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Legal Responsibility in Debt Agreements if the Debtor Experiences Default

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Abstract: Legal Responsibility in Agreements Debt Receivables If Debtor Experiencing Default, In the live in society , each individual or people have interests that are not same between parties One with party others . Sometimes interest they there are those that clash and clash with each other contradictory, which is the case the can cause something disputes between each party. The party that must fulfil obligation A engagement called debtors and entitled parties For must be fulfilled fulfillment from A engagement something engagement called creditors. If not filled or No keep engagement called injury promise (breach of contract) Scientific article This Use study law normative or study law literature that is research conducted with method research material library or secondary data, and types research on writing This is study juridical normative, namely reviewed with approach legislation It means something problem will seen from aspect the law with examine regulation legislation. Research results show that the law in Indonesia is still need to be completed For form arrangement about. Legal Responsibility in Agreements Debt Receivables If Debtor Experiencing Default.

Keyword: Default, Debt Agreement, Debtor

INTRODUCTION

In the live in society, each individual or people have interests that are not same between parties One with party others. Sometimes interest they there are those that clash and clash with each other contradictory, which is the case the can cause something disputes between each party. For avoid matter the need hopefully something the rules that govern rule mentioned in in society to create order so that members can society, can comply rule and if provision the violated will cause sanctions for offenders. (Mrs. Retnowulan Sutantio, Iskandar Oeripkartawinata) In Constitution the 1945 constitution also regulates as contained in Article 27 paragraph 1 of the Law base Republic of Indonesia in 1945 in provision the sounds in essence that every citizens of the Republic of Indonesia are required to uphold law and government without except for the creation of A justice within life in society, in achieving need his life man need Work the same and they must each other tie up self For fulfil something performance so that arise law engagement. (Afnil Guza, 2009)

The party that must fulfil obligation A engagement called debtors and entitled parties For must be fulfilled fulfillment from A engagement something engagement called creditors.

If not filled or No keep engagement called injury promise (breach of contract). Breach of contract is No fulfil or negligent carry out obligation as specified in agreement made between creditors with debtor. (Salim HS, 2008) Default or No fulfilled promise can happen Good Because intentional and No deliberate. (Ahmadi Miru, 2007) A debtor it is said negligent, if He No fulfil his obligations or late fulfill it but No as has been promised. (Subekti, 2007)

If the parties has there is an agreement so formed something agreement debt receivables. With existence agreement / consent the result in bond law for the parties. Generally bond the resulting law agreement is each other burdensome or is loading to the relevant parties. This matter result in emergence rights and obligations of the parties in agreement borrow borrow this. Rights and obligations the must carried out by the parties with Good in accordance with the agreement that has been happen.

Economic development including inside it political economy from a country holds role important in help increase welfare its people. Such as as in Indonesia, society or individuals who need funds or capital can get it through credit. Granting chance purchase credit This carried out by the perpetrators business or owner business Good individual or moving legal entity in business capital loans such as banks and non-bank.

Debts incurred No always can walk smooth and good, a moment If giver loan credit or creditors experience difficulty For collect payment debt. Credit is agreement borrowing money, if debtor No can pay paid off debt

About understanding from default, according to Ahmadi Miru default That can in the form of actions:

1. Absolutely No fulfil performance.
2. Achievements made No perfect.
3. Late fulfil performance.
4. Do what 's in agreement forbidden For done.(Ahmadi Miru, 2008)

In a agreement of the parties must notice elements legitimacy something agreement as arranged in provision Article 1320 of the Civil Code, its elements is:

1. Agreed those who bind self
2. Skills For make something engagement
3. A matter certain
4. A lawful reasons or allowed

Basically something agreement made based on agreement between two sides competent party For act legally For carry out something achievements that are not contradictory with rule applicable law morality and order general. In addition to seeing elements legitimacy agreement made sometimes apply principle freedom contract. The parties free determine content shapes and objects agreement. However in its development principle freedom contract have limitations.

On a agreement debt receivables are very possible emergence default or absence achievement. Absence performance the arise from No he did or No implementation performance by the debtor For pay his debt to creditors in accordance with the agreed date. Negligence on action debtor the result in loss party creditors because of the funds he lent the No returned to creditors.

Problem debt receivables of course enough problems complicated. Complicated in meaning at the time a person need money, then someone who has money will give loan to applicant with various conditions (of course) only loan interest). However, that's how it is affairs payment si applicant No Want to pay. Of course just This make loss head si money owner.

Based on background behind on so problems that arise among others, How Legal Responsibility in Agreements Debt Receivables If Debtor Experience Default i and How consequence law default of the parties in agreement debt.

METHOD

Scientific Articles Legal Responsibility in Agreements Debt Receivables If Debtor Experienced Default using type study normative law or library legal research, namely research conducted by researching library materials or secondary data alone. (Soerjono Soekanto, Sri Mamudji, 2003) Types of research on This writing is a normative juridical research, namely it is studied using an approach legislation (*the statute approach*) means that a problem will be viewed from legal aspects by examining statutory regulations. (Restu Adhie Charisma, Aji Lukman Ibrahim, 2023) Data collection techniques in this research this, with material primary law, law secondary and tertiary collected based on topic problems formulated and studied according to classification problem according to source the hierarchy in a way sequential related Legal Responsibility in Agreements Debt Receivables If Debtor Experienced Default with Data / material analysis law in research This with the method of library research *is* by means of Study literature is research conducted with use literature (library), both in the form of books, notes, and report results study previously, and the rules legislation, which outlines and connects so that served in systematic writing For answer questions problem above. (Iqbal Hasan, 2008)

RESULTS AND DISCUSSION

Legal Responsibility in Agreements Debt Receivables If Debtor Experiencing Default

Agreement debt receivables is one of the form regulated agreement in Book III of the Civil Code (KUH Perdata) concerning agreement. Based on Article 1754 of the Civil Code, an agreement borrowing (debt) receivables) is something an agreement in which one party give to the other party a number of goods finished use, with condition that party recipient will return goods similar in the same amount at a specified time. (Article 1754 of the Civil Code (KUH Perdata)

In practice, the object from agreement debt receivables usually in the form of money. The party providing loan called creditors, whereas the receiving party loan called debtor.

According to Article 1320 of the Civil Code, a agreement to be valid must fulfil four conditions, namely: (Article 1320 of the Civil Code)

1. Agreement between the parties,
2. Skills For make agreement,
3. A matter certain, and
4. Because it is halal.

If fourth element This fulfilled, then agreement debt receivables the valid and binding in a way law for the parties. (Article 1338 paragraph (1) of the Civil Code)

Default is a situation in which one party No fulfil obligations that have been promised. Based on Article 1243 of the Civil Code, breach of contract happen when debtor No fulfil or late fulfil his achievements after given warning (*summary*) by the creditor. (Article 1243 of the Civil Code)

Forms default can in the form of:

1. Not implementing what was promised,
2. Carry out but No as should be,
3. Carry out but late, or
4. Do something that should be No may done. (R. Subekti, 2010)

In context agreement debt receivables, default generally happen if debtor No return the loan money in accordance with the time and amount agreed upon.

Forms Legal Responsibilities of Debtors

Not quite enough answer law debtors who do default can categorized in a number of form following:

1. Obligations Paying Compensation (Schadevergoeding)

Debtor must give change make a loss to creditors on losses incurred consequence No fulfilled agreement. Terms This arranged in Article 1246 of the Civil Code, which states that change make a loss includes :

- a. Costs (Costs), namely actual expenses issued by creditors consequence negligence debtor ;
- b. Loss (Schade), namely loss experienced creditors on treasure the object ;
- c. Interest, namely the benefits that should be obtained creditors if engagement implemented as should be. (Article 1246 of the Civil Code)

In principle, replace make a loss must can proven in a way concrete by creditors and must is consequence direct from negligence debtor. (R. Setiawan, 2010)

2. Obligations Paying Interest

In the agreement debt receivables whose object is is money, late interest is part from not quite enough answer law debtor. According to Article 1250 of the Civil Code, if debtor negligent pay a certain amount of money, then He must pay the specified interest in agreement or based on prevailing interest rate in a way general.(Article 1250 of the Civil Code)

This flower functioning as compensation on loss time suffered creditors because money is not can used in accordance promised time.

3. Obligations Bear Risk on Loss Consequence His negligence

According to Article 1237 paragraph (2) of the Civil Code, if debtor negligent deliver goods certain things that become object agreement, then risk on damage or lost goods the switch to debtor. (Article 1237 paragraph (2) of the Civil Code) This means that since moment debtor stated negligent, everything risk related achievements that have not been achieved filled become not quite enough the answer completely.

4. Execution or Foreclosure Guarantee

In practice agreement debt receivables, often accompanied by guarantee material like pawn, mortgage, right liability, or fiduciary. If debtor default, then creditors entitled execute object guarantee in accordance with mechanism applicable law.

As for example, according to Article 6 of the Law Number 4 of 1996 concerning Mortgage Rights, if debtor injury promise, holder right liability entitled sell object right liability through auction general without need agreement debtor. (Law Number 4 of 1996 concerning Mortgage Rights)

With thus, responsibility answer law debtor in matter This No only in a way personal (persoonlijke) aansprakelijkheid), but also includes not quite enough answer material (zakelijke aansprakelijkheid) towards treasure the object that is used guarantee.

Legal Principles Underlying Debtors' Responsibilities

Not quite enough answer debtor in agreement debt receivables based on the principle general law agreement, namely:

1. Principles of Pacta Sunt Servanda

According to Article 1338 paragraph (1) of the Civil Code, every agreement made in a way legitimate valid as Constitution for the parties who make it. (Article 1338 paragraph (1) of the Civil Code.) That is, the debtor bound For fulfil obligations that have been agreed and not can dodge from not quite enough answer law consequence his negligence.

2. Principles Good Faith (Goede Trouw)

According to Article 1338 paragraph (3) of the Civil Code, the agreement must implemented with good faith Good. Debtors who delay, avoid, or No Honest in fulfil obligation his debt considered violate principle this and can aggravate not quite enough answer the law.

3. Principle of Compensation As Restoration (Reparation Principle)

In law civil, purpose giving change make a loss No For punish, but rather For restore condition creditors to return like back to the beginning if agreement implemented with Good.(R. Subekti, 2010)

Legal Action against Debtor Default

If the debtor No fulfil not quite enough answer the law, creditors can go through a number of track:

1. Give Summons according to Article 1238 of the Civil Code ;
2. Submit lawsuit default to court For demand implementation agreement or change make a loss ;
3. Pleading execution object guarantee through institution state auction (KPKNL);
4. Submit application bankrupt If debtor No capable pay his debts to more from One creditors (Law No. 37 of 2004 concerning Bankruptcy and PKPU).

Legal Consequences of Default by the Parties in an Agreement Debt

In general rights and obligations that arise from engagement fulfilled by the parties Good creditors and debtor. However in in fact one of party sometimes No comply what becomes his obligations and this is what is called " default ". default originate from Dutch that is performance bad. Besides that default is also possible interpreted as negligent or negligent, deny promise, or violate agreement, if just debtor do or do something that is not may done. Actions default or events deny promise No born so just but started from existence agreement. Agreement or contract is something actions the law that is carried out One or more subject law with One or more subject law others who agree tie up self One each other regarding matter certain in field treasure wealth. Agreement or contract is something an event in which a person or One party promise to a or another party or where two people or two parties That each other promise For carry out something terms of the agreement originate from Language Dutch that is overeenkomst and language English namely a contract which means engagements, obligations and agreements.¹

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Article 1313 of the Civil Code (KUHPerdata) states that " the Agreement is something actions with which one person or more with tie up himself to one person or more". Then you can concluded that agreement or something agreement is something incident Where a promise to another person or where are those two people each other promise For carry out something thing. In Article 1320 of the Civil Code (KUHPerdata) it is stated, to legitimacy something agreement required four conditions, namely:

¹I Wayan Bandem, I Wayan Wisadnya, Timoteus Mordan, Legal Consequences of Actions Default in the Agreement Debts and receivables, Raad Kertha, Vol. 03, No. 01 February 2020 - July 2020

1. Agreed those who bind himself, meaning that the parties who held agreement That must agreed or agree about the agreement that will be held said, without existence coercion, error and fraud.
2. Skills, namely that the parties who held agreement must speak according to law, as well as entitled and authorized do agreement. Regarding Article 1329 of the Civil Code (KUHPerdata) states that that everyone is capable do actions law except as required by law stated No competent. Article 1330 of the Civil Code (KUHPerdata) states that people who are not speak For make something agreement namely :
3. People who have not adults. Regarding maturity Constitution determine as following:
 - a. According to Article 330 of the Civil Code (KUHPerdata) : Capacity measured if the parties make agreement has 21 years old or not enough from 21 years but Already married and healthy his mind.
 - b. According to Article 7 of Law No. 1 of 1974 dated January 2, 1974 concerning Constitution Marriage (“ Law”) Marriage ”): Competence for man is when has reach 19 years old, while for woman if has reach 16 years old.
 - c. Those at the bottom guardianship.
 - d. Women in matters stipulated by law (with its validity Constitution Marriage, provisions This Already No valid Again).
 - e. All persons prohibited by law For make agreements certain.
4. Regarding something matter certain things This It means is that agreement the must about something object certain.
5. A lawful reasons, namely content and purpose something agreement must be based on things that are not contradictory with law, morality and order Condition first and second called with Subjective Conditions, because about the people or the subject who held agreement, whereas condition third and fourth called Objective Conditions, because about object from something agreement

Condition first and second called with Subjective Conditions, because about the people or the subject who held agreement, whereas condition third and fourth called Objective Conditions, because about object from something agreement. If condition subjective No can fulfilled, then one of them party have right For request so that agreement That cancelled. The party that can request cancellation It is the party that does not speak or the party providing the agreement (permission) is No free. So, the agreement has been made made That will Keep going tie second split the party holding the event agreement, as long as No cancelled (by the judge) on request entitled party request cancellation said. Meanwhile if condition objective that is not fulfilled, then agreement That will null and void. This means since back to the beginning No Once born something agreement and not Once There is something engagement.

In terms of agreement between the parties in essence must responsible answer on fulfillment achievement and implementation achievements. For example agreement borrow borrow or debt accounts receivable is give something to somebody with agreement that someone (Debtor) will return something he received in term agreed time. Of course just with No change the situation. Debt receivables is a corridor area law civil, namely the rules that govern connection between one person with other people, with emphasize interests individual or personal debt receivables considered legitimate in a way law if made something agreement. Namely valid agreement in accordance with condition legitimacy something agreements regulated in Article 1320 of the Civil Code (KUHPerdata).

However if in matter debtor operate performance or his obligations No in accordance with provision in agreement so creditors entitled For demand or bring problem the to court. For say someone (debtor) does default is:

1. Fulfill achievement but No just in time. With words other, late do achievement, meaning although performance That implemented or given, but No in accordance with time handover in engagement. Such an achievement That also called negligence.

2. Does not meet the requirements achievement, meaning performance That No only too late, but also not Can Again run. Such things This caused by Because :
 - a. Fulfillment performance No Possible Again implemented Because the goods has destroyed ;
 - b. Achievement Then Already No useful again, because moment handover has a very important meaning. For example, orders gown bride For used at the time marriage, if No submitted on time before marriage, then handover Then No has another meaning.
 - c. Fulfill performance No perfect, meaning performance given, but No as should be. For example, achievements about handover One truck peanut soya bean quality number 1, but what was submitted is peanut quality soybeans number 2.

According to opinion Subekti, Default (negligence / negligence) of a person debtor can in the form of:²

1. Not doing what is promised will he did.
2. Implement promised, as promised. what but that doesn't
3. Doing what he promised but late.
4. Doing something according to No may agreement he did.

More continue, still according to opinion Subekti, punishment for Debtors who are negligent (default) are:

1. Pay losses suffered by creditors or with short named compensation. 2. Cancellation agreement or also called solution agreement.
2. Transition risk.
3. Pay cost matter, if until prosecuted before a judge.³

How to determine interest and penalties in default, if No agreed previously in something agreement said, then previously need listened to provisions of Article 1239 of the Civil Code (KUH Perdata) which have been give arrangement as following : " Each engagement For do something, or For No do something, if si in debt No fulfil his obligations, get the solution in obligation give replacement costs, losses and interest." Departing from provisions of Article 1338 of the Civil Code, the parties in something agreement given something freedom contract For determine things or clause what to do promised in agreement including those For determine interest or fine in something agreement.

However thus, the agreement the still must created and implemented in good faith Good as well as pay attention propriety, customs and laws Law (Vide: Article 1338 paragraph 3 and 1339 of the Civil Code) Regarding interest, in matter the amount of interest is not arranged in something agreement, then law the laws that are published State Gazette No. 22 of 1948 has set interest from something negligence / negligence (flora moratoir) which can be sued by creditors from debtor is of 6 (six)% per year. If we referring to the provisions of Article 1250 of the Civil Code, the interest demanded by the creditor the No may exceeding the maximum interest limit of 6 (six)% per year, as stipulated in Constitution Regarding the fine in accordance with what is described in the section beginning, consequences law from default according to Article 1239 of the Civil Code is costs (kosten), losses (schaden) and interest (interesten).

The problem is whether unpaid fines arranged previously can qualified as cost or loss. In case This Subekti have an opinion that Cost is all expenditure or costs that are real Already issued by one of the parties. Meanwhile Make a loss is loss Because damage goods belonging creditors resulting from negligence si debtor. From the definition costs and losses according to Subekti said, it is clear that unpaid fines promised previously No can qualified as costs and losses. However so, already become jurisprudence still, that the defeated party will punished

²Taufik Siregar Isnaini, Jandrias Tarigan, Review Juridical Regarding Legal Relations Due to Default in Debt Receivables (Decision Study) Lubuk District Court Pakam No.05/ Pdt.G /2007/ Pn.Lp, Law Enforcement / Volume 1/ Number 2/ December 2014

³R. Subekti, Contract Law, Intermasa, Jakarta, 1979,

For pay cost matter. In practice, indeed No easy For differentiate qualification as well as consequence from Default and Acts Against the Law in Article 1365 of the Civil Code. In simple, from aspect qualification I have an opinion that coverage default which is usually arise from something agreement is more narrow from Deeds Against the Law. Meanwhile from aspect as a result, a Deeds Against the Law can publish change loss in a way wide, not only in a way material but also immaterial.

CONCLUSION

Debtors who do default in agreement debt receivables own not quite enough answer law For bear all losses incurred consequence his negligence. Form not quite enough answer the covers change losses, interest payments, as well execution guarantee if There is the principle of “pacta sunt servanda ” in Article 1338 of the Civil Code confirm that every agreement valid as Constitution for the party who made it, so default is violation to obligation law that binds the parties in agreement. One of the consequence law if a debtor do default is debtor sued For pay change make a loss on No fulfillment performance debtor According to Article 1243 of the Civil Code (KUHPerdata), the replacement make a loss civil focus on replacement loss Because No fulfillment obligation (default). Suggestions for Creditors must Can evaluate Will the person who borrows money (debtor) later can return all over his debt in a way paid off with appropriate time. And for as debtors, it is hoped in every do agreement debts and receivables to always be in good faith Good in accordance the agreement that was written down in debt agreement made in a way together namely with return or pay installments his debt until paid off.

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