



Compensation in the Termination of Agreement Due to Breach of Contract

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ABSTRACT

In the execution of an agreement, there are cases where parties are unable to fulfil their rights and obligations as agreed, resulting in a breach of contract, known as "wanprestasi" in Indonesian law. Breach of contract can be a cause for terminating the agreement, as stipulated in Article 1266 of the Civil Code (Kitab Undang-Undang Hukum Perdata). The termination of an agreement due to a breach of contract has legal consequences, and the parties involved can claim their rights resulting from the cancellation, including the right to seek compensation for the losses suffered. This research aims to examine the compensation for the termination of an agreement due to a breach of contract. This research was a doctrinal law research based on a literature study. The approach method used in this research was the statute approach. In cases where an agreement is terminated due to breach of contract, the aggrieved party can file a claim for compensation, which includes costs (kosten), losses (schaden), and interest (interessen). However, the aggrieved party cannot claim compensation if the breach of contract occurred due to force majeure or unforeseen circumstances.

INTRODUCTION

Article 1233 of the Civil Code (Kitab Undang-Undang Hukum Perdata or KUHPerdata) states that the sources of obligations are agreements and laws. The term "perikatan" refers to a legal relationship in the law of property, where one party has the right to demand performance, and the other party is obligated to fulfil the performance (Prayogo, 2016). According to Article 1313 of the KUHPerdata, a "perjanjian" (agreement) refers to an act by which one or more persons bind themselves to one or more other persons.

In Indonesia, for an agreement to be valid, it must fulfil four elements stated in Article 1320 of the KUHPerdata, namely (a) the agreement of the parties, (b) the capacity of the party binding themselves, (c) a specific object of the agreement, and (d) a lawful cause. These four elements are cumulative requirements (all must be fulfilled). If an agreement fails to meet the subjective requirements elements (a) and (b), the agreement can be invalidated by the interested parties through a lawsuit to the district

court. If an agreement fails to meet the objective requirements, namely elements (c) and (d), the agreement is considered void ab initio, as if it had never existed.

When the four elements for a valid agreement according to Article 1320 of the KUHPerdata are fulfilled, the agreement becomes binding for the parties, and they are obligated to fulfil the rights and obligations agreed upon. If one party fails to fulfil their rights and obligations due to negligence, that party can be considered to have committed a "breach of contract" (wanprestasi).

The occurrence of a breach of contract can be one of the reasons for terminating an agreement, as stipulated in Article 1266 of the KUHPerdata. This article explains that for an agreement to be cancelled by one party, it must be a mutual agreement, there must be a breach of contract by one or more parties, and the cancellation must be requested from the competent district court (Weydekamp, 2013).

Sometimes, in the execution of an agreement, one or more parties may fail to fulfil the promised performance due to errors or omissions, resulting in losses for the other party. In such cases, the aggrieved party due to the failure to fulfill the agreement can request the cancellation or termination of the agreement.

A cancelled/broken agreement has legal consequences, and the parties can claim their rights due to the nullification of the agreement. Therefore, in such cases, the parties can demand the restoration of the performed obligations or claim damages suffered. This research aims to examine the compensation for the termination of an agreement due to a breach of contract.

METHOD

The research approach used in this study was the doctrinal or normative legal research approach. According to Muhammad, normative legal research emphasizes law as norms and rules that apply in society and serve as a reference for behaviour. This type of research focuses on inventorying positive law, principles, legal doctrines, legal discoveries in concrete cases, legal systematics, legal synchronization, legal comparison, and legal history (Suteki & Taufani, 2020). This research was based on library research, which used literature as the main material to analyze the issues at hand. The theoretical approach used was the statute approach. Marzuki explained that the statute approach involves examining and analyzing all laws and regulations related to the legal issues at hand (Marzuki, 2008).

RESULTS AND DISCUSSION

The normal state of a contract is a balance between performances and counter-performances between the parties. However, in certain circumstances, the exchange of performances does not proceed as intended, resulting in a breach of contract.

Breach of contract refers to a violation of an agreed contract. Literally, "prestasi" in civil law means fulfilling obligations according to the agreement, while "breach of contract" means failing to fulfil obligations according to the agreement.

Breach of the contract itself can take four forms, namely (Tatawi, 2015):

1. Failing to do what one has promised to do;
2. Fulfilling what one has promised, but not as agreed;
3. Performing what has been promised but with delay;
4. Doing something that should not be done according to the agreement.

A performance in an agreement can be considered fulfilled when the parties have fulfilled their rights and obligations as agreed upon. However, if a performance has been fulfilled but the agreed-upon time

or deadline has not yet expired, it cannot be considered fully performed because the completion of the performance should also consider the end of the agreement period (Ariyanti, 2018).

On the other hand, if an agreement has exceeded the agreed-upon time or deadline, but the execution of the agreement does not follow the agreement or is done beyond the time limit, it cannot be considered as fulfilment of the performance. Therefore, parties who fail to fulfil the performance, perform it with delay, or do not perform it according to the agreement are considered to have committed a breach of contract.

Referring to Article 1267 of the KUHPerdata, parties who suffer damages due to a failure to perform the agreement by the other party have the right to claim their contractual rights.

This claim can be made independently or in combination with other claims, such as:

1. Claim for specific performance of the agreement only.
2. Claim for damages.
3. Dissolution, termination, or cancellation of the agreement.
4. Specific performance with additional compensation.
5. Dissolution with additional compensation.

In common law, in case of a breach of contract, the creditor can sue the debtor for damages and not for performance. However, due to the need for a more comprehensive claim for specific performance, it is now possible, based on equity, to request both damages and performance (Tatawi, 2015).

Damages, in a legal sense, refer to the money given as compensation for losses. Legal remedies, or damages, are the means of fulfilling or compensating for rights based on court decisions given to the party who has suffered losses due to negligence, error, or intentional acts of others (Simorangkir et al., 1983). The need for damages arises from actions of one party that cause a reduction in the wealth of another party.

In civil law, there are two causes for damages: damages due to breach of contract and damages due to unlawful acts. Damages caused by breach of contract are regulated in Book III of the KUHPerdata, starting from Article 1243 to Article 1252. Damages caused by unlawful acts are regulated in Article 1365 of the KUHPerdata. Damages caused by unlawful acts are a form of compensation imposed on the person who has caused harm to the injured party. Damages arise due to a mistake, not because of an agreement.

The provisions regarding compensation for damages due to breach of contract, as stated in Article 1243 of the KUHPerdata, explain that the obligation to compensate for costs, losses, and interest arises when the debtor remains negligent in fulfilling their obligations even after being declared in default, or when something that should be given or performed can only be given or performed after the agreed period has elapsed.

Similarly, Article 1244 of the KUHPerdata states that in case of failure to fulfil the obligation, the debtor is still required to compensate for costs, losses, and interest if they cannot prove any valid reason for their failure.

It is evident that the KUHPerdata divides the forms of compensation for damages in case of breach of contract into three components:

1. Costs (*konsten*): These are all the actual expenses incurred by the aggrieved party in performing the contractual obligations.
2. Losses (*schaden*): These encompass all the damages resulting from the negligence of the other party, such as damage or loss of goods and/or property owned by one of the parties.
3. Interest (*interessen*): This refers to all the benefits that one party should have gained if the

other party had not been negligent in fulfilling their obligations.

According to Abdulkadir Muhammad, in a compensation claim, it is not always necessary for all three elements to be present. In practice, it is possible to claim only the actual losses or only the expenses incurred, or a combination of actual losses and expenses (Lubis, 2019).

In essence, the form of compensation used is in the form of money because it is the easiest means to resolve a dispute with minimal disagreement. However, compensation doesn't need to be in the form of money; it can also be in the form of restitution to the original state (*innatura*) or in the form of a prohibition against repeating the act. Compensation can be divided into two categories:

1. Substitute compensation: This refers to compensation for the loss of the right to receive performance by one party, including all the losses resulting from the failure to fulfil the obligations.
2. Supplementary compensation: This refers to compensation for delays or inadequate performance of the obligations, as well as compensation for termination of the agreement.

In literature and jurisprudence, several forms of damages resulting from a breach of contract are also known, namely (Fuady, 2014):

1. Damages specified in the agreement.
Damages specified in the agreement refer to the compensation for a breach of contract where the method and amount of damages have been clearly stated and determined in the agreement when it is agreed upon, even if a breach of contract has not yet occurred at that time.
2. Expectation damages.
Expectation damages refer to compensation for the loss of expected profits (in the future) in the event of a breach of contract. Therefore, in this case, the aggrieved party due to the breach of contract is placed as if the breach did not occur, with various benefits to be obtained.
3. Reimbursement of costs.
Reimbursement of costs refers to the compensation by reimbursing all expenses incurred by one party that should be paid by the other party, who has committed the breach of contract. The calculation of the incurred costs is generally based on evidence of expenditures such as receipts.
4. Restitution.
Restitution refers to compensation that places the agreement in a position as if no agreement had occurred at all. However, in this case, what needs to be done is to return all the added value in its original form that has been received by one party or both parties from one party to another. The mentioned added value refers to an additional value received by the parties as a result of the implementation of the agreement, and this added value must be returned in its original form as a form of compensation.
5. Quantum meruit.
Quantum meruit is a form of compensation that is similar to restitution. The difference between the two lies in the value of the added value that must be returned. In Quantum Meruit, the form of compensation is not based on the original form of the added value but rather on the price of the received added value, as the original form is no longer in a returnable position.
6. Specific performance.
Specific performance refers to compensation by obligating the performance of the contract, even if it is delayed, with or without compensation.

Regarding the amount of compensation, the parties can determine it themselves according to their mutual agreement. However, in certain cases, the determination of compensation must still comply with the provisions of the law, so that the amount of compensation can be determined appropriately if the agreement were fulfilled properly without any default by either party. In determining the amount of damages, two aspects need to be considered (Busro, 2012):

1. Objectivity, which involves examining the general extent of the suffered damages.

2. The profit that should have been obtained if there had been no breach of contract.

To avoid arbitrary claims for compensation, the law sets limitations on the compensation that must be met as a consequence of the party's negligence (Breach of contract), which includes:

1. Foreseeable damages at the time of agreeing (Article 1247 of the KUHPperdata).
This means that the damages to be paid are the damages that could be reasonably foreseen at the time of agreeing unless there is intent. According to Asser's-Losecaat Vermer, intent refers to a deliberate violation of obligations without considering whether there was an intention to cause harm (Busro, 2012). Foreseeable damages must be understood objectively, meaning that a reasonable person should be able to foresee the occurrence and extent of the damages.
2. Damages as a direct consequence of the debtor's default (Article 1248 of the KUHPperdata). To determine the requirement of "direct consequence," two theories can be used:
 - a) The *Conditio Sine Qua Non* theory.
This theory was first proposed in 1873 by Von Buri, a German legal expert. This theory states that all conditions or factors that contribute or jointly cause an effect and cannot be eliminated from the series of factors causing the effect should be considered as the cause (*causa*). Each factor that has equal and parallel value does not distinguish between condition and cause. If one condition is absent, it will lead to the absence of other effects. This theory is often referred to as the equivalent theory because each condition has the same value and is called a condition for the cause. In this theory, conditions and causes are not distinguished (Lienarto, 2016). If these factors are interpreted as human actions, then each action must be regarded as causes that, together, have made the effect possible, and each condition retains its nature as a cause because of the involvement of other actions or circumstances in the occurrence of the same effect. In other words, each condition is also a cause of the same effect (Lienarto, 2016). To determine which events or factors are considered causes of the effect, Von Buri stated that every event/factor that is a condition for the occurrence of an effect should be considered a cause (*oorzaak/causa*). This implication expands the scope of liability.
 - b) The Adequate Causation Theory.
This theory was first proposed by Von Kries. The Adequate Causation theory states that an event can be considered a cause of an effect if, according to human experience, it can reasonably be considered capable of causing such an effect. It can be said that a condition is a cause if, according to its nature, it can generally be considered capable of causing an effect (Busro, 2012). The Adequate Causation theory limits the events considered as causes based on facts that occurred before the occurrence of the fact (*ante factum*), namely facts that, according to reasonable calculations, can be considered as the cause/act that caused the effect. This theory generalizes the search for causes (*causa*) by looking at and assessing which factors, based on common sense, can reasonably be considered capable of causing an effect (Sofian, 2016). According to this theory, subjective factors or the mental state of the actor before their actions are crucial in determining the causal relationship. This mental state involves knowledge (awareness) that the action to be taken is adequate to cause the effect, and this adequacy must be based on the experience of ordinary people (Sofian, 2016).
3. Interest in the case of late payment of a debt (Article 1250, paragraph 1 of the KUHPperdata).
The amount of interest is based on the provisions set by the government.

In the event of a breach of contract, the enforcement of rights by the creditor often outweighs the enforcement of contractual rights by the debtor. The law provides the debtor with the means to defend their contractual rights by raising exceptions in various ways, including:

1. Based on the doctrine of waiver, which refers to the creditor's behaviour that seems to accept the debtor's performance even if it does not comply with the agreement.
2. Based on the doctrine of "*exceptio non adimpleti contractus*," which states that the parties terminating the performance have also committed a breach of contract. This exception can be

- invoked when the agreement does not specify who should perform first.
3. Based on the occurrence of force majeure events (*overmatch*).

Force majeure is regulated in the KUHPerdata in Part IV on Compensation for Costs, Losses, and Interest due to the Non-fulfillment of an Obligation, including Articles 1244 and 1245 of the KUHPerdata, and in Part VI on the Destruction of Borrowed Goods, including Articles 1444 and 1445 of the KUHPerdata.

Force majeure refers to a situation where a debtor is hindered from performing their obligations due to unforeseen circumstances or events at the time of making the contract. The debtor cannot be held responsible for such circumstances, provided that the debtor is not acting in bad faith (Rasuh, 2016). Force majeure can be described as an unforeseen event that occurs beyond the debtor's control after the conclusion of the contract, hindering the debtor from fulfilling their obligations. In such cases, the debtor cannot be blamed or held liable for the occurrence of such events (Hernoko, 2006).

The conditions for being released from liability based on force majeure are divided into three (Hernoko, 2006):

1. Performance is hindered or prevented.
2. The hindrance of performance is beyond intentional fault.
3. The event that hinders performance is not the debtor's risk.

The occurrence of force majeure has several consequences for the agreement, including (Hernoko, 2006):

1. The creditor cannot demand performance.
2. The debtor cannot be declared in default.
3. The debtor is not obligated to pay compensation for losses.
4. The risk does not shift to the debtor.
5. The creditor cannot demand cancellation in a reciprocal agreement.
6. The obligation is considered terminated.

It can be said that when force majeure occurs in an agreement, it has consequences for the parties, where the party being unable to fulfil the performance is not considered in breach of contract. Therefore, in the event of force majeure, the defaulting party is not required to pay compensation since the agreement is considered terminated or nullified.

CONCLUSIONS

In the case of an agreement being terminated due to a breach of contract, the aggrieved party can file a claim for compensation, including costs (*konsten*), damages (*schaden*), and interest (*interessen*). The determination of the amount of compensation was based on the agreement of the parties while considering the applicable laws. However, the aggrieved party could not claim compensation if the breach of contract occurs due to force majeure.

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