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CONTRACTING AGREEMENT: LAWSUIT FOR DEFAULT OR UNLAWFUL ACTION?

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Abstract: The legal relationship between the contractor and the employer creates reciprocal rights and obligations. Civil Law regulates this relationship under the name of a work contracting agreement, which can be made orally or in writing. Those who feel aggrieved can sue legally, either by filing a lawsuit for unlawful acts (PMH) or breach of contract (WP). However, it is necessary to pay attention to whether the lawsuit is really PMH or WP, as in the two judge's decisions which rejected each lawsuit, thus arousing the author's attention to find out more about the contracting agreement. The method used is normative research because it only analyzes legal material that is relevant to the subject matter, namely regarding work contracting agreements. The research results state that a contracting agreement is a reciprocal agreement, whether stated in written form or only verbally. This is based on the principle of freedom of contract so that each person or party has the right to determine the form and substance of the agreement in accordance with the agreement reached. Work contracting agreements are also consensual because after reaching an agreement, especially agreeing on price and work, the rights and obligations of the parties immediately arise. The application of the principle of pacta sunt servanda should be based on the good faith of the parties so that disputes do not arise because the implementation of the agreement is carried out responsibly by the parties. Based on contract law, the party who feels aggrieved must first send a summons before filing a lawsuit, both PMH and WP.

Keywords: Annemer, Bouwheer, Concurrent Lawsuit, Contract Agreement, Pacta Sunt Servanda

I. INTRODUCTION

Socializing or interacting is human nature as a social creature. The socialization that exists gives rise to reciprocal relationships between individuals and groups (Aris, 2014). It can be seen that in life each individual needs help or cooperation with other individuals, such as helping, discussing, exchanging information, working together, or in other life activities.

One of them is building a residential building which requires people who are experts in their field. In daily practice, the relationship between the two parties is mostly realized in verbal form or is not expressed in a written agreement. This means that the agreement on the type of work and the price for workers' wages is sufficient for the parties.

By law, this relationship is called a contract work agreement where one party wants the other party to build a house according to the drawings and for this work the other party will be given a certain amount of money (Subekti, 1987). Such an agreement is a complex agreement because it contains many legal aspects such as granting power of attorney, carrying out work, and providing services. Apart from that, the technicalities and results must be in accordance with the agreements that have been made previously. Therefore, it is highly recommended that work contracting agreements be put in written form with the aim of being used as evidence in court.

The verbal agreement that occurs in a legal relationship in the form of contracting out work gives rise to rights and obligations where if these rights or obligations (Subekti, 1987) are not fulfilled then the party who violates them can be subject to sanctions (Subekti, 1987). Legal sanctions resulting from the violation of this relationship can be found in case number 50/PK Pdt/2012 where the contractor sued the employer for default because the wages received were not in accordance with what was previously agreed, but the court rejected the lawsuit with evidence that the signing of the addendum was invalid so that Legal work wages are based on the initial agreement.

There is also case number 28/Pdt.G/2020/PN Cbn where the contractor filed a lawsuit against the law because the employer terminated the agreement unilaterally, but the Court decided to reject the lawsuit on the basis that the contractor had previously defaulted by not completing the work in accordance the agreed deadline so that the employer has the right to terminate unilaterally as stated in the clause in the agreement.

From the two court decisions above, it attracted the author's attention to find out more about the legal relationships that existed in the dispute. The author believes that there is a working relationship based on a cooperation agreement between the private sector and the government. In Civil Law, such a cooperative relationship is usually known as a work contracting agreement, where Article 1601 b of the Civil Code states that one party as the recipient of the work (annemer) agrees to carry out work for the other party providing the work (bouwheer) by accepting the price that has been determined. determined upon completion of the work. Regarding the contracting agreement, Radella Elfani et al in the Legal Preferences journal Volume 4 Number 2 July 2023 with the title Termination of Construction Services Work Contracts in Drainage Projects discusses the legal consequences of terminating the agreement by the work provider based on the work recipient's default due to not completing the work. according to the agreed time, one of which is the disbursement of the work implementation guarantee.

Seto Kurniawan and Achmad Busro in the Notarius journal Volume 11 Number 2 of 2018 with the title Legal Consequences of Private Contracting Agreements are still recognized and valid in the eyes of the law so that if one of the parties defaults they can be sued for sanctions and fines as stated in the private contract that has been made.

Hanafi Darwis in the journal Legal Issues Volume 41 Number 1 January 2012 with the title Legal Relations in Contracting Agreements stated several principles in the relationship between the parties including the responsibilities of the parties as regulated in

Article 1604-1605 of the Civil Code, price changes related to contracting agreements in accordance with Article 1610 of the Civil Code Civil law and unilateral termination of the agreement in accordance with Article 1611 of the Civil Code.

Based on the three journals mentioned above, the author's novel in this journal places greater emphasis on indications of the judge's considerations in deciding cases where the author sees the application of the principle of pacta sunt servanda in contracting agreements. The author takes this because in the case of the existing position, the parties are adamant about their respective arguments, where Annemer feels he has done as agreed even though there is additional work so that it burdens the costs incurred and Bouwheer feels that the agreed deadline has passed but the work has not been completely completed so it is felt that there has been an act of default on Annemer's part.

II. RESEARCH METHODS

The research method used is normative juridical, because the author only obtained legal material through literature study regarding disputes resulting from cooperation agreements, in this case the provisions regarding contracting agreements. The data that has been obtained is grouped and selected, then analyzed using qualitative analysis techniques, which is then studied deductively by connecting theories, opinions and regulations that have been obtained from library data, and finally a conclusion is made as an answer to the problem formulation in this research.

III. DISCUSSION

Every human being who is born into the world becomes a person/individual whose characteristics, style, soul, body, shape, ego, motivation, desires and needs are different from other individuals. As individual creatures, humans are also social creatures which require interactions based on the interests of each individual.

The need to fulfill individual needs mostly occurs by interacting with other individuals who also need fulfillment, such as one individual offering a product to meet financial needs and another individual needing the product offered so that a mutualistic relationship is established between these individuals. This is in accordance with what was stated by Aristotle where humans are zoon politicon so that in their lives humans need to interact and socialize with other humans.

The achievement of interests is based on an agreement or suitability for cooperation, mutual assistance and complementarity between individuals. Without conformity, it will lead to disharmony where strong individuals will suppress weak individuals so that conflicts of interest cause disputes where one party feels disadvantaged and it is not impossible that the dispute will take the form of a legal dispute that ends in court. These disputes can be public or private on a national to international scale .

Interaction between individuals in social life in accordance with the principle of ubi societas ibi ius put forward by Marcus Tullius Cicero presents legal institutions in society which become norms and warning signals for perpetrators of violations in interacting in order to maintain order in society .

One of them is civil law as the basic provisions that regulate legal relationships between individuals in social life . Especially regarding agreements that are often found in social relations activities, whether made verbally or stated in written form, such as buying and selling, renting, or carrying out certain work. This form of action creates a legal relationship where one party is bound by an obligation to the other party for a right, either unilaterally or reciprocally. In this way, an agreement can create an agreement between individuals.

In accordance with the principle of freedom of contract, the parties involved in an agreement are free to determine the desired form, content and legal actions without any intervention from other parties. Therefore, the agreement can be said to bind the parties like law, so it must be implemented in good faith because if one of the parties does not obey or fulfill what has been agreed, a lawsuit can be filed. This is known as the principle of freedom of contract, the principle of legal certainty, and the principle of good faith contained in an agreement.

Non-compliance by one individual can be seen in a dispute that occurs between the private sector as the recipient of the work (annemer) and the government as the employer (bouwheer) where the party receiving the work feels disadvantaged because the cooperation agreement was terminated unilaterally. Meanwhile, according to the employer, the unilateral termination was carried out because after being given a warning to immediately complete the work which had exceeded the agreed deadline, the recipient of the work was still negligent. Annemer filed this dispute by filing a civil suit at the Cirebon District Court with case number: 28/Pdt.G/2020/PN Cbn in the form of an unlawful act because Bouwheer terminated the agreement unilaterally, resulting in losses for Annemer.

This legal relationship can be called a work contracting relationship. The Civil Code regulates the issue of work contracting agreements in only 14 articles, namely 1604 to 1616. However, the provisions of these articles become positive law that applies in work contracting relationships for both private and government projects.

Based on civil law systematics, contracting agreements are included in agreements to carry out work. Article 1601 b of the Civil Code confirms that there are two parties in a contracting agreement where one party as the recipient of the work (annemer) agrees to carry out work for the other party who provides the work (bouwheer) by receiving a predetermined price for the completion of the work. At first glance, a contracting agreement is similar to a work agreement, in that both contain elements of orders, work, and also prices/wages. However, the position of the parties is what differentiates the two agreements, where in a contracting agreement the position is equal rather than subordinate (superior-subordinate) as in a work agreement. Imam Soepomo emphasized that a contracting agreement cannot be equated with a work agreement, because there is no authority from the bouwheer to organize or lead in the implementation of the work that has been given to the employee. The technical implementation of the work is left entirely to Annemer.

Apart from that, the element of 'work' itself can be interpreted according to Article 1604 of the Civil Code that the annemer simply carries out work according to his field of expertise or along with the materials. In other words, it could be that Bouwheer only needs Annemer's services or labor because the work materials have been prepared by Bouwheer. Or Bouwheer hands over all the work and preparation of the ingredients to Annemer. The legal consequences of these two conditions are the juridical responsibility of the annemer which is regulated in the provisions of Article 1605-1607 of the Civil Code.

The birth of such an agreement is based on the principle of freedom of contract contained in an agreement. If we look further back, the law is a tool to control society in achieving its goals in life. Law can be interpreted as rules that are coercive and must be obeyed. Even though it can be made unwritten, as a rule, the law is put into written form so that its application is stricter. Laws are formed not only to regulate individual behavior in society, but also to regulate the interests of individuals in relationships in society.

Likewise, contract law is part of private (civil) law. It is not uncommon in social interactions in society that the will of one individual is responded to by another individual into an agreement. They are free to make an agreement, starting from the format or form to the content or substance. This is contained in the principle of freedom of contract in agreements which emphasizes the agreement and will of the parties. From the principle of

freedom of contract, rights and obligations arise in an agreement that is made. Therefore, the annemer can decide whether to accept only the work or accept the whole work (work and materials).

From the annemer side itself, it can be divided into those that reflect the principle of freedom of contract, reflected in two groups of annemers seen from the work agreement in the contracting agreement. The first group is annemers who do the work themselves and can be assisted by other workers who are trusted by the annemer to work together on the work they receive. The second group is annemer who accepts work but only provides labor services to do the work offered by Bouwheer so that Annemer does not carry out any work at all because in this case Annemer recruits workers who are worthy of completing the work from Bouwheer. The Job Creation Law refers to the last group as job service providers, which are termed outsourcing companies. Apart from that, regarding the price agreement and especially the method of payment which must be stated clearly, such as the price given by Bouwheer is done in a lump sum, cost plus, unit price, or percentage.

The consequence of the principle of freedom of contract gives rise to a connected principle, namely the principle of consensualism. The wishes of each party must be mutually agreed in order to create an agreement. Article 1320 of the Civil Code means that the agreement made can be canceled if an agreement is not reached. Thus, consensualism here becomes a limitation of the principle of freedom of contract. The nature of the contracting agreement is consensual, meaning that after an agreement is reached, reciprocal rights and obligations are immediately born on the part of the parties. The agreement concerns the type of work and price. Thus, the offer submitted by Bouwheer is agreed to be accepted (acceptance) by Annemer so that the agreement cannot be canceled unilaterally or without the consent of the other party.

Therefore, from the formulation of Article 1601 b of the Civil Code, it can be seen that the contracting agreement is a reciprocal agreement, where the contractor is obliged to provide a price for the work as the annemer's right. Vice versa, Annemer is obliged to complete the work given by Bouwheer because the completion of the work is the right of Bouwheer. Apart from containing the rights and obligations of each party, the contracting agreement also contains the type of work and price related to changes in work such as additions or reductions in volume, time, or materials/materials except with the consent of the parties as regulated in Article 1610 of the Civil Code.

Therefore, an agreement that has been legally made will bind individuals like legal regulations that must be obeyed and implemented by the parties in accordance with what has been agreed. The form of contracting agreement itself can be made in oral or written form (authentic or private). The only difference is in the proof when a dispute occurs at a later date. For work that is not simple, which requires large costs, as well as government projects, it is usually made in written form. A written agreement is usually prepared by one of the parties which contains the rights and obligations as agreed by the parties. Munir Fuady terms an agreement prepared by one of the parties with the name standard contract. The legal aspects of a standard contract remain binding on the parties as long as the material requirements stipulated in Articles 1320 and 1337 of the Civil Code are fulfilled as well as formalities such as signing a letter of agreement and others.

In the case of a breach of contract lawsuit filed by Annemer with case number 50/PK Pdt/2012, the Supreme Court Judge gave a decision rejecting Annemer's cassation because the addendum agreement was invalid because the party who signed the addendum agreement was not an authorized party, even the party who signed the addendum was challenged because he did not feel there are additions or changes to the work so that there is no agreement on additional work contracting prices that must be paid to the annemer. In this case, Annemer's claim that Bouwheer should pay the shortfall in wages due to additional

work was rejected because the panel of judges saw that the parties were still bound by the type and volume of work according to the initial agreement so that Bouwheer's obligations had been carried out appropriately. The principle of pacta sunt servanda in an agreement remains valid as long as the agreement has been validly made in accordance with Article 1320 of the Civil Code, considering that in the initial agreement there was no mention of an increase in the volume of work and its price. Article 1610 of the Civil Code determines the conditions for allowing additions or changes to a contracting agreement, namely the existence of a written agreement between the parties, especially the contractor, regarding the type/volume of work and the price resulting from the addition.

Article 1338 of the Civil Code confirms that an agreement that has been legally made will bind the parties as law and has coercive power or sanctions for parties who do not comply. This is in accordance with the principle of pacta sunt servanda where an agreement, apart from providing legal certainty, also has binding force and coercive legal force on the parties. The legal consequence is that parties who do not have good intentions or fail to carry out their achievements as agreed can be sued legally. The principle of pacta sunt servanda in classical legal theory is considered something sacred because when a party does not keep a promise it is considered a sin. So what has been agreed must be implemented seriously by the parties.

A breach of contract or what is usually called a breach of contract is caused by two things. Firstly, there is an error committed by one of the parties (usually the debtor) whether intentionally or negligently and secondly due to a force majeure situation where due to these two things there is a party who feels disadvantaged. In principle, losses suffered by one of the parties can be held legally accountable by filing a lawsuit in court with a demand to carry out the performance in full, pay compensation along with fines and interest, or cancel the agreement.

In a work contracting agreement, default can occur if the contractor does not carry out according to the agreement or does not carry out the work as agreed, even if the deadline for completing the work is exceeded. For such conditions, the party giving the job (bouwheer) still has to reprimand or warn the employee first even though the contracting agreement contains a clause that can terminate the agreement unilaterally. This is what Bouwheer did, who was sued for committing an unlawful act in case number 28/Pdt.G/2020/PN Cbn, where it was proven convincingly in the trial by Bouwheer that there was a summons to Annemer who did not complete the work on time in order to speed up the completion of the work. So Bouwheer terminated the agreement unilaterally according to the clause contained in the work contracting agreement. In his decision, the judge considered that the principle of pacta sunt servanda had been implemented properly by Bouwheer, who had sent a written warning to Annemer to immediately complete the work in a timely manner, but Annemer still refused, so according to the clause in the agreement, Bouwheer terminated the work contract agreement without mediation from the court. So Annemer's lawsuit against the law was rejected because Annemer was the one who defaulted first.

Even though they both contain elements of loss, it is necessary to distinguish between acts against the law and breach of contract. In breach of contract, the loss is material with compensation for the loss in the form of money, whereas in an unlawful act the loss is not only material but also immaterial so that the form of compensation other than money is also in the form of restituto in integrum.

There is a possibility that a lawsuit can actually be filed by the party who feels aggrieved. As an illustration, the party who is injured does not necessarily know the legal provisions correctly and is not necessarily able to hire a lawyer, so that based on Article 119 HIR the court judge can provide assistance and advice to parties who go to court to file a

lawsuit and based on their position in accordance with Article 178 paragraph (1) HIR, the Judge is obliged to complete the legal reasons that have not been stated by the parties.

The Supreme Court's jurisprudence states that based on decision Number 2686 K/Pdt 29-01-1987, claims for unlawful acts are still accepted (not obscuur libel) even though basically the legal incident is a breach of contract. Likewise, decision Number 866 K/Pdt 24-10-2007 where claims that contain objective cumulatives (containing positive elements of unlawful acts and breaches of contract) are not considered obscuur libel.

Edy Lisdiyono added that the coincidence of legal events can be possible even though the norms governing them are different, in other words the coincidence of legal norms cannot be coincided but only the events. As an example, he illustrates that when a house owner who is renting it to a tenant renovates the rented house to the point that it damages one of the tenant's belongings. Such incidents can be carried out in conjunction with a lawsuit where the renovation violates the provisions of the agreement so that the homeowner is in default and the homeowner also commits an unlawful act because he damaged the tenant's property.

The work contracting agreement can end if the work has been completed and handed over to Bouwheer immediately after the work is 100% complete or after the maintenance period has passed. Apart from that, in accordance with Article 1161 of the Civil Code, the contracting agreement can be canceled unilaterally by the buyer by replacing all costs that have been incurred by the customer along with the estimated profits lost due to the end of the agreement. This happens when work becomes stagnant and neglected, so that over time the employee feels disadvantaged. Article 1612 of the Civil Code also confirms that with the death of Annemer, the chartering agreement ends, but not vice versa if the person who dies is Bouwheer. Default or bankruptcy determination. Specifically for breach of contract, the aggrieved party can file a lawsuit in the form of seeking compensation or terminating the contracting agreement. The contracting agreement can also be terminated by agreement of the parties.

IV. CONCLUSION

A work contracting agreement is a reciprocal agreement that is consensual in nature. Unilaterally terminating a reciprocal agreement is considered an unlawful act, so the parties who feel aggrieved must first submit a request for termination of the agreement to the court or file a lawsuit for breach of contract after submitting a summons to the violating party. The principle of pacta sunt servanda in agreements is upheld because it becomes like law for the parties who make it.

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