JIHAD : Jurnal Ilmu Hukum dan Administrasi
Vol. 6 No. 3 September 2024
p-ISSN : 2745-9489, e-ISSNl 2746-3842
http://dx.doi.org/10.58258/jihad.v3i1.7254

Legal Reconstruction of Empirical Juridical Analysis of Unilated Determination of Defense (Study of Pontianak District Court Decision Number 51/Pdt.G/2021/PN Ptk)

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Article Info
Article history:
Received: 16 July 2024
Publish: 1 September 2024

Keywords:
Default;
Unilateral;
Jurisprudence;
Subpoena.

Abstract
Decision case number 51/Pdt.G/2021/Pn Ptk contains a legal problem, namely the unilateral determination of default and the legal consequences (the application for the sale of collateral was also carried out unilaterally). This research basically aims to find out the legality of unilateral determination of default in positive law in Indonesia and the legal construction of Pontianak State Decision No. 51/Pdt.G/2021/Pn Ptk in terms of the theory of legal certainty. This research has a normative juridical character, with a statutory approach and a case approach. Legal materials were obtained from primary legal sources (legislation and decisions) as well as secondary legal materials, namely library sources such as books and journals. The results of this research: The legality of unilateral determination of default in positive law in Indonesia refers to the Supreme Court (MA) Jurisprudence No. 186 K/Sip/1959 and based on the jurisprudence of the Republic of Indonesia Supreme Court Decision No. 852 /K/Sip/1972, in Indonesian law, it is not legal/legitimate/legitimate to carry out unilateral acts of default without a prior summons. The legal construction of the Pontianak District Decision No. 51/pdt.g/2021/pn PTK is viewed from the theory of legal certainty, namely that the judge must grant petitum number 3 "stating that the Defendant's decision stating that the Plaintiff is a bad debt debtor is an unlawful act and cancels the entire series of consequences of the decision. Unilateral default, namely making a Sales Request unilaterally. Because in the theory of legal certainty, compliance or implementation of legal sources (jurisprudence) is a concrete form of legal certainty.

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1. INTRODUCTION

To carry out execution in the form of selling collateral or collateral, the creditor must be based on legal provisions that the customer or debtor has defaulted. Default is defined as a broken promise, namely the debtor's obligation to fulfill an achievement. If carrying out the obligation is not affected by circumstances, then the debtor is deemed to have broken his promise.[1]. It is stated in Article 6 of Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land that if the debtor breaks his contract then the first Mortgage Right holder has the right to sell the object of mortgage rights under his own authority through a public auction and take repayment of receivables from the proceeds of the sale.

The issue of determining default is interesting to discuss further in the context of breach of contract in paying credit installments at the bank. Determining the qualifications for default must be clear because this is related to the aspect of legal certainty for both parties bound by the credit agreement. One of the cases where a customer felt disadvantaged due to collateral in the form of land and buildings (as mortgage rights under the creditor's control) had deliberately, without the customer's knowledge, made an application for the sale of collateral, namely the case in decision number 51/Pdt.G/2021/Pn Ptk.

Case position in decision number 51/Pdt.G/2021/Pn Ptk, debtor, in this case a customer at PT. Bank Panin Tbk, felt aggrieved by the unilateral actions of the creditor (defendant/ PT Bank Panin Tbk), who unilaterally declared the debtor as a "Bad Credit Debtor" and due to this unilateral determination, the creditor intentionally and without the debtor's knowledge made a Request for Sale of Collateral. An interesting issue to discuss is the unilateral determination of default criteria by creditors. In the case of this position, it is true that the debtor has committed a default in the form of failure to pay installments (in paying credit installments), but the debtor is a party with good intentions, namely by always seeking mediation with the creditor for payment relief because the debtor is still able to make credit installment payments. . Even though in the Pontianak District Decision No. 51/Pdt.G/202/Pn Ptk, the judge stated that the plaintiff's claim could not be accepted because the plaintiff did not have good faith in mediation. However, the legal issue in this case did not immediately disappear, where the defendant unilaterally determined there was a default and then sold the collateral without the plaintiff's knowledge.

One similar case as a comparison is the Supreme Court Decision Number 2818 K/PDT/2015, which is a cassation decision with the main issue being that the Defendant carried out an auction unilaterally (without the Plaintiff's consent) for two important documents in the form of a land plot certificate and a building. In Pontianak State Decision No. 51/Pdt.G/2021/Pn Ptk. As explained above, we also request a unilateral sale of collateral. In the Supreme Court's decision Number 2818 K/PDT/2015, the judge granted all of the Plaintiff's cassation requests and deemed the Defendant's actions in unilaterally auctioning the collateral invalid.

RI Supreme Court Decision No. 852 /K/Sip/1972, in essence states "That to declare someone has committed a default, an official collection must first be carried out by a bailiff (summon). ... etc". The 1972 Supreme Court decision emphasized that there is legal action that must be taken to declare someone in default, namely by subpoena, so that a default is not a unilateral action as stated in the 1972 Supreme Court decision above. RI Supreme Court Decision No. 852 /K/Sip/1972 emphasizes the inability to unilaterally view someone as being in default before a summons is issued. However, in fact there are cases of unilateral determination of default, including the case of the Pontianak District Decision No. 51/Pdt.G/2021/Pn Ptk. Factors influencing non-compliance with the Republic of Indonesia Supreme Court Decision No. 852 /K/Sip/1972, which creates a gap between legal objectives (das sollen) and implications in society (das sein), namely creditors who do not have good intentions regarding the agreement or other factors, creditors who want to quickly get repayment by auctioning collateral, thereby ignoring the provisions subpoena in the Republic of Indonesia Supreme Court Decision No. 852 /K/Sip/1972.

Based on the description above, the author is interested in conducting legal research regarding creditor actions that determine the qualifications of the debtor's unilateral default, so that it becomes the basis for a request to auction collateral without the debtor's knowledge as well. The urgency of this research is to provide an answer as well as additional reference for similar cases that could occur in the future, so that the public as debtors and financial institutions as creditors have legal certainty regarding all their legal actions, especially whether or not unilateral default determinations are valid. Departing from the gap between das sollen, namely the Indonesian Supreme Court Decision No. 852 /K/Sip/1972, which emphasizes that there must be a summons that precedes the determination of default, and das sein, namely the case of Pontianak District Decision No. 51/Pdt.G/2021/Pn Ptk, where the director/defendant unilaterally stated that the debtor was in breach of contract so that is the basis for a request for a collateral auction without notification to the debtor, the author is interested in studying it in more detail in this legal

research with the title "Judicial Analysis of Unilateral Determination of Default (Study of Pontianak District Decision No. 51/Pdt.G/2021/Pn Ptk)"

The aim of this research is to find out know legality of unilateral determination of default in positive law in Indonesia and legal construction of the Pontianak State Decision No. 51/Pdt.G/2021/Pn Ptk in terms of the theory of legal certainty. Several previous studies which also discussed similar issues were research conducted by Sipa Paujiah in 2021 with the title "Legal Protection for Customers Regarding the Auction Execution of Mortgage Objects in Sharia Banking (Case Study at Bank Muamalat Indonesia[2]. Thesis written by Zulkevin Siregar in 2016 with the title "Legal Consequences of Carrying Out Auctions Without Bank Notification on Debtors (Case Study of Medan District Court Decision Number: 607/Pdt.G/2013/PN Mdn)[3]and a thesis written by Pretty Oktavina in 2021 with the title "Judicial Implications of Auctions for Mortgaged Property Without Notification to the Debtor and Without Announcement of the Auction" Islamic University of Malang[4].

2. RESEARCH METHOD

The type of research that the author will use in this research is normative juridical research, the main study of which is law as norms, rules, legal principles, legal principles, legal doctrine, legal theory and other literature to answer the legal problems being studied.[5]. Therefore, the type of data used by the author is secondary data obtained from library materials related to the legal issues discussed by the author. The nature of this research is descriptive qualitative, namely research that wants to describe the phenomenon of a research object being studied, which in this research will describe the legal phenomenon of unilateral determination of default.

The statutory approach or statute approach is an approach taken by examining all laws relating to the legal issues being discussed or handled. The case approach is an approach taken by reviewing the case in the Pontianak District Decision No. 51/Pdt.G/2021/Pn Ptk.

This type of normative juridical research places the main data relying only on secondary data, so the legal material in this research is primary legal material (Civil Law Book, Jurisprudence of the Supreme Court (MA) No. 186 K/Sip/1959, Jurisprudence of the Supreme Court of the Republic of Indonesia No. 852 /K/Sip/1972, Pontianak District Court Decision No 51/Pdt.G/2021/Pn Ptk) and secondary legal materials (books, articles, journals, internet and other relevant and accessible reading sources support research). The data collection method used by the author in this research is the library research method which is used by collecting library materials related to this research in the form of book literature, statutory regulations, court decisions, articles, searches via internet media, and other reading. The research method that will be used by the author in processing the data is a qualitative approach and then the data is analyzed descriptively to obtain an overview or meaning of the legal rules which are used as a reference in resolving the legal problems that the author writes about.

3. RESEARCH RESULTS AND DISCUSSION

3.1.Legality of Unilateral Determination of Default in Positive Law in Indonesia

The concept of default is a domain in civil (private) law. Article 1234 BW states that the purpose of the agreement is to give something, do something or not do something. The difference between doing something and not doing something often raises doubts and requires explanation, the first is positive, the second is negative. What is meant by 'doing something' is giving up ownership rights or providing enjoyment of an object[6]. Determination of default in a contract construction must refer to a clear reference so that the parties do not feel treated unfairly. Paying attention to the provisions of article 1313 of the Civil Code, explains that: "an agreement is an act by which one or more people bind

themselves to one or more other people. So it can be understood that the two parties can also formulate their own determination of default if they wish to ignore the provisions on default in the legislation.

To find out when the debtor has been in default, it is necessary to pay attention to whether the statement stipulates a deadline for fulfilling the performance or not. In the event that the deadline for fulfilling achievements is "not specified", it is necessary to warn the debtor so that he fulfills the achievements. However, if a time limit has been determined, the debtor is considered negligent if the time limit specified in the agreement has passed. The debtor needs to be given a written warning, which states that the debtor is obliged to fulfill the achievements within the specified time. If the debtor does not comply within that time, the debtor is declared negligent or in default[7]. Written warnings can be given officially or informally. A formal written warning is called a summons. The summons is served through the competent District Court. Then the District Court, through the intermediary of the Bailiff, delivers the warning letter to the debtor, accompanied by a report on its delivery. Informal written warnings, for example by registered letter, telegram, or delivered by the creditor himself to the debtor with receipt. This warning letter is called "ingebreke stelling"[7].

In addition, determining when a person is said to be the party who has committed a default can refer to the principle of freedom of contract, namely the principle which means guaranteeing someone freedom to be free in several matters related to the agreement, including: is free to determine whether he will carry out the agreement or not, freedom to determine with whom he will enter into an agreement, freedom to determine the content or clauses of the agreement, freedom to determine the form of the agreement, and other freedoms that do not conflict with statutory regulations. It can be understood that referring to the principle of freedom of contract above provides flexibility for the parties bound by the agreement to be able to "design" their own form of agreement, including the design of determining the model of default as desired by the parties.[8].

In determining other defaults, the author quotes the views of several experts such as:

1. According to M Yahya Harahap, default is the implementation of obligations that are not done on time or are carried out inappropriately. This creates an obligation for the debtor to provide or pay compensation (schadevergoeding), or if there is a default by one party, the other party can demand cancellation of the agreement.[9], it can be understood that M Yahya Harahap provides provisions for default if the implementation of obligations is not done on time or is carried out inappropriately.
2. According to Abdulkadir Muhammad, default is failure to fulfill obligations that must be stipulated in an agreement, whether an agreement arising from an agreement or an obligation arising from a law. It is understood that Abdulkadir Muhammad requires default when one of the parties does not fulfill the mutually agreed obligations.
3. According to Wirjono Prodjodikoro, default is the absence of a performance in contract law, meaning something that must be implemented as the contents of an agreement.[10].It can be understood that Wirjono Prodjodikoro requires a breach of contract if the achievements in the agreement are not implemented.
4. According to Juswito Satrio, default is an event or situation, where the debtor does not fulfill his obligation to fulfill his obligations properly, and the debtor has an element of fault for it.[11]. It can be understood that Juswito Satrio requires that a default occur when one of the parties/debtors cannot fulfill their obligations, not just fulfill them but fulfill them well (maximum).
5. Salim HS defines default as not fulfilling or failing to carry out obligations as specified in the agreement made between the creditor and the debtor. Default or

non-fulfillment of a promise can occur either intentionally or unintentionally because the obligation was fulfilled properly, and the debtor has an element of fault for it.[12]. It can be understood that Salim HS requires the occurrence of default, namely when one party does not carry out/fulfill or neglects to carry out the contents of the agreement which is his obligation.

Apart from that, determining when someone is said to be the party who committed the crime

From the description above, it can be understood that the determination of default can be carried out in various forms. In Article 1313, determining when someone is said to be in default is left to each party to formulate their own determination of default. Likewise, the principle of freedom of contract is the freedom of the parties to determine the style of their agreement, including the design of determining the model of default as desired by the parties. As well as the various views of the experts above which basically state that if one of the parties does not carry out its achievements. Something that is considered taboo but is still done in some cases is that in an agreement, one party determines for themselves when the other party is in default or unilateral default. An example is the case of Pontianak District Decision No. 51/Pdt.G/2021/Pn Ptk where the plaintiff unilaterally declared the debtor to be a "Bad Credit Debtor" and due to this unilateral determination, the creditor intentionally and without the debtor's knowledge made a Request for Sale of Collateral. The issue of determining unilateral default is important to study because it relates to legal certainty for all parties involved in the agreement.

Regarding the legality of unilateral determination of default in positive law in Indonesia, it is not regulated in a specific regulation. Therefore, this research will examine jurisprudence, namely the Indonesian Supreme Court Decision No. 852 /K/Sip/1972 and Supreme Court (MA) Jurisprudence No. 186 K/Sip/1959 to determine the legality of unilateral determination of default, whether it is valid or not justified because it violates legal certainty. Applying legal provisions in concrete cases must follow the applicable legal provisions, basically there are several provisions that cannot be applied without being preceded by other actions, such as in cases of default. One party or several parties suing the other party for not implementing the agreement properly can only be done if the person suspected of being in default has been declared negligent first (Article 1243 of the Civil Code). Likewise in the Supreme Court (MA) Jurisprudence No. 186 K/Sip/1959, dated 1 July 1959, states that if in an agreement it has been clearly determined when the party concerned must carry out something and after the specified time has elapsed he has not yet carried it out, according to the law he cannot be said to have neglected to fulfill the obligations of the agreement during the period. This cannot be said to be negligent in fulfilling contractual obligations as long as this has not been stated to him in writing by the opposing party (ingebreke gesteld). Based on this, in order to achieve fair legal certainty for the parties, specifically cases of default should be preceded by a warning letter or warning (summon) by the party first and as a result, if the lawsuit is not preceded by a warning letter, the lawsuit can be considered premature. This is important in order to provide an opportunity for the negligent party to try to implement the agreement[13]

According to Taryana Soenandar, who commented on Article 1243 of the Civil Code, the meaning of being in a state of default is a warning or statement from the creditor about the latest time the debtor must fulfill its achievements. If this is exceeded, then the debtor breaks his promise (default). In general, a default only occurs if the debtor is declared to have failed to fulfill his achievements, or in other words, a default exists if the debtor cannot prove that he has committed the default through no fault of his own or due to compelling circumstances. If a time limit is not specified for fulfilling achievements, then a creditor is deemed necessary to warn/reprimand the debtor so that he fulfills his

obligations. This warning is also called sommatie (summation).[13]. The existence of a warning letter as a basis for default is also confirmed in Supreme Court (MA) Jurisprudence No. 186 K/Sip/1959, dated 1 July 1959, states that if in an agreement it has been clearly determined when the party concerned must carry out something and after the specified time has elapsed he has not yet carried it out, according to the law he cannot be said to have neglected to fulfill the obligations of the agreement as long as the It cannot be said that he has neglected to fulfill his contractual obligations as long as this has not been stated to him in writing by the opposing party (ingebreke gesteld). Thus, even though in the agreement the parties have determined how late the agreement can be implemented, this cannot be a basis for declaring the debtor in default, but a letter of warning or summons is required first.[13].

The above provisions are also in line with the jurisprudence of the Republic of Indonesia Supreme Court Decision No. 852 /K/Sip/1972 which essentially has the following legal rules:

> "That in order to declare that someone has committed a default, an official collection must first be carried out by a bailiff (subpoena). Because the summons in this case has not been served, the court has not been able to punish the defendants/appellants for breach of contract, therefore the plaintiff/appellee's lawsuit must be declared inadmissible.

Likewise, in several other similar studies, such as research interpreting the words of Article 1238 of the Civil Code:

> "The debtor is declared default with a warrant, or with a similar deed, or based on the strength of the agreement itself, that is, if this agreement results in the debtor being deemed default after the specified time has passed."

Article 1238 of the Civil Code states that the debtor is negligent, if he is declared negligent by means of a warrant or a similar deed or for the sake of his own agreement, that is, if this stipulates that the debtor must be considered negligent after the specified time has passed. From the provisions of this article it can be said that the debtor is declared in default if a summons has been issued. Thus, the notification letter or summons can be used as a basis for determining when a debtor is declared in default[14].

A subpoena is a warning so that the debtor carries out his obligations in accordance with the warning for negligence that the creditor has conveyed to him. In the subpoena, the creditor states his wish that the agreement must be implemented within a certain time limit[15]. In short, the meaning of a summons is a warning. Furthermore, Jonaedi Efendi in the Dictionary of Popular Legal Terms somatie or legal notice, or better known as a summons is a warning to a potential defendant. The purpose of giving a subpoena is to give the potential defendant an opportunity to do something or stop an action as demanded by the plaintiff[16]It is reiterated that if an agreement does not specify a time limit for fulfillment or performance, then to state whether a debtor has defaulted, a written warning letter from the creditor is required to be given to the debtor. This warning letter is called a statement of negligence or subpoena[14]. In the explanation above, it quotes the jurisprudential provisions of the Republic of Indonesia Supreme Court Decision No. 852 /K/Sip/1972 and Supreme Court (MA) Jurisprudence No. 186 K/Sip/1959, then someone cannot directly determine that one of the other parties is in default (if there is no mutually agreed agreement on determining the default), but must be preceded by a summons.

3.2.Legal Construction of the Pontianak State Decision No. 51/Pdt.G/2021/Pn Ptk Viewed from the Theory of Legal Certainty

The description of the position case that has been described in the introductory chapter above, namely in the case of Pontianak District Decision No. 51/Pdt.G/2021/Pn Ptk, contains legal problems even though Pontianak District Decision No.

51/Pdt.G/2021/Pn Ptk. is a decision that is rejected because it does not necessarily eliminate the legal issue to be studied regarding the unilateral determination of default. As explained in the background, the position case in decision number 51/Pdt.G/2021/Pn Ptk, the debtor, in this case the customer at PT. Bank Panin Tbk, felt aggrieved by the unilateral actions of the creditor (defendant/ PT Bank Panin Tbk), who unilaterally declared the debtor as a "Bad Credit Debtor" and due to this unilateral determination, the creditor intentionally and without the debtor's knowledge made a Request for Sale of Collateral. The main problem in decision number 51/Pdt.G/2021/Pn Ptk is the unilateral determination of default criteria by the creditor. In the case of this position, it is true that the debtor has committed a default in the form of failure to pay installments (in paying credit installments), but the debtor is a party with good intentions, namely by always seeking mediation with the creditor for payment relief because the debtor is still able to make credit installment payments. . Even though in the Pontianak District Decision No. 51/Pdt.G/202/Pn Ptk, the judge stated that the plaintiff's claim could not be accepted because the plaintiff did not have good faith in mediation. However, the legal issue in this case did not immediately disappear, where the defendant unilaterally determined there was a default and then sold the collateral without the plaintiff's knowledge.

On case decision position number 51/Pdt.G/2021/Pn Ptk, the panel of judges must grant the plaintiff's claim, especially in petitum number 3 "stating that the Defendant's decision stating that the Plaintiff is a bad debt debtor is an unlawful act", because it is in positive law which originates from Jurisprudence does not allow unilateral determination of default without being preceded by a summons. The defendant's actions in unilaterally declaring the plaintiff as a bad credit debtor and the defendant's actions in deliberately without the plaintiff's knowledge carrying out a request to sell the collateral and the defendant also taking action in the form of approving the defendant's request for the sale of the collateral and carrying out the sale and determining the defendant as the winner or buyer. itself, must be completely canceled and the application for sale must also be deemed invalid and against the law because the act of making a unilateral determination of default is also invalid.

The requirement to grant petitum number 3 "declaring the Defendant's decision stating that the Plaintiff is a bad credit debtor is an unlawful act" and canceling the entire series resulting from a unilateral determination of default, namely declaring the plaintiff as a bad credit debtor, even intentionally without the plaintiff's knowledge having made a Sales Application which is closely related to implementation of legal certainty. As explained in the previous chapter, legal certainty refers to the application of law that is clear, permanent and consistent, where its implementation cannot be influenced by subjective circumstances.[17]. The author quotes the opinion of Peter Mahmud Marzuki regarding legal certainty, namely a concrete form of legal rules in written and unwritten form which contains general rules which serve as guidelines for everyone to behave in society. These regulations become limitations and references for the community in taking action against other parties. The existence of such rules and the implementation of the rules is a form of legal certainty[18].

It should be noted that a good judge's decision will be used as jurisprudence, namely generally applicable positive law that is born or originates from a judge's decision, where the principles or rules are general in nature and can be used as a basis for legal considerations for anyone. Substantially, a decision that has a jurisprudential character, so that it is followed by other judges, is a decision that contains legal breakthrough value.[19]. In Indonesia itself, the sources of formal law in the Indonesian legal system are Legislation, Customs, Jurisprudence, Treaties and Doctrine. In Indonesia, judges can use jurisprudence as a source of law when deciding cases. There is no agreed definition of jurisprudence. In

Indonesia, the civil law legal system uses jurisprudence as a source of law that is not binding on judges, so that judges can follow jurisprudence that has previously existed or is even different from jurisprudence.[20].

The development of Indonesian legal science influences jurisprudence. Jurisprudence in Indonesia is very important because apart from functioning as a source of law, it also functions as a guide for judges in deciding cases. The judiciary produces laws. According to Algemene Bepalingen van Wetgeving voor Indonesia (AB), judges may not reject cases because there is no governing law, so the function of jurisprudence itself in terms of judges making decisions is to fill legal gaps. The law can only be addressed and covered by the judge who makes the law, which will function as a guideline for jurisprudence until a complete and standard legal code is created.[21]. It can be understood that the position of jurisprudence in the legal system in Indonesia is also as a source of law, especially a reference for judges in similar cases, so that judges may not reject a case due to the absence of legal rules. Linked to the theory of legal certainty put forward by Peter Mahmud Marzuki above, legal certainty is a concrete form of legal rules in written and unwritten form which contains general rules which serve as guidelines for everyone to behave in society (in this case Jurisprudence must also be perceived as a source of law/jurisprudence of the Republic of Indonesia Supreme Court Decision No. 852 /K/Sip/1972 and Supreme Court (MA) Jurisprudence No. 186 K/Sip/1959). These regulations become limitations and references for the community in taking action against other parties. The existence of such rules and the implementation of the rules is a form of legal certainty.

Peter Mahmud Marzuki emphasized "implementation of rules" as a form of legal certainty. Therefore, if the panel of judges in all decision cases are similar to decision number 51/Pdt.G/2021/Pn Ptk, namely regarding unilateral determination of default, grant or ratify the unilateral default action (without being preceded by a summons as per the jurisprudence of the Decision of the Supreme Court of the Republic of Indonesia No. 852 /K/Sip/1972 and Supreme Court (MA) Jurisprudence No. 186 K/Sip/1959), then legal certainty is not implemented by one of the parties. One of the adherents of the school of legal certainty even looked at it Legal certainty is more important than justice, because the nature of justice is very relative. For this school, justice is only an individual's sentimental feelings whose measurements are very individual. If this "feeling" of justice is allowed to float within each individual, then the state is the party most troubled by this situation. Gustav Radbruch put forward 4 basic things related to the meaning of legal certainty, namely: First, that law is positive, meaning that positive law is legislation. Second, that law is based on facts, meaning it is based on reality. Third, that facts must be formulated in a clear way so as to avoid errors in meaning, as well as being easy to implement. Fourth, positive law must not be easily changed[22]. Gustav Radbruch's opinion is based on his view that legal certainty is certainty about the law itself. Legal certainty is a product of law or more specifically legislation. Based on this opinion, according to Gustav Radbruch, positive law which regulates human interests in society must always be obeyed even though positive law is unfair.[22]. According to Gustav Radbruch, although jurisprudence of the Republic of Indonesia Supreme Court Decision No. 852 /K/Sip/1972 and Supreme Court (MA) Jurisprudence No. 186 K/Sip/1959 apparently was not felt by the defendant to be fair, but the judge had to decide that unilateral breaches of contract cannot be carried out without a summons because that is what jurisprudence says. Adherence to the implementation of legal sources (jurisprudence) is a form of concrete legal certainty.

4. CONCLUSION

Based on the research results and discussions that have been described by the researcher, the following conclusions can be drawn:

1. The legality of unilateral determination of default in positive law in Indonesia refers to the Supreme Court (MA) Jurisprudence No. 186 K/Sip/1959 which basically states that if in the agreement it has been clearly determined when the party concerned must carry out something and after the specified time has elapsed he has not yet carried it out, according to the law he cannot be said to have neglected to fulfill his obligations. agreement as long as this has not been stated to him in writing by the opposing party. And based on the jurisprudence of the Republic of Indonesia Supreme Court Decision No. 852 /K/Sip/1972 which basically states that someone who has committed a default must first carry out official collection by a bailiff (subpoena). So in Indonesian law, it is not legal/legitimate/legitimate to carry out unilateral acts of default without a prior summons.
2. The legal construction of the Pontianak District Decision No. 51/pdt.g/2021/pn PTK is viewed from the theory of legal certainty, namely that the judge must grant petitum number 3 "stating that the Defendant's decision stating that the Plaintiff is a bad debt debtor is an unlawful act and cancels the entire series of consequences of the decision. Unilateral default, namely making a Sales Request unilaterally. Because in the theory of legal certainty, compliance or implementation of legal sources (jurisprudence) is a concrete form of legal certainty.

5. ACKNOWLEDGEMENT

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