

Consequences Of Defense For The Parties In The Agreement To Surrender The Position Of General Chairman Of The Sukabumi Young Man Association Football Club 1928 (Study Decision Number 38/Pdt.G/2021/Pn.Skb)

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Abstract : Klup YMA 28 is a Klup in Sukabumi, but in advancing football the management borrowed money from a 3rd party and caused a lawsuit in court which was considered by one of the parties to be in default in handing over his position. This research is normative research and research results of legal consequences for parties who violate the agreement (default) handing over the position of general chairman of Yma Sukabumi Football Club 1928 based on decision number 38/Pdt.G/2021/Pn.Skb according to civil law. The results of the author's analysis show that the agreement is legally valid, but does not meet the requirements for the validity of an agreement, namely the dictum regarding what was agreed in the Agreement Letter Number: 20190049/SMI/SP/X/2019 made by the Plaintiff and Defendant is something that is not clear, Is there an agreement regarding coaching money (article 3) or the issue of the position of general chairman (article 4) and in the agreement there is no article that explains the specific rights and obligations that must be fulfilled by the parties. However, the Mandate Letter Number: 20190058/MAN/SURMAN/X/2019 does not explain the object of the agreement in the mandate letter, what will be given by the Defendant as the first party and what will be obtained by the Plaintiff as the second party or not. explain the rights and obligations of the parties in the mandate letter. Apart from that, the Panel of Judges assessed that the agreement and mandate letter made between the Plaintiff and the Defendant did not have a clear or vague agreement object, so that the agreement and mandate letter did not fulfill the third requirement of Article 1320 of the Civil Code. So the lawsuit is deemed not to meet the requirements for the validity of an agreement so that the legal consequence is that the agreement is invalid and the defendant is obliged to return the construction money to the plaintiff because it is borrowed money. And the binding force of the agreement to hand over the position of general chairman of the YMA Sukabumi Football Club 1928 is linked to the principle of freedom of contract. with the management of the YMA football club in coaching and are free to contract with anyone, however, in making the terms of an agreement so that it is binding, the parties must be guided by article 1320 of the Civil Code and there are clauses regarding default and fulfillment of achievements and resolving disputes. So that if a dispute or dispute occurs, a judge can provide a sense of justice for those who desire it.

Keywords, Agreement, Default, Court Decision,

1. Introduction

Subekti said that an agreement is also called an agreement, because two parties agree to do something. It can be said that the two words (agreement and agreement) have the same meaning. The term contract is narrower because it refers to written agreements or agreements. Nowadays, a written contract has developed

in another form, known as a standard contract, which is also usually called a standard contract.¹ Standard contracts are another variation of written agreements as a logical consequence of the open system or the principle of freedom of contract in contract law.

Agreement means issuing an agreement between two or more people who make it so that the agreement is the source of the agreement in addition to other sources. An agreement is also called an agreement, because two or more people agree to do something. An engagement is a relationship between two or more people where the other party is obliged to fulfill demands, and vice versa. In order to realize an agreement that has been mutually agreed upon, the parties bound by the agreement can carry out the contents of the agreement as appropriate. An agreement creates an agreement that has a legal relationship that gives rise to rights and obligations for each party. The value of an agreement that has been determined by each party in an agreement is binding which is in line with article 1338 paragraph (1) of the Civil Code².

The principle of freedom of contract is one of the many principles in an agreement. According to the principle of freedom of contract, every person is free to enter into an agreement which contains the terms and types of agreement and does not violate applicable rules and morality. In Indonesia, the legal system in contractual agreements is very open, so the principle of freedom of contract is very relevant to the system adopted, making it easier for people to enter into an agreement³.

Default is not fulfilling or failing to carry out obligations as specified in the agreement made between the creditor and the debtor. Default or non-fulfillment of promises can occur either intentionally or unintentionally. Intentional or negligent, these two things give rise to different consequences, where as a result of intent, the sidebitor must compensate more for losses than due to negligence. A warning letter stating that the debtor ⁴has defaulted is called a summons. A summons is a notification or statement from the creditor to the debtor containing the stipulation that the creditor wishes to fulfill the performance immediately or within the time period specified in the notification.

The "Sukabumi 28" team, as the Sukabumi City football team, is not playing around in facing the prestigious competition, Liga III Jalapa West Java Zone. Training and trials continue to be carried out, in order to raise the name of the City of Sukabumi, in the football arena which has been in limbo for so long, due to PSSI being frozen and the lack of competition. Director of Sukabumi 28, Wiryawan is determined to work together with the Sukabumi 28 team to revive the passion for football, especially in Sukabumi City, and prove its seriousness. "We are not playing around to revive football in Sukabumi. Starting from the players, management, also coaches

¹ Subekti, Hukum Perjanjian, Jakarta: PT. Intermasa, 1985, hlm. 1.

² Huala Adolf, Dasar-Dasar Hukum Kontrak Internasional, Bandung: Refika Aditama, 2006, hlm. 15.

³ Gemala Dewi, Aspek-Aspek Hukum Dalam Perbankan Dan Peransuransian Syariah, Jakarta: Kencana, 2004, hlm. 187.

⁴ Salim HS, Pengantar Hukum Perdata Tertulis (BW), Jakarta: PT. Rosdakarya, 2008, hlm. 180.

The team created by Wiryawan is optimistic that it can achieve maximum targets and achievements, of course supported by various parties, including the community, because Sukabumi 28 is not a seasonal team that only exists during competitions. "The forerunner of Sukabumi 28 was taken from the name of the Club, in 1928. Namely the Young Man Association (YMA 1928) which had not appeared for a long time," said Wiryawan. He admitted that there is a lot of potential in the people of Sukabumi City, which has not been captured in Sukabumi 28, because some of them are already playing with other teams and in the future they will certainly prioritize local boys who have potential and have good skills or talents. "Local players will certainly be our priority in the future, even though currently there are only a few of them. I'm sure there will be lots of great players here," he said⁵.

Talking about targets, Wiryawan hopes to win League III and enter League II with all his abilities and strong determination. However, in advancing football, YMA even had a breach of contract problem as proposed by Dedy Santoso against Ir. Wirawan with the following chronology:

The Sukabumi District Court, which examines and decides civil cases at the first instance, has handed down the following decision:

lawsuit between:

Denny Susanto, domiciled at Jalan Otto Iskandardinata Number 596 Rt.007/Rw.007, Nyengseret Village, Astana Anyar District, Bandung, West Java Province, in this case gives power of attorney to MUHAMMAD RAFI'I NASUTION, SH, IMAM NURHADI, SH., and RIZAL FIRMANSYAH, SH., all of them Legal Counsel Advocates who are members of the Muhammad Rafi'i Nasution & Rekan Law Office having their address at Jalan Padjadjaran Number 10 Gunung Guruh, Sukabumi Regency, West Java based on a special power of attorney dated April 5 2021, hereinafter referred to as Plaintiffs

Against:

Ir. Wiryawan, Occupation Director of YMA Sukabumi 1928 Football Club, address at Jalan Pelabuhan II Number 38 Sukabumi City, West Java Province, hereinafter referred to as Defendant

the District Court;

After reading the case file;

After hearing the Plaintiff;

CONCERNING CASE SITTING

Considering, that the Plaintiff with a lawsuit letter dated 23 August 2021 which was received and registered at the Registrar's Office of the Sukabumi District Court on 25 August 2021 in Register Number 38/Pdt.G/2021/PN Skb, has filed the following lawsuit:

- 1) That on the twenty-eighth of October two thousand and nineteen (28-10-2019) a Letter of Agreement No. 20190049/SMI/SP/X/2019 between the Plaintiff and the Defendant and the Defendant on the same date issued Mandate Letter Number: 20190058/MAN/SURMAN/X/2019 privately;

⁵ <https://www.sukabumiupdate.com/bola/28993/tim-sukabumi-28-serius-bangkitkan-persepakbolaan-di-kota-sukabumi> di akses pada tanggal 15 november 2023 pukul 07.00 wib

- 2) That based on Agreement Letter No. 20190049/SMI/SP/X/2019 dated 28 October 2019 in Article 1 paragraph (1) states "the first party (in this case the Defendant) acts for and on behalf of the Director of Club YMA Sukabumi 1928 and the second party (in this case the Plaintiff) for name of self-employed person", in the process of making the Agreement Letter intended by both parties to occur without any coercion from and by anyone and based on mutual agreement, it must be legally declared valid and binding on both parties;
- 3) That based on Agreement Letter No. 20190049/SMI/SP/X/2019 dated 28 October 2019, in Article 2 states "The First Party (Defendant) agreed to appoint the Second Party (Plaintiff) as General Chair of the 1928 Sukabumi YMA Club", and therefore on the same date as Letter of Agreement, namely dated 28 October 2019, the Defendant has issued a Mandate Letter Number: 20190058/MAN/SURMAN/x/2019 for the Plaintiff to become General Chair of the 1928 Sukabumi YMA Club, the Defendant but up to the time this lawsuit has been registered at the Registrar's Office of the Sukabumi District Court, the Defendant has not and/or never carried out its obligations, namely handing over the management of the General Chair of the 1928 YMA Sukabumi Club to the Plaintiff";
- 4) Whereas the facts that exist up to now have been that there has been no transfer at all of the management of the General Chair of the Sukabumi 1928 YMA Club from the Defendant to the plaintiff while the Plaintiff is in accordance with Letter of Agreement No. 20190049/SMI/SP/X/2019 dated 28 October 2019 Article 3 stated that he had spent and paid for money by giving more than Rp. 75,000,000 (seventy-five million rupiah) to the Defendant as money for coaching the YMA Sukabumi 1928 football club. However, the fact is that the Defendant has not carried out his obligation to hand over the management of the General Chair of the YMA Sukabumi 1928 club to the Plaintiff, so it is legally proven that the Defendant has not acted in good faith, therefore legally he must be declared in default;
- 5) That from the time the Letter of Agreement No. 20190049 / SMI / SP / can be contacted again. With the Defendant's legal action being in default, the Plaintiff was greatly disadvantaged because of this, based on Agreement Letter No. 20190049 / SMI / SP / all legal consequences;
- 6) That because the material losses suffered by the Plaintiff were very large due to the Defendant's failure to perform, it is appropriate and reasonable for the Plaintiff to have the right and demand legally to be appointed and declared General Chair of the YMA Sukabumi 1928 Football Club;
- 7) That in order for the Defendant to implement the decision in this case, the Plaintiff requests that the Defendant be sentenced to pay forced money (dwangsom) to the Plaintiff in the amount of Rp. 1,000,000,- (one million rupiah) for every day of delay in implementing the contents of this decision which is calculated from this lawsuit is registered at the Sukabumi District Court until this decision has permanent and definite legal force (in kracht van gewijsde);
- 8) That because this lawsuit is based on valid and authentic evidence, the Plaintiff requests that the Panel of Judges at the Sukabumi District Court which examined

and tried this case, please accept the decision of this case so that it can be implemented immediately (Uitvoerbaar bij vooraad) even though there is an appeal or cassation.

Based on the data presented which explains the agreement or contract relationship, often one of the parties defaults which results in losses and conflicts, and there must be consequences for the party who defaults, so the researcher is interested in conducting a scientific paper study entitled: Legal Consequences of Default for the Parties In the Agreement to Hand Over the Position of General Chair of the Sukabumi Young Man Association Football Club 1928 (Study Decision Number 38/Pdt.G/2021/Pn.Skb)

Based on the background description above, the problem formulation that will be raised by the author in this research is:

- 1) What are the legal consequences for the parties who violate the agreement (default) in handing over the position of General Chair of the Yma Sukabumi 1928 Football Club based on Decision Number 38/Pdt.G/2021/Pn.Skb?
- 2) How is the binding force of the agreement to hand over the position of general chairman of the 1928 Sukabumi Young Man Association (YMA) Football Club related to the principle of freedom of contract?

2. Metode

Based on the problems researched by the author, using normative legal research methods. The statutory approach or statute approach and the conceptual approach

The sources of legal materials used in this research consist of primary legal materials, secondary legal materials and tertiary legal materials, which are described as follows:⁶

- 1) Primary legal materials, namely binding legal materials,⁷ in the form of statutory regulations relating to the issues to be studied, consist of:
 - a. Civil Code (KUHPerdata).
 - b. Law Number 8 of 1999 concerning Consumer Protection.
- 2) Secondary legal materials are legal materials obtained from textbooks, scientific journals, opinions of scholars, legal cases, symposiums held by experts related to the object of this legal research study. Newspapers, weekly magazines, bulletins and the internet can also be material for this research as long as they contain information that is relevant to the object of study of this legal research.⁸
- 3) Tertiary legal materials, namely supporting legal materials that provide instructions and explanations for primary legal materials and secondary legal materials, such as legal dictionaries.⁹

⁶ Bambang Waluyo, *Penelitian Hukum Dalam Praktik*, Penerbit Sinar Grafika, Jakarta, 2004, hal. 18.

⁷ Johny Ibrahim, *op.cit*, hlm. 392.

⁸ Jay A. Sieglar dan Benyamin R. Beede, *The Legal Souyrces of Public Policy*, Lexington Books, Massachussets, Toronto, 2007, hlm. 23.

⁹ Soerjono Soekanto dan Sri Mamudji, *Penelitian Hukum Normatif, Suatu Tinjauan Singkat*, Raja Grafindo Persada, Jakarta, 2004, hlm. 14-15

This research uses description techniques and legal discovery techniques (Rechtsvinding).

3. Discussion

A. Legal Consequences for Parties Who Violate the Agreement (Default) Handling Over the Position of General Chair of the Yma Sukabumi 1928 Football Club Based on Decision Number 38/Pdt.G/2021/Pn.Skb.

In the Civil Code, agreements are regulated in Book III (Articles 1233-1864) concerning Engagements. BW uses the terms contract and agreement to mean the same thing. This can be clearly seen from the title of Chapter II Book III BW, namely: Concerning obligations that arise from contracts or agreements. There are various definitions of agreement or contract, including:

- 1) Abdul Kadir Muhammad said that an agreement is an agreement by which one or more people bind themselves to each other to carry out something in the field of property.¹⁰ Meanwhile, what is meant by standard contract is a written contract made only by one of the parties to the contract, often the contract has been printed (boilerplate) in the form of certain forms by one of the parties.¹¹
- 2) Subekti said, an agreement is: "An event where one person promises to another person or where two people promise each other to carry out something". Meanwhile, an agreement is: "A legal relationship between two people or two parties, based on which one party has the right to demand something from another party, and the other party is obliged to fulfill these demands."¹²
- 3) Article 1313 of the Civil Code states: "Agreement is an act by which one or more people bind themselves to one or more other people."¹³

Thus, an agreement in the form of an agreement or contract is essentially binding, in fact, in accordance with Article 1338 paragraph 1 of the Civil Code, this agreement has binding force as law for the parties who make it. Apart from that, based on the formulation of the meaning of the agreement stated above, it can be concluded that the agreement consists of:¹⁴

- 1) There are parties.
- 2) There is an agreement between the parties.
- 3) There are achievements that will be carried out.
- 4) There are certain forms of oral or written.
- 5) There are certain conditions as part of the agreement.
- 6) There is a goal to be achieved.

With the use of agreements, this shows a tendency for standard agreements to become increasingly useful in people's lives with every contract/agreement that is made. It is important to know that every agreement entered into will definitely give rise to legal consequences, and to provide a sense of certainty and

¹⁰ Abdulkadir Muhammad, *Hukum Perikatan*, Alumni, Bandung, 1982, hlm, 17

¹¹ Munir Fuady, *Hukum Kontrak*, PT. Citra Aditya Bakti, Bandung, 2003, hlm, 76.

¹² R.Subekti, *Hukum Perjanjian*, Jakarta: Intermasa, 2005, hlm, 1.

¹³ KUHPerdata (burgelijk wetboek), Op.Cit, Pasal 1313.

¹⁴ Sudikno Mertokusumo, *Mengenal Hukum: Suatu Pengantar*, Yogyakarta, Liberty, 1999, hlm, 82.

formal juridical resolution of the legal consequences arising from the standard agreement, it is necessary to have a legal rule as the basis for the validity of the standard agreement itself.

In Law Number 8 of 1999 concerning Consumer Protection, it also regulates the provisions for the inclusion of clauses, which are explained in article 18 Paragraph (1) which states that: "Business actors in offering goods and/or services intended for trade are prohibited from making or include a clause in each document and/or agreement if:

- 1) declare the transfer of responsibility of the business actor;
- 2) states that business actors have the right to refuse to return goods purchased by consumers;
- 3) states that business actors have the right to refuse to hand over money paid for goods and/or services purchased by consumers;
- 4) declare the granting of authority from consumers to business actors, either directly or indirectly, to carry out all unilateral actions relating to goods purchased by consumers in installments;
- 5) regulate the matter of proving the loss of use of goods or use of services purchased by consumers;
- 6) give business actors the right to reduce the benefits of services or reduce the assets of consumers who are the object of buying and selling services;
- 7) declare that consumers are subject to regulations in the form of new, additional, continued rules and/or further changes made unilaterally by business actors during the period when consumers use the services they purchase;
- 8) states that the consumer authorizes the business actor to impose mortgage rights, pledge rights or security rights on goods purchased by the consumer in installments."

However, in the view of many parties, there are still many agreements circulating in society that are detrimental to society with the clauses (standards) contained in them. The contents of standard agreements are generally one-sided, and mostly benefit the maker.¹⁵ The party drafting the contract/agreement (creditor) with its terms and conditions has a stronger position when compared to other parties who are generally in a weaker position (debtor). The other party or opponent usually has no other choice and will simply accept the conditions proposed by the contract preparer (creditor).

Case analysis of legal consequences for parties who violate the agreement (default) Handing over the position of general chairman of the Yma Sukabumi 1928 football club based on decision number 38/Pdt.G/2021/Pn.Skb according to civil law

Considering, that the aims and objectives of the Plaintiff's lawsuit are as stated above;

Considering, that the main subject of the Plaintiff's lawsuit against the Defendant is the issue of Default, where the Defendant has not or has never

¹⁵ Sudikno Mertokusumo, Ibid., hlm, 78.

carried out its obligations to the Plaintiff, namely handing over the management of the General Chair of the Sukabumi 1928 YMA Club to the Plaintiff;

Considering, that on the appointed trial days, the Defendant or his attorney never appeared at the trial, even though they had been legally and appropriately summoned according to the provisions of the law, as stated in the summons dated 26 August 2021 for the trial on 8 September 2019, summons relaas dated 9 September 2021 for the hearing on 15 September 2021, summons dated 16 September 2021 for the hearing on 29 September 2021 and via Radar Sukabumi Daily Newspaper dated 1 October 2021 for the hearing on 3 November 2021;

Considering, that because the Defendant has been legally and appropriately summoned according to the law as above, but the Defendant never appeared at the trial, the Defendant must be declared absent from the trial and the trial continues without the Defendant's presence (*verstek*);

Considering, that to prove the arguments of his lawsuit, the Plaintiff submitted evidence in the form of photocopies of letters marked as evidence: P-1, P-2, P-3, P-4, P-5, P-6 and presented 2 (two) witnesses, namely witness Arief Nugraha, SE and witness Siti Hasanah;

Considering, that based on the evidence presented by the Plaintiff and Defendant, the Panel of Judges can draw conclusions regarding the existence of the following legal facts:

1. Whereas based on evidence P-1 and P-2 as well as the statements of witnesses Arief Nugraha, SE and Siti Hasanah it is proven that the Plaintiff and Defendant have made an Agreement Letter Number: 20190049/SMI/SP/X/2019 dated 28 October 2019 for guidance a football club and Mandate Letter Number: 20190058/MAN/SURMAN/X/2019 dated 28 October 2019 from the Defendant to the Plaintiff;
2. Whereas as stated by the Plaintiff's witness, Arief Nugraha, SE, explained that the witness knew that the contents of the agreement letter were an agreement to finance the development of a football club, and also that the Defendant asked the Plaintiff to finance the Sukabumi 28 YMA Club and then the agreement was made;
3. Whereas the Plaintiff's witness Arief Nugraha, SE explained that he did not know that the Sukabumi 28 YMA Club was an organization, and the witness knew that the obligation given by the Defendant to the Plaintiff was to hand over the mandate if it was successful;
4. Whereas as stated by witness Siti Hasanah, she explained that the achievement that the Plaintiff requested from the Defendant was ownership of the Sukabumi 28 Club, and the witness had never seen the AD/ART of the Sukabumi 28 Club;
5. Whereas the Plaintiff's witness Siti Hasanah explained that the Plaintiff never showed the object of the agreement, only showed the administration and the Plaintiff himself made the payment;
6. Whereas based on evidence P-3, P-4, and P-5 it is proven that receipt Number 00806-00808 is for payment of football players' salaries but it is not stated from whom it was received;

Considering, that next the Panel of Judges will consider each petitum of the PLAINTIFF's lawsuit;

Considering that the first petitum of the Plaintiff's lawsuit is to ask the Panel of Judges to accept and grant the Plaintiff's lawsuit in its entirety, the Panel of Judges is of the opinion that because this first petitum is very closely related to the other petitums, this first petitum will be considered later after considering the remaining petitums;

Considering that in the second petitum the Plaintiff's lawsuit states that legally the Defendant is a person with bad intentions and therefore legally must be declared in default, the Panel of Judges is of the following opinion:

Considering, that the term Default comes from the Dutch language, namely "wanprestatie" which means non-fulfillment of performance or obligations that have been determined towards certain parties in an agreement, whether an agreement that arises from an agreement or an agreement that arises due to law;

Considering, that in the a quo case, there was an agreement between the Plaintiff and the Defendant which was born out of an agreement, so that the Panel of Judges must first examine the letter of agreement made by the Plaintiff and the Defendant, then this second petitum will be considered later after considering the third petitum;

Considering, that in the third petitum the Plaintiff's lawsuit is stated to be valid according to the law of Agreement Letter No. 20190049/SMI/SP/IX/2019 dated 28 October 2019 which was made privately between the Plaintiff and the Defendant along with Mandate Letter Number: 20190058/MAN/SURMAN/X/2019 dated 28 October 2019, the Panel of Judges held the following opinion:

Considering, that the legal conditions for an agreement are regulated in the Civil Code, in particular Article 1320. These legal conditions include, among others:

- a. Their agreement that binds them;
- b. Ability to create an agreement;
- c. A particular subject matter;
- d. A cause that is not prohibited.

Ad. 1 Their agreement which binds them;

"Their agreement is binding" means that the parties making the agreement must agree or agree regarding the main matters or material being agreed upon.

Considering, that the Parties consisting of the Plaintiff and the Defendant on October 28 2019 have agreed to bind themselves in an agreement numbered: 20190049/SMI/SP/X/2019, where the Defendant is the FIRST PARTY and the Plaintiff is the SECOND PARTY (vide evidence P-2);

Considering, that the Plaintiff and Defendant also agreed on October 28 2019 to bind themselves by making a mandate letter number: 20190058/MAN/SURMAN/X/2019 (vide exhibit P-1).

Considering, that according to the Panel of Judges, the first requirement of article 1320 of the Civil Code in the agreement and mandate letters made by the parties has been fulfilled;

Ad.2 The ability to make an agreement

Whereas Article 1330 of the Civil Code regulates which parties may or are deemed competent to enter into an agreement.

Considering, that the Parties are not persons excluded in Article 1330 of the Civil Code, so that the Plaintiff in casu Denny Susanto and the Defendant in casu Ir. Wiryawan are persons who according to the law are adults and are not under guardianship.

Considering, therefore, the Agreement Letter Number: 20190049/SMI/SP/X/2019 and Mandate Letter Number: 20190058/MAN/SURMAN/X/2019 made by the parties have fulfilled the second requirement as in article 1320 of the Civil Code.

Ad. 3 A particular subject matter

Considering that "a certain subject matter" means that what is promised (the object of the engagement) must be clear. In other words, the types of goods and services must exist and be real.

Considering, that what was agreed in the Agreement Letter Number: 20190049/SMI/SP/X/2019 made by the Plaintiff and Defendant was something that was not clear, whether the agreement was regarding coaching money (article 3) or the issue of the position of general chairman (article 4) and in the agreement there are no articles that explain the specific rights and obligations that must be fulfilled by the parties.

Considering, that the Mandate Letter Number: 20190058/MAN/SURMAN/X/2019 does not explain the objects agreed upon in the mandate letter, what will be given by the Defendant as the first party and what will be obtained by the Plaintiff as the second party and does not explain the rights and obligations of the parties in the mandate letter.

Considering, that based on the considerations above, the Panel of Judges considers that the agreement and mandate letter made between the Plaintiff and the Defendant do not have a clear or vague agreement object, so that the agreement and mandate letter do not fulfill the third requirement of Article 1320 of the Civil Code.

Ad.4. A reason that is not forbidden.

"A cause that is not prohibited" or also often referred to as a halal cause means that you are not allowed to promise something that is prohibited by law or that is contrary to the law, politeness values, or public order;

Considering, that by observing the contents of the agreement and mandate letter between the Plaintiff and the Defendant, things are agreed that do not conflict with the law, morality or public order, so that according to the Panel of Judges the fourth requirement in Article 1320 of the Civil Code has been fulfilled.

Considering, that because the Agreement Letter Number: 20190049/SMI/SP/X/2019 and Mandate Letter Number: 20190058/MAN/SURMAN/X/2019 do not fulfill the third requirement in Article 1320 of the Civil Code, the Panel of Judges is of the opinion that the third petitum of the Plaintiff's lawsuit worthy of rejection;

Considering, that the second, fourth and fifth petitum are closely related to the legal considerations in the third petitum which in the description of the legal

considerations states that the agreement made between the Plaintiff and the Defendant does not fulfill the legal requirements for an agreement as mandated in article 1320 of the Civil Code;

Considering, that the Agreement Letter Number: 20190049/SMI/SP/X/2019 and the Mandate Letter Number: 20190058/MAN/SURMAN/X/2019 do not contain articles that specifically

explains the rights and obligations that must be fulfilled by the parties so that it is not known exactly what rights have been fulfilled by the parties and which obligations have not been fulfilled by the parties, and therefore the "achievement" referred to by the Plaintiff is unclear so the second petitum, these four and five must be rejected;

Considering, that the sixth petitum cannot be justified and must be rejected, because in this case there is no urgency for the application of forced money (dwangsom), so this sixth petitum must be rejected;

Considering, that based on Supreme Court Circular Letter No.3 of 2000, a Immediate Decision can only be issued if:

- 1) The lawsuit is based on authentic/handwritten evidence whose truth is not disputed by the opposing party;
- 2) Claims for Debts and Receivables whose amounts are certain and are not disputed;
- 3) Lawsuits regarding the rental of land, houses, warehouses, etc., where the rental relationship has ended or the tenant has neglected his obligations as a good tenant;
- 4) Principal of the lawsuit regarding claims for jute property, the decision of which has been inkracht van gewijsde;
- 5) Provisional lawsuit is granted;
- 6) The main dispute regarding bezitsrecht;

Considering, based on the Supreme Court Circular Letter No.3 of 2000 above, the Plaintiff's lawsuit does not meet the qualifications according to the provisions above, therefore the seventh petitum must be rejected;

Considering, that regarding the eighth petitum to punish the Defendant to pay all costs incurred in this case, the Panel is of the opinion that because the Plaintiff is the losing party in this case, this eighth petitum must be rejected;

Considering, that based on the above considerations, because the Plaintiff's petitum was rejected in its entirety, the Panel of Judges declared that the Plaintiff's lawsuit was rejected in its entirety;

Pay attention to Article 1320 of the Civil Code and the articles in the HIR, as well as the provisions of laws and regulations relating to this case:

JUDGE

- 1) Declare that the Defendant who has been properly summoned to appear in court is not present;
- 2) Reject the Plaintiff's lawsuit in its entirety with Verstek;

Sentenced the Plaintiff to pay the court costs incurred in this case in the amount of Rp. 2,550,000.00 (Two million five hundred and fifty thousand rupiah);

Thus, the results of the author's analysis show that the agreement is legally valid, however, it does not meet the requirements for the validity of an agreement, namely the dictum regarding what was agreed in the Agreement Letter Number: 20190049/SMI/SP/X/2019 made by the Plaintiff and Defendant is something that is not It is clear whether the agreement was regarding coaching money (article 3) or the issue of the position of general chairman (article 4) and in the agreement there is no article that explains the specific rights and obligations that must be fulfilled by the parties. However, the Mandate Letter Number: 20190058/MAN/SURMAN/X/2019 does not explain the object of the agreement in the mandate letter, what will be given by the Defendant as the first party and what will be obtained by the Plaintiff as the second party or not. explain the rights and obligations of the parties in the mandate letter. Apart from that, the Panel of Judges considered that the agreement and mandate letter made between the Plaintiff and the Defendant did not have a clear or vague agreement object, so that the agreement and mandate letter did not fulfill the third requirement of Article 1320 of the Civil Code. So the lawsuit is deemed not to meet the requirements for the validity of an agreement.

B. The Binding Strength of the 1928 Sukabumi Young Man Association (YMA) Football Club General Chairperson's Position Handover Agreement is Linked to the Principle of Freedom of Contract

The principle of freedom of contract is a principle that occupies a central position in contract law. Even though this principle is not translated into legal rules, it has a very strong influence on the contractual relationship between the parties. This principle is based on the ideology of individualism which was embryonally born in the Greek era, continued by the Epicurists and developed rapidly in the Renaissance era (and was further developed in the Aufklarung era) through, among others, the teachings of Hugo de Groot, Thomas Hobbes, John Locke and Rousseau. This development reached its peak after the French Revolution. As a universal principle originating from legal understanding, the principle of freedom of contract emerged at the same time as the birth of classical economics which glorifies laissez faire or free competition¹⁶.

Freedom of contract is basically a manifestation of free will, an emanation of human rights whose development is based on the spirit of liberalism which glorifies individual freedom. This development was in line with the formulation of BW in the Netherlands, and this spirit of liberalism was also influenced by the motto of the French Revolution "liberte, egalite et fraternite (freedom, equality and fraternity)". According to the ideology of individualism, everyone is free to obtain what they want, meanwhile in contract law this philosophy is manifested in the principle of freedom of contract¹⁷.

According to Treitel, the principle of freedom of contract in the English legal system is used to refer to two general principles. First, it states that the law does not limit the terms that can be agreed by the parties. This principle does not

¹⁶ Badrulzaman, Mariam Darus, dkk., Op cit, hlm, 110.

¹⁷ Hernoko, Agus Yudha, ibid, hlm, 94.

excuse the enactment of the terms of an agreement by the parties. Its scope includes the freedom of the parties to determine for themselves the contents of the agreement they wish to make. Second, it states that in general a person cannot be forced by law to enter into an agreement. Freedom of contract includes the freedom of the parties to determine with whom they want or do not want to make an agreement¹⁸

In the United States, freedom of contract is the free will to make or not to make binding agreements regarding one's personal affairs, including the right to make employment agreements, and to determine terms deemed favorable as a result of negotiation or bargaining. bargain with other parties. This also includes the right to accept contracts proposed by other parties¹⁹

In the classical doctrine of French contract law, the understanding that freedom of contract is related to the free will of the parties is adhered to. The parties have autonomy of will, namely the will to determine their own laws. Contractual obligations originate from the wishes of the parties which form the basis of the contract. This doctrine emphasizes individual freedom to make anonymous contracts (ombenoemde, innominat contracten); As long as it does not conflict with public order, the parties are free to make whatever contract they wish²⁰

As a unified and complete unit in one system, the application of the principle of freedom of contract as concluded from the substance of Article 1338 paragraph (1) BW must also be linked to the framework for understanding other articles or provisions, as follows²¹

1. Article 1320 paragraph (1) in conjunction with Article 1338 paragraph (1) of the Civil Code

Article 1320 paragraph (1) states that one of the conditions for the validity of an agreement is that it requires "the agreement of those who bind themselves". Article 1338 paragraph (1) determines that "all agreements made legally apply as law for those who make them"

Based on these two articles in the Civil Code, it can be said that the application of the principle of consensualism in contract law strengthens the principle of freedom of contract. Without "agreement" from one of the parties making the agreement, the agreement made is invalid, so it can be canceled. People cannot be forced to agree. An agreement given by force is called *Contradictio interminis*, the presence of coercion indicates a lack of agreement.

The existence of consensus from the parties gives rise to the binding force of the agreement as per the law (*pacta sunt servanda*). The principle of

¹⁸ Suryono, Leli Joko, Pembatasan Asas Kebebasan Berkontrak dalam Perjanjian, Jurnal Media Hukum, No. 2, Desember. 2009, hlm, 350.

¹⁹ Sjahdeini, Sutan Remy, Kebebasan Berkontrak dan Perlindungan yang Seimbang bagi Para Pihak dalam Perjanjian Kredit Bank di Indonesia, Jakarta, Institut Bankir Indonesia, 1993, hlm, 45.

²⁰ Khairandi, Ridwan, 2003, Itikad Baik dalam Kebebasan Berkontrak, Universitas Indonesia, Pascasarjana, 2003 hlm, 91.

²¹ Suryono, Leli Joko, Pembatasan Asas Kebebasan Berkontrak dalam Perjanjian, Jurnal Media Hukum, No. 2, Desember. 2009, hlm, 351-353.

pacta sunt servanda is the binding force for agreements. This is not only a moral obligation, but also a legal obligation whose implementation must be obeyed, as a consequence, judges or third parties must not interfere with the contents of the agreement made by the parties.

The way to conclude the principle of freedom of contract is to emphasize the words "all" which appear before the words "agreement" as stated in Article 1338 paragraph (1) of the Civil Code. It is said that Article 1338 paragraph (1) seems to make a statement that people are allowed to make agreements and bind them as binding by law for those who make them. Restrictions on freedom are only in the form of what are called "general provisions and decency"²²

The word "all" has the meaning of covering all agreements, both those whose names are known and those which are not known by law. This principle relates to the contents of the agreement, namely the freedom to determine "what" and "whom" the agreement is entered into. This agreement made in accordance with Article 1320 of the Civil Code has binding force²³

2. Article 1320 paragraph (4) jo. Article 1337 Civil Code

Article 1320 paragraph (4) of the Civil Code states that one of the conditions for the validity of an agreement is if it is made for "a lawful cause". Article 1337 of the Civil Code determines that "a cause is prohibited, if it is prohibited by law, or if it is contrary to good morals or public order".

It can be concluded that as long as it is not due to a cause (causa) that is halal (prohibited) by law, then everyone is free to make an agreement.

3. Article 1329 jo. Articles 1330 and 1331 of the Civil Code

Article 1329 of the Civil Code states: "every person is competent to make agreements, unless he is determined to be incompetent by law". Article 1330 of the Civil Code states that "not competent to make an agreement" is:

- 1) People who are not yet adults;
- 2) Those who are placed under guardianship;
- 3) Married women.

Article 1331 of the Civil Code states "persons who in the previous article are declared incompetent, may demand cancellation of the agreements they have entered into in cases where that authority is not excluded by law".

It can be concluded that the Civil Code does not prohibit someone from making an agreement with any party they wish. The law only determines that certain people are incompetent to enter into agreements. Everyone is free to choose the party with whom to make an agreement, as long as that party is not a party who is incompetent to make an agreement. In fact, if someone makes an agreement with another who according to law is not competent to make an agreement, then the agreement remains valid as long as the incompetent party does not demand cancellation.

²² Subekti, Hukum Perjanjian, Jakarta, PT. Intermasa. 1984, hlm, 5.

²³ Badruzaman, Mariam Darus, dkk., Kompilasi Hukum Perikatan, Bandung, PT. Citra Aditya Bakti. 2001, hlm, 84.

4. Article 1332 of the Civil Code states "only goods that can be traded can be the subject of agreements". This article emphasizes that as long as it concerns goods of economic value, then everyone is free to make a contract.
5. Article 1335 of the Civil Code which prohibits making contracts without causa, or being made based on false or prohibited causa, with the consequence that it has no force.
6. Article 1338 paragraph (3) of the Civil Code which stipulates that contracts must be carried out in good faith.
7. Article 1339 of the Civil Code, refers to the binding of an agreement to nature, propriety, custom and law. The customs in question are not local customs, but provisions which in certain circles are always observed.
8. Article 1347 of the Civil Code regulates matters which according to custom are always agreed to be tacitly included in the contract.
9. The provisions of Book III of the Civil Code are mostly complementary law (annulled recht, optional) meaning that the parties can freely make their own terms or rules in an agreement deviating from the provisions of the law, but if the parties do not stipulate in the agreement, then The provisions of Book III of the Civil Code will complement it to prevent a legal vacuum in accordance with the material content of the agreement desired by the parties.
10. Book III of the Civil Code does not prohibit someone from making an agreement in a certain form, so that parties can freely make agreements verbally or in writing, except that certain agreements must be in the form of authentic deeds.

In connection with the above, the scope of the principle of freedom of contract includes:²⁴

1. Freedom to make or not make agreements.
2. Freedom to choose the party with whom he wants to make an agreement.
3. Freedom to determine or choose the cause of the agreement that will be made.
4. Freedom to determine the object of the agreement.
5. Freedom to determine the form of an agreement.
6. Freedom to accept or deviate from optional provisions of the law

When making a contract, the parties need to pay attention to the following matters:²⁵

1. Fulfill the conditions for the validity of the contract.
2. To achieve the goals of the parties, the contract must have a cause.
3. Does not contain false causes (prohibited by law).
4. Does not conflict with propriety, customs, decency and public order.
5. Must be implemented in good faith

C. Restrictions on the Principle of Freedom of Contract

²⁴ Sjahdeini, Sutan Remy, *Kebebasan Berkontrak dan Perlindungan yang Seimbang bagi Para Pihak dalam Perjanjian Kredit Bank di Indonesia*, Jakarta, Institut Bankir Indonesia, 1993, hlm, 47.

²⁵ Hernoko, Agus Yudha, *Hukum Perjanjian, Asas Proporsionalitas dalam Kontrak Perjanjian*, Yogyakarta, LaksBang Mediatama, 2008, hlm,103.

The paradigm of freedom of contract ultimately shifted towards the paradigm of propriety. Although freedom of contract is still an important principle in contract law, both in civil law and common law, it no longer appears like the freedom of contract that developed in the nineteenth century. Now freedom of contract is not unlimited freedom. The state has implemented a number of restrictions on freedom of contract through statutory regulations and court decisions, as well as in the practices of economic activities in society.²⁶

Freedom of contract does need restrictions, due to the fact that the positions of the parties in a commercial agreement are often unequal, so it is very possible that parties who have a weak position or bargaining position in an agreement will suffer a lot of losses. Moreover, if a party who has a strong position or position imposes his will on a weak party for the benefit of the party who has a strong position or position. As a result, the contract becomes unreasonable and contrary to fair legal regulations.

There are several factors that influence restrictions on freedom of contract, including:²⁷

1. The increasing influence of the teaching of good faith where good faith is not only present in the implementation of the agreement, but must also be present at the time the agreement is made;
2. The growing development of the teaching of abuse of circumstances;
3. The development of the economic field which forms trade associations, legal entities, companies and other groups of society, such as workers and farmers;
4. The development of trends in society that desire social welfare;
5. The government's desire to protect the public interest or weak parties.

Restrictions on freedom of contract from the state, for example, are very visible in legislation to determine the terms and conditions of insurance policies, minimum wages, working conditions and terms of employment, as well as insurance programs for workers that are required in connection with employment agreements. between employers and their workers. In the United States, for example, state intervention is applied to labor laws, anti-trust laws, business regulations, and public welfare. In Indonesia, restrictions on this principle appear in the provisions of various articles in the Civil Code, as explained above, namely: 1320, 1330, 1332, 1335, 1337, 1338, 1339.

In examining and adjudicating cases relating to the principle of freedom of contract, the courts are also fully empowered to limit this principle, if it is truly felt to be contrary to the sense of justice in society. This is in line with the function and authority of the Judge himself who has autonomy and freedom which includes:²⁸

1. Interpret laws and regulations;

²⁶ Khairandi, Ridwan, *Itikad Baik dalam Kebebasan Berkontrak*, Universitas Indonesia, Pascasarjana, 2003, hlm, 2.

²⁷ Patrik, Purwahid, *Asas Itikad Baik dan Keputusan dalam Perjanjian*, Semarang, Badan Penerbit Universitas Diponegoro, 1986, hlm, 9-10

²⁸ Sutantio, Retnowulan, *Perjanjian Menurut Hukum Indonesia*, Varia Peradilan, Tahun V, No. 56, Mei.1990, hlm, 144.

2. Search for and discover the principles and basics of law;
3. Creating new laws when facing a vacuum in statutory regulations;
4. It is also justified to carry out *contra legem* if the provisions of laws and regulations conflict with the public interest and;
5. Have free autonomy to follow jurisprudence.

Judges have the authority to enter/examine the contents of a contract, if necessary because the contents and implementation of a contract conflict with the values of society. The principle of freedom of contract is no longer absolute, because in certain circumstances judges have the authority through legal interpretation to examine and assess and declare that the position of the parties in an agreement is in an unequal state, resulting in an abuse of opportunity or circumstances (*misbruik van omstandigheden*)²⁹

Judges have the authority to prevent violations of the sense of justice. In the context of contract law, this authority includes the authority to reduce, or even completely eliminate, a contractual obligation from an agreement that contains injustice. This is in line with the aim of the law itself, namely realizing justice. The content of the law, including the content of agreements, must contain the values of justice, namely propriety that develops in society³⁰

Thus, the binding force of the agreement to hand over the position of general chairman of the 1928 YMA Sukabumi Football Club, linked to the principle of freedom of contract, is binding between the parties who make an agreement, namely between the capital borrower and the YMA football club manager in a development, but in making the terms of an agreement so that binding the parties must be guided by article 1320 of the Civil Code and there are clauses regarding default and fulfillment of achievements and resolving disputes. So that if a dispute or dispute occurs, a judge can provide a sense of justice for those who desire it. When facing a case or dispute that contains certain circumstances or that have not been regulated in legislation, or have been regulated in legislation, but the substance is too general, abstract, and contrary to the public interest or not in accordance with propriety; So in circumstances like this, judges must function as "judges as laws makers". The legal discovery carried out is not just interpreting/implementing the law, but also legal discovery, in the sense of carrying out the process of concretization and individualization of general legal regulations by remembering concrete events.³¹

4. Conclusion

- A. Based on the Decision of the Sukabumi District Court Number 38/Pdt.G/2021/Pn.Skb, the Agreement to Hand Over the Position of General Chairperson of the 1928 YMA Sukabumi Football Club does not fulfill the requirements for the validity of the agreement, because of the content (*dictum*)

²⁹ Atmadja, Asikin R.Z. Kesuma, Pembatasan Rentenir sebagai Perwujudan Pemerataan Keadilan, *Varia Peradilan Tahun II*, No. 27, Februari.1987, hlm, 45.

³⁰ Khairandi, Ridwan, *Itikad Baik dalam Kebebasan Berkontrak*, Universitas Indonesia, Pascasarjana, 2003, hlm, 35.

³¹ Setiawan, *Aneka Masalah Hukum dan Hukum Acara Perdata*, Bandung, PT. Alumni., 1992, hlm, 140-141.

agreed upon in the Letter of Agreement Number: 20190049 /SMI/SP/X/2019 it is not clear whether it is about coaching money (article 3) or handing over the position of general chairman (article 4), in the agreement there is also no article that explains the specific rights and obligations that must be fulfilled by the parties, so that the agreement and mandate letter do not fulfill the third requirement of Article 1320 of the Civil Code. The legal consequence is that the agreement is declared invalid (cancelled) by the court and the defendant is obliged to return the construction money to the plaintiff, because it is considered to be borrowed money.

- B. If related to the principle of freedom of contract, the contents of the agreement which is named (nomenclature) Agreement for the Handover of the Position of General Chairperson of the 1928 YMA Sukabumi Football Club is binding on the parties who make an agreement as long as it is in the context of a capital loan agreement between the capital borrower and the management of the association or YMA football club. However, in the context of handing over the position of General Chair of the 1928 YMA Sukabumi Football Club, according to the Sukabumi District Court's decision in the a quo case, the agreement is invalid, because the object is unclear (violates Article 1320 point 3 of the Civil Code)..

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