

# PUBLISH JHK 264 HAL 24-33.pdf

by Seffianidwiazmi@gmail.com 1

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**Submission date:** 24-Dec-2024 10:25AM (UTC+0300)

**Submission ID:** 2526055588

**File name:** PUBLISH\_JHK\_264\_HAL\_24-33.pdf (404.48K)

**Word count:** 5002

**Character count:** 26083

## The Redefinition of Nullity for Legal Purposes and the Possibility of Annulment Due to the Failure to Fulfill the Validity Requirements of an Agreement (Case Study of Decision No. 31/Pdt/2-2-/PT MDN)

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Received : November 20, 2024

Revised : November 28, 2024

Accepted : December 20, 2024

Published : December 28, 2024

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**Abstrak:** The research written by Tasya Sabillah explains the redefinition of nullity for legal purposes and the possibility of annulment due to the failure to meet the validity requirements of an agreement. It discusses the validity of an agreement in relation to the annulment of an agreement in Decision No. 31/Pdt/2-2-/PT MDN, as well as the legal norms that define the annulment of an agreement in this decision. The research, conducted through a literature study and categorized as normative research, results in the Judge's Considerations in the Annulment of the Agreement in Decision No. 31.7/Pdt/2020/PT.Mdn. The main point is that PT. Tarurung had incorrectly applied the law by examining and ruling on the plaintiff's lawsuit, whereas the core dispute in the case was about breach of contract (*wanprestasi*) between the defendant and the plaintiff based on the cooperation agreement (SPK), which is essentially a contractual case. The legal consequence of the annulment of the agreement in Decision No. 31.7/Pdt/2020/PT.Mdn, as concluded by the judge in the case, is that the decision cannot be executed, making the ruling effectively non-existent.

**Keywords :** Obligation, Agreement, Nullity for Legal Purposes

### INTRODUCTION

Indonesia is a country governed by law, where every word or action of an individual carries rights and obligations, referred to as legal subjects.<sup>1</sup> Therefore, every citizen has the right and obligation to carry out legal actions, including entering into agreements with other parties. Agreements are made to gain mutual benefits, which is a common occurrence in society. This can be found in Book III of the Civil Code, which adopts an open system, meaning that parties have the freedom to enter into agreements with anyone, determine the terms, implementation, and form of the contract, whether oral or

written. Many people also enter into written agreements, but in some cases, these agreements do not meet the requirements for validity as outlined in Article 1320 of the Civil Code.<sup>2</sup>

Obligatory Law, in essence, regulates the interests between individuals. It is known that in Book III of the Civil Code, there are provisions regarding obligations (*van verbintenis*), which refers to the legal relationships of wealth, containing rights and obligations that apply to specific individuals or parties. Book III, consisting of 18 chapters, regulates various

<sup>1</sup> Lubis, A. E. N., & Fahmi, F. D. (2021). Pengenalan dan Definisi Hukum Secara Umum (Literature Review Etika). *Jurnal Ilmu Manajemen Terapan*, 2(6), 768-789.

<sup>2</sup> Amalia, I. Q. A., & Prasetyawati, E. (2019). Karakteristik asas proporsionalitas Dalam Pembentukan Klausul Perjanjian Waralaba. *jhbhc*, 173-184.

agreements, such as purchase agreements, leases, and others.<sup>3</sup>

In a sale or other agreements, the legal relationship that arises contains a contract binding both parties. The contract in the Civil Code is regulated in Article 1313 and is also referred to as an agreement.<sup>4</sup> An agreement is an act by one or more persons to bind themselves to one or more other persons.<sup>5</sup> Wirjono Prodjodikoro defines a contract as a legal relationship involving property, which originates from two parties who promise to do something or refrain from doing something with the other party, who then has the right to demand the fulfillment of that promise.<sup>6,7</sup> The conditions for the validity of a contract are mutual consent, capacity, a definite subject matter, and a lawful cause, as stipulated in Article 1320 of the Civil Code.<sup>6</sup>

Obligations are regulated in Article 1235 of the Civil Code, which states, "In every obligation to give something, it includes the debtor's duty to deliver the concerned property and to take care of it as a good householder until the delivery takes place." Based on this article, it can be concluded that the debtor has certain obligations before the delivery occurs.

In society, not everyone who has entered into a contract is aware that a contract can be legally void due to the failure to fulfill the rights and obligations of one party or both parties. A contract that is absolutely null and void can occur if the

objective requirements of the agreement are not fulfilled, even though the law has specified that the legal act must be carried out in a prescribed manner or is contrary to morality or public order.<sup>7</sup> Since the agreement is considered nonexistent, there is no longer any basis for the parties to demand or sue each other in any form or manner<sup>8</sup>. Regarding the redefinition, which is the re-description of an object based on valid theory, this has occurred in several cases, such as the redefinition of the International System of Units (SI) in 2019, where the SI units were redefined without changing any units. Redefinition also means reconsidering or re-describing something that was previously deemed correct in a way that is more appropriate.

The norms related to this must, of course, be adjusted to the applicable principles. Specifically, regarding a contract, the redefinition taken is a re-description based on contract law and the rules set forth and enforced in the contract. Based on the background above, the author formulates the following issues: Does the validity of a contract relate to the annulment of a contract in the decision No. 31/Pdt/2-2-/PT MDN. What legal norms indicate the definition of the annulment of a contract in the decision No. 31/Pdt/2-2-/PT MDN.

## METHODOLOGY

The type of research used in this study is library research, which involves examining and analyzing various

<sup>3</sup> Titik Triwulan Tutik, *Hukum Perdata dalam Sistem Hukum Nasional*, (Jakarta: Kencana Prenada Media Group, 2008).

<sup>4</sup> Pantow, C. S. (2020). Hubungan Hukum Para Pihak Dalam Perjanjian Kerjasama Dagang Antar Perusahaan Menurut Hukum Perdata. *Lex Privatum*, 8(2).

<sup>5</sup> Hidayani, S., & Pohan, M. N. (2020). Aspek Hukum terhadap Perjanjian Pinjam Emas dengan Jaminan Tanah Sawah dalam Masyarakat Pidie. *Jurnal Mercatoria*, 13(2), 204-215.

<sup>6</sup> Renjana, A. R. (2023). *Tinjauan Terhadap Penyelesaian Wanprestasi Dalam Perjanjian Kredit Dengan Jaminan Sertipikat (Studi di BTM Pekalongan KC Kajen)* (Doctoral dissertation, Universitas Islam Sultan Agung Semarang).

<sup>7</sup> Peter Mahmud Marzuki, *Batas-Batas Kebebasan Berkontrak*, Yuridika, FH Universitas Airlangga, Volume 18, Nomor 3, Mei 2003, hlm. 203.

<sup>8</sup> KUH Perdata Pasal 1235

documents or literature related to the topic of this research. The research method applied by the author is a normative research method, where the author collects reading materials from books, journal articles (both printed and online), and seminar papers. The nature of this research is descriptive, aimed at analyzing, reviewing, and explaining the topic.

## RESULT AND DISCUSSION

### The validity of a contract in relation to the annulment of a contract in the decision No. 31/Pdt/2-2-/PT MDN.

Legal Dictionary, the term "validity" is explained in various languages, including *convalesceren* and *convalescentie*, which have the same meaning as *to validate, to legalize, to ratify, or to acknowledge*. These terms refer to the act of validating or the validation of something. For example, the validation of a draft law proposed by the DPR (People's Representative Council) that is not ratified by the president cannot be reintroduced in the session of the People's Representative Council in that particular year.<sup>9</sup>

The material requirements for the validity of a decision are as follows:

- The governmental body making the decision must be authorized (entitled).
- The will of the governmental body making the decision must not contain any juridical deficiencies (*geen juridische gebreken in de welsvorming*).
- The decision must be in the form (form) prescribed by the regulations that form its basis, and its formation must also adhere to the decision-making procedures if such procedures

are explicitly outlined in the regulations (Lawful).

- The content and purpose of the decision must align with the content and objectives intended to be achieved (Effective).

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Article 1313 of the Civil Code states: "A contract is an act by which one or more persons bind themselves to one or more other persons."<sup>10</sup>

Based on the formulation, it can be understood that a contract is:

- An act.
- Between at least two people.
- The act creates an obligation between the parties involved in the agreement.

The act mentioned in the initial formulation of Article 1313 of the Civil Code explains that a contract can only occur if there is a tangible act, either in the form of speech or physical action, and not merely in the form of thought.<sup>11</sup>

When detailed, a contract contains the following elements:

- Essentialia:** These are the elements that must absolutely exist for a contract to be formed. These elements are essential for the validity of the contract and represent the necessary conditions for its legitimacy. The essential elements in a contract reflect the terms regarding the performances that must be carried out by one or more parties, which characterize the nature of the contract and distinguish it fundamentally from other types of contracts.
- Naturalia:** These are elements that are typically inherent in a contract. They are elements that, unless specifically agreed

<sup>9</sup> Van Pramodya Puspa, 1977, *Kamus Hukum*, Semarang, Aneka Ilmu, . 252.

<sup>10</sup> Munir Fuady, *Op.cit*, 3-4

<sup>11</sup> Kartini Muljadi & Gunawan Widjaja, *Perikatan yang Lahir dari Perjanjian*, 2010, Jakarta: Rajawali Pers, 7-8

upon in the contract, are implicitly considered to be part of the contract because they are customary or inherent to it. Article 1339 of the Civil Code states: "Contracts are binding not only for matters expressly stated in them, but also for everything that, according to the nature of the contract, is required by decency, custom, or law."<sup>12</sup>

- c. **Accidentalialia:** These are supplementary elements in a contract, which are provisions that can be altered by the parties according to their will. These are special conditions agreed upon by the parties together. Therefore, these elements are not fundamentally obligations or performances that must be fulfilled by the parties.<sup>13</sup>

The conditions for the validity of a contract can be found in the provisions of Article 1320 of the Civil Code, which states: "For the validity of contracts, four conditions are required:

The agreement of those who bind themselves;

- a. The capacity to create an obligation;
- b. A definite subject matter;
- c. A lawful cause."

A contract that does not meet these requirements will not be recognized by law, even though it may be acknowledged by the parties who made it. As long as the parties acknowledge and comply with the contract they created, even if it does not fulfill the requirements, the contract remains valid between them.

A contract will end under the following circumstances:

<sup>12</sup> Sudikno Mertokusumo, *Hukum Acara Perdata Indonesia*, Yogyakarta:Liberty, hlm. 118-119

<sup>13</sup> Kartini Muljadi & Gunawan Widjaja, *Op.Cit.*,hlm. 85-9

The contract's term has expired.

- a. One party deviates from what was agreed upon.
- b. If there is evidence of negligence and evidence of betrayal (fraud). If one party commits an act of negligence and there is evidence that one party has betrayed what was agreed upon, the contract that was formed can be declared terminated by the other party.<sup>14</sup>

A contract must meet certain requirements in order to be considered valid. The Civil Code contains provisions that specify the conditions for the validity of a contract, namely in Article 1320. According to Article 1320 of the Civil Code, there are four conditions that must be met for a contract to be valid, which are:

- a. The agreement of those who bind themselves;
- b. The capacity to enter into a contract;
- c. Concerning a specific matter;
- d. A lawful cause.<sup>15</sup>

The first two conditions are called subjective conditions because they relate to the individuals or subjects entering into the contract, while the last two are called objective conditions because they pertain to the contract itself or the object of the legal act.

The concept of *batal demi hukum* (annulment by law) is divided into two types:

1. **Absolute Annulment** This means the legal product is absolutely void (*absolute nietigheid*), resulting in a legal consequence that the event caused by the legal product is considered to have never occurred,

<sup>14</sup> Abdulkadir Muhammad, *Op.Cit.*, hlm. 225-228

<sup>15</sup> Chairuman Pasaribu dan Suhrawardi K. Lubis, *Hukum Perjanjian dalam Islam*, 2004, Jakarta: Sinar Grafika, hlm. 4

and thus must be restored to its original state.

## 2. **Relative Annulment / Cancellation**

This refers to a contract that is not automatically void but can be annulled by a judge at the request of the party that feels harmed.

As stated in Article 1335 of the Civil Code, a contract that does not have legal force is often referred to as being *batal demi hukum* (void by law). This means that the contract is considered as though it never existed or was never formed

### **The Legal Norms That Indicate The Definition Of The Annulment Of A Contract In The Decision No. 31/Pdt/2-2-/PT MDN.**

The word "norm" in the Indonesian Dictionary is defined as a rule or provision that binds all or some members of society; a standard rule or measure for determining something.<sup>16</sup> According to Sudikno Mertokusumo, a norm is defined as a regulation of life that determines how individuals should behave and act in society to protect both their own interests and the interests of others. In a narrower sense, legal norms are values found in concrete regulations.<sup>17</sup>

In terms of content, legal norms can be divided into three categories: First, legal norms that contain commands which must inevitably be followed or obeyed. Second, legal norms that contain prohibitions. Third, legal norms that contain permissions, which are binding only as long as the parties involved do not agree otherwise in the contract.<sup>18</sup>

<sup>16</sup> Pusat Bahasa Departemen Pendidikan Nasional, Kamus Bahasa Indonesia, Jakarta, 2008, hlm 1007

In general, a person can be considered negligent or in breach of contract (wanprestasi) in various ways, such as failing to fulfill the entire performance, performing the obligation imperfectly, failing to meet the obligation on time, or doing something prohibited by the agreement. The elements of a breach of contract (wanprestasi) include:

1. The existence of a valid contract (in accordance with Article 1320 of the Civil Code).
2. The presence of fault or negligence (either through carelessness or intent) by the party in breach of the contract.
3. The existence of damages resulting from the breach of contract.
4. The imposition of sanctions, which may include compensation for damages, as a result of the breach.
5. A breach of contract may lead to the annulment of the agreement, transfer of risks, and the obligation to pay court costs if the matter is brought to court.

Breach of contract refers to the non-compliance with the obligations agreed upon in the contract, and if it occurs, the party in breach may be subject to sanctions and held responsible for the damages caused by their negligence or violation.

The legal consequences of making a contract are:

- a. It Acts as a Law: A contract is binding as a law for the parties involved, meaning the contract has a binding and compulsory force and provides legal certainty for the parties who created the contract.
- b. It Cannot Be Unilaterally Revoked:

<sup>17</sup> Sudikno Mertokusumo, Penemuan Hukum (Sebuah Pengantar), Liberty, Yogyakarta, 2006, hlm 11.

<sup>18</sup> Ibid 3



Since the contract is the result of mutual agreement, if it is to be revoked or canceled, both parties must agree. c. Performance in Good Faith: A contract must be performed in good faith (Article 1338, paragraph 2, Civil Code). Good faith is an objective standard used to evaluate the performance of a contract, which must align with norms of decency and propriety.

Responsibility for unlawful acts, under the Civil Code, gives rise to civil liability based on a breach of contract. It starts with a contract that creates rights and obligations for the parties involved. If, in the legal relationship based on the contract, one party fails to fulfill or violates the obligations set out, that party can be deemed to have committed a breach of contract. In this situation, the harmed party may seek legal accountability based on the breach. On the other hand, civil liability for unlawful acts is related to the existence of legal relationships, rights, and obligations derived from the law itself. In this context, liability arises as a result of the violation of law or legal norms, without necessarily involving a specific contract.

In the decision, the basis for the annulment of the contract includes:

#### **In the Posita**

1. On March 27, 1995, the government of North Tapanuli (hereinafter referred to as the PLAINTIFF) entered into a cooperation agreement with Drs. Rudy S.M. Sinaga, who represented the president of the Board of Commissioners of PT Nusatara Bona Pasogit (hereinafter referred to as the DEFENDANT). The agreement was regarding the provision of tourism facilities, such as bungalows/hotels/cottages, based on the cooperation agreement letter No. 01-00/1991 (hereinafter referred to as SPK

1) and cooperation agreement letter No. 01-00/1995 (hereinafter referred to as SPK), which were created and signed by both parties, where the Plaintiff was the employer and the Defendant was the contractor.

2. Based on Article 1, paragraph (1) of the SPK, the Plaintiff provided capital amounting to 150,000,000 (One Hundred Fifty Million Rupiah) and land of 14,148 square meters located in Situmeang Habinsaran Village, Sipoholon District, North Tapanuli.
3. Based on Article 3, paragraphs 2(a) and 2(b) of the SPK, it is stated that the Defendant is obligated to:
  - a. Build physical structures in accordance with the agreement outlined in the SPK, and these structures must be completed no later than 2 years from the signing of the SPK.
  - b. Manage the hotel/bungalow/cottage and public bath so that it can generate profit for both parties.
4. Until now, the construction has not been realized as per the SPK that was signed, meaning the Defendant has committed a breach of contract (wanprestasi), and therefore, based on Article 1226 of the Civil Code, the Plaintiff has the right to cancel this cooperation agreement.
5. Both parties have met several times to resolve this issue, and the Plaintiff has sent a warning letter regarding the SPK 1 and SPK agreements.
6. There has been no good faith from the Defendant in fulfilling their obligations to the Plaintiff after the meetings were held.
7. The failure to fulfill the Defendant's obligations has caused losses to the Plaintiff, as the

- hotel/cottage/bungalow and bathhouse should have been operational by now.
8. According to Article 5 of the SPK, it is written that the agreement is valid for 30 years from the date of signing on March 27, 1995.
  9. Due to the breach of contract committed by the Defendant, the Plaintiff has suffered losses because the land provided has been neglected and cannot be managed properly. In this case, the Plaintiff is requesting compensation of 2% per month, starting from the date the SPK was made, March 27, 1995, until the decision is executed.
  10. Due to the breach of contract committed by the Defendant and in order to protect the public interest of the Plaintiff, the Plaintiff requests the panel of judges handling this case to declare that the Defendant has committed a breach of contract and to annul the SPK 1 and SPK agreements.

Based on the above, the Plaintiff requests the Tarutung court to make a decision.

#### **In the Petition**

Based on the arguments and evidence presented by the Appellant (formerly the Defendant) above, we respectfully request that the Honorable Panel of Judges of the Medan High Court, who are examining and adjudicating this case, decide on the following matters:

1. Accept the request for appeal from the Appellant (formerly the Defendant);
2. Declare that the Defendant has committed a breach of contract (wanprestasi);
3. Declare that the Defendant's actions were unlawful for failing to fulfill the mutually agreed-upon contract;

4. Declare that the Defendant is obliged to return the capital amount of 150,000,000 (One Hundred Fifty Million Rupiah) provided by the Plaintiff, as well as the land of 14,148 square meters, which must be measured again;
5. Declare that the Defendant is liable for compensation to the Plaintiff amounting to 2% per month for damages caused by the Defendant for 21 years;
6. Declare that the agreements under contracts No. 01-00/1991 and No. 01-00/1995 are legally void;
7. Order the Defendant to pay the court fees of both the first instance and appellate levels;
8. Declare that this decision can be enforced immediately, even if there is an appeal, cassation, or opposition.

Furthermore, the contents of this Counter-Memorandum of Appeal are as follows:

- a) Regarding the Exceptions (response to the preliminary arguments of the Appellant);
- b) Regarding the response to the contents of the Appellant's Memorandum of Appeal and the lack of proof for the Appellant's allegations;
- c) Regarding the place of the Appellant's legal arguments before the Panel of Judges at the First Instance.

#### **Considerations**

After reviewing, examining, and carefully studying the case file and documents related to this matter, including the official copy of the Tarutung District Court's decision No. 39/Pdt.G/2018/PN Trt, dated April 26, 2019, and especially the Memorandum of Appeal filed by the Appellant (formerly the Defendant) and the Counter-Memorandum of Appeal from the

Respondent (formerly the Plaintiff), the Panel of Judges at the Medan High Court is of the opinion that the Panel of Judges at the First Instance of the Tarutung District Court has correctly and properly examined the facts and events in the case and has considered all relevant facts based on the legal evidence presented during the trial.

After considering the arguments and evidence presented, the Panel of Judges at the High Court believes that the decision of the Tarutung District Court, dated April 26, 2019, No. 39/Pdt.G/2018/PN Trt, can be upheld.

### **Judgment**

Based on the above considerations, the Panel of Judges at the Medan High Court rules as follows:

1. Accept the appeal filed by the Appellant (formerly the Defendant);
2. Amend the decision of the Tarutung District Court No. 39/Pdt.G/2018/PN Trt, dated April 26, 2019, as follows:
  1. Grant the Plaintiff's (now the Respondent's) claim in part;
  2. Declare that the Defendant (now the Appellant) has committed a breach of contract (wanprestasi);
  3. Order the Defendant (now the Appellant) to return the capital amount of 150,000,000 (One Hundred Fifty Million Rupiah) and land of 14,148 square meters, which must be re-measured;
  4. Order the Defendant (now the Appellant) to compensate the Plaintiff (now the Respondent) for material losses caused by

the Defendant's breach of contract at a rate of 2% per month for 21 years;

5. Declare that the contracts under No. 01-00/1991 (SPK-1) and No. 01-00/1995 (SPK) are null and void;
6. Order the Defendant (formerly the Appellant) to pay the costs of the case in both the first and appellate instances, amounting to Rp. 150,000 (One Hundred Fifty Thousand Rupiah).

This decision was made in a deliberation meeting of the Panel of Judges of the Medan High Court on Tuesday, September 15, 2020, consisting of: Ronius, S.H., as the Presiding Judge; Purwono Edi Santosa, S.H., M.H.; and Krosbin Lumban Gaol, S.H., M.H., each serving as a Judge Member, who were appointed to examine and adjudicate this case in the appellate level based on the Decree of the Chairman of the Medan High Court No. 317/Pdt/2020/PT MDN dated July 13, 2020. This judgment was pronounced in an open session on Tuesday, September 29, 2020, by the Presiding Judge, with the assistance of the Judge Members and Masrukiyah, S.H., the Substitute Clerk of the Medan High Court, in the absence of the Appellant (formerly the Defendant) and the Respondent (formerly the Plaintiff) or their representatives

### **CONCLUSION**

The Judge's consideration in annulling the agreement in Decision No. 31.7/Pdt/2020/PT.Mdn essentially states that PT. Tarutung applied the law incorrectly by examining and deciding on the Plaintiff's lawsuit, while the core issue in the case was a breach of contract (wanprestasi) between the Defendant and

the Plaintiff, based on the cooperation agreement (SPK), which is fundamentally a contractual dispute. The legal consequence of annulling the agreement in Decision No. 31.7/Pdt/2020/PT.Mdn, as concluded by the Judge, is that the decision cannot be executed, meaning it can be regarded as though the decision never existed. One of the fundamental principles in contract law is the principle of protection for the parties, particularly for the party that suffers damage. To realize this protection for the aggrieved party, the following actions can be taken: annulment of the agreement, annulment accompanied by a claim for compensation, fulfillment of the agreement, fulfillment of the agreement accompanied by a claim for compensation, or claiming compensation. In the case above, the Defendant committed a breach of contract (wanprestasi), as they failed to fulfill the obligations as per the agreement. A legal review of the annulment of an agreement under the Indonesian Civil Code stipulates that an agreement may be annulled if it does not meet the required conditions, as outlined in Article 1446 of the Civil Code. This includes agreements made by a person who is underage, agreements that fail to adhere to the formalities required by law, and those made with defects in consent. Defects in consent occur when the agreement is made under error, coercion, or fraud. In such cases, the agreement can be annulled by the concerned parties.

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