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Juridical Review of Consensual Principle in the Scope Legal Agreement

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ABSTRACT
Legal interests that want order and uphold justice in society, put the consensual principle as a demand for legal certainty. As we understand that humans who live in an orderly society must be able to obey their words or utterances because it is something that is absolute from a good legal system. So that the law of the agreement has been declared valid if it has reached an agreement. The consensual principle is contained in article 1320 of the Civil Code which of course supports and complements each other with article 1338 paragraph 1 of the Civil Code. Meanwhile, in terms of buying and selling, it is contained in article 1458 of the Civil Code. The legal requirements for an agreement in Article 1320 of the Civil Code can be divided into 2 requirements, namely subjective conditions consisting of elements of agreement and skill and objective conditions consisting of elements of a certain matter and a legal cause.

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INTRODUCTION

As the legal adage "ubi societas ubi ius", "where there is society there is law". Law exists only in society. The existence of law in society is intended to realize an orderly social order. Each member of society has different interests from one another. Laws are made to balance interests between individuals, as well as between individual interests and the interests of society. However, in social life, it is difficult to avoid conflicts of interest, which of course must be resolved. The conflict of interest solution can be resolved by the parties by agreement. As a wise man said that life is an agreement (consensual) and in accordance with human nature created by Allah SWT, God Almighty to be able to live in society, nation and state.

In society, of course humans interact, communicate and agree to establish relationships in fulfilling their desires, interests and needs. Communication is needed to find common ground so that it can be accepted by other parties, which then creates an agreement. Offering each other is an initial process that occurs before an agreement is realized between the parties to the agreement (a meeting of the minds).

However, on various occasions in today's social life, we often find it so easy for someone or several people to make an agreement that at first they do not realize or do not understand that the agreement they made is something that will or can have legal consequences later. The complexity of life's problems and difficulties sometimes makes people take shortcuts to try to try their luck so that they can easily make a deal, but when an item or object of value or something that is urgently needed to sustain one's life is taken over by another person or auctioned off, that's when awareness and immeasurable regret arises instantly, that it turns out that the agreement that has been made has caused havoc for himself and his family so that it is as if someone said they had fallen down a ladder too. Low public awareness of the legal consequences of an agreement in an agreement has led to frequent disputes in the future over agreements that have been made by the previous parties. Agreement disputes that occur in the future are very likely to occur due to the low knowledge and ability of the parties to make an agreement. From the outset, the agreement made had to be clear, clear and definite and made freely. An agreement made when it contains coercion both physically and spiritually, where one of the parties is threatened or afraid and forced to agree to an agreement or one of the parties is mistaken about the main matters or important characteristics of the object of the agreement or one of the parties deliberately giving false information accompanied by trickery to persuade the other party to give an agreement, the agreement can be canceled in front of the court by a judge.

An agreement should ideally be built on good intentions and intentions, by fulfilling the conditions determined by law, both verbally and in writing in order to guarantee that the agreement is correct, on target, there is legal certainty and as perfect evidence if it arises. future disputes. In the Civil Code, article 1320, the consensual principle can be seen as follows, which reads, “For an agreement to be valid, four conditions are required: 1. The agreement of those who bind themselves; 2. The ability to make an agreement; 3. A certain

thing; 4. A lawful cause. In the word "agreed" in the first condition above, it shows that an agreement already exists and is legally binding on the parties when an agreement has been reached regarding the main matters in the agreement or also called the essence of the agreement, without the need for any other formalities unless otherwise required by law. – invite.

For this reason, careful and careful consideration from various parties is not only really needed, but also absolutely necessary, in concluding an agreement. Because of this, each party wishing to enter into an agreement should prepare everything that is considered important for entering into an agreement in order to avoid the risk of economic loss and legal consequences that will be borne in the future. The layman, as the parties to an agreement, often does not think in detail or in detail about the various matters and terms and conditions of an agreement, but only determines the main matters he just not important (essential). This has greatly harmed the parties entering into the agreement both economically and legally because various possibilities for the object of the agreement, both goods and objects that are stationary or moving, can occur and it is not clear how the arrangements will be made, so it is difficult to determine the legal basis and evidence in the future when experiencing a dispute. or problems later.

Agreement disputes by the parties to the agreement often arise after one of the parties feels aggrieved or feels unfair. And if there is a dispute, it will result in both material and moral losses, in the form of wasted property, time and costs. A will from the disputing parties is very difficult to meet. For this reason, if every will by the parties is given the opportunity and opportunity to become an offer and request in resolving the dispute, it is of course impossible. So that the will of the parties can only be used as an input to formulate the best solution for the parties to the dispute. Nevertheless, the will of the disputing parties must be known in advance before a solution is offered to the parties, because the solution offered should consist of the will of the agreed parties and the will of the law.

Feelings of restlessness, being disturbed, uncomfortable and uneasy will continue to be felt by the parties to the agreement if there are unfavorable matters in the agreement or the existence of a cause which at any time can be used as an excuse to cancel the agreement so that the parties to the agreement in carry out their daily activities without feeling the peace or serenity of life. For this reason, a good intention and good faith coupled with caution in making an agreement will greatly support the success of an agreement entered into by the parties. The fulfillment of the legal terms of an agreement, both subjective and objective conditions can provide legal certainty and guarantees for the parties to the agreement.

LITERATURE REVIEW

Definition of Open Legal System.

The legal system is declared open and closed, which can be seen from how the rights of legal subjects and objects apply. In terms of object law, we know that it uses a closed legal system, while contract law actually adheres to an open

legal system. This is due to the fact that the rights to objects are limited and coercive, while contract law gives the greatest possible freedom to the parties to make the contents, objects and subjects of an agreement provided that they do not violate the rules and principles of applicable law, including order. and decency as applicable in Indonesian society. Often the articles in contract law are often referred to as complementary articles (Optional Law), so that the parties making the agreement can ignore these articles if desired by the parties making the agreement but if the parties making the agreement do not include it in the agreement explicitly details regarding the main matters in their agreement, these articles absolutely apply as a concrete manifestation of obedience to the Law. So for that it is appropriate in making an agreement that it must be understood as clearly as possible regarding freedom in the agreement.

Article 1320 of the Civil Code reads "in order for a valid agreement to occur, four conditions need to be met; 1. The agreement of those who bind themselves; 2. the ability to make an engagement; 3. a certain subject matter; 4. a cause that is not forbidden. And article 1338 paragraph (1) of the Civil Code reads "All agreements made in accordance with the law apply as laws for those who make them".

The word All, in the above article gives meaning to the parties to enter into an agreement in the form and content of anything. This provides an understanding of the principle of openness with the intention that we are given the opportunity to make laws for ourselves. The agreement made by the parties is a law which contains an agreement in the form of provisions for the fulfillment of rights and obligations which are carried out freely, consciously and openly to give, do and or not do something. Because we are given the freedom to arrange the agreements we make ourselves, we are automatically required to be able to make an agreement that is as clear and complete as possible. The freedom to make provisions in the agreement can provide advantages and disadvantages to parties who do not understand how to make a good and right agreement. So that in order to provide benefits and uses that are right on target, an agreement should be made in such a way that the agreement fulfills the principle of freedom without any pressure or coercion from any party and anyone.

While the freedom not to do something is meant to guarantee the parties get the freedom not to be forced and forced to do something that is not liked or not wanted so that the agreement made by the parties is carried out consciously, clearly and correctly. fulfilled, the parties who make the agreement must also be able to guarantee the freedom to give something, consciously and correctly in order to fulfill the rights and obligations arising from the agreement. Something that is given consciously and correctly guarantees the validity of an agreement. Giving something is the result of an agreement in the form of obligations of the parties in an agreement that is agreed upon or mutually agreed upon. And gave birth to the desired rights of the parties. Giving something as far as possible must show clear ownership of the rights to what is given so that the granting of property rights can be explained correctly

and has evidence and strong legal grounds for the transfer of a right and legal obligation to the ownership of the object or object being agreed the.

Understanding the Principles of Agreement Law.

The principle of not being able to play judge alone.

This principle indicates that an agreement is made jointly by the parties which has resulted in a joint agreement of the parties making the agreement and then it turns out that in practice one of the parties cannot fulfill its obligations as it should be in the agreement, so even though the law guarantees the rights of someone who is harmed obtain protection for their rights that have been violated, but the aggrieved party cannot or cannot at will ask the other party to fulfill the agreement immediately. Or in any way individually or together with other parties to cook the first party ain fulfills the agreement or commonly called " Main Judge Alone ".

"That the right owned by the person concerned to uphold his interests will be lost or non-existent, but must be upheld through the applicable procedures, namely through the court or asking for the help of a judge"

So that the party who is harmed or feels harmed in good faith, can enforce their rights according to the procedures and legal provisions in force. Or in other words through the Court or ask for the help of a judge. The aggrieved party can also enforce their rights outside the court institution through institutions recognized by law to resolve disputes outside the court. However, it is different from a mortgage or mortgage agreement, where the creditor or the aggrieved party can carry out the execution directly without going through the assistance of a judge because this matter has been previously/previously agreed upon by the parties, which is a condition or a clause that has been expressly prepared and included. in the pawn agreement. So that in an agreement with the achievement of "to do something" or "not to do something" if the parties making the agreement do not fulfill their obligations, the settlement is that the parties are obliged to provide reimbursement of costs, losses and interest. As Article 1240 of the Civil Code.

Principle of Freedom.

The principle of freedom to make agreements was embryonally born in the Greek era, which was continued by the Epicurists and developed rapidly in the Renaissance through the teachings of Hugo de Grecht, Thomas Hobbes, John Locke and Rosseau.

Book II of the Civil Code or BW adheres to a closed, limited and absolute legal system, very different from Book III which adheres to an open and free system. So that every person or parties who make an agreement can make an agreement according to their intentions and desires.

The Principle of Freedom is a principle that gives freedom to the parties to:

a. Make or not make an agreement,
b. Enter into an Agreement with anyone
c. Determine the contents of the agreement, its implementation and terms, and

d. Determine the form of the agreement, namely written or oral.

The open system of contract law provides freedom in such a way that every person or parties making an agreement is entitled and free to make or enter into an agreement where everything is in accordance with the wishes of the parties making the agreement.

As stated in the Civil Code Article 1338 paragraph (1) which reads "all legally entered into agreements apply as laws for those who make them". so that the words "all agreements" indicate that any agreement, both agreements that have been regulated by the Civil Code and new agreements that appear with a name that may not be regulated in the law or not recognized by law. So it is very clear that there is freedom in determining the contents of the agreement so that the principle of freedom of agreement is a very important principle in contract law.

Consensual Principle

Consensual comes from the Latin word consensus, which means to agree. agreement or agreement implies the parties have agreed or agreed on something.

As seen in article 1320 paragraph (1) of the Civil Code. That one of the conditions for the validity of an agreement is the agreement of the parties who make the agreement. Where the agreement is an agreement between the will and the statement made by the parties who promised.

The principle of agreement is a principle which states that agreements are generally not held formally, but only by the verbal agreement of the parties making the agreement. So that an agreement is declared binding on the parties when there is already or an agreement is reached regarding the main matters promised.

According to article 1458 of the Civil Code, it states that: "Buying and selling is considered to have taken place immediately after an agreement was reached regarding the object and the price, even though the item has not been delivered and the price has not been paid".

The consensual principle adheres to the basic understanding that an agreement has existed since the time an agreement was reached. At the moment an agreement is reached, an agreement is born. It is also stated in the common law legal system that "Offer and Acceptance go together to create mutual assent" or "a meeting of the minds", which means that the parties know the terms and conditions and freely agree to be bound by these terms and conditions. In the case of buying and selling, when an agreement has been reached on the goods and price, or in the case of leasing, if the object and the rental price have been agreed upon, then the agreement has been concluded. gave birth to an agreement.

The Principle of Good Faith (Goede Trouw).

The principle of good faith can be seen in Article 1338 paragraph (3) of the Civil Code. Which reads, "The agreement must be implemented in good faith". The meaning of the word good faith is that the parties making the agreement or agreement must be able to carry out the substance of the agreement based on

firm trust or belief or the good will of the parties making the agreement. The meaning of the word good faith is that the parties making the agreement or agreement must be able to carry out the substance of the agreement based on firm trust or belief or the good will of the parties making the agreement.

Principle of Legal Certainty (Pacta Sunt Servanda Principle).

The principle of legal certainty or also known as the principle of pacta sunt servanda relates to the consequences of an agreement or the result of the agreement of the parties making an agreement. The principle of pacta sunt servanda is the principle whereby a judge or a third party when resolving a problem or dispute over an agreement must be able to respect the substance of the agreement made by the parties making the agreement.

This principle can be seen in Article 1338 paragraph (1) of the Civil Code which reads "An agreement made legally applies as a law for those who make it".

Principles of Personality. (Personality)

A person or parties making an agreement or agreement is generally done for the benefit of an individual or for a legal entity. As seen in Article 1315 and Article 1340 of the Civil Code. Article 1315 reads; "In general, a person cannot enter into an agreement or agreement other than for himself. " while Article 1340 reads "The agreement only applies between the parties that make it. ", but this provision has exceptions, as stated in Article 1317 of the Civil Code, which reads; "An agreement can also be entered into for the benefit of a third party, if an agreement made for oneself, or a gift to another person, contains such a condition. "So this article provides an indication that agreements can be made for third parties with certain conditions.

Principles of Trust

The principle of trust implies that everyone who will enter into an agreement or agreement of mutual trust will fulfill or comply with any achievements agreed between them in the future. Trust is the initial process of a relationship or communication between parties who want or want to enter into an agreement regarding a certain matter.

Principle of Legal Equality

The principle of legal equality means that legal subjects who enter into agreements or agreements have the same position, rights and obligations in law. The parties making the agreement are not differentiated from one another, even though the legal subjects differ in skin color, religion, and race.

The Principle of Balance

The principle of balance requires both parties to fulfill and implement agreements or agreements. The parties making the agreement have the power to demand performance and if necessary can demand payment of achievement

through the assets of the parties making the agreement or agreement between the creditor and the debtor.

Moral Principles

The moral principle is contained in a reasonable agreement, namely an act or action voluntarily (morally) from a person or parties who make an agreement or agreement, which then makes a person or parties who make the agreement, unable to claim the right for him to claim the achievement of the parties to the agreement (creditor or debtor). The moral principle in an agreement or legal action is based on decency (moral) as a call of conscience for the parties making the agreement or agreement, so that the parties making the agreement have a legal obligation to continue and complete their actions.

The principle of aanvulend recht (complementary law)

The principle of aanvulend recht means that basically contract law is a complementary law. That is, if the parties making the agreement do not regulate or do not agree on something in detail in the agreement, then the articles of the agreement law apply to the parties making the agreement. This is possible because contract law adheres to an open legal system with the principle of freedom to make agreements. For example, in the case of buying and selling, only the goods and price are agreed upon, but no agreement is made regarding the time limit for delivery of goods, place of delivery, transportation costs, risks, etc. or existing treaty law. If it turns out that there are no rules, then what applies is custom.

The Principle of Conformity and Habitn.

The principle of decency and custom can be seen in Article 1339 of the Civil Code. This principle relates to the contents of the agreement or the agreement of the parties making the agreement. Article 1339 of the Civil Code reads "Consent is not only binding on what is expressly specified in it, but also everything that by its nature consent is demanded based on justice, custom or law. "

The Principle of Protection (Protection)

The principle of protection means that the parties making an agreement or agreement must be protected by law. However, when viewed from the position of an agreement, the debtor is on the weak side so that as much as possible protection for the debtor can be given as much as possible. Protection of the weak gives more sense of justice and humanity before the law.

Conceptual Basis Requirements for the Validity of an Agreement.

When viewed from article 1320 of the Civil Code, four conditions are required for an agreement to be valid, namely:

1. Agree those who bind themselves.
2. Capable of making an agreement.
3. Regarding a certain matter.
4. A lawful cause

The first and second terms are called subjective conditions because they concern the people or subjects of the parties who make or work on the agreement. While the third and fourth conditions are objective requirements because they are related to the agreement or the agreement itself or the object of the legal action carried out in an agreement. This can be parsed as follows:

1. Deal

An agreement must be given freely. This can be seen from article 1321 of the Civil Code, which states that an agreement is valid if it is given not because of an oversight, or not by coercion, or not because of fraud. Otherwise, the agreement becomes invalid. And the agreement made becomes a defective agreement. An agreement that is given not freely, can result in the agreement or agreement being canceled or it can also be canceled by law.

2. Proficiency

The person or parties who are declared capable of entering into an agreement are adults who are 21 years old (article 330BW). But basically everyone is capable of making an agreement if he is not declared incompetent by law. This is a general Legal Presumption.

Regarding incompetent people or parties, it can be seen in article 1330 of the Civil Code which states that "People who are not yet mature, those who are placed under guardianship, women in matters stipulated by law, and all people who has been prohibited by law from making certain agreements. "

3. A Certain Thing

As it is known that the subject of the agreement is the parties who make the agreement which are often known as creditors and debtors, while the object of an agreement is achievement.

The law requires that only tradable goods can become the subject of the agreement. Or the item must be an item of at least a specified type.

Something certain, must be made into an achievement. If the object of the agreement is something that is impossible to do or cannot be done objectively or absolutely, then the agreement entered into by the parties does not have binding force because there is no obligation for the debtor to carry out something that is impossible for him to do.

4. A Legal Cause.

A condition of the agreement is that the contents of an agreement must contain a cause that is permissible or legal. The agreement makes the object or content and achievement objectives contained in the agreement must be a legal cause so that the agreement becomes valid and valid and binding.

A cause that is legal or permissible means that apart from being permissible based on law, it also cannot conflict with public order and/or decency.

The Time and Place of Birth of an Agreement

An agreement occurs when the parties making the agreement reach conformity of will where one party with the other party expresses agreement or agreement, which is a joint statement both orally and in writing. When an agreement occurs in the Civil Code it is not stated clearly and in detail, but in Article 1320 of the Civil Code it is stated that sufficient consensus of the parties exists so that the agreement has been declared to have occurred. By simply saying "agreed" without requiring any method (formality), such as writing, marking or down payment and so on, we can conclude that when an agreement has been reached, then the agreement is valid or the agreement is binding or it applies as like a law for those who make it.

According to the compiler, by paying attention to the origin of the occurrence of an agreement, namely the existence of communication between parties who wish and have an interest in carrying out a relationship with one another, both in the meaning of a legal relationship and not being a legal relationship, it can be stated that an agreement occurs when a certain thing and cause is agreed. . Even though the agreement has been declared valid when an agreement has been reached, in formal agreements, or real agreements, it is an exception. As the peace agreement according to article 1851 paragraph 2 B.W. must be held in writing otherwise it is invalid. This is different from real agreements, for example a loan-to-use agreement, which according to Article 1740 can only be declared valid if the object of the agreement has been handed over. Or in the case of safekeeping agreements which according to Article 1694 are only declared valid when the goods deposited have been delivered.

In the opinion of Prof. Eggens, that the adoption of the consensual principle which means "binding words is a demand for decency (zedelijke eis). So that by placing trust in people's words, it has raised human dignity to the highest possible level. It is true that if someone wants to be respected as a human being then he must be able to hold his words or words. However, for the law that wants order and justice in a consensual society, it is a demand for legal certainty. That people who live in an orderly society must be able to obey their words and utterances, this is an absolute cornerstone of a good legal system. Thus article 1320 has sufficiently stated that an agreement occurs when there is an agreement or has agreed or agreed with one another.

Execution of an Agreement.

To carry out an agreement, it must first be determined explicitly and carefully what the contents of the agreement are, or in other words, the parties must state what their rights and obligations are. Usually people make an agreement by not regulating or not stipulating carefully their rights and obligations but only stating the main and most important things. For example, in buying and selling, it is only determined which goods are purchased, their type, quantity, and price. But does not specify the place of storage or delivery of goods, delivery costs, place and time of payment and the risk of buying and selling the goods.

In an agreement made by the parties who make it, it is a legal event or not a legal event that is carried out through a process where a person promises to

another person or the parties promise each other to carry out something. When viewed from the type and type of an agreement to be implemented, it can be divided into three types of agreements, namely:

1. An agreement to provide or deliver goods or services.
2. Agreement to do something.
3. Agreement not to do anything.

Agreements to provide or deliver goods or services can be seen in sale and purchase agreements, exchange agreements, grants (gifts), lease agreements, loan agreements.

Agreements - agreements to do something (do something) and agreements - agreements not to do something, (not do something) this is very visible as seen in article 1240 which mentions about agreements not to do something (not do something), that the party the debtor (creditor) has the right to demand the abolition of everything that has been made contrary to the agreement and the creditor may ask that the judge authorize him to order to write off everything that was made earlier at the expense of the debtor (debtor), without reducing his right to claim compensation, if there is a reason for the creditor to ask for it.

Article 1241 explains the agreement to do something (to do something), that, if the agreement is not implemented or a breach of promise occurs (if the debtor does not keep his promise), then the creditor may authorize him to carry out the implementation himself at the expense of the debtor.

RESEARCH RESULT

Incompetent Person Agreement And Cancellation

An agreement made by an incompetent person can be annulled with the help of a judge before the court because the subjective conditions of an agreement are not fulfilled.

Cancellation of an agreement made by an incompetent person can be done in front of a judge by a child who is not yet an adult when he reaches adulthood or is represented by a parent or guardian, for the sake of ian also with someone who is under the guardianship of the guardian or someone who has given an agreement not freely by the person himself. Prosecution submitted to the judge by a person who owes money or by a creditor under article 1341 BW (known as "actio pauliana"), namely from the day it is known that the awareness needed for cancellation exists. The cancellation of the agreement is allowed within 5 (five) years to file a claim before a judge, but does not apply to cancellations that are brought forward as a defense or countermeasure because for that it can always be done, without any time restrictions. For example, a person or party who is still underage is sued before the court for fulfilling the agreement. And in front of the court he stated to the judge that he agreed to the agreement when he was underage (incompetent). Thus, before the trial, he asked the judge to annul the agreement. Then it is appropriate that the agreement be canceled by the judge.

Defense of the Debtor Accused of Negligence.

As a result of the negligence of the parties making the agreement, both the debtor (creditor) and the debtor (debtor) will receive a penalty or sanction in accordance with the agreement he made. However, the debtor (indebted) can defend himself if he is accused of being negligent for several reasons that can free him from these penalties, namely:

1. File a claim for a force majeure event (overact or force majeure).
2. Submitting that the debtor or the creditor himself has also been negligent (exceptio non adimpleti contractus)
3. Suggest that the debtor or creditor has waived his right to claim compensation (waiver of rights: rechtsverwerking).

The three types of reasons mentioned above can be broken down as follows:

1. Forced Circumstances.

Force majeure (overmacht or force majeure) is closely related to the risk of an agreement. The debtor who enters into an agreement must be able to prove that circumstances have occurred that are beyond his control. So that the judge will certainly reject the demands of the creditor who asks the debtor to fulfill his promise.

An incident or event that is solely due to natural forces without any human intervention. That is, any disaster or accident caused by physical causes that cannot be controlled, such as lightning, hurricanes, sea disasters (perils of the sea), tornadoes, earthquakes, tsunamis and the like is something that cannot be controlled and or is beyond the control of human power to prevent it.

This coercive situation no longer solely applies solely to natural conditions, but can also arise when a situation occurs where there is a change in law or new provisions issued by the government so that the debtor is unable to carry out his promise.

Article 1244 reads: "If there is a reason for that, the debtor must be punished with compensation for costs, losses and interest, if he does not prove that the thing was not implemented or that the agreement was not implemented at the right time due to something unexpected, even uncontrollable." accountable to him, all of that even if bad faith is not on his part." Article 1245 says: "no costs, losses and interest must be reimbursed, if due to coercive circumstances or due to an accidental event, the debtor is unable to provide or do something that is required, or because of the same things he has committed a prohibited act."

That the above mentioned articles very clearly illustrate that the force majeure is an unexpected, unintentional event and cannot be accounted for by the debtor and is coercive in the sense that the debtor is forced to fail to keep his promise. If the debtor can prove that there is a coercive situation so that he cannot carry out the agreement, then Article 1244 of the Civil Code very clearly explains that the debtor will not and cannot be punished to pay compensation. However, in the case of an agreement in which the debtor has agreed or is willing to bear the loss in the event of an unexpected event, the debtor must and cannot refuse to compensate for the loss.

This means that the unexpected event has been preceded by the ability of the debtor to carry out the work so that the debtor must compensate for losses due to the unexpected event.

2. Negligent Creditors (exceptio non adimpleti contractus)

This defense was carried out by the debtor by submitting before the judge that the debtor who was accused of being negligent and demanded to pay compensation by the creditor had also committed negligence and did not keep his promise. yes. Therefore, the debtor wants the same demands as the creditor. As a reciprocal agreement, which gives birth to the same rights and obligations to the creditor and the debtor because it is considered a principle that both parties must equally carry out their obligations.

The principle of "crossing together" in buying and selling is emphasized in article 1478 of the Civil Code which states: "the seller is not obliged to hand over the goods, if the buyer has not paid the price, while the seller does not allow the delay in payment."

By looking at Article 1478 of the Civil Code, of course each party can argue that if the debtor's negligence is done because the creditor is also negligent in keeping his promise. And if this can be proven by the debtor, then the debtor may not be punished by compensating for losses. This is indeed when viewed from the law, there is no law that frees the debtor from paying compensation, however, there is already jurisprudence regarding this matter.

3. The creditor has waived his rights

The defense of a debtor who is accused of negligence in fulfilling his promise and is required to compensate for a number of losses can be made by stating that there has been a waiver of rights.

This is meant that the debtor concludes the attitude of the creditor during an agreement which basically the creditor accepts by using or reordering the same goods that have been agreed upon but in the future the creditor accuses the debtor of being negligent in carrying out the agreement.

If the debtor can prove the attitude and acceptance of the creditor, it is appropriate that the creditor's demands cannot be accepted by the judge. However, in an absolute (absolute) coercive situation, it is appropriate that the agreement be abolished by itself. However, if the coercive circumstances are only relative, then the agreement is considered to still exist and fulfillment can be demanded when the obstacle has stopped.

Default and Consequences

Default is intended as an act of breaking a promise or being negligent or can also be said to be breaking a promise, namely doing or doing something that cannot be done based on an agreement that has been agreed upon so that the other party is harmed. Based on article 1365 the Civil Code states that every act violates the law which causes harm to another person, obliges the person whose mistake caused the loss to compensate for the loss.

Default (negligence or negligence) of a debtor can be of four types:

1. Does not do what he is willing to do;
2. carry out what he promised, but not in accordance with what was promised.
3. did what he promised but it was too late.
4. to do something according to the agreement he is not allowed to do.

Against parties who commit defaults, they can be prosecuted for their actions with several sanctions, namely:

1. Demands for fulfillment of agreements;
2. The demand for fulfillment of the agreement is accompanied by compensation;
3. Claim for compensation only;
4. Demand for Cancellation of the Agreement; or
5. The demand for cancellation of the agreement is accompanied by compensation and risk.
6. Pay court fees, if the case is resolved in court.

However, the parties making the agreement must be determined in advance to have defaulted or been negligent. And if the alleged default is denied by him, then it must be proven before a judge. In fact, sometimes it is very difficult to say that someone has been negligent, negligent or in default because often it is also not promised exactly when a party is required to carry out the promised achievements. So that if the parties to the agreement experience default are required to surrender an item or to perform an action, if the agreement does not set a time limit but the debtor and creditor will be considered negligent with the lapse of the specified time, then the implementation of the agreement must be billed first.

Article 1238 of the Civil Code, this article reads that "The debtor is negligent, if he has been declared negligent by a warrant or by a similar deed, or for the sake of his own engagement if this determines that the debtor will be deemed negligent by the passage of appointed time".

So that if you look closely at the explanation of the law above, if the parties or debtor parties commit default and will be subject to sanctions, they must be subject to sanctions in the form of things that can be expected and direct consequences of default but cannot punish if the negligence or negligence is done with something unexpected things, for example ak due to illness or natural disasters. Another limitation in the payment of compensation is contained in the regulations regarding moratorium interest. Or as interest that must be paid (as a penalty) because the debtor is negligent or negligent in paying his debts. And by a law contained in the State Gazette of 1848 no. 22 interest is set at 6 percent a year. And according to article 1250 of the Civil Code, the interest demanded may not exceed the percentage set by the law. So it is very clear that articles 1247, 1248 and 1250 of the Civil Code are very much aimed at providing protection or protection for debtors who are negligent or default because they very much provide limits on compensation that can be demanded by the creditor.

As stated in article 1266 which reads "cancel conditions are considered forever included in reciprocal agreements, when one party does not fulfill its obligations.

In this case the agreement is not null and void, but can be canceled by request to the judge. This request must also be made, even though the terms of cancellation regarding non-fulfillment of the obligation are stated in the agreement. If the cancellation conditions are not stated in the agreement, the judge is free according to the circumstances at the request of the defendant, to provide a period of time for the opportunity to fulfill his obligations, which period may not exceed one month.

Risk.

Everything in human life carries a risk. Likewise with the agreement. Risk in an agreement is a loss that must be borne or borne by the party making the agreement caused by an event beyond the fault of one of the parties. Or because of a coercive situation.

Prof. Subekti in his book provides a definition of risk. "That is the obligation to bear losses caused by an event that occurs outside the fault of one of the parties that befalls the object of the agreement".

In article 1237 it reads as follows: In the case of an agreement to provide a certain item, then that item, since the contract was born, is the responsibility of the debtor. if observed carefully, the word dependent in this article contains the meaning of "risk".

This gives the impression that legislators are trying to think of an agreement where there is only an obligation on one party, namely the obligation to provide certain goods without thinking that the party that bears this obligation can also be a party entitled or can demand something. In other words, lawmakers do not think about reciprocal agreements, where one party has the right to demand performance and the other party demands counter-performance. So impressed as an engagement in the abstract. However, article 1237 can only be used for unilateral agreements. Such as the grant agreement, and the loan agreement. And it will be very difficult if it is used in a reciprocal agreement so we have to look for articles that are specific to buying and selling, exchanging, leasing and so on. In article 1460 regarding risks in buying and selling, and article 1545 concerning risks in exchanging.

Article 1460 states; "If the item being sold is in the form of an item that has been determined, then this item is the responsibility of the buyer from the time of purchase, even though the delivery has not been made, and the seller has the right to demand the price." Meanwhile, article 1545 determines; "If a certain item, which has been promised to be exchanged, is destroyed through the fault of the owner, then the agreement is considered void, and the party who has fulfilled the agreement can claim back the goods he has given in the exchange."

By taking into account the above articles, exchange agreements are seen as a principle that applies in general to reciprocal agreements, because Article 1545 is correct and fair. Because a reciprocal agreement when one party cannot carry

out its obligations by itself, the other party is also freed to fulfill its obligations. A person or one of the parties wishes to exchange his goods, of course, with the desire for these goods to be exchanged for other goods in accordance with an agreement or agreement. And if the expected item is not given, of course he doesn't want to lose the item just like that.

Article 1553 of the Civil Code, which regulates the issue of rental risk, is also in line with article 1545 which places the risk on the shoulders of each owner of the object being rented out. In article 1553 it is stated "if during the rental period, the object being leased is destroyed beyond the fault of one of the parties, then the lease agreement is null and void by law". In other words, the loss due to the destruction is borne entirely by the owner of the goods.

CONCLUSIONS AND RECOMMENDATIONS

Conclusion

By examining the entire discussion of the Juridical Review on the Applicability of the Consensual Principle in the Scope of Agreement Law, some conclusions that can be used as learning materials as well as add to our legal knowledge include:

1. Legal interests that want order and uphold justice in society place consensual principles as a demand for legal certainty. As we understand that humans who live in an orderly society must be able to obey their words or utterances because it is something that is absolute from a good legal system. So that the law of the agreement has been declared valid if it has reached an agreement.
2. Statements that can or may be used as the basis for an agreement in an agreement must be statements that can be objectively trusted. And may not use statements that are made in earnest or jokingly or statements that clearly contain an error or omission.
3. The requirements for the validity of an agreement in Article 1320 of the Civil Code can be divided into 2 requirements, namely subjective conditions consisting of elements of agreement and skills and objective conditions consisting of elements of a certain thing and a legal cause.
4. Cancellation of the Agreement can be made in the event of default or coercive circumstances. Default means that one of the parties making the agreement does not carry out the performance in accordance with the contents of the agreed agreement resulting in an act of breaking the law or an act against the law (onrechtmatigedaad). And what is meant by force majeure is an event that is solely due to natural forces without human intervention so that the risk of the agreement cannot be borne by any party or due to a cause that is beyond the control or ability of the parties making the agreement.
5. Every agreement has a risk. Therefore the Civil Code provides guidelines in resolving agreement issues. For example, in a sale and purchase agreement, the risk is contained in article 1460 regarding certain goods, article 1461 regarding goods sold according to weight, number or size, article 1462 regarding goods according to the stack. In the exchange agreement, the risk is contained in articles 1544, 1545 and 1546. In the lease agreement, the risk

contained in article 1553 regarding the goods being rented is borne by the owner of the goods. , In the lending agreement, the risks are contained in articles 1744 to 1749. In the lending and borrowing agreements, the risks are contained in articles 1753, 1759 to 1769. In the chancy agreement, the risks are included in articles 1774 to 1791. In guarantee agreement (accessoir), the risk contained in article 1839 to article 1844 of the Indonesian Civil Code.

Recommendation

1. In implementing the agreement, you must maintain the contract in the agreement because this will bind both parties.
2. There needs to be further research that is more specific about contract law, for example sale and purchase agreements, credit agreements and other agreements

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