

**Decision Analysis on the Default Lawsuit Against the Tri Handayani Boutique
Investment Contract, Supreme Court Decision
NO. 13/PDT.G/2023/PN LGS**

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Abstrak

Cases of default in an investment contract are an event that often occurs in Indonesia. Default is a condition where one party in a contract cannot fulfill some or all of the provisions stated in the contract. Default events require a more in-depth explanation so that we can easily understand all aspects of a default event. In Decision No. 13/Pdt. G/2023/PN Lgs, it is clear that incidents of default still occur frequently in Indonesia. Default can cause losses in both material and immaterial forms to the victim. Therefore, the author's aim in conducting this analysis is to provide an in-depth understanding of default in Indonesia.

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1. INTRODUCTION

a. Background

An agreement is an agreement formed by two or more parties who agree to carry out all agreements that have been contained in written or unwritten (oral) form. In Article 1313 of the Civil Code it is defined that, "An agreement is an act by which one or more people bind themselves to one or more people". In Article 1338 paragraph (1) of the Civil Code, it is stipulated that agreements made legally are valid as law and are binding on the parties who make them. Apart from that, it must also fulfill the four legal conditions for the agreement as stated in Article 1320 of the Civil Code, namely:

1. Their agreement binds them;
2. Ability to create an engagement;
3. A particular subject matter; And
4. A reason that is not forbidden.

This means that parties who have the ability to agree on an agreement that has an object and does not violate the law, must carry out all obligations and fulfill the rights of the other party in implementing the agreement or what is called performance. This is because Article 1338 paragraph (3) of the Civil Code stipulates that agreements or contracts must be implemented in good faith. Good faith focuses on the form of implementation of an agreement after the agreement is legally made. Thus, if in an agreement or contract, these achievements are not carried out, it can give rise to what is called a default.

Default, according to Article 1238 of the Civil Code, is a condition when the debtor is declared negligent by means of an order, or by means of a similar deed, or based on the strength of the agreement itself, namely if this agreement results in the debtor being

deemed to be in default after the specified time has passed. . There are four forms of default, namely:

1. What is promised is not done or what is promised is not done;
2. What was promised was done but not according to what was promised;
3. What was promised was done but not on time or late; And
4. What is prohibited in the agreement is done.

There are also factors that underlie default, namely:

1. Negligence of One of the Parties

One of the parties neglects their responsibilities and goes against the agreed agreement. Thus, the actions taken by this party may harm other parties as a result of negligence or intention;

2. *Force Majeure*(Force Circumstances)

Usually the underlying thing is that there is a condition that cannot be controlled by the party so that the party cannot carry out the agreement not because of his wishes. Therefore, this party cannot simply be blamed. Elements of default in compelling circumstances include natural disasters, objects lost or stolen, objects destroyed due to accident, and others;

3. Party Deliberately Violates the Agreement

The party knowingly and deliberately carries out actions that are contrary to the agreement which results in the other party suffering losses due to that party's negligence.

We often find breaches of contract or acts of default in the investment context. Investment is a practice involved in improving a country's economy and involves agreements between investors and other parties. Investment aims to generate greater income from invested sources so that it can obtain profits for investors and the company. Various forms of assets in investment include shares, bonds, property and other assets. In investment, a letter of agreement is needed that explains the agreement between the investor and the company or is called an investment contract. An Investment Contract is a legal document that contains an agreement in the form of rights and obligations between the investor and the recipient of capital. In an Investment Contract, often one of the two parties do not fulfil or is not responsible for its obligations according to the agreement.

We can see an example of a default case related to an Investment Contract in the Tri Handayani Boutique Investment case. It is known that the Defendant has violated the provisions of the contract because the Defendant did not fulfil the Plaintiff's rights stated in the contract and the Defendant also neglected the obligations contained in the contract, even though the contract that had been made was binding on the Defendant or had to be implemented. This is of course very detrimental to the Plaintiff. For this reason, the author in this article will discuss and analyse a decision related to a breach of contract lawsuit in order to avoid similar incidents and losses.

b. Formulation of the problem

Based on the background description above, the author makes two problem formulations which will be discussed in this Scientific Article, namely:

1. What is the impact of the Defendant's negligence on the implementation of the Boutique Investment Contract?
2. How does the judge consider the case of breach of contract committed by the Defendant?

2. RESEARCH METHOD

In this research the author uses a normative juridical method. This approach is an approach that involves conducting literature studies that use secondary data such as statutory regulations, court decisions, legal theory and can be the opinions of scholars.

3. RESULTS AND DISCUSSION

1. The impact of negligence committed by the Defendant on the implementation of the boutique investment contract

In this case there are two plaintiffs, namely Bobby Amanda as Plaintiff I and Putra Safriza as Plaintiff II, and Tri Handayani as the Defendant. Bobby Amanda as Plaintiff I acts as an investor who provides capital to Tri Handayani's boutique business. Bobby sued Tri Handayani for breach of contract because the Defendant was unable to fulfill Plaintiff I's rights, as written in the Boutique Investment Contract. According to the provisions of Article 3 paragraph (2) in the contract, the rights and obligations of Plaintiff I are:

- a) Obligation
 1. Gave money worth IDR 150,000,000 (one hundred and fifty million rupiah) to the Defendant.
- b) Right
 1. Obtain information and clarity on all financial reports from the Defendant's boutique business;
 2. Obtain a profit of 40% from the boutique business after deducting operational costs and payment of salaries for employees who work at the Defendant's boutique (Article 2 paragraph (3) of the Contract);
 3. Get the investment money back along with the profits agreed upon by the Defendant;
 4. Request and/or collect investment money and profits from the Defendant when it is due;
 5. Requesting Plaintiff II, who has the right to hold the object of collateral, to sell the assets which are collateralized by the Defendant if a loss occurs and the Defendant is unable to fulfil its obligation to return the investment money and profits to Plaintiff I.

Apart from that, Putra Safriza as Plaintiff II also filed a breach of contract lawsuit against Tri Handayani. The lawsuit was filed because of a violation committed by Tri Handayani, this violation behavior was certainly not in line with the provisions stated in the contract. This behavior took the form of the Defendant not handing over the land certificate that was used as collateral, not providing clarity regarding the assets that were used as collateral in the contract, and not giving Power of Attorney as a right to Plaintiff II to sell the assets that were used as collateral in the Contract. The following are the provisions of Article 3 paragraph (3) in the contract which contains the rights and obligations for Plaintiff II, namely:

- a) Obligation
 1. Holding the Collateral object as agreed in the Contract;
 2. Supervise the implementation of contractual agreements;
 3. Become a mediator and/or resolver of problems between Plaintiff-I and the Defendant if problems arise by prioritizing amicable solutions.
- b) Right
 1. Reprimand Plaintiff I and the Defendant if they do things that could harm this agreement;
 2. Selling collateral objects as stated in the contract;
 3. Earn 5% of the gross profits of this agreement.

During the time period agreed upon in the contract, the Defendant, namely from April 29 2021 to June 29 2021, was proven to have committed negligence because he never carried out all the obligations stated in the contract, even though the contract that had been made was binding on the Defendant. or must be implemented. Based on the provisions of Article 3 paragraph (1) in the contract, the rights and obligations of the Defendant are:

a) Obligation

1. Provide information and explain all financial reports to Plaintiff I regarding the running of the Defendant's boutique business;
2. Completing the return of investors' money and distribution of profits according to the contract term;
3. Hand over the land certificate which is the object of collateral to Plaintiff II when the contract is signed;
4. Providing clarity regarding the collateral assets to Plaintiff I and Plaintiff II and guaranteeing that the collateral set has no problems;
5. Gives Plaintiff II the right to sell the assets that are used as collateral if Plaintiff I cannot return the investment funds.

b) Right

1. Received investment capital amounting to IDR 150,000,000 (one hundred and fifty million rupiah) from Plaintiff I as the investor no later than 2 (two) months after signing the contract.

Therefore, the impact of the breach of contract carried out by the Defendant on Plaintiff I and Plaintiff II, namely that the Plaintiffs suffered losses. These losses are divided into two, namely material losses and immaterial losses (losses that are not worth money). Here's the explanation:

● Material Losses

a) That the first material loss is:

1. For Plaintiff I

- The Defendant did not fulfil his achievements, to be precise he did not return Plaintiff-I's capital amounting to IDR 150,000,000 (one hundred and fifty million rupiah) within the agreed time period;
- The defendant provided a gross profit from the investment of 40% after deducting operational costs and employee salaries;
- The loss of potential profit is IDR 72,000,000 (seventy-two million rupiah).

2. For Plaintiff II

- The defendant did not fulfil his achievements, by not providing a gross profit from investment of 5%

b) Whereas the second material loss would be if the defendant had immediately fulfilled his obligation to return Plaintiff I's capital, Plaintiff I could have used these funds for business capital, and the profit could be estimated at IDR. 3,000,000,- (three million rupiah) per month. As for the maturity date, it has been 2 years (24 months) so the total loss in this case is IDR 72,000,000 (seventy-two million rupiah).

● Immaterial Losses

As a result of the Defendant's breach of contract, the immaterial losses were as follows:

1. For Plaintiff I

Due to the Defendant's breach of contract, Plaintiff I experienced a loss of time, energy and thought which resulted in Plaintiff I experiencing anxiety and difficulty concentrating so that Plaintiff I experienced a decrease in productivity levels. Plaintiff I have also lost his appetite for business, which in the eyes of the law can require compensation for immaterial losses in the amount of IDR 1,000,000,000 (one billion rupiah).

2. For Plaintiff II

Because Plaintiff II's good name was destroyed and he was no longer trusted in working together because Plaintiff II was deemed to have failed in carrying out his profession as a mediator, as well as in the form of loss of time, energy and mind, he experienced anxiety and difficulty in concentrating, so that Plaintiff II experienced a decrease in his level of productivity. In this case, in the eyes of the law, compensation for immaterial losses can be requested, in this case amounting to IDR 1,000,000,000 (one billion rupiah).

So as a result of the breach of contract committed by the Defendant, the Plaintiff has the right to demand the following things (vide Article 1267 of the Civil Code):

- a. Fulfilment of engagement;
- b. Fulfillment of obligations and compensation;
- c. Compensation;
- d. Cancellation of reciprocal agreements; And
- e. Cancellation of engagement and compensation.

2. Judge's Consideration in Boutique Investment Contract Default Case

Based on the legal considerations above, in this case the Defendant is categorized as having broken his promise/default, namely not fulfilling the obligations that the Defendant was late in binding himself to carry out, as follows:

- 1) The Defendant did not provide a 40% portion of profits from the invested business to Plaintiff I (vide Article 2 paragraph (3) in conjunction with Article 3 paragraph (1) letter c Boutique Investment Contract);
- 2) The Defendant did not provide information to Plaintiff I regarding the financial reports and progress level of the boutique business (vide Article 3 paragraph (1) letter b of the Boutique Investment Contract);
- 3) The Defendant did not return the money belonging to the investor in case Plaintiff I amounting to Rp. 150,000,000.00, - (one hundred and fifty million rupiah) within the agreed period, namely a maximum of 2 months after the signing of this agreement (vide Article 2 paragraph (1) jo. Article 3 paragraph (1) letter c jo. Article 4 Boutique Investment Contract);
- 4) The Defendant did not hand over the land certificate as collateral to Plaintiff II when this investment contract was signed (vide Article 2 paragraph (5) in conjunction with Article 3 paragraph (1) letter d Boutique Investment Contract);
- 5) The Defendant did not provide clarity regarding its collateral assets to Plaintiff I and Plaintiff II and guarantee that the collateral assets had no problems (vide Article 3 paragraph (1) of the Boutique Investment Contract);
- 6) The Defendant did not give Plaintiff II the right to sell the assets that were used as collateral if he could not return Plaintiff I's investment funds (Article 3 paragraph (1) letter f Boutique Investment Contract);
- 7) The Defendant did not give Plaintiff II 5% of the gross profits from this agreement (vide Article 3 Paragraph (3) letter f Boutique Investment Contract).

After various considerations were made, the lawsuit submitted by the Plaintiffs to the Defendant was partially granted. The defendant is declared the losing party and must

be subject to sanctions to pay court costs. By paying attention to Article 1243 of the Civil Code, Article 1267 of the Civil Code, and articles in the Civil Code, as well as other relevant regulations. It is hereby determined in the deliberative session of the Langsa District Court Panel of Judges on February 1 2024, namely:

- The Defendant was declared not to have provided a 40% portion of profits from the invested business to Plaintiff I (Violating Article 2 paragraph (3), Article 3 paragraph (1) letter c of the Contract);
- It was stated that the Defendant had not provided information to Plaintiff-I regarding the financial reports and progress level of the boutique business (violating Article 3 paragraph (1) letter b of the Contract);
- The Defendant was declared not to have returned the capital money belonging to Plaintiff I within the agreed time period (Article 2 paragraph (1), Article 4 of the Contract);
- The Defendant was declared not to have handed over the land certificate which was used as collateral to Plaintiff II (Violating Article 2 paragraph (5), Article 3 of the Contract);
- It was stated that the Defendant did not provide clarity regarding the assets that were collateral in the contract to Plaintiff I and Plaintiff II (Violating Article 3 of the Contract);
- It was stated that the Defendant did not provide Power of Attorney as a right to Plaintiff II to sell the assets that were collateral in the Contract (Violating Article 3 paragraph (1) letter f of the Contract);
- Sentenced the Defendant to compensate the principal loss (material loss) to Plaintiff I in the amount of Rp. 150,000,000.00 (one hundred and fifty million rupiah); And
- Sentenced the Defendant to pay the court costs which as of today have been set at IDR 331,500.00 (three hundred thirty-one thousand five hundred rupiah).

4. CONCLUSIONS AND RECOMMENDATIONS

1. Conclusion

An agreement is an agreement formed by two or more parties who make an agreement to carry out all agreements that have been formed in writing or verbally. In accordance with the requirements stated in Article 1320 of the Civil Code, that two or more parties who have the ability to make an agreement that has an object and does not violate the law, are obliged to carry out all the requirements in implementing the agreement or what is called performance. Default according to article 1238 of the Civil Code is a condition when the debtor is declared negligent by means of a warrant, or by a similar deed, or based on the strength of the agreement itself, namely if this agreement results in the debtor being deemed to be in default after the specified time has passed.

The impact of the negligence committed by the Defendant as a result of the breach of contract against the Plaintiff was that the Plaintiff suffered losses both material and immaterial (losses that were not worth money), namely that Plaintiff I suffered a loss of IDR 150,000,000 and lost potential profits of IDR 72,000,000,- (seventy-two million rupiah) in material losses. Meanwhile, in terms of immaterial losses, Plaintiff I suffered losses of time, energy and thoughts that made Plaintiff I lose his appetite for business. Plaintiff II has experienced material loss by not being given the 5% gross profit from investment by the Defendant. Meanwhile, in terms of immaterial losses, Plaintiff II was no longer trusted to cooperate because he was deemed to have failed in carrying out his profession as a mediator, causing Plaintiff II's good name to be destroyed and in the form of loss of time, energy and thoughts.

With various considerations made, the lawsuit filed by the Plaintiffs against the Defendant was partially granted. The defendant is the party who is declared the loser and must be sanctioned to pay court costs. With a penalty of compensating the principal loss (material loss) to Plaintiff I in the amount of IDR 150,000,000 (one hundred and fifty million rupiah) and paying the court costs which to date have been set at IDR 331,500.00 (three hundred thirty-one thousand five hundred rupiah).

2. Suggestion

In a contract, default can give rise to various risks which can include operational, financial or legal risks. In implementing the contract, we must be able to understand the points that will become our rights and obligations so that we can renegotiate the contract if there is a right and/or obligation that we cannot fulfill, so that the event of default can be avoided.

3. In the process of making a contract, we must also carry out critical monitoring of contract performance and the parties involved must be able to communicate effectively between one party and another, carry out regular contract evaluations, and make changes to the contract according to business situations and conditions. By doing all these things, events of default due to differences in contract conditions and actual conditions can be avoided.

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