

Validity of Addendums which Made Under Hands Due to a Default on Cooperation Agreement Deed

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Abstract. *This writing aims to find out and analyze the validity of the addendum made by the parties under the hand due to the occurrence of default of the cooperation agreement deed made before a Notary and to know and analyze the legal considerations by the judge in deciding the case number 15/Pdt.G/2016/PN.Kds. This research method uses a normative juridical approach, which is an approach using secondary data as the main data. Secondary data is data obtained by conducting library research. The results of this study indicate that basically in an agreement it is allowed to add an addendum on the condition that the parties agree, this is because in the addition of an addendum to add, changing or eliminating something in the agreement is always related to the main agreement, as stipulated in Article 1320 of the Civil Code regarding the conditions for the validity of the agreement. The main key to an addendum is the agreement of the parties in accordance with Article 1320 of the Civil Code.*

Keywords: *Addendums; Agreement; Cooperation; Default; Under Hand.*

1. Introduction

Land problems that often arise in the midst of society generally occur for various reasons, one of which is cooperation in housing development on land owned by one of the parties in the cooperation agreement. The problem that arises in the cooperation agreement is default, whether done intentionally or unintentionally caused by other factors. The definition of an agreement as regulated in Article 1313 of the Civil Code is that an agreement is an act where one or more people

bind themselves to one or more other people. The conditions for the validity of an agreement as stipulated in Article 1320 of the Civil Code. Everyone is free to enter into an agreement with anyone, even if they are free to decide the form, content, and terms of the agreement¹, and also to prevent default in the future. If one of the parties feels aggrieved in the implementation of the agreement, they can file a lawsuit through the District Court written in the agreement. In case number: 15/Pdt.G/2016/PN. Kds one of the lawsuits stated that on January 2, 2013, PT GSB through its Director came to EZ's house with and gave an underhand letter, namely an addendum with the title Addendum to the Deed of Cooperation Agreement Number 5 dated August 13, 2011 which must be signed by EZ at that time. That apparently after EZ signed the addendum, there was an error regarding the agreement number which was used as the basis for formulating the addendum, namely Addendum to the Deed of Cooperation Agreement Number 05 dated August 13, 2011.

Based on the description above, this study aims to find out and analyze the validity of the addendum made by the parties under the hand due to the occurrence of default of the cooperation agreement deed made before a notary and legal considerations by the judge in deciding case number 15/Pdt.G/2016/PN .Kds.

2. Research Methods

This research used a normative juridical approach, which was an approach to problems that need to be considered on the basis of legal principles, legal norms, applicable legal regulations and legal theories that can provide a framework to ensure the truth of facts or a framework of evidence.

3. Results and Discussion

3.1 The validity of the addendum made by the parties under the hand due to a default of the cooperation agreement deed made before a Notary

At the time of entering into an agreement there is a legal relationship between the parties in the agreement and each party has inherent rights and obligations that must be implemented. An agreement is an event in which one party undertakes to bind another party. The agreement contains an agreement that has been agreed, in the form of rights and obligations attached to the parties in

¹Sumini and Amin Purnawa, "Peran Notaris Dalam Membuat Akta Perjanjian Notariil", *Jurnal Akta* Vol 4 no. 4 December 2017, p. 563 url: <http://jurnal.unissula.ac.id/index.php/akta/article/view/2498/1862>

writing or verbally, as in Article 1313 of the Civil Code.² Basically in an agreement it is allowed to add an addendum on condition that the parties agree (agreed by the parties), this is because in adding an addendum to add, change or remove something in the agreement and add to an agreement is always related to the main agreement regulated in Article 1320 of the Civil Code regarding the terms of the validity of the agreement. Article 1320 of the Civil Code explains that the agreement is valid because of the agreement of the parties in the agreement, the ability of the parties to make an engagement, a certain matter and a lawful/legal cause (*causa*).

In this case, changes to the contract or agreement can be made after deliberation between the parties to the agreement. Even though the addendum is an additional agreement, its existence is outside the contents of the contract as the main agreement, but because the addendum includes mutually agreed matters, so long as it fulfills the legal requirements of the agreement as stated in Article 1320 of the Civil Code, the addendum in its implementation has binding force as binding on the laws.³

An underhand agreement is an agreement made by the parties themselves. The power of proof between the parties is only if the parties do not deny and acknowledge the existence of the agreement (acknowledging that they signed the agreement). This means that one of the parties can deny the truth of his signature in the agreement. In contrast to an authentic deed, a deed has full evidentiary capabilities, which means that it can be used as evidence in court.⁴ Retnowulan Soetantio also emphasized the difference in the strength of proof between a non-deed and a deed, which stated that: "Unlike an ordinary letter, a deed is made intentionally to be used as evidence. It is not certain that the deed will, at one time, be used as evidence in court, but a deed is evidence that a legal

²Cheren Shintia Pantow, Djefry W. Lumintang and Anastasya E. Gerungan, "Hubungan Hukum Para Pihak Dalam Perjanjian Kerjasama Dagang Antar Perusahaan Menurut Hukum Perdata", *Lex Privatum* Vol. VIII/No. 2/Apr-Jun/2020, p.10, <https://ejournal.unsrat.ac.id/index.php/lexprivatum/article/download/29777/28834>, accessed on 15 May 2022

³Aptina, "Kekuatan Mengikat Klausula *Addendum* Mengenai Besarnya Bunga Pinjaman yang Dibuat Delapan Bulan Setelah Perjanjian Utang Piutang Dibuat", *Jurnal Education and development Institut Pendidikan Tapanuli Selatan*, Vol.9 No.4 Edition November 2021, p.20 http://repository.ubaya.ac.id/40825/1/Aptina_KEKUATAN%20MENGIKAT%20KLAUSULA%20ADDENDUM.pdf

⁴Dahlang UIN Alauddin Makassar, KEPASTIAN HUKUM AKTA DIBAWAH TANGAN DALAM PERSPEKTIF KEWENANGAN NOTARIS, *Jurnal Al-'Adl* Vol. 9 No. 2, July 2016, p. 60, url: <https://ejournal.iainkendari.ac.id/index.php/al-adl/article/download/678/624>

event has been committed, and the deed is the evidence”.⁵ The importance of the role of an authentic deed as a written evidence made by and or before an authorized public official, which in this case is a Notary and other officials appointed by law⁶.

According to Sudikno Mertokusumo, an underhand deed is a deed deliberately made for proof by the parties without the assistance of an official. So solely made between interested parties.⁷ An authentic deed is a deed made by an official who is authorized to do so by the authorities, according to the provisions that have been determined, either with or without the assistance of the interested parties, which records what is requested to be included in it by the interested parties statement of an official, which explains what he did and saw in front of him.

In this case, the deed of agreement between EZ and PT GSB as the housing developer as agreed and made by a Notary does not violate the terms of the validity of the agreement as stipulated in Article 1320 of the Civil Code. However, the addendum made under the hands of PT GSB had many errors as under the consideration of the Panel of Judges. *Addendum* is contrary to the main agreement, namely the deed of cooperation agreement Number 11 dated August 13, 2011 and the addendum is also contrary to the sense of justice. Aristotle understands justice in terms of equality. In numerical similarity, every human being is equated in one unit. For example, everyone is equal before the law. Then proportional equality is to give everyone what is their right, according to their abilities and achievements.⁸ The concept and meaning of justice as the purpose of the agreement used in this study is to emphasize the role of the principles contained in contract law, including: freedom of contract, consensualism principle, legal certainty principle (*pacta sunt servanda*), good faith principle (good faith), as personality, the principle of trust, as legal equality, as a balance, such as legal certainty, moral principles, ownership principles, and protection principles. The value of justice must be a reflection of the attitude of living the characteristics of the Indonesian nation as stated in the Pancasila and the 1945 Constitution based on proportional values, balance values, property values, good faith, and protection.

⁵Pramono, Dedy., 2015, “Kekuatan Pembuktian Akta yang Dibuat oleh Notaris Selaku Pejabat Umum Menurut Hukum Acara Perdata di Indonesia”. *Lex Journalica* Volume 12 No. 3, p. 249, <https://ejournal.unsrat.ac.id/index.php/lexprivatum/article/download/29777/28834>

⁶ Ong Argo Victoria, Ade Riusma Ariyana, Devina Arifani. (2020). *Code of Ethics and Position of Notary in Indonesia*. Sultan Agung Notary Law Review 2 (4), 397-407, <http://lppm-unissula.com/jurnal.unissula.ac.id/index.php/SANLaR/article/view/13536>

⁷ Mertokusumo, Sudikno, (1998), *Hukum Acara Perdata*, Liberty, Yogyakarta, p.125.

⁸Santoso, M Agus., (2014), *Hukum, Moral dan Keadilan Sebuah Kajian Filsafat Hukum*, Second Ed., Kencana, Jakarta, p. 242.

3.2 Legal Considerations by Judges in Deciding Case Number: 15/pdt.G/2016/PN. Kds

An underhand deed only provides a perfect legal effect of proof for the benefit of the party to whom the signatory wishes to provide evidence, while for a third party the legal effect of the proof is free. An authentic deed that has perfect evidentiary power, then for a deed under the hand, the power of proof is in the hands of the judge to consider it (Article 1881 paragraph (2) of the Civil Code).⁹

Basically every agreement made by both parties must be voluntary or in good faith, but in reality the agreements they make are often violated. There are two ways of settlement, through the courts and alternative dispute resolution. Settlement through the courts is a way of resolving disputes that occur between the parties which are resolved through the courts. The decision is binding. While Alternative Dispute Resolution (ADR) is a system in which disputes or differences of opinion are resolved through a procedure agreed upon by the parties, and resolved out of court through consultation, negotiation, mediation, settlement or expert judgment. Any problems that arise in the field of agreement must be resolved with the applicable rules by taking into account the legal terms of the agreement, principles or principles in contract law. The judge's decision is part of the application of the law, namely the truth of the law and legal certainty. The legal certainty provided by the judge's decision is a product of the application of law based on relevant legal facts resulting from the process of resolving cases in court. According to Jan Michiel Otto as quoted by Asikin Zainal, "legal certainty is a guarantee that the law must be implemented in a good way. Legal certainty requires efforts to regulate law in legislation made by authorized and authoritative parties, so that these rules have a juridical aspect that can guarantee certainty that the law functions as a regulation that must be obeyed."¹⁰ Jan Micheil Otto argues that in order to maintain order and justice in people's lives, the law must be enforced by law enforcement officers who can guarantee legal certainty.

Based on the consideration of the Panel of Judges because the addendum contradicts the main agreement, namely the cooperation agreement Number 11 dated August 13, 2011 and the addendum is contrary to the sense of justice which is a broad interpretation of public order, the Panel of Judges is of the opinion that the addendum is null and void and because the addendum to the agreement deed cooperation Number 05 dated 13 August 2011 has been declared null and void, so the agreement between EZ and PT GSB returns to the

⁹Dimas Agung Prastomo dan Akhmad Khisni, "Akibat Hukum Akta Di Bawah Tangan Yang Dilegalisasi Oleh Notaris", *Jurnal Akta* Vol 4 No 4 Desember 2017, p. 737 url: <http://jurnal.unissula.ac.id/index.php/akta/article/viewFile/2519/1881>

¹⁰Zainal, Asikin., (2012), *Pengantar Ilmu Hukum*, Rajawali Press, Jakarta, p. 103

original agreement, namely agreement Number 11 dated 13 August 2011 which was made before a Notary. The experts presented at the trial argued that an addendum may be made to an agreement as long as it is agreed by both parties, because the addendum is to add, change and remove something in an agreement and to add to an agreement is always related to the main agreement. Article 1320 of the Civil Code has determined 4 (four) conditions for the validity of an agreement, namely: the agreement of those who bind themselves, the ability to make an engagement, a certain matter and a lawful cause. With the decision of the panel of judges, it is hoped that all parties will be fully responsible. Legal certainty can have a double meaning, that is, it is clear, it must not give rise to multiple interpretations in the law, it must not conflict with the provisions, and the provisions can be implemented. The law that applies and is made by the authorities and is authoritative, in this case the government must be firm to the community, including openness so that the public can understand the intent of the regulations or laws made by the government authorities.

According to legal certainty theorists, the law should not conflict. Because, if it contradicts, then the law will be a source of doubt. Legal certainty itself can be a legal instrument of a country with clarity that guarantees the rights and obligations of every citizen. The existence of such a law will create what is called legal certainty, where the community where the law stands, the law dictates what to do and what not to do.

To avoid things that are not desirable, the parties always read in advance the agreement that has been made and mutually agreed upon, the purpose is to find out whether what is written in the agreement is the same as what has been agreed upon or different and to make an addendum that the parties do not know how to make an addendum, it is better to make it before a notary so that things do not happen that harm one of the parties.

4. Conclusion

Basically in an agreement it is allowed to add an addendum on condition that the parties agree (agreed by the parties), this is because in adding an addendum to add, change or remove something in the agreement and add to an agreement is always related to the main agreement, as stipulated in Article 1320 of the Civil Code regarding the terms of the validity of the agreement. The main key to an addendum is the agreement of the parties in accordance with Article 1320 of the Civil Code. According to Article 1320 of the Civil Code, the agreement is valid in circumstances such as the agreement of the parties in the agreement, the ability of the parties to make an engagement, a certain matter and a lawful/legal cause. In the decision it is stated that *addendum* contrary to the main agreement, the addendum is null and void and returns to the original agreement made before a Notary.

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