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A Juridical Review of Breach of Contract in Commercial Cooperation Agreements in Indonesia

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ABSTRACT

Trade cooperation agreements are essential legal instruments in the Indonesian business landscape, as they regulate the rights and obligations of the involved parties. However, in practice, breaches of contract or wanprestasi frequently occur, resulting in losses for one of the parties. This study aims to analyze the legal perspective on wanprestasi in trade cooperation agreements, including its forms, causes, and available legal remedies. The research employs a normative juridical method with a statutory and case study approach. The findings indicate that wanprestasi may take the form of failure to perform, delay, improper performance, or total non-performance. Legally, the aggrieved party may pursue compensation, contract cancellation, performance enforcement, or a combination thereof, as stipulated in Articles 1243 to 1252 of the Indonesian Civil Code. To minimize the risk of wanprestasi, it is recommended that parties formulate clear and detailed agreements with dispute resolution clauses. Effective enforcement of civil law is also essential to ensure legal certainty and protection in commercial activities.

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INTRODUCTION

The development of the trade sector in Indonesia has stimulated increasing cooperation among business actors, often formalized through commercial cooperation agreements or business contracts. These agreements serve not only as legal instruments but also as foundational pillars for building trust and sustaining business relationships. Within the Indonesian legal system, a contract is deemed valid if it fulfills the requirements stipulated in Article 1320 of the Indonesian Civil Code (Kitab Undang-Undang Hukum Perdata, or KUHPer), namely mutual consent, legal capacity, a specific subject matter, and a lawful cause. These elements affirm that a contract holds the same binding force as statutory law between the parties involved (pacta sunt servanda).

However, in practice, not all agreements are executed as initially intended. Breaches of contract, either due to negligence or willful misconduct, are common occurrences. In civil law, such breaches are known as “wanprestasi” (non-performance or default). Wanprestasi may manifest as a failure to fulfill obligations, delayed performance, improper execution, or a complete lack of performance. According to Sutan Remy Sjahdeini (2013), wanprestasi constitutes a form of contractual non-compliance that triggers specific legal consequences, predominantly compensation or contract termination.

In the context of commercial cooperation, wanprestasi can severely harm the aggrieved party, potentially disrupting business continuity, damaging reputations, and causing substantial material losses. A study by Utomo and Prasetyo (2020) revealed that the majority of breach-of-contract cases in Indonesia stem from the absence of clear dispute resolution clauses within contracts and a general lack of legal literacy among small and medium enterprises (SMEs). This underscores the importance of law in fostering a healthy and professional contractual culture in the business environment.

From a legal standpoint, provisions concerning breach of contract are explicitly regulated in the Indonesian Civil Code, particularly Articles 1238 to 1252. These provisions outline the legal consequences applicable to the defaulting party and the rights of the aggrieved party. They provide a robust legal basis for demanding performance, seeking damages, rescinding the contract, or pursuing a combination of these remedies. Nasution (2019) argues that while Indonesia's civil law framework is sufficiently structured to address breach-of-contract issues, the primary challenge lies in enforcement and raising legal awareness among business actors.

One of the central issues in resolving breaches of contract is the weak enforcement of contractual obligations. Many business actors—particularly in the informal sector—tend to view contracts as mere formalities and lack awareness of the legal implications of non-compliance. This problem is exacerbated by the suboptimal involvement of notaries and legal consultants in drafting well-structured agreements. Research by Dewi and Harimurti (2021) indicates that over 60% of commercial contracts in the SME sector are drafted without legal assistance, weakening the legal position of aggrieved parties when disputes arise.

Moreover, dispute resolution clauses are often neglected or ambiguously formulated in cooperation agreements. These clauses are crucial for determining the mechanism of dispute settlement in the event of a breach—whether through litigation or alternative methods such as arbitration, mediation, or negotiation. Fitriani and Widodo (2020) found that contracts incorporating arbitration clauses tend to result in faster and more efficient dispute resolution compared to those relying solely on general court proceedings.

The importance of effective dispute resolution mechanisms is also emphasized in international law and global trade practices. In the Indonesian context, institutions such as the Indonesian National Arbitration Board (BANI) provide alternative avenues for resolving business disputes, particularly for larger corporations. However, access to such institutions remains limited for small business actors due to cost and procedural complexity.

Breach of contract also impacts the investment climate and legal certainty. Uncertainty in contract enforcement deters both domestic and foreign investors from committing capital. Therefore, enhancing legal awareness, providing legal education on contracts, and strengthening the civil justice system are crucial agendas for reinforcing Indonesia's contractual legal framework.

To prevent breach of contract, it is essential for parties to formulate clear, detailed agreements that adhere to the principles of due diligence. Legal professionals—such as advocates and consultants—play a vital role in providing legal advice and drafting contracts that fairly protect the rights and obligations of all parties. Concurrently, legal education institutions are expected to prepare future legal practitioners with the skills necessary to draft professional contracts.

The juridical analysis of breach of contract must also consider evolving social and technological contexts. In the digital era, commercial cooperation has become increasingly complex, encompassing online transactions and electronic agreements (e-contracts). This shift introduces new challenges related to evidence, the legal validity of electronic agreements, and enforcement mechanisms. Consequently, the civil legal system must continue evolving to meet contemporary demands without compromising the core principles of contract law.

This study employs a normative juridical approach, analyzing statutory provisions, legal doctrines, and relevant court decisions related to breach of contract in commercial cooperation agreements. This approach is deemed appropriate for comprehensively understanding the concepts, principles, and application of contract law in both theoretical and practical dimensions. Case studies are also utilized to illustrate the dynamics of breach of contract in practice.

The objective of this research is to provide a comprehensive analysis of the various forms and causes of breach of contract in commercial cooperation agreements in Indonesia and to examine alternative dispute resolution mechanisms. The study is expected to contribute academically and practically toward developing a more orderly, fair, and equitable contractual legal system.

With a strong theoretical and empirical foundation, this study also aims to offer recommendations for policymakers, legal practitioners, and business actors in formulating adaptive legal policies and strategies responsive to contemporary challenges. In this way, the law serves not only a repressive function but also a preventive and educational one in shaping law-abiding business behavior.

RESEARCH METHOD

This study employs a normative juridical approach, which is grounded in the examination of legal norms within the prevailing positive legal system. This approach is utilized to analyze legal provisions governing breach of contract (wanprestasi) in trade cooperation agreements in Indonesia. The analysis draws upon statutory regulations, legal doctrines, and court decisions. The normative juridical approach is chosen because the study aims to examine legal principles from a theoretical perspective and identify their application within civil law practices.

In addition, the research incorporates a conceptual approach by investigating legal concepts related to contracts and breach of contract as developed in legal literature. Through this approach, the researcher formulates a deeper understanding of the definitions, elements, and legal consequences of breach of contract within the context of Indonesian contract law.

The type of research used is normative legal research, which relies on legal sources as its primary data. Normative legal research seeks to explore theoretical legal norms in relation to the problem under investigation, particularly concerning the forms of breach of contract and their legal resolutions. This study is descriptive-analytical in nature, aiming to provide a systematic, factual, and accurate depiction of the characteristics of breach of contract and its legal implications in trade cooperation agreements.

The data used in this research is secondary data, derived from written legal materials. These secondary legal materials consist of:

1. Primary legal materials, which include binding legal sources such as the Indonesian Civil Code (Kitab Undang-Undang Hukum Perdata, KUHPer), particularly Articles 1238 to 1252 that govern breach of contract and its legal consequences, as well as other relevant statutory regulations.
2. Secondary legal materials, which provide commentary and explanation of primary legal materials. These include legal textbooks, academic journals, scholarly writings, prior research findings, and other legal literature discussing breach of contract and trade cooperation agreements.
3. Tertiary legal materials, which offer guidance or clarification of primary and secondary legal materials, such as legal dictionaries, legal encyclopedias, and glossaries.

The data collection technique used is library research, involving a comprehensive review of both printed and digital legal literature related to contracts, breach of contract, and dispute resolution under civil law. This includes an analysis of legislation, expert legal doctrines, and empirical studies published in scholarly legal journals.

The data analysis technique applied in this study is qualitative analysis, which entails examining, interpreting, and drawing conclusions from the collected legal materials. The data is organized systematically and analyzed logically to address the legal problems posed in this research. The analysis connects existing legal norms with legal theories and their implementation in relevant civil law cases.

To strengthen the validity of the data, the researcher also reviews several court decisions related to breach of contract in trade cooperation agreements. These judicial decisions are examined to understand how courts interpret and enforce the law in breach of contract cases, serving as a basis for evaluating the effectiveness of the civil law system in delivering justice to the involved parties.

Through the methodologies employed, this research is expected to contribute meaningfully to the development of legal science and serve as a practical reference for the drafting and execution of trade cooperation agreements in Indonesia.

RESULTS AND DISCUSSION

Default, or breach of contract, is a legal term referring to a party's failure to fulfill obligations as stipulated in an agreement. In Indonesian civil law, default is governed by Article 1239 of the Civil Code (KUHPerdata), which emphasizes that every obligation to perform must be carried out in good faith. Failure to do so is categorized as a breach. Within the context of commercial partnerships, default becomes a central issue as it may result in substantial financial losses and disrupt the stability of business relationships. As noted by Pranoto (2020), breach of contract is not merely a violation of a contractual promise but also a breach of the trust principle embedded within civil legal relationships.

Forms of default in business cooperation agreements typically fall into four primary categories: complete non-performance, untimely performance, performance not in accordance with contractual terms,

and actions explicitly prohibited under the contract. Each type of default carries distinct legal consequences depending on the severity of the breach and the extent of the damage caused. According to Azhari (2021), total non-performance is the most detrimental form, as it directly results in significant economic losses and the forfeiture of business opportunities.

The causes of default in commercial cooperation can stem from both internal and external factors. Internal factors include negligence, poor management, or financial difficulties, which often serve as the main contributors. Meanwhile, external factors may consist of changes in government policy, economic crises, natural disasters, or other force majeure events. Lestari and Wicaksono (2022) discovered in their study that the majority of business actors lack adequate contractual risk management systems, making them vulnerable to default when unexpected external disruptions occur.

Legally, a breach of contract results in several consequences, including the obligation to pay compensation, compulsory fulfillment of the agreement, termination of the contract, and administrative or other penalties as stipulated within the contract. The principle of restitutio in integrum is frequently applied to determine compensation, implying that the injured party should be restored to their original position prior to the breach (Harahap, 2021). This principle underscores the right of the aggrieved party to claim compensation corresponding to the actual loss suffered.

From a legal standpoint, default constitutes a violation of the principle of pacta sunt servanda as enshrined in Article 1338 of the Civil Code, which states that contracts are binding as law upon the contracting parties. Violation of this principle entitles the injured party to seek compensation or other legal remedies. Siregar (2023) affirms that courts tend to protect the injured party, particularly when strong evidence and documentation of the contractual breach are presented.

The resolution of default in commercial partnerships may be pursued through litigation. This process allows judges to objectively assess the contract and the actions of both parties. However, litigation is often time-consuming and costly, and thus not always the preferred route. Mahendra (2022) observes that most business actors initially opt for non-litigation methods such as negotiation or mediation before escalating the dispute to court proceedings.

Alternative dispute resolution mechanisms such as mediation and arbitration have gained popularity, particularly in large-scale or cross-border commercial transactions. Arbitration is seen as more efficient due to its expedient and confidential process, and the parties' autonomy in selecting arbitrators. Law No. 30 of 1999 provides a solid legal foundation for dispute resolution via arbitration. Fauzi (2020) notes that arbitration has become the preferred method in many international commercial contracts, as its decisions are final and binding.

A concrete example can be seen in the decision of the Surabaya District Court No. 145/Pdt.G/2021/PN.Sby, where the defendant was declared in default for failing to deliver goods as per contract specifications. The court annulled the contract and ordered the defendant to pay damages amounting to IDR 250,000,000. This case demonstrates that strong contractual evidence is crucial in prevailing in default-related disputes.

In practice, prevention of default can be achieved through carefully drafted contracts that include essential clauses such as force majeure, penalties for delay, and dispute resolution mechanisms. Yulianto (2021) asserts that well-crafted contracts with comprehensive clauses significantly reduce the potential for conflict between parties.

Furthermore, the principle of good faith must serve as the foundation in executing any agreement. A contract executed without good faith may still constitute default, even if formal contractual obligations are ostensibly fulfilled. The Supreme Court of Indonesia has, in several decisions, emphasized that evasion of responsibility through legal loopholes still constitutes default when proven to be committed in bad faith.

Although the Indonesian legal system normatively provides legal protection for aggrieved parties, the effectiveness of such protection is often hampered by delays in legal processes and difficulties in enforcing court decisions. This is especially true for small and medium enterprises (SMEs), which often face constraints in accessing legal assistance. Santoso and Dewi (2023) highlight that many SMEs struggle to execute court decisions due to costs and bureaucratic hurdles.

Compared to legal systems in common law countries such as the United States and the United Kingdom, Indonesia's civil law system is relatively straightforward but offers limited remedial options for breach of contract. In those countries, available remedies include punitive damages and specific

performance—remedies that are seldom applied in Indonesia. This illustrates the need for the Indonesian legal framework to adapt to the evolving dynamics of modern business, which demand more flexible dispute resolution mechanisms.

In conclusion, this analysis underscores that drafting commercial cooperation agreements must involve comprehensive legal consideration to prevent and address breaches. It also highlights the importance of legal literacy among business actors, both in contract formulation and in effective dispute resolution. Such understanding not only enhances legal protection but also fosters a fair and healthy business environment.

CONCLUSION

Based on the explanations and discussions presented, it can be concluded that breach of contract in commercial cooperation agreements constitutes a failure by a party to fulfill its obligations as agreed upon in the contract. Forms of breach of contract may include non-performance, delayed performance, performance not in accordance with the terms of the agreement, or violation of prohibitive provisions stipulated within the contract. From a juridical perspective, breach of contract violates the principle of pacta sunt servanda as enshrined in Article 1338 of the Indonesian Civil Code (KUHPerdata), thereby granting the aggrieved party the right to seek remedies through claims for damages, contract cancellation, or other dispute resolution measures.

Resolution of breach of contract can be pursued through various legal mechanisms, either litigative or non-litigative, such as arbitration and mediation. Each form of dispute resolution has its own advantages and disadvantages. In business practice, detailed contract drafting that includes clear dispute resolution clauses and penalty provisions has been proven effective in reducing the risk of breach of contract and facilitating resolution should violations occur. The principle of good faith in executing agreements also remains a key factor that must always be upheld by parties in commercial relationships.

Thus, this study affirms that understanding and strengthening the juridical aspects of commercial cooperation agreements are crucial to ensuring legal certainty, justice, and the sustainability of business relationships. Business actors are advised to exercise greater caution in drafting contracts and to thoroughly understand the legal rights and obligations inherent in each agreement to avoid potential disputes in the future.

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