



## Dispute Resolution Due to Default Based on Contract Agreement: Case Study of PT. Serayu Putra Persada With CV. Mustika Karya Pratama

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### Abstract

Development is an effort to create the prosperity and welfare of the people. The stages of development work sometimes experience obstacles, both from human factors and other resources. Problems that can occur during the implementation of construction work include potential disputes, disagreements, differences in understanding, or disputes between parties involved in a construction agreement that will default. The method in this research uses the normative juridical method. The normative juridical method is carried out through literature studies examining mainly secondary data in statutory regulations, court decisions, agreements, contracts, other legal documents, research results, study results, and other references. The result of this research is the default made by CV. Mustika Karya Pratama in the form of not making payments so that PT. Serayu Putra Persada came to the office of CV. Mustika Karya Pratama to ensure the continuation of term payments. With these problems, it is hoped that the parties involved in this work can comply with and understand the legal rules that have been set.

**Keywords:** Development, Agreement, Default.

### Abstrak

Pembangunan merupakan usaha untuk menciptakan kemakmuran dan kesejahteraan rakyat. Tahapan pekerjaan pembangunan terkadang mengalami hambatan, baik dari faktor manusia maupun sumberdaya lainnya. Permasalahan yang dapat terjadi saat pelaksanaan pekerjaan pembangunan yaitu berpotensi adanya sengketa perselisihan pendapat, perbedaan pemahaman, maupun pertengkaran diantara pihak yang terlibat dalam perjanjian kontruksi yang akan mengakibatkan wanprestasi. Metode dalam penelitian ini adalah menggunakan metode yuridis normatis. Metode yuridis normatis dilakukan melalui studi Pustaka yang menelaah terutama data sekunder yang berupa Peraturan Perundang-undangan, putusan pengadilan, perjanjian, kontrak, atau dokumen hukum lainnya, serta hasil penelitian, hasil kajian, dan referensi lainnya. Hasil dari penelitian ini yaitu wanprestasi yang dilakukan oleh CV. Mustika Karya Pratama berupa tidak melakukan pembayaran termin sehingga PT. Serayu Putra Persada mendatangi kantor CV. Mustika Karya Pratama untuk mengkonfirmasi tentang kelanjutan dari pembayaran termin. Dengan adanya permasalahan ini diharapkan para pihak yang terkait dalam pekerjaan ini untuk mematuhi dan memahami aturan-aturan hukum yang telah ditetapkan.

**Kata kunci:** Pembangunan, Perjanjian, Wanprestasi.

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## I. Introduction

Development is an effort to create prosperity and welfare for the people. The implementation of development in a country aims at equitable infrastructure distribution under the mandate of Article 28 H paragraph (2) of the 1945 Constitution, which states that "everyone has the right to special facilities and treatment to obtain equal opportunities and benefits to achieve equality and justice." Development carried out in earnest on the right track can lead the nation to a higher welfare level.<sup>1</sup> Development can be in the form of development in the physical sector or development in the non-physical sector. The implementation of physical development in construction services involves many resources, including human resources, natural resources in building materials, energy, equipment, mechanical and electrical resources,

<sup>1</sup> Mohammad Ali, *Pendidikan Untuk Pembangunan Nasional* (Jakarta: Grasindo, 2009), 67.

and financial resources. The construction carried out includes road infrastructure, bridges, buildings, and public facilities for the community.

The stages of development work sometimes experience obstacles, both from human factors and other resources. Problems that can occur during the implementation of the construction work include the potential for disputes of opinion, differences in understanding, or conflicts between the parties involved in the construction agreement to disputes arising from delays in completing construction work. The agreement is a legal relationship where the debtor must fulfill their achievements or obligations.<sup>2</sup> The agreement is a translation of *toestemming*, interpreted as *wilsovereenstemming* (agreement of the will/agreement).<sup>3</sup> An agreement is an act in which one or more people bind themselves to one or more people.<sup>4</sup> According to Subekti, in his book entitled Agreement Law, a contract is a form of a written agreement or agreement.<sup>5</sup> The thing that needs to be considered for the parties who make or enter into an agreement is that whatever has been legally agreed upon under the law must be done in good faith as law for them to carry out, complete, and maintain the work, including its parts and include fines if there is negligence or not. According to the predetermined specifications (*bestek*). These things require solid regulations regarding the technical juridical aspects that need to be improved and developed in its implementation.

Under the agreement between the Service User and the contractor, all parties want to be responsible for carrying out their obligations. An agreement is a legal relationship whose achievements or obligations must be fulfilled. If the achievement is not fulfilled under the agreement, it is considered a default.<sup>6</sup> However, many construction service actors, service users, and contractors have not achieved their achievements as stipulated in the practice agreement. Construction services have an essential and strategic role in achieving various targets and supporting national development, where national development aims to increase the standard of living of a just and prosperous society under Pancasila and the 1945 Law. In addition to playing a role in development, construction services also support the development of various industrial goods and services required in implementing construction work. Before issuing Law Number 18 the Year 1999 regarding construction services, construction services were regulated in the Civil Code with contracting services. The many companies that won tenders also did not work on their work packages (subcontracted the work packages) to other companies that did not win the tender at the government auction. A construction work contract is made in the form of a document known as a construction work contract document. These documents relate to construction activities, including the arrangement (model, location) of a building that is the agreement's object.

According to its form, an agreement is a series of engagements containing promises or commitments, both written or verbally.<sup>7</sup> If the debtor does not meet the agreement's performance, it is considered the default. Default fails to fulfill or neglects to carry out the obligations specified in the agreement between the creditor and the debtor.<sup>8</sup> The default in construction work is often caused by the delay in implementation or not carrying out the work to not be completed on time. That results in a delay in the use of the project. The employer should warn and provide sanctions against the contractor responsible for the work's implementation in the form of fines or contract termination. Some cases also occur in which the employer or service user defaults, for example, in delays in payment of achievements that the service provider or contractor has carried out promptly and without any defects. The service provider must first submit a bill accompanied by calculation data regarding service users'

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<sup>2</sup> Martin Putri Nur Jannah and Dewi Nurul Musjtari, "Penyelesaian Sengketa Akibat Wanprestasi Keterlambatan Pelaksanaan Perjanjian Konstruksi Bangunan," *UIR Law Review* Vol. 03, No. 02 (2019).

<sup>3</sup> Sudikno Mertokusumo, *Penemuan Hukum, Sebuah Pengantar* (Yogyakarta: Liberty, 2004), 142.

<sup>4</sup> Article 1313 of the Civil Code.

<sup>5</sup> R. Subekti, *Hukum Perjanjian* (Jakarta: Intermasa, 2008), 143.

<sup>6</sup> Martin Putri Nur Jannah and Dewi Nurul Musjtari, *Loc. Cit.*

<sup>7</sup> R. Subekti, 2008, *Op. Cit.*, 154.

<sup>8</sup> Salim HS, *Pengantar Hukum Perdata Tertulis (BW)* (Jakarta: Sinar Grafika, 2008), 180.

responsibility. Dispute resolution can be made in two ways, namely litigation and non-litigation.

The Jasinga road section is a road section of the Tasikmalaya district and the link between Tasikmalaya and Ciamis, so this section has the primary function of supporting smooth transportation. Repair of roads will increase the economic growth and development of Tasikmalaya residents and minimize the risk of accidents due to damaged and potholed roads. CV. Mustika Karya Pratama is a small company with an office address in Parigi Village, Pangandaran Regency. As the person in charge and responsible for implementing the Jasinga Road Improvement work package, the Commitment Making Officer has warned that the work package must not experience obstacles either to the agency or the supply of raw materials. It is feared that it will harm the implementation of the package work if there are obstacles. Both administrative and non-administrative problems must be handled by minimizing any obstacles.

CV. Mustika Karya Pratama gave the hot mix work package items to PT. Serayu Putra Persada on road works items (Hotmix). With the agreement CV. Mustika Karya Pratama will pay for the work item in two-term sessions after the work has been running and almost finished, PT. Serayu Putra Persada submitted term disbursement to CV. Mustika Karya Pratama for finishing costs on work, but there was no answer from the CV. Mustika Karya Pratama for two months, after which there was no answer from CV. Mustika Karya Pratama, PT. Serayu Putra Persada gave a summons or reprimand, noting that she would be sued. CV. Mustika Karya Pratama invites PT. Serayu Putra Persada to renegotiate and make a re-agreement. From the background above, the writer was interested and took the writing title entitled "Settlement of Disputes Due to Default Based on the Contract Agreement "Case Study of PT. Serayu Putra Persada With CV. Mustika Karya Pratama".

## II. Research Problems

1. How are the problems of default carried out by CV. Mustika Karya Pratama to PT. Serayu Putra Persada?
2. How is the dispute resolution process between PT. Serayu Putra Persada with CV. Mustika Karya Pratama?

## III. Research Methods

The method in this research is to use the normative juridical method. The normative juridical method is carried out through literature studies that examine mainly secondary data in laws and regulations, court decisions, agreements, contracts, other legal documents, research results, assessment results, and other references.<sup>9</sup> Interviews can complement the normative juridical method. This descriptive research provides an overview of dispute resolution between PT. Serayu Putra Persada and CV. Mustika Karya Pratama in Tasikmalaya City. In this paper, the writer will use secondary data sources. Secondary data is data obtained from literature by conducting literature studies, namely, conducting document studies, archives, and literature by studying theoretical matters, concepts, views, and legal principles relating to the subject matter, writing as well as legal knowledge consisting of primary legal materials, secondary legal materials, tertiary legal materials. The data in this study were obtained through Library Research. This library research was conducted to obtain secondary data, which included primary, secondary, and tertiary legal materials by reading, taking notes, quoting books, and using data or information and information through requests for data requests from relevant agencies based on research objectives. Methods are arranged systematically, logically, and rationally. In this case, the analysis used is qualitative data analysis, namely data that cannot be directly measured or assessed by numbers. Thus, after the primary and secondary data in the

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<sup>9</sup> Badriyah Khaleed, *Legislative Drafting Teori dan Praktik Penyusunan Peraturan Perundang-undangan* (Yogyakarta: Medpress Digital, 2014), 112.

form of documents are obtained, they are analyzed with regulations related to the problem under study.<sup>10</sup>

#### IV. Result and Discussion

##### 1. Default problems committed by CV. Mustika Karya Pratama to PT. Serayu Putra Persada.

Every work contract, especially in construction services, should agree upon the Service User and the contractor. The term agreement translates into the Dutch *ooreenkomst* or contract (English). Article 1313 of the Civil Code reads: an agreement is an act whereby one or more parties bind themselves to one or more people.<sup>11</sup> In essence, an agreement is an agreement made by the parties agreeing. The parties agree to bind themselves to one another whether to give something, do something or not do something.<sup>12</sup> Law Number 2 of 2017 concerning Construction Services mentions a construction agreement as a construction work contract. As stated in Article 1 point, 8 of Law Number 2 of 2017 concerning Construction Services, the definition of a construction work contract is the entire contract document that regulates the legal relationship between Service users and Service providers in Construction Services".

A contracting work agreement is an agreement between a person or business entity (the party who bought out the work) with someone or another business entity (the contractor) where the first party wants or expects the results of specific work that he has given and has agreed to be held by another party for the payment of an amount certain as the price.<sup>13</sup> Along with its development, work contracting agreements are now better known as construction work contracts. Construction Work Contract is a document that has a legal force that contains a voluntary mutual agreement between the first party and the second party in which the first party promises to provide services and provide materials to build a project for the second party; the second party promises to pay a sum of money in exchange for the services and materials used.<sup>14</sup>

The laws and regulations relating to construction services generally still follow the regulations issued by the Dutch East Indies Government, with what at that time we were known as *Algemene Voorwaarden* (AV) 1941. Long after that, the Indonesian Government issued laws and regulations directly related to services new construction through Law Number 18 of 1999 and Government Regulations Number 28, 29, and 30 of 2000, and other laws and regulations at the central and regional levels.<sup>15</sup>

Construction work includes activities: construction, operation, maintenance, demolition, and rebuilding of a building.<sup>16</sup> According to Article 1606 b of the Civil Code, a contract is an agreement in which the contractor binds himself to carry out a job for another party (the contracting party) by receiving a determined price.<sup>17</sup> The contents of the contracting work agreement that one party wants the result of a work that has been agreed by the other party to be submitted within a predetermined period by receiving an amount of money as a work's result.<sup>18</sup> There are two types of work contracting agreements: first, where the contractor is required to provide the work's danger, and second, where the contractor will only do his job.<sup>19</sup> Due to default, liability in the Construction Work Contract is a form of responsibility of a

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<sup>10</sup> Mathew Miles and Michel Huberman, *Analisis Data Kualitatif: Buku Sumber tentang Metode-metode Baru* (Jakarta: UI Pres, 2009), 102.

<sup>11</sup> Salim HS, 2008, *Op. Cit*, 119.

<sup>12</sup> Ridwan Khairandy, *Hukum Kontrak Indonesia : Dalam Prespektif Perbandingan* (Yogyakarta : FH.UII Press, 2014).

<sup>13</sup> Wirjono Prodjodikoro, *Asas-Asas Hukum Perdata* (Bandung : Sumur, 1986), 9.

<sup>14</sup> Rochany Natawidjana and Siti Nurasiyah, *Aspek Hukum dan Administrasi Proyek*, (Bandung : Universitas Pendidikan Indonesia, 2009), 6.

<sup>15</sup> Martin Putri Nur Jannah and Dewi Nurul Musjtari, *Loc. Cit*.

<sup>16</sup> Article 1 Paragraph (2) and (3) of the Law 2 of 2017 concerning Construction Services.

<sup>17</sup> F.X. Djumaldi, *Perjanjian Pemborongan* (Jakarta : PT.Rineka Cipta, 1991), 131.

<sup>18</sup> Subekti, *Aneka Perjanjian* (Bandung : PT.Citra Aditya Bakti, 1997), 120.

<sup>19</sup> *Ibid*, 121.

person or legal entity providing construction services or construction service users for violations of the Construction Work Contract agreed by both parties. The breach is one of the errors in implementing the contract or is called default.

Debtors are declared negligent if they do not fulfill their achievements, are late in achieving, and are performing but not as they should be.<sup>20</sup> However, default only occurs if the creditor declares negligence to the debtor. The results of the default are as follows <sup>21</sup>:

- a. The bond remains
- b. The debtor must pay compensation to the creditor (Article 1243 of the Civil Code)
- c. The risk burden is transferred to the debtor's loss if the obstacle arises after the debtor is in default unless there is a deliberate or significant mistake by the creditor. Therefore, the debtor is not allowed to hold on in a state of force.
- d. If the agreement is born from a reciprocal agreement, the creditor can free himself from the obligation to provide counter-performance by using Article 1266 of the Civil Code.

Default is when the parties or one of the parties do not fulfill their obligation specified in the agreement.<sup>22</sup> Default in Article 1243 of the Civil Code states that default is "compensation for costs, losses, and interest due to non-fulfillment of an agreement, then it becomes compulsory, if the person owes after being declared, if he fails to fulfill his achievement, he still neglects it, or if something must be given or made, it can only be done. given or within the grace period that has been exceeded."<sup>23</sup> The term default is derived from the Dutch language, namely *wanprestatie*, which means that achievement is not fulfilled in an engagement, either an agreement born from an agreement of the parties or an agreement born from a law that regulates.<sup>24</sup>

In this case, default has several meanings, including breaking promises, breaking promises, not keeping promises, etc. Subekti explained that there are four forms of default, namely:<sup>25</sup>

- a. Not doing what we were supposed to do
- b. Doing what was promised, but too late
- c. Carry out the agreement but not under what was promised
- d. Doing something that, according to the agreement, should not be done

The dispute, in this case, began when CV. Mustika Karya Pratama received a hot mix tender in West Java and gave hot mix work items to PT. Serayu Putra Persada through a written agreement with Number SP/155/MKP\_SPP/IX/2019, which the two company leaders signed. CV. Mustika Karya Pratama which is led by a Director named Acep Setiawan and PT. Serayu Putra Persada led by the President Director named Dwi Suswati Andayani, S.sos. The signing of the agreement was carried out at the PT. Serayu Putra Persada, having her address at Jl.Pemuda No.03 Kedungreja Cilacap.<sup>26</sup> The contents of the agreement stated that the implementation of hot mix work was carried out for two months and seven days, starting after the signatures of both company parties. And in the payment process from CV. Mustika Karya Pratama to PT. Serayu Putra Persada is carried out using a term system, with double-term billing with the first terminal portion of 70% and the second term of 30% and 70% billing if the hot mix work has entered progress of 75% of 100%, then the remaining 30% is billed after hot mix work progress enters 100% or progress finishing.

After the hot mix job entered 75% of PT. Serayu Putra Persada, through the finance department, bills the term to CV. Mustika Karya Pratama, and after invoicing, is sent to reply that the payment of the term will be made by waiting for the hot-mix work item finishing process until the progress of the hot mix item work has entered 100% or has been completed. PT. Serayu Putra Persada Returns to collect terms through the finance department to CV.

<sup>20</sup> Agus Yudah Herneko, *Hukum Perjanjian Asas Proporsionalitas Dalam Kontrak Komersial* (Jakarta : Kencana, 2011), 114.

<sup>21</sup> Salim HS, *Hukum Kontrak Teori dan Teknik Penyusunan Kontrak* (Jakarta:Sinar Grafika, 2006), 87.

<sup>22</sup> *Ibid*, 98.

<sup>23</sup> Agus Yudah Herneko, *Op. Cit*, 117.

<sup>24</sup> Abdulkadir Muhammad, *Hukum Perikatan* (Bandung: Citra Aditya Bakti, 1990), 20.

<sup>25</sup> R. Subekti, 2008, *Op. Cit*, 50.

<sup>26</sup> Based on an interview with the Director of PT Serayu Putra Persada.

Mustika Karya Pratama. However, there was no follow-up on the billing of this term, then after warning PT. Serayu Putra Persada gave summons to CV. Mustika Karya Pratama because he was deemed to have defaulted on PT. Serayu Putra Persada.<sup>27</sup>

## **2. Dispute Resolution Between PT. Serayu Putra Persada with CV. Mustika Karya Pratama.**

In resolving disputes in construction services, service users and service providers prefer to resolve disputes through non-litigation channels such as negotiation, mediation, or arbitration. Default disputes can be resolved through two options, namely litigation and non-litigation. The choice of litigation dispute resolution can be through the court. The procedures and processes follow the provisions of the Civil Procedure Code. Non-litigation dispute resolution can be through arbitration (institution or ad hoc) or alternative dispute resolution (consultation, negotiation, mediation, conciliation). Dispute resolution options must be stated in the agreement. The settlement of disputes is stated in the arbitration agreement. In this case, the court is not authorized to adjudicate the dispute as regulated in Article 3 of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution.<sup>28</sup> Settlement of construction service disputes outside the court can be pursued for binding activities and construction work implementation problems. A construction service dispute consists of 3 (three) parts as follows:<sup>29</sup>

- a. Precontractual disputes occur before a contractual agreement and are in the bargaining process stage.
- b. Contractual disputes are disputes that occur during construction work.
- c. Post-contractual disputes occur after the building has been operating or utilized for 10 (ten) years.

Settlement of construction service disputes that cannot be resolved by deliberation/consensus can be resolved throughout court settlement and leads to dispute resolution through arbitration. In the case of a contractual dispute or dispute during the ongoing work implementation period, the dispute settlement can be done through the following channels:

- a. Consultation Line,
- b. Negotiation Route,
- c. Mediation Path,
- d. Path of Conciliation,
- e. Line of a legal opinion by the arbitration institution.

After being declared negligent or committing default by CV. Mustika Karya Pratama, then PT. Serayu Putra Persada did various ways by confirming CV. Mustika Karya Pratama. The warning letter was sent three times. Finally, PT Serayu Putra Persada gave summons to CV. Mustika Karya Pratama was considered negligent and defaulted because it did not pay the terms agreed in the contract agreement.<sup>30</sup> After waiting for the good faith that did not come either from the representative or the head of CV. Mustika Karya Pratama from PT. Serayu Putra Persada sent a letter to CV. Mustika Karya Pratama stated that he would take this case to court because of the potential for fraud. After the letter was sent, the party from CV. Mustika Karya Pratama contacted PT. Serayu Putra Persada and asked to meet to discuss this issue. The dispute resolution process between CV. Mustika Karya Pratama with PT. Serayu Putra Persada uses the negotiation route under Article 6 paragraph (2) of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution by producing new agreements or renegotiation and, of course, favorable results for both parties to the dispute. Finally, after meeting to discuss dispute resolution between CV. Mustika Karya Pratama with PT. Serayu Putra Persada was renegotiated with a re-agreement that contained CV. Mustika Karya Pratama will immediately pay the terms to PT. Serayu Putra Persada with a note before the termination from CV. Mustika Karya Pratama gave guarantees to PT. Serayu Putra Persada in the form of a land certificate

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<sup>27</sup> *Ibid.*

<sup>28</sup> Martin Putri Nur Jannah and Dewi Nurul Musjtari, *Loc. Cit.*

<sup>29</sup> Bambang Poerdyatmono, "Alternatif Penyelesaian Sengketa Jasa Konstruksi", *Jurnal Teknik Sipil Vol 8, I* (October 2007).

<sup>30</sup> Based on an interview with the Director of PT Serayu Putra Persada.

covering an area of 650m<sup>2</sup> located in Cijulang Pangandaran. Furthermore, this agreement was carried out in writing and signed by the two parties' leaders in the dispute, not forgetting to be witnessed by the witnesses, namely a notary and six other witnesses, three witnesses representing the two parties.<sup>31</sup> From the above analysis, the dispute settlement process uses the negotiation route under Law Number 30 of 1999 concerning alternative dispute resolution.

## V. Conclusions

Based on the discussion and analysis above, it can be concluded that: default is carried out by CV. Mustika Karya Pratama is not carrying out achievement in payment for implementing hot mix work items on the Jasinga road section. The achievement that must be carried out is making payment of terms, but until the implementation of the work on the Jasinga road is complete, there is no payment of terms from CV. Mustika Karya Pratama. Efforts made by PT. Serayu Putra Persada is by visiting the office of CV. Mustika Karya Pratama to confirm the continuation of the term payment that CV should have paid. Mustika Karya Pratama.

The dispute resolution process between CV Mustika Karya Pratama with PT Serayu Putra Persada uses the negotiation route under Article 6 paragraph (2) of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution by producing new agreements or renegotiation and, of course, with favorable results for both parties to the dispute. Good CV. Mustika Karya Pratama has a deadline for making payments to PT. Serayu Putra Persada, which is an advantage for CV. Mustika Karya Pratama for getting additional time. And PT. Serayu Putra Persada received benefits from land certificate guarantees in Cijulang Pangandaran village as collateral until CV. Mustika Karya Pratama carried out his presentation to PT. Serayu Putra Persada, namely making payments according to the agreed nominal. Things that need to be considered when entering into a contract agreement include conducting a background check on the company or business partner and conducting a draft contract analysis signed jointly. Check it from the chapter by article, and what will happen if there is a default will be understandable. The rights and obligations of each party entering into a contractual agreement.

## VI. Suggestion

1. For CV. Mustika Karya Pratama must carry out its obligations to PT. Serayu Putra Persada because PT. Serayu Putra Persada has fulfilled her obligations to CV. Mustika Karya Pratama by carrying out the work of hot mix items.
2. For PT. Serayu Putra Persada is better if, before signing the Cooperation contract, the company's background or business partner must be checked to minimize defaults, such as what happened between CV. Mustika Karya Pratama with PT. Serayu Putra Persada.
3. It is hoped that parties bound in this work must comply and understand the legal rules without injuring what has been established together. That goal is to reduce the legal compliance degree. Furthermore, the rights and obligations will be adequately fulfilled according to what is expected by the parties.

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<sup>31</sup> Ibid.

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