Juridical Review of The Provision of Catering Services In Theory And Practice And Problematic at PT. Well Harvest Winning Alumina Refenary Site Kendawangan, Ketapang Regency, West Kalimantan

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Abstract
Traditional Covenant Law theory has characteristics emphasizing the importance of legal certainty and predictability. The main function of one of the contracts is to provide certainty about the binding of an agreement between the parties so that the principles of good faith in the civil law system and promissory estoppel in the common law legal system. which in this article the author will discuss PT ADEN’s contractual agreement with PT Well Harvest Winning Refinery Alumina in the catering contract for employees of PT Well Harvest Winning Alumina Refinery which discusses whether the agreement made between the customer and the catering party has qualified the validity of the agreement and the issues contained in the valid agreement.

Keywords: Treaty Law Theory, Civil Law, Agreement.

Introduction
Traditional Covenant Law theory has characteristics emphasizing the importance of legal certainty and predictability. The main function of one of the contracts is to provide certainty about the binding of an agreement between the parties so that the principles of good faith in the civil law system and promissory estoppel in the common law legal system can only be enforced if the agreement already meets the legal requirements of the agreement (Suharnoko, 2009). Modern Covenant Law theory tends to ignore the formality of legal certainty to achieve substantial justice. The exception to the doctrine of consideration and application of the promissory estoppel doctrine and the principle of good faith in the negotiation process is a clear example of the modern theory of the Covenant
Law (Suharnoko, 2009). According to Article 1320 of the Civil Code, the legality of the agreement must meet four conditions, namely:

1. Agreeing to bind themselves to the Agreement means that the parties to the agreement must agree, agree to a word on everything promised. The word agreed this should be given freely, meaning no influence on the third side and no interference.

2. The ability to agree means having the authority to make an agreement or to have a legal relationship. Everyone mature and healthy in mind is capable according to the law.

3. A certain thing A certain matter is the subject of the agreement. These terms are necessary to be able to determine the debtor’s obligations in the event of a dispute. Article 1338 of the Civil War states that an agreement must have as a subject of the least determined type.

4. The lawful reason is the purpose of the two parties who have the intention to achieve it. According to Article 1337 of the Civil Code, the reason that is not lawful is if it is prohibited by law, contrary to moral order or order. According to Article 1335 of the Criminal War, agreements without false or prohibited reasons are without or null and void.

Generally, the agreement stipulated in Civil Code is consensual. The consensus is a meeting of wills or conformities between the parties to the contract. A man is said to give his consent/ his agreement (toestemming), if he does want what is agreed.

Mariam Darus Badrulzaman describes the understanding of agreement as a statement of will approved (overeenstemende wilsverklaring) between the parties. The offered party statement is called an offerte. The statement of the accepting party to the offer is called acceptance time. So the meeting of the will of the offering party and the will of the accepts party is called a deal and that is what gives rise to the contract/agreement.

Several theories can be used to determine the birth of the contract, namely:

a. Statement Theory (Uitings Theorie)

This theory is based on one of the legal principles that a new will has meaning if it has been declared. According to this theory, the word agreed occurred at the time the party receiving the offer had written a letter of reply stating he received an affidavit. The downside of this theory is that
there is no legal certainty because the party who made the offer does not know exactly when the party receiving the offer prepared a letter of reply.

b. Delivery Theory (Verzending Theori).
According to this theory, a deal occurs if the party receiving the offer has sent a letter of reply to the offer made against him. The delivery of the letter means that the sender loses control of the letter, besides when the delivery can be determined appropriately. The downside of this theory is that sometimes there is an agreement that has been born outside the knowledge of the person who made the offer, besides there will be a problem if the recipient delays to send an answer.

c. Theory of Knowledge (Vernemingstheorie).
This theory holds that the deal occurred when the party making the offer knew that the offer had been known to the party receiving the offer. The downside of this theory is that it is possible to delay the birth of the agreement because it delays opening the offer letter and it is difficult to know exactly when the recipient of the offer knows the contents of the offer letter.

d. Acceptance theory (Ontvangtheorie).
According to this theory, it occurs when the offering party receives a direct letter of reply from the party receiving the offer

In Civil Code (KuHPerdata) Article 1331 (1) it is stated that all agreements made legally apply as law to those who make them, that is, if the object of the law is not based on sincere intent, then automatically the law of the agreement is annulled for the sake of the law. So each side has no basis for prosecution before a judge. However, if the law of the agreement does not meet the subjective requirements, for example, either party is under the supervision and pressure of a particular party, then this agreement may be annulled before a judge. Thus, the agreement will not bind the two sides. The law of this agreement will apply if each party has agreed on the content of the agreement.

Establishing when the treaty is born has important meaning for:

1. chance of withdrawing the offer;
2. risk determination;
3. when the period of expiry begins to be calculated;
4. determine where the agreement will occur

The parties who are already bound have the right and obligation to perform performance to the other party. According to Subektii, the Agreement is an event in which the person promises to another person or where the person promises to do something. According to Sutan Remy Syahdeini in the Civil Code
or other laws and regulations does not contain any provision that requires or prohibits a person to bind themselves in an agreement (Syahdeini, 1993). There is also no prohibition for a person to agree with any party as well as not to prohibit a person from agreeing in any particular form he wants.

A covenant does not occur immediately or immediately and an agreement is made to be executed, therefore in a covenant made there are always three stages, namely (Salim, 2003):

a) Pre-contractual, i.e. actions included in negotiations with a review of offers and receipts;

b) Contractual, which is about the meeting of two statements of will that fill each other out and bind both parties;

c) Post-contractual, i.e. the stage in the exercise of the rights and obligations to be realized through the agreement.

Covenants can be distinguished differently. The difference is as follows (Badrulzaman, 2001):

a) A reciprocal agreement is an agreement that creates a principal obligation for both parties, for example, a trade agreement.

b) The Free Agreement and the agreement on expenses. A free agreement is an agreement that benefits only one party, such as a grant. The agreement on burden is an agreement on the achievements of the other party always gets counter achievements from the other party, and between the two achievements, there is no connection according to the law.

c) The agreement named (benoemd specified) and the unspecified agreement (onbenoemd) the named agreement (special) is an agreement that has its own name. The meaning is that the agreements are governed and named by the legislators, based on the type that happens almost daily. The agreement is signed against in Chapter V to XVIII of the Civil Code. Outside of the named treaties grows an unnamable treaty, i.e. an agreement – a treaty that is not regulated da; a Civil Code, but is found in the community. The number of these agreements is not limited. The birth of this covenant is based on the principle of partij autonomy that applies to the law of the covenant. One example of a description is a lease agreement.

d) Mixed agreement (contact us sui generis) Mixed agreement is an agreement containing an unsure agreement, for example, the owner of the hotel who rents out the room (rent), but serves food (trade) and also provides services.
e) Obligatory Agreement Obligatory Agreement is an agreement between the parties that bind themselves to make submissions to other parties (agreements that give rise to binding). According to the Civil Code, the trade agreement alone has not resulted in the switch of property rights from the seller to the buyer. In the transition of property rights to its property, another institution is required, namely the company. The trade agreement is called an obligatory agreement because it imposes obligatory on the parties to conduct levering. Its submission is a seed agreement.

f) The agreement of the object (zakelijke overeenkomst) of Material Agreement is the agreement of the right to the object transferred/submitted (transfer of title) to the other party.

g) Consensual agreements and real agreements. A consensual agreement is an agreement between the two parties that have been reached following the will to ally. According to the Civil Code, this agreement already has binding powers (Article 1338 of the Civil Code). However, in the Civil Code, some agreements only apply after the delivery of goods. E.g. custody agreement (Article 1694 Civil Code), borrowing - use (Article 1740 Civil Code). This latter covenant is called the real covenant which is a relic of Roman law.

h) Special agreements of their nature.
   1) *Liberatoir Agreement*: i.e. the agreement of the parties who absolve themselves of existing obligations, e.g. debt relief article 1438 civil code;
   2) Evidentiary agreement; agreement between the parties to determine what evidence applies between them.
   3) Profit agreement – profit, for example, insurance agreement, Article 1774 Civil Code;
   4) Public agreements, i.e. agreements that are partially or entirely governed by public law because one party acts as a ruler (government), for example, service bond agreements and government procurement agreements (presidential decree No. 29/84).

**Research Problems**

PT ADEN’s contract agreement with PT Well Harvest Winning Refinery Alumina in catering provider contract for employees of PT Well Harvest Winning Alumina Refinery.
Discussion

1. Understanding of the agreement

Etymologically the agreement (which in Arabic is termed *Mu'ahadah Ittifa', Akad*) or contract can be interpreted as: "an agreement or agreement is an act in which a person or more binds himself to another person or more". (Yan Pramadya Puspa, 1997: 284) (Pasaribu, 2004). R. Subekti uses the word "covenant" as a translation of the *overeenkomst* because according to him, the word covenant is already felt by the public as a steady word to describe the series of promises whose fulfillment is guaranteed by the law (Subekti, 1988).

Furthermore, R. Subekti defines the covenant as "an event in which one promises another or where the two men promise each other to do something (Subekti, 1987). Abdulkadir Muhammad translates *overeenkomst* as a covenant. In relation to the definition of the agreement mentioned in Article 1313 of the Civil War, he argues that the definition is less clear because it contains some of the following weaknesses:

a. It's just about one side. This is known by the formula "..... one or more people bind themselves to one or more". The verb "bind" means to be unilateral only.

b. The word "deeds" also includes deeds without consensus. The sense of agreement is too broad. This is because the understanding of the covenant stipulated in the article may also include the marriage vows and the continuity of marriage which is subject to and regulated in family law. But what is meant is a covenant set forth in the law of wealth.

c. Without mentioning the purpose. The formulation of the article does not explain the purpose of the parties to enter into an agreement (Muhammad, 1990).

Based on the reasons put forward, Abdulkadir Muhammad concluded the agreement as "an agreement with which two or more people bind themselves to each other doing something in the field of wealth" (Muhammad, 1990). From some of the meanings of the above agreement it is understandable that the agreement contains some things of the essence, namely:

a. there are two or more parties;

b. there is a word of agreement between the parties;

c. there is a goal to be achieved;

d. there are achievements to be fulfilled.
Soedikno Mertokusumo explained that a covenant contains three elements, namely:

a. essential, i.e. the absolute element must be in the agreement, for without such an element an agreement is not possible. For example in a trade agreement, the absolute must be the goods and the price;

b. natural, which is an element attached to an agreement so that it does not need to be promised specifically in the agreement. For example, the provision stipulated in the seller’s obligation to guarantee the goods he sells;

c. accidental, i.e. an element that must be contained or expressly mentioned in the agreement, although not governed by law. For example, in a home sale agreement, it must be expressly mentioned whether or not with its household appliances (Mertokusumo, 1986).

The principle is something that is the focus of thinking or arguing or can also be referred to as the basic law. According to RM. Soedikno Mertokusumo which is meant by the principle of law is a common basic mind of its nature or is the background of concrete regulations contained in and behind every legal system incarnated in the legislation and the judge’s ruling which is a positive law.

From the above definition, it can be known that the principle of law does not manifest as a concrete rule, but rather is a basic mind that is general so that it can be said as a basic mind that backgrounds the formation of positive laws. In the law of the covenant, there are several such legal principles below.

a. Principles of Contracting Freedom

This principle is closely related to the content of this agreement contained in Article 1338 paragraph (1) of the Code of Data which reads as follows:

"All consents made lawfully apply as a law to those who make them". The elements of freedom contained in the principle of freedom of contract consist of:

1) the freedom of any person to enter into or not agree;
2) the freedom of any person to agree with anyone;
3) the freedom of the parties to determine the content of the agreement;
4) the freedom of the parties to determine the form of the agreement;
5) the freedom of the parties to determine how to establish the agreement (Subekti, 1988).
For the development of the law, especially the law of the covenant, this principle provides an opportunity for the growth of new types of treaties that have not been governed by the law but are needed by the community. However, freedom is not absolute freedom but there are some restrictions as set out in article 1337 of the Civil War which stipulates that in an agreement then a cause is prohibited if prohibited by law or contrary to public order and decency.

As an implication of the principle of freedom of contract, the position of the series of articles contained in Book III of the Penal Code is only as a supplementary law (aanvullend recht). So that the articles can be kept as long as the parties wish and will only apply as a law of coercion (dwingen recht) if the parties do not govern themselves otherwise against the agreements made.

b. Principles of Consensualism

The principle can be summed up from Article 1338 (1) jo Article 1320 of the Code of Data in the section that reads "agree with those who bind themselves". The word consensual comes from the word consensus meaning agreement. The agreement means that between the parties concerned has been reached according to the will. The meaning of the principle of consensual itself is that the agreement has been born since the second of the agreement or the consensus of the two parties that agreed.

The exception to this principle is governed by a law that determines a specific new agreement is valid and binding if made in writing, such as a peace treaty, or it must be made in the form of an authentic deed, such as the establishment of a limited liability company (Triyanto, 2004).

c. Basic Pacta Sunt Servanda

This principle is closely related to the legal consequences of a covenant. The principle stipulated in article 1338 paragraph (1) of the Civil War is primarily in the sentence "..... applies as a law to those who make it" means that the agreement made legally has binding powers such as the law for the parties who make it, this means that the parties are obliged to comply and carry out the agreement, furthermore, the one party cannot unilaterally dis escape from the other party.

From the above understanding, it can be known that this principle of pacta sunt servanda is the principle of legal certainty. This is following the provisions of Article 1338 paragraph (2) which states that "such consents cannot be withdrawn other than by agreeing to both parties, or
for reasons by a law expressed sufficient for it”. This principle of legal certainty can be maintained fully if in an agreement the position of the parties is balanced and each party is capable of doing legal deeds.

d. Personality Principles

According to Article 1315 and Article 1340 of the Civil War, the agreement applies only to the party who made it or it can be said that the agreement does not apply to third parties. The exception to this principle is the promise of a third party (derden beding) stipulated in Article 1317 of the Civil Code. In this promise to a third party, there is an agreement between the two parties but on certain terms, it can have direct legal consequences against the third party. For example, A entered into an agreement with B, and in that covenant, he asked for the promise of rights to C without the power of C. In this relationship A is referred to as a stipulator and B is the promisor (Subekti, 1988). Another exception is as outlined in Article 1316 of the Criminal War on warranty agreements, in which a person promises that it is a third party that will do an act.

e. Principles of Good Faith

The principle of goodwill can be concluded from Article 1338 paragraph (3) of the Code of Data which reads "Consents shall be carried out in good faith”. According to R. Subekti, this principle of goodwill has two such meanings below.

1) subjective, i.e. meaning based on one's bathing attitude. This subjective measure is required at the time the agreement will be made. Good faith in a subjective sense as outlined in Articles 1963, 1965, and 1977 of the Civil War;

2) objective, i.e. an agreement made must be implemented with due care of norms of propriety and law. This objective measure is used to assess the exercise of rights and obligations arising from agreements made by the parties. The necessity of the implementation of the agreement in good faith in this objective sense is contained in article 1338 paragraph (3) of the Civil War (Subekti, 1988).

A covenant is an act by which one or more persons bind themselves to one or more (Section 1313 BW). The meaning of this agreement contains the following elements:

a. The Act, the use of the word "Action" in the formulation of this Agreement is more appropriate if replaced by the word
legal action or legal action because it carries legal consequences for the parties who promise;

b. One or more people against one or more. For an agreement, there must be at least two parties facing each other and giving statements that match each other. A party is a person or legal entity;

c. Binding itself, in the covenant there is an element of a promise given by one party to the other. In this covenant, one is bound to the consequences of the law that arise by his own will. Before an agreement is drawn up it is necessary to note the identification of the parties, preliminary research on each party up to the juridical consequences that may occur at the time the agreement is made (Salim, 2007).

2. Types of Agreements

Regarding this agreement is stipulated in Book III of the Civil Code, the regulations outlined in this Civil Code are often referred to as complementary regulations, not coercive regulations, which means that the parties may enter into agreements by sideways with the existing treaty rules. Therefore here the parties can enter into treaties that are in no way governed in the form of such agreements:

a) The named agreements, i.e. the treaties outlined in the Civil Code. Included in this agreement are trade, exchange, lease, etc.

b) Irregular agreements in the Civil Code. So in this case the parties decide for themselves the agreement. And the provision stipulated by the parties applies as law to each party (Suryodiningrat, 1978).

In civil code article 1234, the alliance can be divided into 3 (three) kinds, namely:

a. Alliance to deliver or deliver an item
b. Alliance to do something
c. The alliance not to do anything.

Further explanations of the above alliance, are as follows:

a. The Alliance to provide or submit an item of these Terms is stipulated in civil code Article 1235 up to Article 1238. For example, for this alliance, are trade, exchange, reckoning, rent, borrowing, etc.

b. The Alliance to do something This is stipulated in Article 1239 of the Civil Code which states that: any alliance to do something, or not to do something, what the debtor does not fulfill his or her obligations, obtains
its settlement in the obligation to provide the reimbursement, loss, and interest. For example, this agreement is a debt agreement.

c. The Alliance not to do anything This is stipulated in Article 1240 of the Civil Code, for example this agreement is: an agreement not to build a terraced house, an agreement not to set up a similar company, etc.

After dividing the form of agreement based on the arrangements in the Civil Code or outside the Civil Code and various agreements seen from others. (Subekti, 1982)

1) Conditional Alliance, is an alliance that is hung on an event in the past, which still does not necessarily or does not occur. First, it is possible to promise, that the alliance will only be born, if an uncertain event arises. Such an agreement contains an alliance on a condition that delays or claimed responsibility (ospchoriende voorwade). An example I promised someone to buy his car if I passed the exam, here it can be said that the trade will only happen if I pass the exam.

2) The alliance that is hung on timeliness (tijdshcpaling), the difference between a condition and a time statute is the first in the form of an event or event that will not necessarily or will not be carried out, while the second is a sure thing to come, although it may not yet be determined when it will come, for example, the death of a person.

3) The alliance that allows the selection (alternative) is an alliance, where there are two or more kinds, achievements, while the debtor is handed over which it will do. For example, he can choose whether he will give you a horse or a car or a million rupiah.

4) This bond of responsibility (hooldelijk or solidair) is an alliance in which several people together as a debiting party face one person who owes or vice versa. Some people together have the right to collect a single person’s receivables. But such alliances these days, there is very little in practice.

5) Alliances that can be divided and which cannot be divided, whether an alliance can be divided or not depending on the possibility of not dividing achievements. It depends on the will or intent of both parties making a covenant. The question of whether or not an alliance can be divided comes to the surface. If one party to the agreement has been replaced by several others. This is usually due to the death of one party which causes him to be replaced in all his rights by all experts.

6) The alliance with strafbeding is to prevent him from easily neglecting his obligations, in the practice of many punishments, if he does not keep his duty. This penalty usually set out in a certain amount of money, is a
payment of losses that has originally been self-determined by the parties who agreed. Judges have the power to ease penalties when the agreement is partially fulfilled. According to Mariam Darus Badrulzaman, covenants can be distinguished in various ways. The distinction is as follows (Badrulzaman, 2001):

1. Reciprocal agreement. A reciprocal agreement is an agreement that poses a fundamental obligation to both parties. For example, a trade agreement.

2. Free agreement and burden agreement. A free agreement is an agreement that benefits only one party. For example grants.

An agreement on expenses is an agreement in which the achievement of one party always has a contract of achievement from the other party, and between the two achievements has to do according to the law.

3. Special agreement (benoend) and general agreement (onbenoend).

A special agreement is an agreement that has its name. The point is that these agreements are governed and named by legislators, based on the type that happens most daily. Special agreements are contained in Chapters V to XVII of the Civil Code. Outside of the special agreements growing general agreements are treaties that are not regulated in the Civil Code but are contained in the community. The number of these agreements is unlimited.

"An agreement is made free of charge or on expense. A free agreement is an agreement by which one party gives an advantage to the other party, without receiving any benefit for itself. An agreement on the burden is an agreement that requires each party to give something, do something or do nothing. The birth of this covenant in practice is based on the principle of freedom of independence or partij autonomy applicable in the Law of the Covenant. One example of a general agreement is a lease agreement”.

i. Agreements of indecencies (zakelijk) and obligatory agreements

A covenant of a thing is an agreement by which one submits his right to something, to the other party. While obligatory agreement is an agreement in which the parties bind themselves to make submissions to other parties (agreements that give rise to alliances)

ii. Consensual agreements and real agreements

A consensual agreement is an agreement in which the two parties have reached the conformity of the will to enter into alliances.

iii. Special Covenants of nature.

a. liberatoir agreement: i.e. an agreement in which the parties absolve themselves of existing obligations, e.g. debt relief (kwijtschelding) article 1438 civil code;
b. proof agreement (bewijsovereenkomst); i.e. an agreement in which the parties determine what evidence applies between them;
c. profit agreement: e.g. insurance agreement, article 1774 civil code;
d. public agreements: i.e. agreements that are partially or entirely controlled by public law, because one party acts as a ruler (government), e.g. a service bond agreement.

Furthermore, concerning the differentiation of reciprocal agreements with free agreements and agreements on expenses, according to Mariam Darus Badrulzaman, it is necessary to discuss mixed agreements. Mixed agreements are agreements that contain various elements of the agreement, such as hotel owners who rent out rooms (rents) but also serve food (buy and sell) and the University of North Sumatra also provides services. To the mixed agreement, there are various.

3. The default of the Catering Agreement

Default comes from the original Dutch term meaning "promise injury" or "default". The debtor is said to default if he does not carry out his obligations as stipulated in the agreement. To determine when the debtor is declared defaulted, it is necessary to note in the agreement that has been determined the grace period of fulfillment of achievement or not.

Based on the provisions of Article 1238 of the Civil War, in the agreement that has been determined the grace period of fulfillment of its achievements, then the debtor will be considered a default with the passing of the specified time. On the other hand, if in an agreement is not determined the grace period of fulfillment of its performance, then the debtor needs to be given somasi i.e. notice to the debtor to fulfill the achievement at the specified time. If the deadline has passed and the debtor has not fulfilled his or her achievement, then since then the debtor is considered a default (Satrio, 1993).

To determine whether the debtor is guilty of default, it is necessary to determine in the circumstances how the debtor was said to be intentional or negligent in not carrying out the performance.

According to R.Soebekti, the criteria of a debtor default is:

1. Do not do what he is expected to do.
2. Carry out what is promised, but not as promised.
3. Execute the agreement, but it is too late.
4. Carry out something that according to the covenant is not permissible.

While according to Abdulkadir Muhammad, there are 3 circumstances to determine whether the debtor defaults are:
1. The debtor does not fulfill the achievement at all, meaning that the debtor does not fulfill the obligations he or she has been able to fulfill in an agreement, or does not meet the obligations set forth by the Law in the alliance arising from the Law.

2. The debtor fulfills the achievement but is not good or wrong. This means that the debtor carries out or fulfills what is promised or what is determined by the Law, but not according to the quality specified in the agreement or according to the quality set forth by the Law.

3. The debtor fulfills the achievement, but is not on time, meaning the debtor meets the achievement but is late. The time set out in the agreement is not met.

According to Mariam Darus Badrulzaman, the form of not fulfilling the alliance there are 3 kinds of namely:

1. The debtor does not fulfill the alliance at all.
2. Debtors are late to fulfill the alliance.
3. The debtor is wrong or inappropriate to fulfill the alliance.

In law, there is a principle that one must not be an eigenrichting judge. A creditor who wishes to implement an agreement from a debtor who does not meet his or her obligations must seek court intercession.

But it often happens that the debtor himself or herself has given his consent if he or she is negligent, the creditor has the right to exercise his rights according to the agreement, without asking for the intermediary of the judge. The implementation is carried out by creditors without the intermediary of judges called parate execusi, for example: in the mortgage, the rights of dependents.

In the case of a predetermined grace period, the debtor does not execute an agreement to provide something, it is considered necessary for the debtor to be warned to fulfill his or her achievements. The debtor is deemed negligent by the passing of the specified time. If the fulfillment of the achievement is not determined in time, then the debtor needs to be warned in writing, with a warrant or something like that (bevel of soortgelijkeakte). Article 1338 paragraph (1) of the Civil Code, which states that all contracts (agreements) made legally apply as law to those who make them. From this article, it can be concluded the principle of freedom of contract, but this freedom is limited by the law of a coercive nature so that the parties who make the covenant must obey the law of a coercive nature. An agreement cannot be withdrawn other than by agreeing with both parties, or for reasons that by law are stated sufficient for it. The Covenant is not only binding on the things expressly stated there in it, but also for everything that according to the nature of the covenant, is required by propriety, custom, or
law. An agreement is not permitted to cause harm to third parties. Article 1338 of the Civil Code, reads:

   a. All agreements made lawfully apply as law to those who make them.
   b. An agreement cannot be withdrawn other than by agreeing with both parties, or for reasons that by law are stated sufficient for it.
   c. An agreement must be implemented in good faith.

Article 1338 paragraph (1) of the Civil Code contains the principle of freedom of contract. The principle of freedom of contract is limited by coercive laws. This means that the parties who agree must abide by the coercive law. For example: in agreeing the parties must comply with the provisions of article 1320 of the Civil Code above. The sentence "legally agreed" as specified in section 1338 paragraph (1) of the Civil Code means that it meets all the conditions for the validity of an agreement as stipulated by law. It must be distinguishable between the terms for the onset of an agreement and the terms for the validity of an agreement. Despite the shortcomings, an agreement may arise and bind the parties. Such an agreement, it can be demanded to be rescinded by opponents of its promise. While the sentence "applies as a law to those who make it" as outlined in section 1338 paragraph (1) of the Civil Code, means that the agreement made is binding on the parties of its creator, such as the applicable law and binds the person to whom the law applies. Or in other words, by agreeing as if the parties were setting laws for themselves. From the above mentioned, there can be a common thread between the provisions of article 1338 paragraph (1) of the Civil Code and the provisions of article 1320 of the Civil Code. Article 1338 paragraph (1) of the civil code provides affirmation of Article 1320 of the Civil Code. The provisions of article 1338 paragraph (2) of the Civil Code are a continuation of paragraph (1) of Article 1338 of the Civil Code. Following the provisions of article 1338 paragraph (1) of the Civil Code, the agreement will bind the parties to the author, so that if the agreement can be canceled unilaterally, it means the agreement is not binding. Thus, the provisions of article 1339 paragraph (2) of the Civil Code are a logical consequence of the provisions of article 1338 paragraph (1) of the Civil Code. What about lease agreements, employment agreements, or other agreements that pose an ongoing obligation to each party or either party? These agreements can be ended unilaterally, because in principle the parties are given the possibility to free each other from them. To resolve such agreements, the parties may agree by listing a certain period, and during that period, the agreement may only be terminated by the wording of the parties. The provisions of article 1338 paragraph (3) of the Civil Code affirm that the agreement must be implemented in good faith, meaning that the implementation of an agreement...
must be according to propriety and fairness. The word "implementation of the agreement" in the article indicates that the conditions after the agreement exist. The provision stipulated in good faith is a provision concerning public order and decency. This is explained in the provisions of the:

5. Article 1339 of the Civil Code, which reads: An agreement is not only binding on the matters expressly stated there in it, but also for everything that according to the nature of the agreement, required by propriety, custom or law.

6. Article 1347 of the Civil Code, which reads: Matters which, according to the customs forever promised, are deemed to be secretly included in the agreement, although not expressly stated

Default is an attitude in which a person does not fulfill or neglect to carry out obligations as specified in the agreement made between the creditor and the debtor. The default stipulated in Article 1243 of the Civil Code, reads: "Reimbursement of costs, losses and interest due to the unfulfilling of an alliance shall be required, if the debtor, even if it has been declared negligent, remains obliged to fulfill the alliance, or if something to be given or done can only be given or done within a set of time". So the elements of default are:

a. There is an agreement by the parties;

b. Parties are violating or not violating the contents of the agreed agreement;

c. It has been declared negligent but still does not want to carry out the contents of the agreement.

Based on the above description it can be understood that default is a situation in which neither the creditor nor the debtor/defaults to executing the agreed agreement.

The act against law is stipulated in Article 1365 of the Criminal Code, which reads "Any act that breaks the law and brings harm to another person, obliges the person who inflicts that loss because of his or her fault to replace the loss".

In the past, unlawful acts were limited to acts that violated the written law only. But since 1919, Hoge Raad Holland in the Lindenbaum v Cohen case expanded the interpretation of unlawful acts so that unlawful acts are no longer limited to unlawful acts but also include one of the following acts:

1. Acts contrary to the rights of others
2. Acts contrary to their legal obligations
3. Acts contrary to decency;
4. Actions that are contrary to prudence or necessity in a good society.
Differences between Default and Unlawful Acts:

To make it easier to see the difference between default and PMH can be seen in this table (Ikatan Hakim Indonesia, 2016):

<table>
<thead>
<tr>
<th>Review</th>
<th>Reviewed from</th>
<th>Unlawful Conduct</th>
</tr>
</thead>
<tbody>
<tr>
<td>Legal resources</td>
<td>- Articles 1238, 1239, 1243 Civil Code</td>
<td>Article 1365 to 1380 Civil Code. Arising out of People</td>
</tr>
<tr>
<td></td>
<td>- Arising from Approval/agreement</td>
<td></td>
</tr>
<tr>
<td>The elements</td>
<td>a. There is an agreement by the parties;</td>
<td>a. There is an act;</td>
</tr>
<tr>
<td></td>
<td>b. Some parties violate or do not violate the</td>
<td>b. The act is against the law;</td>
</tr>
<tr>
<td></td>
<td>content of the agreed agreement;</td>
<td>c. Any wrongdoing on the perpetrator's side;</td>
</tr>
<tr>
<td></td>
<td>c. It has been declared negligent but still does</td>
<td>d. There is harm to the victim;</td>
</tr>
<tr>
<td></td>
<td>not want to carry out the contents of the agreement.</td>
<td>e. There is a causal relationship between deeds and losses.</td>
</tr>
<tr>
<td>The onset of the right to sue</td>
<td>The right to claim damages in default arises from</td>
<td>The right to claim damages in unlawful conduct does not need negligent warning. Whenever a unlawful conduct occurs, the person who feels harmed has the right to directly claim damages.</td>
</tr>
<tr>
<td></td>
<td>Article 1243 of the Code, which in principle requires</td>
<td></td>
</tr>
<tr>
<td></td>
<td>a negligent statement (somasi)</td>
<td></td>
</tr>
<tr>
<td>The principle requires negligent statements (somasi)</td>
<td>Plaintiff simply indicates any default or breach of the agreement.</td>
<td>The Plaintiff must be able to prove all elements of The Act Against the Law are fulfilled in addition to being able to prove the mistakes made by the</td>
</tr>
</tbody>
</table>
### Compensation claims

- Civil code has set about the period of calculation of redress that can be sued, as well as the type and amount of damages that can be sued in default.
- The default lawsuit cannot demand a return on the original state *(restitutio in integrum)*

- Civil code does not govern how the form and details of compensation. So it can sue for material and immaterial damages.
- May demand a return on the original state.

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4. **Consumer Protection in Catering Procurement Agreement**

Consumer protection is part of a law that contains principles or rules that govern and also contain properties that protect the interests of consumers. Consumer law is defined as the whole principle and the rules of law governing relationships and problems between various parties relating to consumer goods or services in the association of life *(Nasution, 1995)*. It is also stated in Law No. 8 of 1999 on Consumer Protection, concerning consumer protection which states that "consumer protection is any effort that guarantees the certainty of the law to protect consumers". Therefore, talking about consumer protection means questioning the guarantee or certainty about the fulfillment of consumer rights.

Catering services at this time, is very affecting the surrounding economy with the rise of the 4 businesses that flock to compete with each other to attract consumers to become regular consumers in the catering services business. When the development of catering services is very rapid, it will automatically affect the high interest of businesses and consumers, and there are still many people with little knowledge about the importance of rules or laws related to consumer protection of catering services, precisely to businesses and consumers. However, not only the rights and obligations of consumers must be fulfilled, but the rights and obligations of the manufacturer (business) must also be fulfilled, for the ongoing relationship between the business and its consumers well and not violate the relevant rules. The Consumer Protection Act in its implementation also continues to pay special attention to small and medium-sized enterprises, which
is done through efforts to foster and implement sanctions for their violations (Sadar, 2012).

To realize the purpose of legal protection for consumers, the state is responsible for the development and implementation of protection for consumers by creating a healthy business climate and relationship between businesses and consumers and improving the quality of human resources, as well as increasing research and development activities in the field of legal protection for consumers. So the purpose of organizing, developing, and setting legal protection for consumers is to increase the dignity and awareness of consumers, and indirectly encourage businesses in organizing business activities with a full sense of responsibility (Subekti, 1987).

Universal consumer rights cannot be unleashed by the struggle for consumer interests that gets strong recognition when consumer rights are formulated clearly and systematically. In 1962, for example, American President J.F. Kennedy in a speech before the United States Congress proposed 4 (four) consumer rights. Those rights are the right to safety, the right to be informed, the right to choose, the right to be heard. These rights were conveyed in a speech before Congress on March 15, 1962. President J.F. Kennedy’s speech was an inspiration to the United Nations, so in 1984, the United Nations issued Resolution No. 39/248 on the guidelines for consumer protection part II (general principles) (Badrulzaman, 1986). The protection of the law for consumers is to protect consumer rights. Although very diverse, in general, the rights of consumers can be divided into three rights that are the basic principles, namely (Miru, 2000):

1. rights intended to prevent consumers from loss, whether personal loss or loss of property;
2. the right to obtain goods and/or services at reasonable prices; and
3. the right to obtain a proper resolution to the problems faced by

Such negligence of catering services makes consumers complain and protest against businesses, but the reciprocal response received by consumers is not as expected. Catering service businesses there only apologize for their negligence to consumers, some who replace with goods or money to consumers. This makes catering services to be more careful in serving consumers so that there are no problems that cause losses both losses from catering service ers and losses from the cost. The Guidelines for Consumer Protection of 1985, issued by the United Nations state: "Consumers wherever they are, of all nations, have
basic social rights”. The intent of such fundamental rights is the right to obtain clear, correct, and honest information; the right to compensation; the right to obtain basic human needs (enough food and boards); the right to a good and clean environment, and an obligation to safeguard the environment; and the right to primary education. The United Nations urges all of its members to enforce the rights of such consumers in their respective countries (Nasution, 2002). Legal protection arrangements for consumers are made by (Syawali, 2000)

1. Create a consumer protection system containing access and information, and ensure legal certainty;
2. Protect the interests of consumers in particular and the interests of businesses;
3. Improve the quality of goods and services;
4. Provide legal protection to consumers from deceptive and misleading business practices;
5. Combine the implementation, maintenance, and legal protection arrangements for consumers with areas of protection in other areas. In the United Nations General Assembly Session (UNGA) on April 9, 1985, through the Resolution of the UN General Assembly Second Committee Report (A/39/789/Add.2) 39/248 The protection of the law for consumers, set forth the Guiding Purpose for Consumer Protection, in the General Principles of the UN General Assembly Resolution, is regulated as follows:

The rights in the Consumer Protection Act are the description of article that characterizes the welfare state, namely Article 27 paragraph (2) and Article 3343 of the Constitution of the Republic of Indonesia. How important are the rights of consumers, thus giving birth to the thought that consumer rights are the "fourth generation of human rights", which is a key word in the conception of human rights for future developments. In dispute resolution to defend consumer rights is set out in Article 45 UUPK , which states that dispute resolution can be pursued through the courts or outside the court based on the voluntary choices of the parties to the dispute.

5. Implementation of Catering Agreement at PT Well Harvest Wining Alumina Refenery with PT Aden
Although the agreement struck by the parties is very simple, it is already qualified for the validity of the agreement, as stated in Article 1320 of the Civil Code namely:

(1) The agreement of those who bind themselves, between the catering services and the customer in the booking has mutually agreed on what is the right and obligation. They want something equal in reciprocity without coercion, confusion, or deception. Prof. Subekti argues that to give birth to an agreement is enough to agree only. The agreement was born by the time or second of the agreement was reached, so the agreement is said to already exist and is binding. It is also following the principle of consensual in the agreement, meaning that the agreement is the absolute condition of an agreement, by agreeing that the agreement struck can be said to already exist and binding.

(2) Capable of allying, the two parties to the booking agreement are considered capable according to the law. Among the catering services and bookers who make bookings are adults.

(3) Certain things, the practice of booking agreements there are objects of agreement that can be determined the type of food and drink that can be taken into account later, this is following the sound of the Civil Code precisely Article 1332, 1333, and 1334.

(4) For a lawful reason, the agreement is clearly visible to both parties. In Article 1320 of the Civil Code there is no firm statement regarding a particular form of formality other than an agreement. The agreement is in accordance with Article 1338 paragraph (1) of the Civil Code which reads "All agreements made lawfully, apply as law to those who make them". The Agreement also adheres to the open principle that any person is permissible or lawful to perform an agreement containing any, when and wherever the origin of the party making the agreement does not violate any general provisions and decency.

Based on customer practices and catering services, it can be said that all the terms set out in Article 1320 of the Civil Code have been fulfilled. The agreement made by the parties constitutes an agreement to perform certain services as set out in Article 1601 of the Civil Code.

Following article 1320 of the Civil War. The terms of the agreement are:
1. The agreement of both parties. The purpose of the word agreement is the two parties who agree to agree on the underlying points of the contract.

2. Ability to perform legal actions. The principle of being able to do legal deeds is every person who is mature and healthy in his mind. The provision is mature, there are some opinions, according to the Civil Code, an adult is 21 years old for men and 19th for women. According to Law no. 1 of 1974 on Marriage, adulthood is the 19th male for, 16th for women. The legal reference we use is the Criminal War because it applies in general.

3. The Absence of Objects. Something promised in a covenant must be a clear thing or item.

4. Halal causal. Article 1335 of the Criminal War, an agreement that does not use a lawful cause, or is made for a false or prohibited reason, has no legal force.

Terms 1 and 2 are subjective. While the terms of numbers 3 and 4 are objective requirements.

When the problem occurs, there are several hokum efforts that you can do, among others:

1. Take the path of peace (deliberation) as you have done, approaching with a family approach let alone having been friends for a long time.

2. If the first way is not successful, then another step that can be done is by litigation, i.e. can sue to the District Court. The letter of agreement on the stamp can be used as a means of evidence in the trial that your friend did indeed perform the default.

What is the default?

1. A default can be interpreted as an unending of achievement due to the debtor's error either due to intentionality or negligence.

2. According to J Satrio: "A situation in which the debtor did not fulfill his promise or did not fulfill as it should and all of it can be blamed on him".

3. Yahya Harahap: "Default as the performance of obligations that are not timely or performed inappropriately, resulting in the necessity for the debtor to provide or pay damages (schadevergoeding), or in the absence of default by one party, the other party may demand the cancellation of the agreement."
Wan forms of achievement

1. Not carrying out achievements at all;
2. Carrying out but not on time (late);
3. Carry out but not as promised; and
4. The debtor performs what according to the agreement should not be done.

Parties who feel harmed by default may demand the fulfillment of the agreement, annulment of the agreement, or seek damages to the defaulting party. The damages may include the real costs incurred, losses incurred as a result of such default, as well as interest. This default is a field of civil law.

**Procedures for declaring debtors default:**

1. *Sommatie*: Written warning from creditors to debtors officially through the District Court.
2. *Ingebreke Stelling*: Creditor's warning to debtors does not go through the District Court.

**Warning Contents:**

1. Reprimand of creditors so that the debtor immediately performs the performance;
2. Strike policy;
3. The slowest date to fulfill the achievement (e.g. May 20, 2015).

The minimum *somasi* has been done three times by creditors or bailiffs. If the *somasi* is not heeded, then the creditors have the right to take the matter to court. And it is the court that will decide whether the debtor defaults or not. *Somasi* is a reprimand from the debtor (the creditor) to the debtor to fulfill the achievement following the contents of the agreement that has been agreed between the two. This *somasi* is stipulated in Article 1238 of the Civil War and Article 1243 of the Civil War.

The legal consequences of debtors who have defaulted are penalties or sanctions in the form of:

1. Pay the losses suffered by creditors (*indemnification*);
2. Cancellation of the agreement;
3. Risk switching. Objects promised by the object of the agreement from the time of secured obligations become the responsibility of the debtor;
4. Pay the costs of the case, if it is brought before a judge.

In addition to the debtor having to bear the above mentioned, then what can be done by the creditor in the face of the debtor who defaults there are five possibilities as follows (Article 1276 of the Criminal Code):

1. Fulfill/execute the agreement;
2. Fulfill the agreement along with having to pay compensation;
3. Pay compensation;
4. Cancel the agreement; Dan
5. Cancel the agreement accompanied by indemnity

**Indemnification that can be sued:**

The debtor is obliged to pay compensation, after being declared negligent he still does not fulfill that achievement”. (Article 1243 of the Civil War). "Indemnification consists of costs, losses, and interest" (Article 1244 to 1246 of the Civil Code).

Cost is any expense or rape that has been incurred by a party.

Loss is lost due to damage to the creditor's belongings resulting from the debtor's negligence.

Interest is a loss in the form of loss of profit, which has been paid or calculated by the creditor.

Indemnification shall have a direct relationship (causal relationship) with the pledge" (Article 1248 of the Civil War) and damages may be expected or duly suspected at the time of the alliance.

It is possible that the failure of the promise (default) occurred not only because of the debtor's error (negligence or willfulness) but also because of a coercive state.

Willfulness is a known and desirable act.
Negligence is an act in which the creator is aware of the possibility of harming others.

Reimbursement can be required by law in the form of "kosten, schaden en interessen" (article 1243 DSL). In question, the losses that can be requested instead of the substitute, not only the costs that have been incurred (kosten), or losses that overwrite the object of the debt (schaden), but also the loss of profit (interessen), i.e. the profit obtained in case the debt is not negligent (winstderving). That the loss to be reimbursed includes a predictable loss and is a direct result of the default, meaning there is a causal relationship between default and loss suffered. Related to this two scholars present theories about causation, namely:

a) Conditio Sine qua Non (Von Buri)

States that event A is the cause of event B (another event) and event B will not occur if there is no event A

b) Adequated Veroorzaking (Von Kries)

States that event A is the cause of event B (another event). If event A according to normal human experience is thought to cause consequences (event B).

Of the above two theories, the most common is the Adequated Veroorzaking theory because the perpetrator is only responsible for the losses that should be considered as a result of the activities besides that this theory is the closest to justice.

A debtor accused of default can apply for several reasons to defend himself, namely:

a) File a claim for overmach;

b) Submit a reason that the creditor himself has been negligent;

c) Apply for the reason that the creditor has waived his right to claim damages.

The Meaning of Sanctions

Sanctions are penalties imposed by the courts.
If the debtor defaults then several sanctions can be imposed on the debtor, namely:

1) Pay the losses suffered by creditors;
2) Cancellation of the agreement;
3) Risk switching;
4) Pay the costs of the case when it comes to litigation before the judge.

Law No. 8 of 1999 on Consumer Protection, states that the default agreement is valid, but this law prohibits the inclusion of a standard clause that is onerous and if included in the agreement, then the default clause is null and void. Article 18 paragraph (1) of the Consumer Protection Act mentions the standard clause that is prohibited from being included in any document and/or agreement, namely:

a. Declare the transfer of responsibility of the business person;
b. States that businesses have the right to refuse the re-delivery of goods purchased by consumers;
c. States that the business is entitled to refuse the re-delivery of money paid for goods and/or services purchased by consumers;
d. Declare the granting of power of attorney from consumers to businesses either directly or indirectly to take any unilateral actions related to goods purchased by consumers in installments;
e. Regulate the evidentiary of the loss of the use of goods or the utilization of services purchased by consumers;
f. To give businesses the right to reduce the benefits of services or reduce the wealth of consumers who become objects of service buying and selling;
g. Declare the consumer’s submission to regulations in the form of new, additional, advanced, and/or advanced changes made unilaterally by the business in the time the consumer utilizes the services he purchased;
h. States that the consumer authorizes the business. for the charging of dependent rights, lien rights, or warranty rights to goods purchased by consumers in installments.

Furthermore, article 18 paragraph (2) states that businesses are prohibited from including standard clauses whose location and form are difficult to see or cannot be read clearly or whose disclosures are difficult to understand. The
inclusion of such a clause is also declared null and void. Regarding the relationship between default and unlawful acts, M. Yahya Harahap in his book The Facets of the Law of The Covenant says that default is a special form of unlawful conduct. The broad interpretation of the understanding of unlawful acts is also in line with the development of the theory in the law of the covenant that covenants must be made in good faith which means to pay attention to the principle of propriety. So the content of the agreement is onerous so that it is not appropriate so that the onerous clause can be declared null and void and not binding on the parties agreeing.

In the event of default on an agreement whose object is the payment of a certain amount of money, then under the provisions of Article 1250 Of the Civil Code can be prosecuted is moratory interest or interest negligence. Moratory interest is only calculated since the lawsuit is registered in the State Court. The size of the moratory according to Stb. 1848 No. 22 jo. 1849 No. 63 is six processes a year. The Jurisprudence of the Supreme Court holds that interest under this law is applied if the parties to the agreement do not determine the amount of interest.

Moreover, the obligations in the contract must be assessed by objective criteria and not solely the will of the parties subjective, so it is no longer relevant the opinion that the tort can only be filed in the case of no contractual relationship between the aggrieved party and the adverse party. Conversely, in the tort there may be elements of the agreement into legal consideration, for example, a football player who is injured in a football match, may not be able to sue under the tort because he has agreed to bear the risk of injury.

Problems That Arise in the Field and Its Resolution

Problems that arise in the field and its resolution related to the practice of catering services provision agreement, namely:

(1) In practice can still be found customers who make unpaying on time or paying off but within a long period. This makes the catering party a little burdened in terms of finances. The catering only approaches the family approach so that the customer pays off the payment;
(2) Customers are dishonest about the number of guests and the number of portions of food ordered. This has an impact on the lack of food served
and harms the name of the catering company related to public trust. If there is a complaint from the customer then the catering party shows the agreed booking record when the customer orders;
(3) Less clear communication related to the menu agreed between the customer and the catering officer who recorded the booking. This results in different menus being ordered in the presentation. This is the case, so the catering party gives a special discount on the menu;
(4) There has never been any explanation from the catering party when there is an error in the presentation. Related to this, the catering party apologizes to the customer, also to the special discount on certain menus;
(5) The food to be served is suddenly stale. If this happens, the catering party replaces the food with a new meal as soon as possible;
(6) The agreement for the provision of catering services is done orally but also followed by the recording in the booking diary only. The parties do not use the agreement in writing. In the event of a violation by either party then it is not easy to prove the truth.

Conclusion

The Catering Agreement between PT Well Harvest Winning Alumina Refinery can be concluded as follows:

First, the implementation of the catering service provision agreement by PT Well Harvest Winning Alumina Refinery with PT ADEN is done in writing. But it is also accompanied by a recording of what is considered necessary by both parties in the booking diary by the catering party. The agreement made between the customer and the catering party has fulfilled the valid requirements of the agreement stipulated in Article 1320 of the Civil Code, which directly binds the parties as stipulated in Article 1338 of the Civil Code. The agreement made by both parties is an agreement to perform certain services as set out in Article 1601 of the Civil Code.

Second, in the implementation of the agreement on the provision of catering services there are problems in practice, namely:
(1) Payment is not on time,
(2) Invalid information from the customer in the booking,
(3) Explanations that are often not noticed by customers regarding errors in the presentation,
(4) Limited documents that can be used as evidence tools,
(5) Unforeseen circumstances regarding food safety and emergentism,
(6) Inappropriate communication regarding menu options between customers and catering parties. The more common way of solving is used by the parties in case of problems or problems such as the above is in a family only.

Third, following Article 1243 of the Civil War and Article 4 letter h of Law No. 8 of 1999 on Consumer Protection. As a result of his default, Harmony Catering must be held accountable for its actions. The form of accountability, namely civil and criminal liability. Civil liability is to be compensated according to the lawsuit. The legislation governs the obligation of businesses to indemnify, namely in Article 1243 of the Civil Code, Article 4 huruf h, Article 7 letters f and g, and article 19 paragraph (1) of the Consumer Protection Act. Criminal liability for his actions.

References


