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The Relationship Between Debt, Default, and Receivables in Contract Law in Indonesia

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Abstract: Treaty law recognizes the terms debt and receivables, but in the legal regulations of agreements or beyond it, it turns out that what is meant by debt and receivables is very limited in its explanation. Likewise, default whose definition appears only limited to the opinions of experts. Regulation will be very important because debts, receivables and defaults have legal consequences for creditors or debtors. Thus, it is very necessary to include the definition of debt, receivables and defaults in laws and regulations to provide certainty and legal protection for the parties to the engagement, especially the law of agreements. The type of research used is normative juridical research using primary legal materials, namely laws and regulations, secondary, namely books by law scholars and tertiary materials in the form of dictionaries. The approach used is a conceptual approach and a legislative approach. From the results of the study, there is a void in norms regarding receivables. Receivables in general cannot arise without obligation, for certain conditions receivables may arise without prior obligation. Receivables are not only the opposite of the word debt. Receivables are the right to sue given by law. In this case, receivables can be interpreted as protection provided by the state to the subject in the law of the agreement. Default is not the same as debt and a defaulter cannot have receivables.

Keywords: Debt, Receivable, Default.

INTRODUCTION

In daily life, the activities carried out between legal subjects are actually a legal relationship. The legal relationship is an engagement. Alliances can arise from treaties or laws. In an engagement born because of the law, rights and obligations are born not the result of a direct agreement between the parties, for an agreement born because of an agreement, the rights and obligations in the agreement are the result of a direct agreement. According to Henry Campbell Black, an agreement is an agreement between two or more parties that creates, modifies or eliminates a legal relationship[1]. According to Hans Kelsen, the agreement made by the parties in a transaction is a legal norm, even though the agreement outlined in the agreement is produced by an individual. The status of the agreement as a legal norm is categorized as an individual norm, considering that the general norm has delegated the authority to make an agreement to individuals and the legal order (legal oreder) has determined sanctions for parties who violate the content of the agreement[2]. This is in line with the principle of pacta sunt servanda contained in article 1338 of the Civil Code. The result of the formulation of the agreement must be considered understood and become a meeting of the will of the parties.

The object of the law is the interest of each legal subject, it can occur between fellow legal subjects or community groups. According to Satjipto Rahardjo, the law functions to integrate and coordinate interests that can collide with each other, by law it is integrated in such a way that the collisions can be suppressed as little as possible. The interests referred to by Satjipto Rahardjo can be managed by state authorities through laws and regulations as well as by the subject of the law itself in private matters or even both. An interest is the object of a right not only because it is protected by law but also because of the recognition of it[3]. Law exists to integrate and coordinate interests that can clash[4] either in public or private law.

The making of an agreement, of course, must be valid in accordance with the applicable regulations as referred to in article 1320 of the Civil Code. Article 1320 of the Civil Code is the minimum requirement for making an agreement because what are the special conditions are contained in various regulations outside the Civil Code. Since the birth of the agreement that is made legally, the parties are bound by the agreement, have obligations and at the same time get legal protection in the event of a dispute. At the time of making the agreement, there are two possible circumstances that can occur and can be foreseen. First,

[1] H S Salim, "Penerapan Teori Hukum Pada Penelitian Tesis Dan Disertasi" (2013).

[2] Yana Risdiana, *Penafsiran Kontrak Komersial Antara Teks Dan Konteks* (Inboeku Media Ilmu, 2016).

[3] Satjipto Rahardjo, *Hukum Dalam Jagat Ketertiban (Bacaan Mahasiswa Program Doktor Ilmu Hukum Universitas Diponegoro)* (UKI press, 2006).

[4] Ibid.

the agreement can be carried out well and there are no problems. In this situation, the rights and obligations of the parties have been fulfilled in their entirety, therefore the agreement ends without any problems. The second situation is that the agreement is not implemented properly and results in disputes. This dispute can arise because there is an assumption that the agreement made is contrary to the applicable law or the second possibility is that the dispute arises because the obligation is not fulfilled correctly. In the second situation, the definition and relationship between debts, receivables and defaults will be the main thing in dispute resolution.

Departing from this, problems arise regarding the meaning of engagement in the legal context. Can an engagement be equated with debt, and what is the mechanism that can be used by creditors to collect promises made by debtors to fulfill their debts. The definitions of these concepts need to be discussed in depth in order to provide clear and applicable boundaries. In Indonesian positive law, the absence of a specific definition of receivables in legislation and legal doctrines raises the need to formulate boundaries that can help clarify its meaning. Based on these issues, this research aims to address the main question, namely how the concepts of debt, receivables, and default are interrelated within the framework of contract law in Indonesia. In addition, this research will also explore the legal implications of default in fulfilling contractual obligations under Indonesian law.

By answering this question, it is hoped that this research can provide a broader and deeper insight into the relationship between the three concepts and their relevance in the practice of contract law. The results of this research can make a significant contribution in expanding the understanding of contract law in Indonesia. This understanding is not only important theoretically but also has great relevance in its practical application. With more structured boundaries and definitions, business actors can have clearer guidance in carrying out their contractual obligations. For legal practitioners, they can use the results of this research to develop stronger legal arguments in handling disputes related to debts, receivables, and defaults. This research also has practical implications that can be utilized by policy makers in formulating more specific and comprehensive regulations regarding receivables and defaults. Thus, the results of this research can support the creation of a clearer, fairer, and more effective legal system in resolving issues related to contract law in Indonesia.

RESEARCH METHODS

The research method used is normative juridical, which focuses on the analysis and interpretation of legal rules, principles, and legal doctrines[5]. This

[5] Sudikno Mertokusumo, "Legal Discovery An Introduction," *Liberty Yogyakarta* (2007).

method was chosen because the main object of the research is legal norms that serve as the basis for explaining concepts such as debt, receivables, and default within the framework of contract law in Indonesia. With a normative juridical approach, the research can explore in depth how legal rules are formulated, applied, and interpreted in practice. In addition, this method helps the research achieve its objectives by providing a strong theoretical foundation to answer the research questions. By using this approach, the researcher can explore the relationship between interrelated legal concepts, thus providing a comprehensive explanation.

The data sources used in this research include primary, secondary, and tertiary legal materials. Primary legal materials consist of relevant laws and regulations, such as the Civil Code and other laws governing contracts. In addition, court decisions are used as references to understand how legal norms are applied in contractual dispute resolution. Secondary legal materials include literature containing views and analysis from legal experts, including books, scientific articles, and law journals. Tertiary legal materials, such as legal dictionaries and legal encyclopedias, were used to provide additional definitions and explanations needed in the analysis[6]. The objects of research analyzed include laws and regulations, court decisions, and customs prevailing in the community. Statutory regulations serve as the main source to identify legal norms governing contractual relationships, while court decisions provide a real picture of the application of the law in concrete cases. Community customs are also analyzed to understand how contractual practices are carried out in daily life and how the law can be adapted to the needs of society. In this research method, the legal material search technique is carried out through documentation studies, either using electronic media or other library media [7]. Specific techniques used to analyze legal materials include legal interpretation methods, especially grammatical interpretation. Grammatical interpretation is used to understand the legal text based on its literal meaning in accordance with the language structure used in the regulation.

Meanwhile, the approach used in this research is a conceptual approach. The conceptual approach helps researchers to identify the core elements of each legal concept, explain the relationship between concepts, and provide interpretations that are relevant to the applicable legal regulations. Conceptual analysis will contribute significantly to a thorough understanding of the research problem. By dissecting legal concepts in depth, it can reveal dimensions that may not be apparent from statutory analysis alone. For example, by understanding the definition and scope of default, researchers can critically evaluate how this concept is applied in practice and whether there is

[6] Peter Mahmud Marzuki, "Legal Research, Revised Edition," *Kencana, Jakarta* (2017).
[7] Rianto Adi, "Social and Legal Research Methods," *Granit, Jakarta* (2004).

a need for improvement or harmonization of legal norms. In addition, conceptual analysis allows researchers to identify potential conflicts or inconsistencies in the application of the law, provide theoretical solutions, and provide better recommendations for practical application.

RESEARCH RESULT

Debt

Obligations in an agreement can be referred to as debts or achievements. The definition of debt according to Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations is an obligation that is stated or can be expressed in the amount of money either in Indonesian currency or foreign currency, either directly or that will arise in the future or contingent, which arises due to an agreement or law and that must be fulfilled by the Debtor and if it is not fulfilled gives the right to the Creditor to get its fulfillment from the Debtor's assets. If the obligation is interpreted as an achievement, then the object can include giving something, doing something or not doing something. According to the Great Indonesian Dictionary, debt is the obligation to pay back what has been received.

Of the two definitions of debt, there is no restriction on when debt must be implemented. In general, the term maturity is known. Maturity according to the great Indonesian dictionary is the deadline for payment or receipt of something that has been set. So the debt will issue receivables if it is not implemented after the maturity has passed. What about the obligations that are carried out before they are due, whether the action can be justified. Such a situation depends on the opponent of the promise, for example, the debtor is obliged to deliver the car on the 5th but on the 1st the debtor wants to deliver the car and the creditor refuses because the garage or car parking lot is not ready. In such a condition, the debtor's actions are not justified.

Is it possible in the agreement that both parties have debts. It is impossible in the agreement that both parties are in debt. The state of debt cannot give rise to the right to collect. If both are called debtors, then both have no right to collect. Debts must be executed on time, in full and without mistakes.

Default

The lack of norms regarding default has made many legal experts give their own definitions. The author will list some definitions of default and forms of default that have differences and meanings from the dictionary. According to the dictionary:

1) According to the Great Dictionary of the Indonesian Language, default is a situation in which one of the parties (usually an agreement) performs poorly because of the agreement[8].
2) According to *Black's Law Dictionary Failure, without legal excuse, to perform any promise which forms the whole or part of a contact. Prevention or hindrance by party to contact of any accurance or performance requisite under the contract for the creation or continuance of a right in favor of the other party or the discharge Off a duty by him. Unequivocal, Distinct and absolute refusal to perform agreement*[9].

Definition of Default According to Law Scholars:

1) J Satrio; default is when the debtor does not fulfill his promise as he should (not fulfilling the achievement, late in fulfilling the achievement, making the mistake of making the achievement) and can be blamed on him[10].
2) R. Subekti When the debtor does not do what he promises, it is said that he has committed a default, he is negligent or negligent or in breach of promise or he violates the agreement, when he does or does something that he cannot do[11].
3) Munir Fuady; default is the opposite reality of achievement in this case If in the achievement the content of the agreement is carried out by the parties, then in default the content of the agreement in question is not carried out[12].
4) Yahya Harahap; default is the execution of obligations that are not timely or done improperly. A debtor is mentioned and in a state of default if he has been negligent in carrying out the agreement so that he is late from the specified time schedule or in carrying out the performance is not as appropriate[13].

Forms of default according to legal scholars:

1) Salim HS; default is failure to fulfill or neglect to carry out obligations as specified in the agreement made between the creditor and the debtor[14].

[8] P. N Balai Pustaka, "Kamus Besar Bahasa Indonesia" (2001).
[9] Henry Campbell Black, "Black's Law Dictionary, St. Paul Minn," *West Publishing Co 4* (1990).
[10] J. Satiro, "Law of Engagement," *Alumni* (1999).
[11] R. Subekti, "Principles of Civil Law," *PT. Intermasa, Jakarta* (1978).
[12] Munir Fuady, "The Concept of Civil Law," *Raja Grafindo Persada* (2015).
[13] Yahya Harahap, "Legal Aspects of Agreements," *Alumni, Bandung* (1986).
[14] Salim HS, "Contract Law Theory and Techniques of Contract Drafting," *Sinar Grafika, Jakarta* (2003).

2) Riduan Syahrini; Default is not fulfilling achievements, late fulfilling achievements and not perfectly fulfilling achievements[15].
3) Munir Fuady; The form of default is not fulfilling achievements, late fulfilling achievements and not perfectly fulfilling achievements[16].
4) R. Subject; default if it does not fulfill its obligations, is late in fulfilling its obligations or fulfills but not as agreed[17].

There is a difference in the understanding between default and the form of default from what has been described. In the definition of default, there are legal scholars who include errors either in the form of negligence or intentionality as part of the definition of default, but there are also those who do not include them. Whether a debtor who does not carry out his obligations can be said to be in default. The first thing that needs to be a limitation is when the debtor is obliged to carry out his obligations. The debtor is obliged to carry out its obligations at the time of maturity. Before the due date, there is no obligation to carry out achievements. At the time of maturity and unable to carry out its obligations, whether the debtor is immediately called a default. The situation of the debtor not being able to carry out its obligations at the time of maturity is a neutral situation. Debtors cannot be called defaulted or not. There are several things that can be a deterrent for debtors who are accused of default, namely:

1. **Compelling circumstances**
   A compelling circumstance is a circumstance that can eliminate the nature of error from an act in the fulfillment of an agreement. In addition to the concept of compelling circumstances in general, there is a form of compelling circumstances in the agreement where J Satrio stated that one form of compelling circumstances in the agreement is the existence of a situation where the creditor is unwilling to cooperate in fulfilling achievements. Furthermore, it is said that there are times when the fulfillment of achievements requires assistance or cooperation from creditors, but if cooperation is not carried out, the debtor cannot be said to be in default because it is qualified as a compelling circumstance[18].
2. **Exception non adempleti contractus**

[15] Riduan Syahrini, "The Intricacies and Principles of Civil Law," *Alumni, Bandung* (2010).
[16] Munir Fuady, "The Concept of Civil Law," *Raja Grafindo Persada, Jakarta* (2015).
[17] Subekti, "Principles of Civil Law."
[18] Ibid.

It is a countermeasure that states that the debtor did not carry out the agreement as it should be precisely because the creditor himself did not execute the agreement as it should[19]. If the debtor as the defendant can prove the truth of his rebuttal, he cannot be held responsible for the non-implementation of the agreement. The legal basis of *exceptio non adempleti contractus* is not found in a single article of the law because *exceptio non adempleti contractus* is sourced from jurisprudence, namely the Decree of the Supreme Court of the Republic of Indonesia dated May 15, 1957 number 156 ka/sip/1995 which corroborates the Jakarta High Court Decision dated December 2, 1953 number 218/1953 which has corroborated the Jakarta District Court Decision dated September 29, 1951 number 767/1950.

3. **Limitation of rights**

Rechtverwerking is an attitude on the part of the creditor, either in the form of an express or tacit statement that he does not demand anything from the debtor that is his right[20]. From the four opinions of law scholars, there is a difference regarding the form of default, namely between not cashing to meet the default and not perfectly fulfilling the achievement. There are also scholars who include obligations that are not stated in the agreement but are in the laws and regulations, then they are considered part of the obligation and if violated, they can be qualified as default. There is a contradiction from other law scholars who stated that if this understanding is accepted, there is no difference between unlawful acts and defaults. Two decisions of the Constitutional Court, namely number 18/PUU-XVII/2019 and number 21/PUU-XVIII/2020 have provided a new understanding of default. In the two decisions, it has been interpreted that the state of default cannot be determined unilaterally, but it must be with an agreement between the parties to agree on the state of default. Here, an agreement on default can only occur after the act is committed, and then it is agreed whether the act qualifies as a default or not.

Receivables

Receivables according to the great Indonesian dictionary are the obligation to pay back what has been received. What is the definition of the dictionary is certainly not the same as what is meant by receivables based on doctrine in civil law. Every creditor must have receivables against debtors.

[19] op. cit J Satrio, "Default According to the Civil Code, Doctrine and Jurisprudence," *Citra Aditya Bakti, Bandung* (2014).

[20] Riduan Syahrani, "Seluk Beluk Dan Asas Hukum Perdata," *Cetakan kesatu, Alumni* (2004).

Receivables can be interpreted as collection rights. For this reason, creditors have the right to collect the receivables. In science, in addition to the right to collect (Vorderingsrecht), if the debtor does not fulfill the obligation to pay his debt, then the creditor has the right to collect the debtor's wealth as his receivables to the debtor (verhaalsrecht)[21].

Not all collection rights are owned by creditors. The right to collect is only given on agreements that are legally made before law. In the law of the covenant it is known the division between the schuld and the haftung. Schuld is the debtor's obligation to carry out his obligations and haftung is the right to claim the debtor's wealth if the obligation is not fulfilled. According to scholars, Schuld and Haftung are distinguishable but inseparable. Thus the exceptions of schuld and haftung are[22]:

1) Schuld without Haftung; The debtor is obliged to fulfill the achievement but is not responsible for the fulfillment. Example: debt due to gambling, the debtor does not have a haftung because in article 1788 of the Civil Code it is clearly stated that the law does not provide a right to sue due to gambling debts.
2) Schuld and haftung are limited; inheritance with the right of registration (Article 1037 of the Civil Code), heirs who receive inheritance benignly are only obliged to pay debts left by the heirs limited to/as much as the value of the property they leave behind. Limited to the assets left by the heirs to pay off their obligations to creditors.
3) Haftung with Schuld on others; For example, insurance agreements. The insurer provides security for its goods to be used as collateral by the debtor against the creditor. In this case, the insurer does not have the obligation to fulfill the achievement (the debtor has the obligation), but is responsible for the fulfillment of the achievement.

Receivables or collection rights arise when the debtor has carried out its obligations correctly and then at that time its position changes to a creditor if there are still obligations from the debtor that have not been completed. At the beginning of the agreement, the right to collect can appear even though it has not carried out its obligations. It can be understood that receivables as collection rights are rights that can be used to sue debtors and the receivables can be transferred to other parties.

[21] Mariam Darus B, "The Law of Alliances with Its Explanation," *Bandung: Alumni* (2010).

[22] R Setiawan, "Principles of Covenant Law," *Putra Abadin, Jakarta* (1999).

Relationship of Debt, Default and Receivables

In an agreement or contract that is reciprocal, there must be an exchange of rights and obligations. In contrast to unilateral agreements that only place obligations on one party, it means that there is no exchange of rights and obligations in this type of agreement. Because there is an exchange of rights and obligations, of course the law must provide protection and justice for those whose rights cannot be fulfilled. Contract theory is a theory that studies and analyzes the legal relationship or agreement between legal subjects in a contract, where one party is obliged to do something while the other party is entitled to something[23]. In this theory, the exchange of rights and obligations must occur completely in accordance with what is stated in the agreement as a manifestation of the principle of pacta sunt servanda. Receivables or collection rights arise after the completion of the debt, the completed debt must be clean from the form of default. Debts and receivables as a form of exchange of rights and obligations must be free from default, in the event of a default, the right to collect cannot appear. A party that has not completed its obligations according to the schedule cannot demand the opponent of its promise to carry out its obligations.

CONCLUSION

Based on all the descriptions above, the understanding of debts, receivables, defaults and their relationships will be concluded. Debt is a tangible obligation to give something, do something and not to do something that can be valued with money and must be carried out no later than maturity. Receivables are the creditor's right to collect because the debtor's obligations are not fulfilled and there are no circumstances that prevent the receivable. Default is a situation where the debtor does not carry out his obligations, is late in carrying out his obligations, misperforms his obligations and there is an error. Without debt there is no default without default there will be no issuance of receivables, so is the relationship between debt, default and receivables.

[23] Haji Said Salim and Erlies Septiana Nurbani, "Penerapan Teori Hukum Pada Penelitian Disertasi Dan Tesis," *PT Raja Grafindo Persada, Jakarta* (2014).

Bibliography

Adi, Rianto. "Social and Legal Research Methods." *Granit, Jakarta* (2004).

B, Mariam Darus. "The Law of Alliances with Its Explanation." *Bandung: Alumni* (2010).

Balai Pustaka, P. N. "Kamus Besar Bahasa Indonesia" (2001).

Black, Henry Campbell. "Black's Law Dictionary, St. Paul Minn." *West Publishing Co 4* (1990).

Fuady, Munir. "The Concept of Civil Law." *Raja Grafindo Persada* (2015).

———. "The Concept of Civil Law." *Raja Grafindo Persada, Jakarta* (2015).

Harahap, Yahya. "Legal Aspects of Agreements." *Alumni, Bandung* (1986).

HS, Salim. "Contract Law Theory and Techniques of Contract Drafting." *Sinar Grafika, Jakarta* (2003).

J Satrio, op. cit. "Default According to the Civil Code, Doctrine and Jurisprudence." *Citra Aditya Bakti, Bandung* (2014).

Marzuki, Peter Mahmud. "Legal Research, Revised Edition." *Kencana, Jakarta* (2017).

Mertokusumo, Sudikno. "Legal Discovery An Introduction." *Liberty Yogyakarta* (2007).

Rahardjo, Satjipto. *Hukum Dalam Jagat Ketertiban (Bacaan Mahasiswa Program Doktor Ilmu Hukum Universitas Diponegoro)*. UKI press, 2006.

Risdiana, Yana. *Penafsiran Kontrak Komersial Antara Teks Dan Konteks*. Inboeku Media Ilmu, 2016.

Salim, H S. "Penerapan Teori Hukum Pada Penelitian Tesis Dan Disertasi" (2013).

Salim, Haji Said, and Erlies Septiana Nurbani. "Penerapan Teori Hukum Pada Penelitian Disertasi Dan Tesis." *PT Raja Grafindo Persada, Jakarta* (2014).

Satiro, J. "Law of Engagement." *Alumni* (1999).

Setiawan, R. "Principles of Covenant Law." *Putra Abadin, Jakarta* (1999).

Subekti, R. "Principles of Civil Law." *PT. Intermasa, Jakarta* (1978).

Syahrani, Riduan. "Seluk Beluk Dan Asas Hukum Perdata." *Cetakan kesatu, Alumni* (2004).

Syahrini, Riduan. "The Intricacies and Principles of Civil Law." *Alumni, Bandung* (2010).