built in an environment that is divided into functionally structured sections, both in the horizontal and vertical directions, and are units each of which can be owned and used separately, especially for separate dwellings. equipped with common shares, common objects, and common land.”

Condo proprietorship can be gotten through trading exchanges between business entertainers (engineers) and purchasers (purchasers). Game plans with respect to trading are by and large contained in Article 1457 of the Common Code, hereinafter alluded to as the Common Code, which expresses that trading is an arrangement by which one party ties himself to give an item and the other party over to address the cost that has been settled upon. guaranteed.

The act of trading pads that are still under development or in the arranging stage is obliged or obliged with the limiting deal and buy arrangement (PPJB) authoritative archive. The legitimate reasoning is that PPJB is definitely not a lawful demonstration of trading that is genuine and cash. PPJB is an understanding between two gatherings to do their separate accomplishments sometime in the future, specifically the execution of a deal and buy before the Land Deed Making Official (PPAT) in the event that the structure has been finished, confirmed, and bearable.[7] Guidelines regarding this are regulated in the Decree of the State Minister for Public Housing No. 090/KPTS/M/1995. The function of the PPJB is to bind the price before the AJB is carried out.[8] The background to the occurrence of default by the Flats Developer is usually caused by borrowing funds on credit from certain Banks made by the Developer to continue the construction of the flats. However, once the bank loan funds have been disbursed, the developer does not directly use these funds to build flats but is used to carry out the construction of other projects. It was exacerbated by the lack of interest from apartment buyers so this case continued in court, with the Flats Developer being considered in default due to the non-completion of credit loan payments entered into the realm of default, so on this occasion, the author wishes to conduct research by taking the title: *"Corporate Legal Responsibility of the Developer of Default Flats"*.

2. Problem

The problem in this paper is: “How is the Corporate Legal Liability of the Defaulting Flats Developer?”

3. Method and Approach

3.1 Method

The strategy utilized recorded as a hard copy this applied paper is the elucidating logical technique, in particular by utilizing information that plainly depicts the issues straightforwardly in the field, then, at that point, the examination is done and afterward finished up to unwind what is happening. Techniques for information assortment through perception and writing study to acquire critical thinking in the readiness of this paper.

In line with the research objectives to be achieved, the realm of this research is included in the realm of qualitative research, thus a qualitative approach method will be used. According to Petrus Soerjowinoto et al., the qualitative method is a method that emphasizes the process of understanding the researcher on the formulation of the problem to construct a complex and

holistic legal phenomenon. The issue in this paper is "How is the Corporate Legal Liability of the Defaulting Flats Developer?" [9]

3.2 Approach

Exact juridical methodology, in particular a methodology that doesn't go against composed positive regulation (regulation) as auxiliary information, yet from genuine way of behaving as essential information acquired from field research areas.[10] This study describes the condition of the object under study, namely focusing on the Corporate Legal Responsibility of Defaulting Flats Developers as the implementation of the Civil Code in practice.

4. Discussion

4.1 General Overview of Sale and Purchase Agreements in the Civil Code.

The meaning of an understanding as per R Wirjono Prodjodikoro, an arrangement is a lawful relationship in regards to property between two gatherings, where one party guarantees or is expected to vow to follow through with something or to avoid something, while the other party has the option to request the execution of that commitment.[11]

An understanding should be viewed as brought into the world at the time an arrangement is arrived at between the two gatherings. The person who wants to agree must state his will and willingness to bind himself. The statement of the two parties meeting and agreeing is important to show that an agreement has been born. 8 For an agreement to be valid, the agreement must meet the conditions specified by Article 1320 of the Civil Code. According to Article 1320 of the Civil Code, the requirements for an agreement to be valid are: a) The understanding of the individuals who tie themselves; b) The capacity to concur; c.) something specific; d) A legitimate reason The initial two circumstances are called emotional circumstances since they know individuals or subjects who concur, while the last two circumstances are called objective circumstances since they concern the actual understanding or the object of the lawful activity being completed.[12]

In light of the Common Code, trading is an understanding wherein one party predicaments himself to give an article and the other party over to address the guaranteed cost.[13] A deal and buy understanding is an understanding between the vender and the purchaser, wherein the merchant dilemmas himself to give up his possession privileges to a thing to the purchaser, and the purchaser ties himself to follow through on the cost of the thing in cash, as per what has been concurred in their arrangement.

Sale and purchase agreements and agreements in general according to the Burgerlijk Wetboek system are consensual which is emphasized in Article 1458 of the Civil Code "Buying and selling is considered to have occurred between the two parties when they have reached an agreement regarding the goods and price, even though the goods have not been delivered or the price has not been paid." In this system, a principle called consensuality applies. The rule of consensuality is that an arrangement emerges on account of an understanding and has existed since an understanding was reached. As such, the arrangement is legitimate in the event that there is settlement on the principal matters, and subsequently no custom is required.[14] Apart from being consensual, the sale and purchase agreement is also obligatory in nature whereby the existence of the sale and purchase has not transferred the ownership rights of the objects that are the object of the sale and purchase, the agreement only places rights and obligations on both parties, namely placing the obligation for the seller to

surrender ownership rights to goods sold to buyers. So, the property rights to the goods sold do not transfer from the seller to the buyer as long as the delivery has not been made.

The sale and purchase of an apartment is an agreement between the parties whereby the seller, namely the developer, binds himself to hand over the rights to the apartment in question to the buyer and the buyer binds himself to pay the developer according to the agreed price. The obligations between sellers and buyers of apartments are generally contained in the Decree of the State Minister for Public Housing Number: 11/KPTS/1994 concerning Guidelines for Binding Sale and Purchase of Flats.

4.2 Corporate Legal Responsibility of Defaulting Flats Developers.

Default isn't satisfying or failing to do commitments as determined in the arrangement made between the lender and the debt holder.[15] Defaults or non-satisfaction of commitments can happen either deliberately or accidentally.[15] A borrower is supposed to be careless in the event that he doesn't satisfy his commitments or is late in satisfying them yet not as concurred.

Default is contained in Article 1243 of the Civil Code, which states that:

"Reimbursement of costs, losses, and interest due to non-fulfillment of an agreement, only then begins to be required, if the debtor, after being declared negligent in fulfilling the agreement, continues to neglect it, or if something that must be given or made, can only be given or made, can only be given or made within a grace period past time"

The non-fulfillment of obligations by the debtor is caused by two possible reasons, namely:

- a. Due to the fault of the debtor, either intentionally not fulfilling obligations or due to negligence.
- b. Due to force majeure (overmatched), force majeure, so beyond the ability of the debtor, the debtor is innocent.

Default (negligence or negligence) of a debtor can be in the form of:

- a. The debtor did not fulfill the performance at all,
- b. The debtor fulfills the achievements, but not as promised,
- c. The debtor fulfills the achievement but not on time (late),
- d. The debtor does something that according to the agreement should not be done.

To find out since when the debtor (Developer of Flats) was in a state of default, the law provides legal remedies with a statement of negligence (ingebrekestelling, a subpoena). A statement of default is a message (notification) from the creditor (Bankside) to the debtor by which the creditor notifies at the latest when he expects the fulfillment of the achievement. With this message, the creditor determines exactly when the debtor is in a state of broken promises when he does not fulfill his achievements. Since then, the debtor has had to bear the adverse consequences caused by the non-fulfillment of achievements.[16]

There are four consequences of default, as follows:

- a. The commitment actually exists.
- b. The indebted person should pay remuneration to the lender (Article 1243 of the Common Code).
- c. The weight of chance movements to the deficiency of the indebted person, in the event that the impediment emerges after the debt holder defaults, except if there is a hole or significant blunder with respect to the bank. Hence, the borrower isn't legitimate in that frame of mind to drive majeure.
- d. If the commitment is brought into the world from an equal understanding, the lender can liberate himself from the commitment to give counter-execution by utilizing

article 1266 of the Common Code. The event of default causes the other party (the rival of the party who defaults) to be hurt.

Since the other party is hurt by the default, the party who has committed the default should bear the outcomes of the requests of the contradicting party which can be as:

- a. Cancellation of the arrangement as it were;
- b. Cancellation of the arrangement joined by requests for pay, as expenses, misfortunes, and interest.
- c. Fulfillment of the agreement just, where the bank just requests that the debt holder satisfy the accomplishments.
- d. Fulfillment of the agreement joined by requests for pay. The bank requests that as well as satisfying the accomplishment, it should likewise be joined by pay from the indebted person (Article 1267 of the Common Code).
- e. Claim compensation only. All of the above issues will have juridical consequences, namely, the party who has committed a default must bear the consequences or punishment in the form of:
 1. Reimbursement of expenses, misfortunes, and interest due to non-satisfaction of an understanding. Thus basically, the compensation is compensation that arises because the debtor defaults. According to the provisions of Article 1246 of the Civil Code, compensation consists of 3 elements, namely:
 - a) Costs, namely all expenses or costs that have been incurred.
 - b) Loss, namely losses due to damage to the creditor's goods caused by the debtor's negligence.
 - c) Interest, namely the profit that should be obtained or expected by the creditor if the debtor is not negligent.
 2. Regarding compensation due to default, there are limitations. The law determines that the losses that must be paid by the debtor to the creditor as a result of default are as follows:
 - 1) Losses that can be foreseen when the agreement is made.
According to article 1247 of the Civil Code, the debtor is only required to pay compensation for losses that he had or could have foreseen when the agreement was made, except if the non-fulfillment of the agreement was caused by deceit committed by him.
 - 2) Loss as an immediate consequence of default. As per Article 1248 of the Common Code, on the off chance that the arrangement isn't satisfied because of the misleading of the borrower, the installment of remuneration just worries the misfortunes endured by the lender and his lost benefits, which is basically what it comprises of.
 - 3) Based on the Exceptio Non-Adimpleti Contractus principle, the party who is harmed as a result of a default can be a direct result of non-compliance with the agreement.

5. Conclusion

Loft possession can be acquired through trading exchanges between business entertainers (engineers) and shoppers (purchasers). Courses of action with respect to trading are by and large contained in Article 1457 of the Common Code, hereinafter alluded to as the Common Code, which expresses that trading is an arrangement by which one party ties himself to give

an item and the other party over to address the cost that has been settled upon. guaranteed. The event of default causes the other party (the rival of the party who defaults) to be hurt. Because of misfortunes by different gatherings, the party that has defaulted should bear the outcomes of the restricting party's requests which can be as understanding denial; wiping out joined by a case for remuneration; satisfaction of the understanding; satisfaction joined by requests for pay; or request pay as it were.

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