

SETTLEMENT OF DEBT AND CREDIT DISPUTES THROUGH ACTA VAN DADING (Case Study of Decision Number 8/Pdt.G.S/2023/PN Pwr and Decision Number 10/Pdt.GS/2020/PN Plj)

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ABSTRACT

Conflicts in society always exist, especially conflicts related to debts and receivables, which in civil law terms are called debts and receivables dispute. Disputes are not always resolved through court, but rather by agreement between the parties involved. Analysis of debt dispute resolution through acta van dading based on decision Number 8/Pdt.G.S/2023/PN Pwr and Decision Number 10/Pdt.GS/2020/PN Plj is a simple lawsuit that ended in peace because of the good faith of the parties in resolving peace. In the research used by the author, a normative juridical approach is used which is based on legal norms. The research aims to explain the responsibilities and legal consequences of settlement debts through acta van dading. The research results in this study will explain that there is a legal analysis related to resolving debt settlement problems through the acta van dading which explains the responsibilities and legal consequences if debt collection is resolved through the acta van dading. The legal force of the acta van dading has executorial power which is binding and has permanent legal force.

Keywords: Dispute, Debts, Peace, Acta Van Dading

ABSTRAK

Konflik di masyarakat secara fakta selalu ada terutama konflik yang berkaitan dengan hutang piutang yang dalam istilah hukum perdata disebut sengketa hutang piutang. Sengketa tidak selalu diselesaikan melalui pengadilan, melainkan dengan kesepakatan diantara mereka para pihak yang terlibat di dalamnya. Analisis penyelesaian sengketa utang piutang melalui acta van dading dengan berdasarkan putusan Nomor 8/Pdt.G.S/2023/PN Pwr dan Putusan Nomor 10/Pdt.GS/2020/PN Plj merupakan gugatan sederhana yang berakhir dengan jalan perdamaian karena adanya iktikad baik para pihak dalam menyelesaikan sengketa. Dalam penelitian yang digunakan oleh penulis memakai pendekatan yuridis normatif yang merujuk pada norma - norma hukum. Penelitian bertujuan menjelaskan tanggungjawab dan akibat hukum penyelesaian sengketa hutang piutang melalui acta van

dading. Hasil penelitian pada penelitian ini akan menjelaskan bahwa adanya analisis hukum terkait penyelesaian masalah sengketa utang piutang melalui acta van dading yang di dalamnya menjelaskan tentang tanggungjawab dan akibat hukum apabila sengketa utang piutang diselesaikan melalui acta van dading. Kekuatan hukum acta van dading memiliki kekuatan eksekutorial yang bersifat mengikat dan berkekuatan hukum tetap.

Kata Kunci: *Sengketa, Utang Piutang, Perdamaian, Acta Van Dading*

INTRODUCTION

Deed (*acte*, Dutch) linguistically means a writing signed and intended to prove the truth of what is stated in it and made by an authorized official who has legal force. *Dading* means an agreement made to end an ongoing dispute. The legal dictionary explains *acta van dading* as an agreement when there is a delivery, agreement and retention of an item, all parties that include two people end a case that is being examined by the court or as a prevention of the emergence of a particular case. Peace is seen from the philosophical values that can be recognized in the cultural values of the nation which are shown by the precepts of Pancasila as a whole. (1)

In fact, conflicts in society always exist, especially conflicts related to debt and credit, which in civil law terms are called debt and credit disputes. Disputes are not always resolved through the courts, but by agreement between the parties involved. For civil law, dispute resolution, especially in relation to peace, has been discussed in the Civil Procedure Law, such as the *Reglement voor de Buitengewesten* (Rbg) and *Herzien Indonesische Reglement* (HIR). In addition to the HIR and Rbg, Book IV Evidence and Expiration of the Criminal Code discusses amicable settlement of disputes in civil law. (2)

The meaning of peace is an agreement of the parties by making an agreement, delivery, or detention of an item, ending a dispute that is currently dependent or preventing the emergence of another case. Based on civil law, *dading* or peace is regulated in Article 130 HIR / Article 154 Rbg. Referring to Article 130 paragraph (2) HIR, a deed of peace has the same force as a verdict that already has permanent legal force and cannot be appealed or appealed.

Furthermore, it needs to be explained that this research is not the first research, but there are several previous studies, such as in the Law Journal with the title "Default Lawsuit on the Decision of the Deed of Peace in the Semarang District Court Decision No

436/Pdt.G/2014/PN Smg” by Riko Kurnia Putra, Moch Djais, Marjo, “The Role of Judges for the determination of Deed of Peace according to Civil Procedure Law” by Dewa Nyoman Rai Asmara Putra and Anak Agung Istri Mas Rahardianti, and “The Power of Deed of Peace and its Problems” by Gusti Yosi Andri, and Djuariah.

Based on previous research as described by the researcher, our research has a different focus. The research that we will conduct is *first*, the regulation of the deed of peace / *acta van dading* in Indonesian civil law and also the object of the dispute that was made peace or *acta van dading* based on Decision Number 8/Pdt.G.S/2023/PN Pwr and Decision Number 10/Pdt.GS/2020/PN Plj. *Second*, the rights and obligations for the plaintiff and defendant in the existence of an *acta van dading* based on Decision Number 8/Pdt.G.S/2023/PN Pwr and Decision Number 10/Pdt.GS/2020/PN Plj.

In the case in Decision No. 8/Pdt.G.S/2023/PN Pwr, a simple lawsuit filed by PT BPR Hidup Arthagraha Kutoarjo Branch Office filed a lawsuit against Purwaningsih as the defendant. Meanwhile, the case in Decision No. 10/Pdt/GS/2020/PN.Plj, is a simple lawsuit filed by PT Sarana Sumatera Barat Ventura as the plaintiff filed a lawsuit against Rosmita as the defendant, which contains that the defendant will pay the loan in accordance with the stated amount and with a guarantee of 1 (one) plot of land and rubber plantation. Both decisions were resolved through *acta van dading*. From this description by looking at the cases in the two decisions, the researcher is encouraged to carry out a study related to the settlement of debt and credit disputes through *acta van dading* based on civil law, which the author will then analyze the settlement of debt and credit disputes through *acta van dading*. With this the researcher will analyze in a title **“SETTLEMENT OF DEBT AND CREDIT DISPUTES THROUGH ACTA VAN DADING”** with the study of Decision No 08/Pdt.G.S/2023/PN Pwr and No 10/Pdt.G.S/2020/PN.Plj.

RESEARCH METHOD

Researchers carry out research by utilizing normative juridical methods, namely the approach method used through a legislative approach. The focus of the normative juridical research method is in order to examine and study the law as rules, norms, legal principles, principles and others to answer the problems studied. The research that will be conducted by the author uses descriptive analytical research, where the descriptive analytical method is

research conducted in an effort to describe an event, symptom, and event at this time. This research uses literature study and document study data collection techniques. The type of data used by researchers includes secondary data which is data that has been documented and is ready for use. The analysis used includes qualitative analysis. (3)

RESULTS AND DISCUSSION

1. Responsibility According to Indonesian Civil Law in the Event of Default on Debt and Credit Agreement.

Legal responsibility is public awareness of actions and behavior without or with intent. Ridwan Halim explained that legal responsibility acts as something that results from the role performed, including obligations and rights and powers. According to the law, responsibility is a consequence of the consequences of individual freedom for their actions related to morals. There are many forms of legal liability which are at least generally divided into 2 (two), namely criminal law liability and civil law liability. Civil law liability itself is divided into two, namely, liability without based on fault and liability without fault, which is called absolute liability or strict liability.

The basis of liability in Indonesian civil law is also divided into 2 (two) types, namely the existence of fault and risk. The act of default or negligence in fulfilling obligations is included in the category of fault so that the party who makes a mistake and causes harm to the other party is obliged to be responsible for his actions, it can be interpreted that individuals are required to be responsible. As for the principle of risk responsibility, that is, if the individual is not required to comply but directly from the owner who is responsible for his business.

Civil liability can be applied in various disputes that occur in the civil sector, one of which is in the case of debt and credit agreement disputes. An agreement can be disputed if one of the parties in it has committed negligence or default in fulfilling the obligations as agreed in the agreement. As a consequence, the person who made the default can be subject to sanctions in the form of an obligation to pay compensation, cancel the agreement, transfer the risk and pay court costs (4). Default, which has a term according to the Dutch language, namely "*Wanprestatie*", means a breach of promise, bad performance or breach of contract, which means that the obligations are not carried out properly as described by Article 1243 of

the Civil Code with the clause “reimbursement of costs, losses and others is required if it is proven that the debtor has failed to fulfill his obligations, or when something that needs to be given or made within the specified time or has been carried out”. (5)

Indemnity obligations arise as a result of the existence of legal rules that regulate and provide obligations to legal subjects. The legal subject is burdened with obligations and must carry out based on the applicable legal rules. (6) Hans Kelsen argues that a legal subject that is subject to sanctions is considered obliged to carry out responsibility or be legally responsible in a violation that has been committed for a sanction related to the opposite action, so that when one of the parties to the debt and credit agreement defaults, the party is obliged to be responsible for the performance either by fulfilling the performance as agreed or providing compensation for the loss incurred.

Decision No. 8/Pdt/G.S/2023/PN Pwr and No. 10/Pdt/GS/2020/PN Plj both contain decisions, namely by means of peace agreed by both parties. In Decision No. 8/Pdt/G.S/2023/PN Pwr, the first party, namely the debtor, is willing to pay off his debt to PT BPR Hidup Arthagraha Kutoarjo Branch Office by asking for the latest time on September 7, 2023 with the total amount of settlement or debt stated in the simple lawsuit at No. 8/Pdt/G.S/2023/PN Pwr. And if the debtor cannot fulfill until the predetermined time or on September 7, 2023, the debtor is responsible for voluntarily submitting collateral in the form of SHM No. 2601 with an area of 97 m in the name of Retno Utami as a younger sibling located in Pangenrejo Village, Purworejo District, Central Java Province to the creditor to carry out sales actions either under hand or through other legal instruments (Retrieve execution). (7)

In Decision No. 10/Pdt/GS/2020/PN Plj both parties agreed to settle with an agreement to settle the dispute by peace. The contents of the peace agreement that have been agreed upon by both parties are that the defendant is willing to pay off the obligation or loan of IDR 42,629,510.00 (forty-two million six hundred twenty-nine thousand five hundred ten rupiah) and in installments of 2 (two) times. The defendant will make the first installment on December 25, 2020 in the amount of IDR 15,000,000.00 (fifteen million rupiah) and the rest will be paid at the end of January 2020. At the beginning of the agreement between the two parties, if the defendant violates what has been mutually agreed upon or is negligent in fulfilling the obligation to repay the debt and credit with collateral, namely 1 (one) plot of land and rubber plantation based on SHM Number: 1937 No and Date of Measurement

Letter: 363/2015 Dated July 08, 2015, 15,240 M2, Location Nagari Koto Padang District Koto Baru Dharmasraya Regency West Sumatra Province in the name of Rosmita. (8)

Based on the two decisions, it can be concluded that the liability imposed on the defendants is that both are required to compensate for the losses suffered by the creditor. (9) In both decisions, the defendant was willing to pay off the debt obligation and agreed to hand over the guarantee. Indemnification itself is regulated in Article 1243 of the Civil Code with the clause “The party against whom the obligation is not fulfilled, can choose whether he will demand the cancellation of the agreement, accompanied by reimbursement of losses and interest”. This means that when the debtor defaults, the creditor can sue the debtor for losses incurred in the form of interest, reimbursement of costs, and cancellation of the agreement. (10)

2. Legal Effects of Settlement of Debt and Credit Disputes through *Acta Van Dading*

Legal consequences can be defined as the impact given by law or a legal event or action of a legal subject. Jazim Hamidi argues that the word legal impact or legal effect contains the meaning of legal effect or impact directly, strongly or explicitly. According to Handri Raharjo, the legal consequences for parties who default on an agreement can be in the form of penalties or sanctions, including; Fulfillment of the agreement; Fulfillment of the agreement followed by compensation; Only compensation; Cancellation of the agreement; Cancellation of the agreement accompanied by compensation. (11) Included in the legal consequences is another alternative legal product in the form of an *Acta van Dading* or peace deed.

Acta van dading is regulated in Article 1851 of the Civil Code. This deed is a deed of peace made by the parties to a dispute which contains an agreement to end the case being examined in court. (12) *Acta van dading* made in court and ratified by the judge cannot be changed because it already has permanent legal force or *inkracht van gewijsde* and cannot be appealed as stated in Article 130 paragraph (3) HIR or Article 154 paragraph (3) RBg). Executorial power is attached from the date the *acta van dading* or deed of peace is made even though it is not a decision that decides the dispute. The explanation is stated in Article 130 paragraph (2) and paragraph (3) HIR, where the legal force of the *acta van dading* is as follows:

1. Equal legal force with a decision that has permanent legal force;

2. Has executorial force; and
3. Peace deed decisions cannot be appealed.

The power of *acta van dading* is that there is legal certainty as a justiciable protection or arbitrary action, meaning that individuals who are litigating or litigants get something that has been confirmed by the law in accordance with what they expect. *Acta van dading* has a binding force of execution and is executed the same as a judge's decision. Through the stipulation of a judge's decision in the form of an *acta van dading* pronounced in open court, the dispute must be declared over with a peace decision which then becomes a binding decision and must be obeyed and implemented in good faith and cannot be appealed. (13)

Adjusting to the provisions of Article 130 paragraph (2) and Article 195 paragraph (1) HIR which both describe “since the agreement and signing of the *acta van dading* or deed of peace, it applies as an Act for the parties who make it, and the parties are obliged to fulfill and obey the contents of the agreed agreement”.

In Decision No. 8/Pdt/GS/2023/PN Pwr by considering Article 130 HIR and Decision No. 10/Pdt/GS/2020/PN Plj based on Article 154 Rbg, the dispute in both agreements ended with an amicable agreement between the parties which was then outlined in the form of an *acta van dading*. Following this point, there is another point with the clause “Providing sanctions or penalties to both parties to obey in carrying out the decisions that have been determined in the *acta van dading* or deed of peace agreed upon by both parties”. The clause states that the parties involved in a settlement agreement or other agreement agree to impose sanctions or penalties if one of the parties does not comply with or violates the rulings set out in the agreement. This is intended to ensure adherence and compliance with the agreement that has been made, thus encouraging both parties to comply with their obligations in accordance with the agreed terms. This point in the judgment aims to emphasize the consequences of breaching the agreement and encourage compliance with the agreed judgment.

CLOSING

1. CONCLUSION

The basis of liability in Indonesian civil law is divided into 2 (two) types, namely the existence of fault and risk. Based on Article 1243 of the Civil Code, it consists of costs; loss;

and interest. When facing a debtor who has defaulted, the creditor can file a claim as stipulated in Article 1267 of the Civil Code. The article states that parties affected by an unfulfilled agreement can choose to demand the cancellation of the agreement, as well as claim compensation costs and interest. The legal consequences when a debtor defaults on an agreement are that the debtor will be required to pay compensation for failure to fulfill obligations. Based on Article 1234 of the Civil Code focuses on compensation for damages due to non-fulfillment of obligations.

Acta van dading or the term used in Indonesian, namely a peace deed, is an agreement made by both parties involved in a dispute to reach an agreement to reconcile which is carried out in front of the trial. In Decision No. 8/Pdt/GS/2023/PN Pwr and Decision No. 10/Pdt/GS/2020/PN Plj, the responsibility of both parties to the dispute is realized in the form of compensation or surrendering collateral if they cannot fulfill their obligations or repay the debt that was used as collateral at the beginning of the agreement. This agreement is contained in an *acta van dading* that is ratified in court by the Panel of Judges and has permanent legal force and has executorial force, so that both parties are obliged to comply with the provisions in the agreement. Parties that violate the agreement will be responsible for the agreed legal consequences, including the possibility of law enforcement action or the implementation of sanctions stipulated in the agreement.

2. Suggestions

- i. The parties or the debtor are required to understand the contents of the agreement at the beginning of the agreement when entering into a debt and credit agreement along with the consequences if they fail to fulfill their obligations so that no party is harmed.
- ii. For both parties to the dispute and resolve the dispute through the court to realize the settlement through *acta van dading* so that it can be resolved based on the agreement of both parties.

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