

Urgence Of Combined Claims Of Default and Branch Of Contract In Civil Procedure Law

Indah Siti Aprilia

Afiliasi: Universitas Indonesia

E-mail: indah.siti01@ui.ac.id

Akhmad Budi Cahyono

Afiliasi: Universitas Indonesia

E-mail: abcahyono@yahoo.com

Abstract

Lawsuits in civil law are divided into 2 (two) types, namely claims for breach of contract and lawsuits against the law. In practice, many legal practitioners combine these 2 (two) basic claims in one lawsuit. This study uses a normative juridical method with the statue approach and case approach. The results of the study stated that a person is said be in default if he has fulfilled the achievements as stated in Article 1234 of Civil Code or as agreed then a person is considered to have committed an unlawful act if he fulfills the elements in 1365 of the Civil Code, and the party whose rights have been violated must prove that his rights have been violated and ask for compensation loss. Then in the doctrinal provisions, it is not permissible to mix up the claim for breach of contract as well as an act that violates the law, but if in formulating the posita it has been firmly separated between the fact of the act of default and the fact of the violating the law, then the merger is allowed. In addition, a default can at the same time lead to unlawful acts, as long as the fact is that it is afegault and the fact itself occurs outside the obligations required by the contract.

Keywords: *Lawsuit, Legal Certainty, Unlawful Acts, Breach of Contract*

Abstrak

Gugatan dalam perdata terbagi menjadi 2 (dua) jenis, yaitu gugatan wanprestasi dan gugatan perbuatan melawan hukum. Dalam praktek banyak praktisi hukum menggabungkan 2 (dua) dasar tuntutan tersebut dalam satu surat gugatan. Penelitian ini menggunakan metode yuridis normative dengan pendekatan Statue Approach dan Case Approach. Hasil penelitian menyatakan bahwa seseorang dikatakan wanprestasi apabila telah memenuhi prestasi sebagaimana dalam Pasal 1234 KUPerdata atau sebagaimana yang telah diperjanjikan, kemudian seseorang dianggap melakukan perbuatan melawan hukum apabila memenuhi unsur dalam 1365 KUHPerdata, dan pihak yang haknya dilanggar harus membuktikan bahwa haknya telah dilanggar dan meminta ganti kerugian. Kemudian dalam ketentuan doktrin tidak dibenarkan mencampuradukkan gugatan wanprestasi sekaligus perbuatan melanggar hukum, namun apabila dalam merumuskan posita telah tegas memisahkan antara fakta perbuatan wanprestasi dan fakta perbuatan melanggar hukum maka penggabungan tersebut dibolehkan. Selain itu suatu wanprestasi dapat sekaligus menimbulkan perbuatan melanggar hukum, asalkan faktanya itu merupakan wanprestasi dan faktanya itu sendiri terjadi di luar kewajiban yang diharuskan oleh kontrak

Kata Kunci: Gugatan, Kepatian Hukum, Perbuatan Melawan Hukum, Wanprestasi.

INTRODUCTION

Business activities in Indonesia today have a phase that continues to develop continuously for the better. For these business activities to obtain legal protection, a contract agreement is made to maintain and resolve disputes, which of course are based on legal provisions, especially contract law as regulated in book III of the Civil Code, to avoid resolving legal problems. which can sometimes give birth to new legal problems.¹

Contracts are included in the realm of private law, namely the law that regulates the interests between one person and another. The provisions of private law in Indonesia have been codified in the Civil Code and the Commercial Code. In addition, to build business relations in legal system business activities between the parties in their business activities, the parties usually bind themselves to each other (freedom to contract) into a fulfillment of rights and obligations between them (party autonomy).²

Contracts in Black's Law Dictionary are defined :³

“An agreement between two or more persons which creates an obligation to do or not to do a particular thing. Its essentials are competent party, subject matter, a legal consideration, mutuality of agreement, and mutuality of obligation.”

From this limitation, Black Law reveals that a contract is an agreement or agreement between two or more people which then creates an obligation to do or not do certain things. Where it gives birth to contract elements consisting of the authorized party, the existence of certain objects, achievements, reciprocal agreements, and reciprocal obligations.⁴ An agreement is an event where one person promises to another person or where two people promise each other to do something. From this event, a relationship arises between the two people which is called an engagement. The agreement issues an agreement between the two people who make it.⁵

If a person binds himself voluntarily in an agreement, then legal rights and obligations arise to fulfill everything regulated in the agreement. Therefore, an agreement binds someone to do something in the future. Agreement as a legal relationship of wealth between two or more people that gives strength to the rights of one party to obtain achievements and at the same time obliges the other party to fulfill the achievements.⁶

¹ I Ketut Artadi, *Hukum Perjanjian Kedalam Perancangan Kontrak*, Denpasar : Udayana University Press, 2010, hal. 27.

² Van Apeldorn L.J. *Pengantar Ilmu Hukum*. Jakarta: Pradanya Paramita, 1975. hal. 155

³ (Black's Law Dictionary, 1979:443)

⁴ Huala Adolf, *Perancangan Kontrak Internasional*. Bandung: CV Keni Media, 2011. Hal. 2.

⁵ Subekti, *Hukum Perjanjian*, cet. 20, Jakarta: PT. Intermedia, 2004, hal.1

⁶ M. Yahya Harahap, *Segi-segi Hukum Perjanjian*, cet.2 Bandung: Alumni, 1986, hal.6

As for the validity of an agreement, four conditions are required, namely:

1. Agree on those who bind themselves;
2. Able to make an agreement;
3. Regarding a certain matter;
4. A lawful cause.

This is according to Article 1320 of the Civil Code.

In addition, an agreement must be able to predict various events that may occur in the future. The conditions for non-performance of the agreement can be due to a default or an act against the law.

A breach of contract itself is often defined as :⁷

Breach of contract must take into account the realities of dispute resolution, such as the fact that going to court or arbitration to determine whether a breach has occurred, whether the breach was serious enough to justify termination, or whether the process of termination for breach was carried out properly will nor yield an instantaneour answer. Instead, such lawsuit will be inconvient, costly, stressfull, time- sonsuming and dangerous.

In Indonesia itself, apart from alternative dispute resolution, breaches of contract are often filed in court through lawsuits against the law or lawsuits for breach of contract. Talking about unlawful acts is important in the field of civil law, as well as breaking promises. As a result, in an application of the conception of a lawsuit, often acts against the law and default are combined in one lawsuit which is called the merger of lawsuits for default and acts against the law. ⁸

The existence of a lawsuit in Indonesia cannot be separated from the duties and authorities of the judiciary, especially in the civil sector, to receive, examine, adjudicate and resolve disputes between the litigants. The nature of civil procedural law which is formal law, namely the law regarding the process of resolving disputes through the courts, and binding on all parties and cannot be deviated, so that civil procedural law has a public nature.⁹

In fact, both unlawful acts and defaults originate from engagements, the difference is that defaults originate from engagements born of agreements, while unlawful acts originate from engagements born of law. Meanwhile, when we talk about default, default itself is

⁷ Neil Andrews, *Breach of Contract: A Plea For Clarity and Dicipline*, “SSRN University of Cambridge, Faculty of Law Research Paper No. 40 2018 page 117

⁸ Yasardin, *Penggabungan Gugatan Wanprestasi dan Perbuatan Melawan Hukum*. *Jurnal Varia Peradilan XXXI (362)*, Januari 2016, hal. 38

⁹ Rai Mantili dan Sutanto, *Kumulasi Gugatan Perbuatan Melawan Hukum dan Gugatan Wanprestasi Dalam Kajian Hukum Acara Perdata di Indonesia*, *Jurnal Dialogia Iuridica*, Vol. 10 No.2 April 2019.

"Implementation of the agreement that is not timely or carried out inappropriately or not implemented at all."¹⁰

Like a lawsuit in an unlawful act, in essence a default also results in the non-performance of the agreement, namely the existence of a debtor's obligation to pay compensation. Therefore, in practice, practitioners often combine the two claims in one lawsuit. Parties who file lawsuits in court often confuse a lawsuit for default and a lawsuit against the law. It often happens that parties file lawsuits against the law, but from the arguments put forward, it can be seen that the lawsuit is a breach of contract. Errors in the argument of the lawsuit can be a gap that the defendant will take advantage of in his defense. Some experts commented that breaking the law with default has the same limitations with certain limitations. Asser Ruten, a Dutch legal scholar, argues that there is no essential difference between breaking the law and default. According to him, default is not only a violation of the rights of others, but also a disturbance of material rights. Yahya Harahap also argues that the debtor's actions in carrying out his obligations that are not timely or inappropriate, are clearly a violation of the creditor's rights. Any violation of the rights of others is against the law. It is also said, default is a species, while the genus is against the law. So in this paper, we will discuss comprehensively related to the conception of the urgency of merging lawsuits against the law and default in joint lawsuits in relation to achieving the goals of law, justice, certainty, and expediency.

This research will use a normative juridical method with qualitative analysis using a literature study to examine the quality of the determination of a rule or legal norm taken from primary legal materials in the form of legislation in this case is the Civil Code, and secondary legal materials in the form of books, journals, research results and so on that discuss the lawsuit for default and lawsuits against the law. The writing of this paper also uses a legal approach and is analyzed in depth to get a conclusion.

DISCUSSION

The regulation of unlawful acts and defaults is basically clearly and unequivocally separated in the Civil Code. The difference between the two is preceded by differences in legal consequences that arise from legal relations based on agreements and legal relationships based on law. The legal consequences of an engagement born of an agreement are the legal consequences desired by the parties, because it has been agreed upon in the

¹⁰ Yahya Harahap, *Op.Cit* hal.60

agreement. Meanwhile, the legal consequences that arise from the law may not be desired by the parties, but the legal relationship and legal consequences are determined by law.¹¹

Acts against the law referring to Wirjono Prodjodikoro's opinion are formulated with four elements in the formulation of Article 1365 of the Civil Code, including:¹²

1. There is an act against the law;
2. There is an error;
3. There is a loss;
4. There is a causal relationship.

The elements of default include the existence of a valid agreement (1320); the existence of errors (due to negligence and intentional); there is a loss; the existence of sanctions; may be in the form of compensation resulting in the cancellation of the agreement; risk transfer; and pay court fees (if the problem is brought to court).¹³ Default is a term that refers to the non-performance of performance by the debtor. The promise of default causes the other party (opponent of the party to default) to be harmed. Due to a loss by another party, the party who has defaulted must bear the consequences of the opposing party's demands which can be in the form of: Cancellation of the agreement; cancellation of the agreement accompanied by a claim for compensation; fulfillment of the agreement and fulfillment of the agreement accompanied by claims for compensation.

Acts against the law, the juridical arrangement is contained in Article 1365 of the Civil Code, which in the formulation of the article gives authority to parties who feel harmed by other parties because of their mistakes to claim compensation for the losses they have suffered. So that the consequences of the unlawful act legally have consequences for the perpetrators and people who have legal relations in the form of work that give rise to unlawful acts. So that the consequences of not carrying out these obligations can be realized in the form of compensation which can be in the form of material and immaterial replacements.¹⁴

¹¹ Prayogo S, Penerapan Batas-Batas Wanprestasi dan Perbuatan Melawan Hukum, *Jurnal Pembaharuan Hukum III (2)*, Mei 2016, hal. 281

¹² Rai Mantili, Tanggung Jawab Renteng Ganti Kerugian Immateriil Atas Perbuatan Melawan Dihubungkan Dengan Asas Kepastian Hukum, *Jurnal Bina Mulia Hukum Volume 4 No. 1 September 2019*, hal. 89

¹³ Niru Anita Sinaga dan Nurlily Darwis, Wanprestasi dan Akibatnya dalam Pelaksanaan Perjanjian, *Jurnal Universitas Suryadarma*, 2020. hal. 44

¹⁴ *Ibid*

Acts against the law or default must compensate for the loss. As for the demands in the lawsuit against the law as stated in Article 1365 of the Civil Code, several types of prosecution can be carried out including:¹⁵

1. compensation for losses in the form of money;
2. compensation in kind or a return to its original state;
3. a statement that the act committed is against the law;
4. prohibition to perform an act;
5. to eliminate something that is held against the law;
6. an announcement of a decision or of something that has been corrected.

According to Yahya Harahap, the merger of lawsuits is the amalgamation of lawsuits or the accumulation of more than one lawsuit into one lawsuit or several lawsuits that are combined into one lawsuit.¹⁶

The forms of standard accumulation can be explained as follows :¹⁷

- a. Subjective accumulation is a combination of several legal subjects where a plaintiff can file a lawsuit against several defendants or on the other hand several plaintiffs file a lawsuit against the defendant on the condition that there is connectivity between the legal subjects combined.
- b. Objective accumulation is a combination of several demands in a case at once where the plaintiff in filing a lawsuit to the court does not only file one claim but is accompanied by other demands.

The material conditions for the accumulation of claims for default and acts against the law are:¹⁸

1. There is a close relationship between two actions
2. The same object and solved by the same procedural law
3. Between a default and an act against the law is the same court authority
4. To simplify the process and avoid conflicting two different decisions
5. Posita has explained clearly about the event of default first, then followed by a clear description of the act against the law as well as in the petitum.

¹⁵ Sri Redjeki Slamet, *Ibid*

¹⁶ Mohd Kalam Daud dan Ridha Saputra, Problematika Penyelesaian Perkara Kumulasi Gugatan Perceraian dan Harta Bersama (Studi Kasus di Mahkamah Syar'iyah Banda Aceh), *Jurnal Hukum Keluarga dan Hukum Islam*, Vol. 1, No. 2, 2017. hal. 439

¹⁷ ¹⁷ Moh. Ali, Menakar Asas Peradilan Sederhana, Cepat dan Biaya Ringan dalam Pengajuan Gugatan

Kumulasi (Samenvoeging Van Vordering) di Pengadilan Agama, *Jurnal Hukum Acara Perdata ADHAPER*, Vol. 3, No. 2, 2017. hal 264

¹⁸ Yasradin, *Ibid*

As for Decision Number 521/Pdt.G/2020/PN.Jkt.Utr where the plaintiffs argued that there was an unlawful act in the a quo case. However, the author is of the opinion that to optimize the case, a lawsuit should be carried out with a cumulative lawsuit. This relates to that in Decision Number 521/Pdt.G/2020/PN.Jkt.Utr the lawsuit needs to be held cumulatively because at least in that case there is a default by the defendant followed by an unlawful act by the defendant. And the two positums in the lawsuit have been described explicitly and separately, but do not use a joint lawsuit.

It is proven that in this case the defendant was proven not to carry out his obligations as stated in the binding sale and purchase agreement on land and buildings in Pluit City with PPJB number No. 00000486 dated September 21, 2019 as previously agreed. Then on the way that PT. MWS as the defendant also in an online report entitled "Developers in Land Reclamation of Big Loss" stated that Pluit City is still in the planning stage, and has only made an inventory of some interested parties. The sale has not been carried out because there is no clear zoning discussed in the regional regulation plan (Raperda). PT. MWS through its staff is still in the planning stage and there are no sales, and there is no IMB. Even though in its condition PT. MWS has conducted sale and purchase binding sales with the Plaintiffs.

Based on the status of the legal facts, it is known that there is a connection between the default, namely the defendant did not carry out the PPJB agreement No. 00000486 dated September 21, 2019. This fact can actually be classified as an act of default. As for the actions of the defendants making a public statement with a statement that there has been no sale and the IMB by stating a statement as if the PPJBTB never existed can be classified as an unlawful act. To classify the urgency of the merger of the lawsuits, it is necessary to study the existing concepts and doctrines, namely whether or not there is a relationship between the eras of legal relations as a condition for the fulfillment of the validity of the objective accumulation.

The element of close relationship is clearly seen from the fact that the defendants have not the slightest success in carrying out the achievements required in the PPJB, and in fact PT. MWS made a statement to the public that there had never been a plan and there had been no sales even though there had been PPJB. The second element, namely the existence of a legal relationship, can be seen from the actions of the defendants that were carried out consciously and intentionally to cause new legal consequences, which the plaintiff realized would not have wanted. Thus, all the requirements for the accumulation of claims in this case have met the qualifications as characteristics of an objective

cumulative claim, so that there is a match between the legal concept of objective accumulation and the constituting of facts.

In this case, it is proven that there are two close legal relations in the two acts which of course have direct contact with the defendant. In addition, it should also be noted that there are the same objects that will be resolved by the same procedural law, namely the PPJB object for binding sale and purchase and are under the same dispute resolution authority in the same judicial domain. So it is clear, there is an urgency to combine these two lawsuits in one combined lawsuit for default and unlawful acts.

CONCLUSION

Based on the description in the results and discussion section, it can be concluded that there is a merger of lawsuits or the cumulative merging of one lawsuit into a lawsuit or several lawsuits are combined into one, in this case a lawsuit for default and a lawsuit against the law is allowed to have an objective and subjective cumulative act of merging. provided that there is a close relationship between the two acts, the existence of the same object, and the same judicial authority and procedural law in the dispute resolution process.

However, even so, until now there is no clear regulation related to the merger of lawsuits that the Supreme Court should issue a PERMA for standard setting guidelines for the merger of lawsuits for default and unlawful acts to create certainty for practitioners in terms of using the combined lawsuit.

REFERENCES

- Adolf, Huala. *Perancangan Kontrak Internasional*. Bandung: CV Keni Media. 2011.
- Andrews, Neil. *Breach of Contract: A Plea For Clarity and Dicipline*, “SSRN University of Cambridge, Faculty of Law Research Paper No. 40 2018
- Ali, Moch. Menakar Asas Peradilan Sederhana, Cepat dan Biaya Ringan dalam Pengajuan Gugatan Kumulasi (Samenvoeging Van Vordering) di Pengadilan Agama, *Jurnal Hukum Acara Perdata ADHAPER*, Vol. 3, No. 2, 2017.
- Ali, Zainuddin. *Metode Penelitian Hukum*. Jakarta: Sinar Grafika. 2010.
- Artadi, I Ketut Artadi, *Hukum Perjanjian Kedalam Perancangan Kontrak*. Denpasar : Udayana University Press. 2010.
- Black’s Law Dictionary. 1979
- Diantha, I Made Pasek. *Metodologi Penelitian Hukum Normatif dalam Justifikasi Teori Hukum*. Jakarta: Prenada Media Group. 2016.

- Daud, Mohd Kalam. Dan RIDha Saputra. Problematika Penyelesaian Perkara Kumulasi Gugatan Perceraian dan Harta Bersama (Studi Kasus di Mahkamah Syar'iyah Banda Aceh). *Jurnal Hukum Keluarga dan Hukum Islam*, Vol. 1, No. 2, 2017
- Hadikusuma, Haliman. Metode Pembuatan Kertas Kerja Atau Skripsi Ilmu Hukum. Bandung: Mandar Maju. 1995
- Harahap, M. Yahya. Segi-segi Hukum Perjanjian, cet.2 Bandung: Alumni, 1986.
- Mantili, Rai. Tanggung Jawab Renteng Ganti Kerugian Immateriil Atas Perbuatan Melawan Dihubungkan Dengan Asas Kepastian Hukum, *Jurnal Bina Mulia Hukum Volume 4 No. 1 September 2019*.
- Mantili, Rai dan Sutanto. Kumulasi Gugatan Perbuatan Melawan Hukum dan Gugatan Wanprestasi dalam Kajian Hukum Acara Perdata di Indonesia. *Jurnal Dialogia Iuridica*. Vol. 10 No. 2 April 2019.
- H.S. Salim. Dan Erlies Septiana Nurbaini. Penerapan Teori Hukum pada Penelitian Tesis dan Disertasi. Jakarta: PT. Raja Grafindo Persada. 2013
- Marzuki, Peter Mahmud. Metode Penelitian Hukum. Jakarta: Kencana Prenanda Media Group. 2011
- Monolong, Lexy.J. Metodologi Penelitian Kualitatif. Bandung: Remaja Rosdakarya. 2001
- L.J. Van Apeldorn L.J. Pengantar Ilmu Hukum. Jakarta: Pradanya Paramita. 1975.
- Sanggono, Bambang. Metode Penelitian Hukum. Jakarta: Rajawali Pers. 2007
- Soejono. Metode Penelitian Hukum. Jakarta: Rineka Cipta.2010
- Sinaga, Niru Anita. Dan Nurlely Darwis. Wanprestasi dan Akibatnya dalam Pelaksanaan Perjanjian, *Jurnal Universitas Suryadarma*, 2020
- Slamet, Sri Redjeki. Tuntutan Ganti Rugi Dalam Perbuatan Melawan Hukum : Suatu Perbandingan Dengan Wanprestasi, *Jurnal Lex Jurnalica Volume 10 Nomor 2*, Agustus 2013
- Subekti. Hukum Perjanjian. cet. 20. Jakarta: PT. Intermasa, 2004
- S. Prayogo. Penerapan Batas-Batas Wanprestasi dan Perbuatan Melawan Hukum, *Jurnal Pembaharuan Hukum III (2)*, Mei 2016
- Yasardin, Penggabungan Gugatan Wanprestasi dan Perbuatan Melawan Hukum. *Jurnal Varia Peradilan XXXI (362)*, Januari 2016.