

ANALYSIS OF THIRD PARTY OPPOSITION (DERDEN VERZET) IN COURT DECISIONS

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Abstract

In accordance with Article 1313 of the Civil Code, an agreement is an act whereby one or more persons bind themselves to one or more other persons. Agreements give the parties the freedom to make written agreements without any restrictions on what is to be agreed upon. Agreements involving third parties can create benefits by imposing costs on persons who are not parties to the agreement. The third party in the agreement must be a person who is not involved as a party or as a representative of one of the parties who has signed the contract. In civil law relations, particularly agreements, if a dispute arises between the parties, the dispute resolution can be carried out in two ways, namely dispute resolution outside of court and resolution through the courts.

Keywords: *agreement, third party, lawsuit, oppositio.*

A. INTRODUCTION

Humans, as social beings, always interact with one another. This means that many new legal relationships arise in society, particularly those related to socio-economic issues. In order to prevent these legal relationships from causing conflict, the parties involved create rules that are contained in an agreement.¹ An agreement is one source that can give rise to an obligation. An obligation is defined as a legal relationship between two people or two parties, based on which one party

¹ Sudikno Mertokusumo, *Mengenal Hukum (An Introduction)*, (Yogyakarta: Liberty, 2003), p. 7.

has the right to demand something from the other party, and the other party is obliged to fulfill that demand.²

An agreement is an act whereby one or more persons bind themselves to one or more other persons (Article 1313 of the Civil Code). Agreements are regulated in Book III Chapter II of the Civil Code under the heading of obligations arising from contracts or agreements. Book III is open in nature, which means that its provisions are only supplementary (*aanvullen recht*). As supplementary law, the provisions in Book III may be deviated from by the parties to the agreement.³ The agreement gives the parties the freedom to make a written agreement without any restrictions on what is to be agreed upon, in accordance with the principle of freedom of contract contained in the written agreement law in the Civil Code. Book III of the Civil Code adopts an open system, which means that the law gives the parties the freedom to regulate their own legal relationships.⁴ This open system can be seen in Article 1338 Paragraph (1), which states that “all agreements made legally are valid as law for those who make them.”⁵ The validity requirements for an agreement are stipulated in Article 1320 of the Civil Code, namely:⁶

1. Existence of an agreement
2. Legal capacity to act
3. Existence of a specific matter
4. Existence of a lawful cause

The first two conditions are called subjective conditions because they concern the persons or subjects entering into the agreement, while the last two conditions are called objective conditions because they concern the object of the agreement.

² R. Subekti, *Contract Law*, (Jakarta: Intermasa, 2008), p. 1.

³ Taufiq El Rahman, et.al., *The Principle of Freedom of Contract and the Principle of Personality in Outsourcing Contracts*, (*Mimbar Hukum Journal*: Volume 23 Number 3, 2017), p. 583.

⁴ Agus Yudha Hernoko, *Contract Law: The Principle of Proportionality in Commercial Contracts*, (Jakarta: Prenada Media Group, 2010), p. 109.

⁵ Article 1338 Paragraph 1 of the Civil Code

⁶ Article 1320 of the Civil Code.

An agreement or settlement that is binding on a third party is also regulated in the provisions of Article 1317 of the Civil Code, better known as the “exception to privity of contract.” This article states that an agreement may be made for the benefit of a third party if an agreement made for oneself, or a gift to another person, contains such a condition. Furthermore, it is stipulated that anyone who has determined a condition may not withdraw it if the third party has stated that they will use that condition.

The principle of freedom of contract mentioned above is limited by Article 1315 of the Civil Code, which stipulates that, In general, no one can bind themselves on their own behalf or request the establishment of a promise for themselves. This article implies that the parties may not have the intention to include or bind third parties other than themselves. In essence, an agreement is only valid and binding on the parties who make it. However, there are several exceptions stipulated in Articles 1316 to 1318 of the Civil Code, as follows: Article 1316 of the Civil Code: A person may guarantee a third party and promise that this third party will do something, but this does not reduce the claim for compensation against the guarantor or the person who made the promise, if the third party refuses to fulfill the agreement. Article 1317 of the Civil Code: An agreement may also be made for the benefit of a third party if an agreement made for oneself, or a gift to another person, contains such a condition.

Anyone who has stipulated a condition may not withdraw it if the third party has indicated that they will make use of that condition. Article 1318 of the Civil Code: A person is deemed to have acquired something by agreement for himself and for his heirs and persons acquiring rights from him, unless it is expressly stated or it is clear from the nature of the agreement that this was not the intention. The exception in Article 1317 of the Civil Code allows a person to enter into an agreement that benefits a third party. In an agreement, each party has obligations to the other party that must be fulfilled, and each party also has rights obtained from the other party in the

agreement. This means that the party who can file a civil lawsuit on the basis of non-performance of obligations or achievements (breach of contract) is the party to whom the achievement should have been performed.⁷ Therefore, a party to whom the achievement should not have been performed cannot file a lawsuit on the basis of non-fulfillment of obligations/achievements.

An agreement involving a third party can create benefits by imposing costs on someone who is not a party to the agreement. For example, Bank A signs an agreement with B to make credit card payments. Then, Bank A and Bank C, which are members of the same group, will process the credit card payments to be made by B. B agrees to this in order to reduce the possibility of fraud or unauthorized use. In this case, Bank C does not enter into a direct agreement with B.⁸ When viewed from the characteristics of a contract for the benefit of a third party, then:

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1. The third party must be a person who is not involved as a party or as a representative of one of the parties who has signed the contract.
2. The third party who benefits from the contract is not obliged to have the right to terminate the contract. Thus, the rights granted to him by the parties in the contract are not automatically granted to third parties. However, these rights are transferred to them when they agree to accept them. No legal form is required for the third party's consent or for the waiver of their rights.

⁷<https://www.hukumonline.com/klinik/detail/ulasan/lt5128e4fbb65d1/bisaka-h-pihak-ketiga-mengajukan-gugatan-wanprestasi/> accessed on January 2, 2020, at 12:25 p.m. WIB.

⁸ Alan Schwartz and Robert E. Scott, *Beneficiary Third Parties and Contract Networks*, Unofficial Translation by the Author, (Journal of Legal Analysis: Volume 7 Number 2, 2015), p. 326

⁹ Malvin Kacaj, *Characteristics of Contracts for the Benefit of Third Parties*, Unofficial Translation by the Author, (Global Journal of Political and Legal Research: Volume 6 Number 1, 2017), pp. 42-44.

3. Before the third party has stated that they will exercise their rights to benefit from the contract, the creditor has the right to cancel the contract or to make any changes that may affect, reduce, or limit the rights of third parties.
4. Third parties who benefit from a contract have the right to request that the debtor exercise their rights unless otherwise agreed.
5. Third parties only receive benefits or rights from the agreement, but have no obligations

M. Yahya Harahap, in his book, argues that the parties who are legally entitled to be plaintiffs or defendants in cases arising from agreements are limited to those parties directly involved in the agreement. However, in practice, there are lawsuits that can be filed by third parties outside the agreement.¹⁰ Examples of court decisions that will be discussed in this paper are Court Decision Number 06/Pdt.Plw/2014/PN.BKL and Court Decision Number 32/Pdt.Bth/2015/PN.Nga. In civil law relationships, particularly agreements, if a dispute arises between the parties, the dispute can be resolved in two ways: out-of-court dispute resolution and court proceedings.¹¹ Resolving disputes through the courts is a pattern of dispute resolution that occurs between disputing parties through the courts, and the decision is binding. In a contract, dispute resolution through the courts is usually pursued if dispute resolution through extrajudicial means fails to reach an agreement.¹²

B. RESULTS AND DISCUSSION

1) The Role of Third Parties in Cases Contained in Court Decisions

- a) Court Decision Number 06/Pdt.Plw/2014/PN.BKL

¹⁰ M. Yahya Harahap, *Civil Procedure Law: On Lawsuits, Trials, Seizures, Evidence, and Court Decisions*, (Jakarta: Sinar Grafika, 2011), p. 114.

¹¹ Sulasi Rongiyati, *Credit Guarantee Agreements Between MSMEs and Guarantee Institutions Based on Law Number 1 of 2016 concerning Guarantees*, (State Law Journal: Volume 7 Number 1, 2016), p. 7.

¹² *Ibid.*

In this decision, the parties involved are Suni, as the Opposing Party, against Asni alias Bok Sayuti, as the Opposed Party. The Opposing Party, with a third-party opposition letter dated March 17, 2014, filed a third-party opposition (derden verzet) as follows:

- 1) On Tuesday, March 11, 2014, the Bangkalan District Court, through a decree issued by the Chief Judge of the Bangkalan District Court No. 19/Pdt.G/1992/PN.Bkl. dated June 18, 2013, carried out an execution on land owned by Pelawan located in Sadah Village, Galis Subdistrict, Bangkalan Regency. During the execution, officers from the Bangkalan District Court demolished two houses inhabited by Pelawan's children.
- 2) The execution was declared as a coercive measure/execution of decision No. 19/Pdt.G/1992/PN.Bkl, which had permanent legal force.
- 3) The decision was based on the Defendant's unlawful possession and management of the land, which resulted in the Defendant collecting and enjoying the proceeds from the land, which was an unlawful act and a violation of the law.
- 4) Based on the facts, the execution of court decision No. 19/Pdt.G/1992/PN.Bkl on the land owned by Pelawan was erroneous in terms of the object of execution (error in objecto), because the object of execution stated in the lawsuit did not match the object of execution at the time of execution, which turned out to be owned by Pelawan. The execution was also not accompanied by the process and stages of written warning (anmaning) and was not preceded by the stages of seizure and/or execution lawsuit, which are the legal basis for execution.
- 5) Based on the sequence of legal events, the Defendant is concerned that the same thing will happen again, considering the Decision No. 21/Pdt.G/1992/Pn. Bkl dated July 20, 1993, with Asni alias Bok Sayuti as the Plaintiff (who in this decision is the Defendant) against Bualim alias Bualim as the Defendant, the same as the Defendant in case

No. 19/Pdt.G/1992/Pn. Bkl, which, although in its provision stated that the provisional claim was inadmissible, because the decision was non-executable as it was not accompanied by a statement of a valid and valuable seizure and the object of the dispute, and also because the area of land in the object of the lawsuit was unclear (vague). Asni alias Bok Sayuti as the Plaintiff (who in this decision is the Defendant) against Bualim alias Bualim as the Defendant, the same as the Defendant in case No. 19/Pdt.G/1992/Pn. Bkl, which, although in its provisional ruling stated that the provisional claim was inadmissible, because the decision was non-executable as it was not accompanied by a statement of a valid and valuable seizure and the object of the dispute, and also because the area of land in the object of the claim was unclear (vague).

Based on the above description, the role of Pelawan as a third party is not actually that of a third party included in the cases mentioned above. Pelawan filed a counterclaim solely to prevent the execution of a decision that was contrary to his ownership of the land. Pelawan's opposition in this case is not an opposition as a third party.

b) Court Decision Number 32/Pdt.Bth/2015/Pn.Nga

This court decision is a case between I Ketut Narya as the Plaintiff against Ni Made Suari (wife of I Gusti Putu Norken), I Gusti Ngurah KD Nurika Dwi Lesmana, I Gusti Made Weken, I Gusti Komang Mirta, I Gusti Ketut Suarna, I Gusti Putu Suarsa, I Gusti Kade Budhiasa, and I Gusti Ngurah Ketut Surya Purnama, all of whom are Respondents I to VIII in sequence, hereinafter referred to as the Respondents, as well as 10 (ten) names referred to as Co-Respondents. On April 29, 2015, the Plaintiff filed an objection, the main points of which are as follows:

- 1) Upon notification from Co-Defendant VII (I Nengah Karta) and Co-Defendant I (I Gusti Ketut Sudarsa), the Negara District Court will execute the seizure of 11,450 m² of rice fields won by Co-Defendants I to VIII, with Decision No. 24/PDT. G/2011/PN.NGR dated November 24, 2011, in

conjunction with the Indonesian Supreme Court Cassation Decision No. 333 K/PDT/2013 dated January 29, 2014.

- 2) The execution of the decision, if carried out, will clearly cause losses to the Defendant, because part of the rice fields subject to execution, covering an area of 7150 m², does not belong to the Petitioner (now Respondents I to VIII). However, it had already been the lawful property of the Defendant long before the Respondents I to VIII (formerly the Plaintiffs) filed a lawsuit on the basis of purchase from the heirs of the late Ni Nyoman Sining, who are now Respondents I to III.
- 3) In case No. 24/Pdt.G/2011/PN.NGR, the Plaintiff was not named as a Defendant, even though part of the rice fields that were the subject of the lawsuit in that case had been the legal property of the Defendant since April 15, 2010, because according to the law regarding the dispute, it was their own problem and should not have resulted in losses to the Defendant, as a Third Party.
- 4) Based on these facts, with the execution of the decision (enforcement) to be carried out by the State Court against Court Decision No. 24/Pdt.G/2011/PN.NGR, the Defendant feels that his rights have been harmed by both parties, so the Defendant is filing this legal action.

Based on the above, the Defendant in this counterclaim provisionally requests to suspend the execution of the decision in case No. 24/Pdt.G/2011/PN.NGR until the decision on the third party's counterclaim (*derden verzet*) that he has filed has permanent legal force. The Defendant in this decision feels that his rights have been violated because the rice fields that he legally owns will be included in the execution of decision No. 24/Pdt.G/2011/PN.NGR. Therefore, the Defendant filed a third party opposition lawsuit.

2) Reasons for Rejecting the Lawsuit Filed by a Third Party in the Case Contained in the Court Decision

- a) Court Decision Number 06/Pdt.Plw/2014/PN.BKL

The Defendant's opposition to the opposing party's request for execution, even though the opposing party's request for execution has not yet entered the stage of seizure for execution and the Defendant is not actually a party in case No. 21/Pdt.G/1992/Pn.Bkl, and the Defendant's land is also not the subject of the lawsuit in that case. However, considering the above events, according to the law, the counterclaim filed by the Defendant in this case must be considered appropriate and reasonable and in good faith, in order to avoid the execution of an enforcement that is contrary to the rules of law.

The main point of Pelawan's counterclaim is that Pelawan is not a party that must comply with Decision No. 21/Pdt.G/1992/PN.Bkl, and that the land owned by the Defendant is not the subject of dispute in that case, it is therefore appropriate according to the law that the land owned by the Defendant should be declared not to be the subject of dispute and not subject to seizure in the petition for execution of decision No. 21/Pdt.G/1992/PN.Bkl.

On the scheduled trial date, the Defendant did not appear in court. It turned out that the Defendant's absence from the trial was due to the fact that the Defendant had passed away on August 20, 1996. In accordance with the provisions of civil procedure law, if the Defendant has passed away, the case must first be withdrawn by the Plaintiff. The Plaintiff could then file a new lawsuit against the Defendant's heirs. However, the Plaintiff stated that he would not withdraw the third-party lawsuit and still wanted to continue the trial. The purpose of replacing the deceased party with the heir in a lawsuit is so that the verdict can be enforced if it is granted. Because the Defendant did not withdraw the lawsuit and then replaced it with the heir, the legal consequence is that the verdict cannot be enforced.¹³ On this basis, the third party lawsuit filed by the Defendant cannot be accepted by the Court.

¹³ As stated in Indonesian *Supreme Court Case Number 332 K/Sip/1971* dated July 10, 1971, in the case of G.H. Panggabean v. Saleh Bisjir,

b) Court Decision Number 32/Pdt.Bth/2015/PN.Nga

The third-party opposition (*derden verzet*) filed by the Opponent in this case proved that the Respondents in the third-party opposition were incomplete or lacking. The lawsuit states that the subject being sued is I Gusti Made Wenken (Defendant III). In fact, I Gusti Made Wenken passed away on September 5, 2013, and therefore should not have been included in the subject of the third-party opposition lawsuit as Defendant III. The defendant should also understand and comprehend the law that a third party opposition lawsuit can be filed by the owner as long as the contested case does not yet have a final and binding decision. If the contested case has a final and binding decision, the legal action that can be taken by a third party regarding the seizure is not a third party opposition lawsuit, but rather a regular lawsuit. The defendant filed a third-party counterclaim against a decision that already had permanent legal force, namely Decision No. 24/Pdt.G/2011/PN.NGR. On this basis, the defendant's claim was rejected as contrary to the law.

Another reason is that the 7,150 m² of rice fields purchased by Pelawan were originally the proceeds of crime based on Case Decision No. 76/Pid.B/2001/PN.Ngr dated May 28, 2002 in conjunction with Supreme Court Decision No. 1198 K/Pid/2002 dated June 20, 2008, on the criminal act of document forgery. The issuance of the Land Ownership Certificate for the land was based on the proceeds of a criminal act committed by the previous owner in 1982. Therefore, the Defendant's argument that he had control over the object was in fact control over the object of a criminal act. In addition, the Defendant did not explain in detail the evidence that the rice field land belonged to him. Therefore, the Defendant's lawsuit was rejected because it was contrary to the criminal and civil decisions that had permanent legal force. With the Supreme Court's decision now legally binding, it must be executed immediately. The third-party opposition filed by the Opponent will not suspend the execution, as the Opponent was wrong to file this type of

opposition, which should have been a regular lawsuit rather than a third-party opposition (derden verzet).

C. CONCLUSION

In both court decisions, the Defendant in the third-party counterclaim filed by the Plaintiff was rejected by the District Court due to errors made by the Plaintiff in filing the claim. As in Court Decision Number 06/Pdt.Plw/2014/PN.BKL, the Plaintiff was not actually a third party, because the Plaintiff was not included in the case that formed the basis of the lawsuit. In Court Decision Number 32/Pdt.Bth/2015/PN.Nga, the lawsuit filed by the Defendant should have been a regular lawsuit, not a third party counterclaim. It is true that the Plaintiff is a Third Party, but the filing of the lawsuit was incorrect because the lawsuit was filed against a decision that already had permanent legal force, so it could not be considered a third party counterclaim. The reason why the lawsuit filed by the Plaintiff was rejected was because the Plaintiff did not understand the applicable laws in civil procedure, so that the lawsuit was incomplete and could not be granted by the Court.

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