Contractor’s Liability In Development The Frontage Apartment And Hotel A. Yani Surabaya (Study In PT. Panca Wira Usaha Jawa Timur)

Navila Saras Agustine 1*, Fauzul Aliwarman 2
1Faculty of Law, Universitas Pembangunan Nasional “Veteran” Jawa Timur, Indonesia, Email: ririn250268@gmail.com
2Faculty of Law, Universitas Pembangunan Nasional “Veteran” Jawa Timur, Indonesia, Email: fauzula.ih@upnjatim.ac.id

Abstract

The development of the population, especially in the city of Surabaya, motivates the higher availability of housing, especially apartments. In this case, it is based on a construction agreement in the form of cooperation in optimizing vacant land by building The Frontage A. Yani Surabaya Apartments and Hotels. The agreement between PT. Panca Wira Usaha East Java as the owner with PT. Trikarya Graha Utama as manager. The purpose of this study is to determine the legal relationship between contractors arising from a construction agreement and to know that there is a liability that must be carried out due to a default. The method of this research is juridical-normative research based on the Civil Code, Law No. 8 of 1999 concerning Consumer Protection, Law No. 20 of 2011 concerning Flats, Law No. 2 of 2017 concerning Construction Services, and Government Regulation No. 28 of 2000 concerning Business and Role of Construction Services. Then the result of this research is that there is a legal relationship from the owner to the manager due to an agreement that gives rise to rights and obligations that must be obeyed and fulfilled by the parties because the agreement is a law for the parties. then, the second party performs a default in the form of default by the second party that is not fulfilled its obligations and is considered to have committed negligence resulting in losses suffered by the first party. The party that feels aggrieved can claim liability by compensating for damages. The form of loss is cost, loss and interest, and can request that its obligations remain fulfilled by meeting compensation agreements.

Keywords: Liability, Default, Loss.

I. Introduction

The city of Surabaya has the largest population in East Java Province. Because it is the capital of East Java Province which is the center of government, security, social, economic, business, and industry which has a variety of facilities and infrastructure to support life that is very diverse and complete. So that the impact is increasingly dense population of Surabaya. Therefore, an increase in population means an increase in the number of dwellings needed because occupancy is a basic need of each individual.

One of the best solutions to overcome these problems is by constructing flats or apartments because Surabaya City does not have enough land so practical housing is needed. In Indonesia, the regulation of Flats is now also regulated by law in the presence of Law No. 20 of 2011 concerning Flats.

In carrying out the construction of Apartments and Hotels is a project that has a great risk, so that not infrequently the contractors make a construction agreement to other
contractors who are considered to facilitate the construction and benefit the parties. However, caution is needed in conducting cooperation, so as not to cause defaults and losses.

This agreement certainly aims to negotiate the interests of the parties, prevent defaults and anticipate losses. This agreement was formed by PT. Panca Wira Usaha East Java as the First Party (Land Owner) in cooperation with PT. Trikarya Graha Utama as the Second Party (Manager) in the apartment development agreement which is located at the main gate of the city of Surabaya namely The Frontage Apartment and Hotel.

The construction of the Apartment and Hotel is carried out on the assets of PT. Panca Wira Usaha East Java with proof of Management Right Certificate No. 1 / Ex. Jemur Wonosari an. PT. Panca Wira Usaha East Java. The agreement was carried out on October 12, 2012. The agreement began with PT. Panca Wira Usaha has land that wants to be used well and beneficially so that it is managed by building The Apartment and Hotel The Frontage by PT. Trikarya Graha Utama. The agreement stated in Notarial Deed No. 77 made before the Notary Evie Mardiana Hidayah., SH on June 25, 2014.

The agreement will lead to a legal relationship which then results in the existence of rights and obligations which must be obeyed and fulfilled by the parties, because the agreed agreement will become the law for those who form it. If the obligation is not fulfilled, then the party is considered default, so as a result, the party must be held accountable for the losses suffered by those who feel aggrieved due to their actions.

PT. Trikarya Graha Utama deemed not fulfilling its obligations to PT. Panca Wira Usaha for having neglected and not responsible in carrying out the agreement including not giving up the apartment building, not completing the construction and not giving information to the first party about the development of the development. As a result, the first party has the right to receive compensation, request fulfillment of obligations, cancel the agreement and sue the second party to the Surabaya District Court.

II. Method

The method used by the author is juridical-normative research. Legal research conducted by examining library materials or secondary data consisting of primary legal materials, secondary legal materials and tertiary legal materials.
This research is based on Addendum Agreement No. 77 formed by the parties which the authors then associate with library materials or secondary data namely legislation relating to this research, including agreements (Civil Code), Flats (Law No. 20 of 2011 concerning Flats) and Construction Services (Law No. 2 of 2017 concerning Construction Services), as well as related books and interviews with one of the parties to strengthen the author's research.

III. Main Heading of the Analysis or Results

An agreement has elements that are competent parties, the principle agreed upon, legal considerations, reciprocal agreements, and mutual rights and obligations. The main characteristic of a contract is that the contract is a writing that contains the pledges of the parties in full with the terms and conditions and serves as a proof of the existence of a set of obligations. So that in an agreement raises a legal relationship. A legal relationship is a relationship between legal subjects governed by law.

The relationship regulated by law is the rights and obligations of individuals, one individual to society, other individuals in social life. Thus, legal relations are the legal rights and obligations of every community or individual in social life. These rights and obligations if not fulfilled may be subject to sanctions according to law.

Judging from the nature of the relationship, legal relations are distinguished between legal relations that are private and legal relationships that are public. In determining whether a legal relationship is public or private, the indicator is not the subject of the legal relationship, but the nature of the legal relationship or the nature of the transaction.

Based on the contractor's legal relationship with PT. Panca Wira Usaha in the construction of The Frontage A. Yani Surabaya Apartments and Hotels is a private legal relationship arising from a construction agreement because the nature of the relationship is to carry out an apartment and hotel construction that will be carried out between the contractor and the recipient of construction services and transactions that involve only

---

parties that do not involve the public do not have an impact on the interests of the state or the public.

PT. Panca Wira Usaha with PT. Trikarya Graha Utama formed a construction agreement in the form of a collaboration on June 25, 2014 in the Addendum to the Cooperation Agreement Number 77 made before the Notary Evie Mardiana Hidayah for which the agreement had been agreed by the parties with a period of 50 years from the agreement was agreed upon with a 30 year term building rights certificate above management rights certificate with an extension of 20 years.

The legal relationship is PT. Panca Wira Usaha as the First Party, that is the party who owns a piece of land located on Jalan Ahmad Yani No. 115 Surabaya and wishes to use the land or as the owner, also known as the First Party. While PT. Trikarya Graha Utama as a Second Party, that is, the party who wishes to utilize the land owned by the first party by paying compensation amount of cooperation to the first party to build The Frontage A. Yani Surabaya Apartment and Hotel or as a manager, also known as the Second Party.

This cooperation agreement is about optimizing the object of the agreement by utilizing an area of 14,530 m² to be managed by a second party and used as a commercial activity center named Apartment and Hotel The Frontage A. Yani Surabaya which is located at Jalan A. Yani No. 115 Surabaya with proof of Management Right Certificate Number 1 / Ex. Jemur Wonosari on behalf of PT. Five Entrepreneurs who serve as the Object of the Agreement.

From the existence of these relationships, it raises the rights and obligations born of the agreement, including:

1. Rights and Obligations of the First Party (PT. Panca Wira Usaha)
   a. First Party Obligations
1) Submit the use of the object of the agreement to the second party and the rights attached to the object of the agreement

2) Give the power of substitution to the second party to take the actions needed for the construction of apartments and hotels

3) Submit the object of the agreement to the second party empty and ready to build a commercial activity center

b. First Party Rights (PT. Panca Wira Usaha)

1) Supervise the use of the object of the agreement made by the Second Party

2) Conduct examination or review of the use of agreement objects in the field

3) Receive payment of compensation costs from second parties in the form of money in the amount of Rp. 9,916,725,000.00 and the form of flat units worth Rp. 37,778,000,000.00

4) Give a warning or reprimand in writing to the second party in the event of a deviation

5) Receive transfer of all shares owned by the Second Party after the end of the agreement without transfer fees, taxes incurred and / or will arise due to a dispute, all of which are borne by the Second Party

2. Rights and Obligations of the Second Party (PT. Trikarya Graha Utama)

a. Second Party Obligations

1) Paying all costs arising from the agreement making

2) Responsible for carrying out cooperation compensation

3) Give written notice to the first party of the request for the issuance of a Certificate of Ownership of Flats in the Office of the Republic of Indonesia National Land Agency

4) Pay all costs incurred and / or will arise at the end of the agreement

b. Second Party Rights

1) Obtain land rights with proof of building rights over the first party's management rights for a period of 50 years
2) Carry out construction of The Frontage Surabaya Apartments and Hotels

3) Submitting an application to get a Flat Right Certificate

4) Plan and determine your own building design, giving names and logos, as well as building designation by notifying the first party in writing

5) Guaranteeing land rights and then getting a source of funding for development funding from banks that are willing to finance development by following bank regulations

6) Selling flats that are the rights and authority of the second party by agreement

7) Enter into cooperation agreements with other parties which are deemed good by notifying the first party

8) After signing the minutes of handover of the use of the object by the parties, the second party has the right to transfer and sell or pass, guarantee and lease the apartment units that will be built according to the planning drawings that have been approved by the Surabaya City Government

9) Applying for a certificate of ownership of the apartment unit to the Office of the National Land Agency of the Republic of Indonesia and must notify the first party.

In each agreement there is a possibility that one of the parties will not enter into an agreement or not fulfill its obligations. If one party cannot fulfill its obligations, the party is considered Default. Then an agreement is considered as a law for the parties who formed it in accordance with article 1338 of the Civil Code. If carrying out the agreement, it is called an achievement

Default is the absence of an achievement in the law of agreement, meaning that something must be carried out as the contents of an agreement or the term of the implementation of the promise for default.\(^4\)

In this case, the second party has been declared default because of negligence. The second party is considered negligent because based on Article 1238 of the Civil Code, the act is

considered negligent in the event of a warning letter. Based on the facts, the First Party has given a warning letter 3 times and was not given a response at all.

The forms of defaults are as follows:

1. Not submitting the form of flats for the first time in 2015 until past the agreement deadline
2. Do not pay fees and submit compensation
3. Did not complete the construction of The Frontage Surabaya Apartments and Hotels
4. Not communicating with PT. Panca Wira Usaha to sell one apartment unit to consumers worth Rp 88,000,000,000
5. Not responsible for carrying out compensation agreements

This form of default violates the laws and regulations including Article 1338 of the Civil Code and Article 7 letter (a) of Law No. 8 of 1999 concerning Consumer Protection, Article 7 of Law No. 8 of 1999 concerning Consumer Protection.

If the contract has been declared default by the injured party, then the liability can be realized in the form of compensation. Compensation in civil law can arise due to default due to an agreement. Then the legal consequences of default by PT. The Main Graha Trikarya is required to pay the compensation stipulated in Article 1243 of the Civil Code, can request the cancellation of the agreement stipulated in article 1266, and can request fulfillment of the achievement, or fulfillment of the achievement accompanied by compensation and cancellation of the agreement with compensation set out in article 1267 of the Civil Code.

PT. Panca Wira Usaha has made various efforts to resolve this problem starting at mediation conducted on May 11, 2016, with the result that the second party is willing to pay in installments and ask for the time to surrender the apartment units to be extended. But the second party returned to negligence until the fine reaches more than 5%. Based on the agreement, if the sanctions and fines exceed 5%, the first party has the right to

---

cancel the agreement. Then, has also been given a warning letter 3 times but no response from the second party.⁶

Based on the agreement, PT. Trikarya Graha Utama should have compensation compensation in the form of money amounting to Rp 9,916,725,000.00 and a form of apartment units valued at Rp 37,778,000,000.00, which is used as a tangible form of accountability which should actually be given to PT. Panca Entrepreneurs. However, because it was late given, it caused the fine to exceed 5% of the terms of the agreement. As well as other losses experienced by building failures. The building has not been built to date, the building does not stand in accordance with the agreement.

In the end there was no form of accountability given by the Second Party, so the first party canceled the agreement through Letter Number: 10.1 / PWU / 502 / XII / 2018 dated January 29, 2018. Following up on the termination of the agreement, the first party ordered to return the land became the location of the development of The Frontage along with all the inherent rights and permits, but until 2019 there had been no fulfillment from the first party.

Resolving a default can be pursued by litigation if a mediation or non-litigation attempt is declared unsuccessful by one of the parties.⁷ Therefore, the First Party submits a civil claim to the Surabaya District Court with a default contract that does not submit the form of flats as well as rights attached to the object of the agreement which is the right of the first party, asking to be compensated due to losses arising from the default of the second party, and requests a cancellation of the agreement.

IV. Conclusion

Based on the discussion previously raised by the author regarding the contractor's accountability in the construction of The Frontage apartments and hotels (a study at PT. Panca Wira Usaha East Java), it can be concluded:

1. Legal Relationship between the Contractor and PT. Panca Wira Usaha East Java in the Construction Agreement in the form of a partnership to optimize land in a way Apartment and Hotel Development. This legal relationship is a relationship between

---

⁶ Interview with Ms. Eka as Head of Legal Section of PT. Panca Wira Usaha on April 25, 2020 at the Office of PT. Panca Entrepreneurs

landowners namely PT. Panca Wira Usaha with the manager namely PT. Trikarya Graha Utama. This legal relationship was born from a cooperation agreement Addendum Cooperation Agreement Number 77 that gives rise to rights and obligations. So that the Agreement must be obeyed and its obligations must be fulfilled.

2. Forms of default by the second party, among others, are not submitting the form of a unit of flats for the first time in 2015 until past the deadline of the agreement, do not pay fees and submit compensation, do not complete construction of apartments and hotels in the frontage surabaya, do not communicate with PT. Panca Wira Usaha to sell one apartment unit to consumers worth Rp 88,000,000,000, and is not responsible for carrying out the compensation agreement. Until the expiry date, there is no claim given by the second party, so the first party cancels the agreement with the second party and is working on it through litigation by submitting a breach of claim to the Surabaya District Court.

Acknowledgments

1. Mr. Dr. H. Sutrisno, SH., M.Hum., As the Dean of the Faculty of Law of the East Java ‘Veteran’ National Development University as well as the Guardian Lecturer.
2. Ms. Mas Anienda Tien F, SH., MH., As Deputy Dean I of the Faculty of Law at the ‘Veteran’ National Development University of East Java.
4. Mr. Fauzul Aliwarman, SHI., M.Hum., As Vice Dean III of the Law Faculty of the National Development University of ‘Veteran’ of East Java as well as a Supervising Lecturer of the writer.
5. Mr Eko Wahyudi, S.H., M.H. As the Coordinator of the Law Study Program at the Faculty of Law, the National Development University ‘Veteran’ of East Java.
6. Mr or Mrs Lecturer in the Faculty of Law of the Surabaya ‘Veteran’ National Development University who has helped a lot during this education.
7. Ladies and Gentlemen at the Administrative Department of the Law Faculty of the National Development University of ‘Veterans’ of East Java, which has provided ease in administration.
8. The extended family of Civil and Administrative Assistant for the State Attorney General’s Office in East Java who has assisted the writer in obtaining material and resources in conducting thesis research.
9. The author’s family, especially Ririn Haryati (late) and Fendi Kuswanto (late) as parents, Talika Feri (late) as the author’s sister, Yangti Soepadmi, Mbahkung Soekimin (late), Tante Riana Hermiati, Om Andri, and beloved Naufal Yasqi always pray for and support all the processes to achieve the best future and also so that the author can complete this thesis properly and thoroughly.
10. My fellow compatriots writers at the Faculty of Law of the East Java ‘Veteran’ National Development University namely Destrin Faransari, Fiona Eriba Rahma

II. Friends who have listened to the writer’s complaints during their thesis research, namely Annisa Fitri Nur Pratama and Diandra Pradipta Tunjungsari.

12. Whole Family of Law Faculty Students 2016.

References

Books with an author:

Other:
Interview with Ms. Eka as Head of Legal Section of PT. Panca Wira Usaha on April 25, 2020 at the Office of PT. Panca Entrepreneurs