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Juridical Overview of Loan-Lending Agreements that are Declared Void by Law

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ABSTRACT

This study aims to determine whether the decision of West Jakarta District Court which decided Loan Agreement between Nine AM Ltd. with PT. Bangun Karya Pratama Lestari is null and void according to the law of treaties or not and to know the legal implications of the West Jakarta District Court decision in Case Number 451 / Pdt.G / 2012 / PN.Jkt.Bar about the cancellation of loan agreements. This research using normative legal research by the statute approach and a case approach. The results of this study were 1) the West Jakarta District Court decision was in accordance with the law of treaties that the agreement is null and void. This decision caused by the Loan Agreement was infringing Article 1320 of the Burgerlijk Wetboek, that is not the fulfillment of the elements of a cause of the lawful and contrary to Article 31 of Act number 24 of 2009 concerning Flag, Language, and The State Emblem and Anthem Language and Article 1339 of the Burgerlijk Wetboek which provides that an agreement is not only bound to what is explicitly approved in the agreement, but also bound by propriety, customs, and laws. 2) Juridical implications of that decision is any agreement that is not made in accordance with the provisions of Article 31 Act number 24 of 2009 concerning Flag, Language, and The State Emblem and Anthem will be declared null and void / agreement is deemed never existed and the parties returned in original condition. Likewise with any follow-up agreement (assumed as accessories) will be declared null and void anyway, even the agreement made with the competent authority knowing it.

1. Introduction

In the current era of globalization, contract law in business practice is present as an aspect that is developing rapidly throughout the world to meet the needs of human transactions. However, along with the development of contract law in business practice, sometimes actors cannot act only based on Book III of the Civil Code concerning Engagement. This development occurred partly because Article 1338 of the Civil Code regulates the principle or principle of freedom to make promises. As it is known that Book III of the Civil Code adheres to a genuine understanding or because the parties are free to determine the contents of the agreement and to which legal system the agreement will be subject to, regarding the matters agreed upon, the method of implementation of the agreement and the mechanism to be taken if problems occur in the future related to the agreement that has been made. However, the freedom given, of course, must not conflict with norms and laws, thus negating the principles of

honesty, decency, justice, and legal certainty.

Agreements closely related to business activities have a high level of complexity, often end up in court, such as business agreements made by the parties based on freedom of contract. Their contents are denied, and an agreement is requested to be canceled in court. This denial is, of course, built by such arguments by the plaintiff, who feels that his interests have been harmed. It is not uncommon for one of the parties to the agreement to ask the judge to declare that the agreement is null and void. Not infrequently, the agreements stated above involve a foreign party as one of the parties. The implementation of the agreement with all its legal consequences will involve parties who have a legal system that is not necessarily in line with the legal system in force in Indonesia. The parties to the agreement may agree to submit to Indonesian law. However, it is not uncommon for the parties to prefer to submit to foreign legal rules or foreign legal jurisdictions to adjudicate disputes that may arise.

Theoretically, it is the right of a person as a party to the agreement to file a lawsuit in court if he has a strong reason to file the lawsuit. The opening of the possibility to request the cancellation of an agreement is an essential means for a modern legal system to ensure the implementation of the principle of access of justice or access to justice and ensure that the principle of the rule of justice is maintained. Therefore, this possibility is common and even mandatory in countries with modern and democratic legal systems.

The law must function as a protector of human interests. Thus, to protect human interests, the law must be enforced in Indonesia, civil disputes where one party demands the cancellation of an agreement have often occurred. The court has also repeatedly dismissed such claims. However, those disappointed or dissatisfied because this judge rejected their lawsuit considered that the judge's actions were unfair because they did not understand the legal developments and the complexities involved in the dispute. Therefore, law enforcers, in this case, especially judges, are required to be able to improve their scientific capabilities and competencies in order to be able to handle cases that have a high level of difficulty involving the legal system and litigants from various countries. This is related to the image of Indonesia's law enforcement in the eyes of foreigners for the better. If the judges have the correct, reasonable, and broad understanding of the matter or the decision being handled in the case, it can positively impact Indonesian society globally and even become a role model in law enforcement.

In addition, the feedback received by foreign parties (individually and corporately) will be good because they already know that judges in Indonesia in resolving a dispute can provide a sense of security and create a trust for foreign parties as partners who will become investors to cooperate in Indonesia, without worrying that the judge handling the dispute may decide the case unfairly, due to the narrow understanding of the judge himself. Therefore, to uphold legal certainty and justice to provide benefits for justice seekers who submit their legal disputes to judges, judges are required to enforce the law wisely and wisely by always paying attention to the essential elements of the law. According to Gustav Radburch, there are several essential elements of law, namely legal certainty, justice, and expediency. Two poles attract each other in implementing the law, namely the pole of justice and legal certainty.[3]

Regarding how the judge as law enforcer should decide a case, as the author has reviewed above, this can be seen in the agreement stated in the West Jakarta District Court Decision Number 451/Pdt.G/2012/PN.Jkt.Bar , related to the loan agreement (Loan Agreement) in this case involving PT. Bangun Karya Pratama Lestari (Plaintiff) is domiciled in West Jakarta, Indonesia, and Nine AM

Ltd. (Defendant) is domiciled in the State of Texas, United States of America. At the same time, based on the Loan Agreement dated April 23, 2010, made between Plaintiff and Defendant and based on the Loan Agreement, which has been translated into Indonesian by an official and sworn translator. Plaintiff has obtained a loan from Defendant of USD 4,422,000 - (four million four hundred twenty-two thousand United States Dollars).

In Article 18 of the Loan Agreement regarding the laws governing and domicile law, it is stipulated that: "Governing Law and Venue this agreement is governed by and shall be construed and interpreted under the laws of the Republic of Indonesia. For this agreement and all its consequences, the Borrower chooses irrevocable and permanent domicile at Registrar's Office of the District Court of West Jakarta." Moreover, translated into Indonesian, "This agreement is governed by and construed following the laws in force in the Republic of Indonesia. Regarding this agreement and all its consequences, the Debtor chooses a permanent legal domicile at the Registrar's Office of the West Jakarta District Court."

They see the provisions of Article 18 of the Loan Agreement, the parties, both PT. Bangun Karya Pratama Lestari (Plaintiff) and Nine AM Ltd (Defendant) submitted to the choice of law of the Republic of Indonesia. Then as collateral for the debt between Plaintiff and Defendant, a Deed of Fiduciary Guarantee Agreement on Objects was made dated April 27, 2010, which was made before Popie Savitri Martosuhardjo Pharmaton, S.H., Notary and PPAT in Jakarta. The collateral items are six Caterpillar Model 775F Off Highway Trucks. The repayment of the payment is 48 monthly installments of USD 148,500,- (one hundred and forty eight thousand five hundred United States Dollars) per month and the final interest is USD 1,800,000,- (one million eight hundred thousand United States Dollars) which must be paid on the installment payment date loan. After running for two years, PT. Bangun Karya Pratama Lestari (Plaintiff) filed a lawsuit because, according to him, the agreement did not meet the formal requirements. The agreement is considered to violate Article 31 paragraph (1) of Law Number 24 of 2009 concerning the Flag, Language, and Emblem of the State and the National Anthem (hereinafter referred to as the Language Law). The reason is, the contract is made only in English, without any Indonesian. Article 31 paragraph (1) of the Language Law4 has stipulated that the language that must be used in a memorandum of understanding or agreement involving state institutions, government agencies, private institutions, or individual Indonesian citizens is Indonesian.

In its lawsuit, PT. Bangun Karya Pratama Lestari (Plaintiff) asked the court to declare the contract null and void or not to have binding force. The Panel of Judges in their decision granted the Plaintiff's claim in its entirety, stating that the Loan Agreement dated April 23, 2010, made by and between the Plaintiff and the Defendant was null and void because the agreement was indeed contrary to Article 31 paragraph (1) of the Language Law. The regulation expressly stipulates that Indonesian is the language that must be used in an agreement. The Panel of Judges also stated that the Deed of Fiduciary Guarantee Agreement on objects dated April 27 2010 Number 33, which was not an essential agreement (Accesoir) of the Loan Agreement dated April 23 which was also null and void, and ordered the Plaintiff to return the remaining money from the loan that had not been delivered to the Defendant in the amount of USD.115,540 (one hundred and fifteen five hundred and forty United States Dollars).[1-12]

2. Methods

This research uses normative research methods, namely legal research that puts the law as a system of norms. The norms in question are regarding the principles, norms, rules, from laws and regulations and court decisions, with the understanding of

research conducted by analyzing the substance of the legislation on the subject matter. In this case, the writer will analyze the agreement, which is null and void as stipulated in Book III of the Civil Code concerning Engagement, Law Number 24 of 2009 concerning the Flag, Language, and Emblem of the State, as well as the National Anthem, as well as Law Number 2 of 2009 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Positions with a study of normative content. The approach used in writing this research is adjusted to the type of research the author takes. Therefore, the approach used includes a statutory approach and a case approach. Legal materials used for normative research purposes in this study are 1. Primary legal materials are legal materials that bind or make people obey the law, such as laws and regulations and judicial decisions. The primary legal material that the author uses in this writing is book III of the Civil Code concerning Engagement, Law Number 24 of 2009 concerning the State Flag, Language, and Emblem, as well as the National Anthem, Law Number 30 of 2004 concerning the Position of Notary in conjunction with law No. -Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of a Notary, as well as Law Number 12 of 2011 concerning the Establishment of Legislation, and West Jakarta District Court Decision Number 451/Pdt.G/2012/PN .Jkt.Bar. 2. Secondary Legal Material, namely legal material that is not binding but explains primary legal material, which is the result of processed opinions or thoughts of experts or experts who study a particular field in particular which will provide clues as to where the researcher will lead. In this case, secondary legal materials are doctrines obtained from books related to contract law, the internet, and other readings related to research that are used to support primary legal materials.

The material analysis uses content analysis to limit the findings of library information so that it becomes an organized and structured material and is more meaningful. From the findings of the literature associated with the existing theoretical basis. In this case, it is material related to contract law. In addition to conducting a content analysis, the authors use descriptive methods to explain, describe, and describe the problems closely related to this research and use the comparative method to look for similarities and differences of opinion by experts to be used a comparison.

3. Results and discussion

Assessing the suitability of the a quo decision with contract law, it is necessary first to explain the problem in question. This is to gain a comprehensive understanding of this matter because that understanding can be understood the legal reasons (legal reasons) from the dictum a quo decision. In this case, the plaintiff is a legal entity in the form of a Limited Liability Company established under the laws of the Republic of Indonesia, domiciled in West Jakarta and having its office at Sentra Niaga Puri Indah Blok T 3 number 1, Puri Kembangan, West Jakarta, which has its principal business activities. In the field of Heavy Equipment Rental / Rental. While the defendant is a limited partnership company established and based on the laws in force in the state of Texas, United States of America. On April 23, 2010, a Loan Agreement was made by and between PT. Bangun Karya Pratama Lestari is the plaintiff with Nine AM Ltd. as the defendant. The plaintiff has obtained a loan from the defendant of USD 4,422,000 - (four million two hundred twenty-two thousand United States Dollars). Article 2.1 of the Loan Agreement stipulates that the repayment or repayment of the loan and its interest will be made as follows: (a) 48 monthly installments of USD 148,500,- (one hundred and forty eight thousand five hundred United States Dollars) per month, of which the first installment must be paid one month after the date of transfer of the loan to the account of the Debtor as

described in Article 1 above, while the remaining installments will follow afterwards; (b) Final interest payment of USD 1,800,000,- (one million eight hundred thousand United States Dollars) which must be paid on the last payment date of the loan installment. Then, Article 3 and Article 7 of the Loan Agreement regulate respectively as follows: Article 3 Alternative Payment of Final Interest: 3.1 The final interest payment as described in Article 2.1(b) above may be paid in cash or (at the decision of the Debtor under the provisions of Article 3.1 below) through the transfer of rights to the Equipment and handover of the Equipment to the Creditor or its agent in Jakarta;

3.2. If the Debtor (in this case the final interest payment) chooses to transfer the rights to the Equipment and hand it over to the Creditor in Jakarta, then all the Equipment must be submitted to the Creditor in Jakarta on or before the date, which is 30 days after the date of payment of the last installment following the Terms and Conditions Refund as applied in Appendix 2, which if the Debtor does not comply, then the Creditor has the right to request the final interest payment directly and in cash. Article 7 Payment for Impairment of Collateral Value: The agreement of the Creditor as referred to in Article 3 above to accept the transfer of rights to the Equipment instead of payment of interest on the loan is based on the assumption that the residual value of the Equipment after being used for four years is USD 1,800,000,- (one million eight hundred thousand United States Dollars). Loan Agreement made between Nine AM Ltd. and PT. Bangun Karya Pratama Lestari has been regulated in Book III Chapter XIII of the Civil Code and is therefore referred to as the agreement named. In article 1754 of the Civil Code, it is determined that: "A loan agreement is an agreement in which one party gives to the other a certain amount of goods that have run out due to use, on the condition that the latter party will return the same amount of and the same situation."

Based on the understanding of the loan agreement, the party who receives the loan becomes the owner of the borrowed item. If the item is destroyed in any way, then the destruction is his responsibility (the one who received the loan). In the case of money borrowers, the debt incurred only consists of the amount of money stated in the agreement. Suppose before the time of repayment, there is an increase or decrease in price (value) or there is a change in the validity of the currency. In that case, the refund of the borrowed amount must be made in the currency prevailing at the time of settlement, calculated according to the price (value) prevailing at that time. Thus, to determine the amount of money owed, we must base on the amount stated in the agreement.

Lending and borrowing agreements are different from leasing. Leasing is the financing of equipment/capital goods to be used in a company's production process either directly or indirectly. KEEP. 122/MK/IV/2/1974, and No. 30/kpb/I/1974 dated February 7, 1974, stipulates that: Every company financing activity in the form of providing capital goods for use by a certain company, based on periodic payments, accompanied by voting rights (options) for the company to purchase the relevant capital goods to extend the lease term based on the mutually agreed residual value. Although the leasing agreement is referred to as a financing agreement, there is no transfer of money from the lessor to the lesse, and the leasing agreement is not a money-borrowing agreement.

However, the commercial needs of companies that lend money and lessees are generally the same, namely that they need financing for their companies. In other words, the leasing agreement is an alternative to obtain financing for the company. Based on the provisions in the agreement, the plaintiff then argued that the agreement was contrary to Article 29 jo. Article 32 and Article 33 of Law Number 42 of 1999 concerning Fiduciary Guarantees. The plaintiff also argued that the

agreement was contrary to Presidential Regulation no. 36 of 2010 jo. Law No. 25 of 2007 concerning Investment because the business field of the agreement is included in the field that is closed to foreign companies. This is because the preamble of the Loan Agreement stipulates that the defendant will provide a loan of USD 4,422,000- (four million four hundred twenty-two thousand United States Dollars) to the plaintiff to purchase six units of new Caterpillar truck model 775 Off Highway with serial numbers respectively. -respectively DLS 00916, DLS 00931, DLS 00932, DLS 00933, DLS 00934 and DLS 00982.

In essence, the plaintiff argues that the contents of the agreement contain provisions contrary to the law so that it should be null and void or at least not have binding legal force. This is because the agreement was made using a foreign language which in this case is English. At the same time, Article 31 paragraph (1) of Law Number 24 the Year 2009 concerning the Flag, Language, State Emblem, and National Anthem stipulates that: used in memorandums of understanding or agreements involving state institutions, government agencies of the Republic of Indonesia, Indonesian private institutions, or individual Indonesian citizens.

The defendant further denied that no provision in the Language Law stipulates that an agreement that does not use the Indonesian language will result in the agreement being null and void. Article 40 of the Language Law stipulates that: Further provisions regarding the use of the Indonesian language as referred to in Articles 26 to 39 are regulated in a Presidential Regulation. Based on the above provisions, the use of English in the agreement still requires further regulation in a Presidential Regulation. However, until the loan agreement was signed by the plaintiff and the defendant on 23 April 2010 there was no Presidential Regulation to regulate the use of the Indonesian language in the agreement as mandated in Article 40 of the Language Law. By the science of legislation and applicable laws and regulations, if the Language Law does not contain sanctions of cancellation for the use of English in the agreement, then the implementing regulations of these regulations should not provide such sanctions. Thus the parties are free to choose the language used in the agreement. The defendant also based his argument on the Ministry of Law and Human Rights which issued Letter Number M.HH.UM.01.01-35 dated December 28, 2009 regarding a request for clarification on the implications and implementation of the Language Law, which essentially contains: 1. Signing of a private commercial agreement in the Indonesian language. English without being accompanied by an Indonesian version does not violate the requirements of the obligation as specified in the Act due to the principle of freedom of contract2. The agreement made in the English version remains valid or not null and void by law or cannot be canceled because the implementation of Article 31 of the Law is waiting for the issuance of a Presidential Regulation as stipulated in Article 40 of Law Number 24 of 2009. 3. The parties also are free to state that if there is a difference in interpretation of a word, phrase, or sentence in the agreement, then the parties are free to choose which language is chosen to interpret the word, phrase, or sentence that gives rise to the said interpretation.

The defendant further argued that by signing the loan agreement, the agreement's provisions were valid and binding on both parties, even though the agreement was made in English. Based on the subject matter above, the panel of judges consisting of Naswandi, Kemal Tampubolon, and Sigit Haryanto, further considered that based on Article 1320 of the Civil Code, the four conditions for a valid agreement were the first condition, "agree to those who bind themselves" and the second condition, " the ability to make an engagement" is a non-essential condition which if these conditions are not met then an agreement can result in cancellation, whereas if the

third condition "there is a certain thing" and the fourth condition, "the existence of a lawful cause" is an essential condition, which which if these conditions are not met then the agreement is null and void. Referring to the provisions of Article 1335 of the Civil Code, which stipulates that: "An agreement without a cause that has been made for a false or forbidden cause has no legal force." While the provisions of Article 1337 of the Civil Code stipulate that "A cause is prohibited if it is prohibited by law or if it is contrary to good decency or public order." Furthermore, based on Article 31 paragraph (1) of the Language Law, it has been expressly obligated that the Indonesian language be used in Memorandum of Understanding or Agreements involving the State, Government Agencies of the Republic of Indonesia, Indonesian Private Institutions or individual Indonesian Citizens and the binding power of a law is the date of promulgation which in this case is July 9, 2009 so that any Agreement or Agreement involving the State, Government Agencies of the Republic of Indonesia, Indonesian Private Institutions and individual Indonesian Citizens made after July 9, 2009 which does not use the Indonesian language is contrary to law. -law, in this context, the Language Law. Regarding the absence of a Presidential Regulation as an implementing rule for the provisions of Article 31 paragraph (1) of the Language Law, it cannot disable the word "mandatory" mentioned in Article 31 paragraph (1) of the Language Law, because the Presidential Regulation has a lower position. from the law. Likewise, the letter from the Minister of Law and Human Rights of the Republic of Indonesia No. M.HH.UM.01.01.35 dated December 28, 2009 which answered a letter from 11 (eleven) Associates Lawyers regarding the Clarification of the Implications and Implementation of the Language Law which essentially stated that the use of English the agreement does not violate the formal requirements specified in the Language Law until the issuance of a Presidential Regulation as stipulated in Article 40 of the Language Law and also cannot disable the word "mandatory" contained in the provisions of Article 31 paragraph (1) of the Language Law. If it is examined between Article 31 paragraph (1) of the Language Law and the letter of the Ministry of Law and Human Rights Number M.HH.UM.01.01-35 regarding the request for clarification on the implications and implementation of the Language Law, it is necessary first to discuss the position or hierarchical level of a legal provision or also using the stufenbau theory of Hans Kelsen. About the hierarchy of legal norms. Hans Kelsen put forward his theory of the level of legal norms (stufenbau), in which he argues that legal norms are tiered and layered in a hierarchy of structure, where a lower norm applies, originates, and is based on higher values apply, are sourced and based on even higher norms, and so on until a norm that cannot be explored further and is hypothetical and fictitious, namely the Groundnorm.[17-20]

4. Conclusion

Based on the descriptions that the author has described in previous chapters, in this concluding chapter the author will draw the following conclusions: 1. The decision of the West Jakarta District Court is in accordance with the law of the agreement that the agreement is null and void. This is because the Loan Agreement has violated the provisions of Article 1320 of the Civil Code, namely the non-fulfillment of the element of a lawful cause and contrary to Article 31 of the Language Law and Article 1339 of the Civil Code, which stipulates that an agreement is not only bound to what is expressly agreed. In the agreement, but also bound by propriety, custom, and law. 2. The juridical implication of the decision is that any agreement which is not made by the provisions of Article 31 of the Language Law will be declared null and void/the agreement is deemed to have never existed, and the parties are returned to their original condition.

Likewise, any accompanying agreement (accessor) will also be declared null and void, even though the agreement is made before an authorized official.

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