JURIPRUDENSI
Journal Ilmu Syari'ah, Perundang-undangan dan Ekonomi Islam
https://doi.org/10.32505/jurisprudensi.v15i2.6586
Vol. 15 No. 2 (Juli-Desember 2023): 280-290

The Debt of the Government of the Republic of Indonesia Against PT. Cipta Marga Nusaphala Persada (Perspective of Good Faith, Adequacy, and Fairness)

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Abstract

Early June 2023 the majority shareholder of PT. Cipta Marga Nusaphala Persada Jusuf Hamka collected a debt of 800 billion to the government. However, IBRA (National Bank Restructuring Agency) rejected CMNP's request because the company is affiliated with Bank Yama, so CMNP is not the responsibility of the Government. Therefore, CMNP filed a lawsuit with the South Jakarta District Court up to PK at (MA). In the end, in 2010 the lawsuit was won by CMNP AND the state was burdened with a 2% tax each month on the debt and it was estimated along with interest that the total was 800 billion. However, within 13 years the Government has not settled the debt. Based on this research aims to analyze the position of government debt to CMNP from the perspective of decency and justice. This research is a normative method with a normative juridical approach that uses grammatical and systematic analysis techniques. Secondary legal materials from this study consist of court decisions, related regulations, legal doctrine, and expert opinions. The results of the study show that the government's actions that have not paid off CMNP's debt are actions that violate the principles of good faith and propriety in law because one indication of implementing these principles is fulfilling the agreements made. So that the prohibition of the agreement with CMNP is an act that is inappropriate and not in good faith. In addition, these actions also violated the principle of justice

because the Government did not comply with court decisions and agreements with CMNP.

Keyword: *Debt, Fairness, Good Faith, Propriety*

Abstrak

Awal Juni tahun 2023 pemegang saham mayoritas PT. Cipta Marga Nusaphala Persada Jusuf Hamka menagih hutang ke Pemerintah senila 800 milliar. Namun BPPN (Badan Penyehatan Perbankan Nasional) menolak permohonan CMNP dikarenakan perusahaan tersebut terafiliasi dengan Bank Yama sehingga CMNP hal tersebut bukan merupakan tanggung jawab Pemerintah. Oleh karena itu, CMNP melakukan gugatan ke pengadilan negeri Jakarta Selatan hingga PK di (MA). Pada akhirnya, tahun 2010 gugatan tersebut dimenangkan CMNP DAN negara dibebani pajak 2% setiap bulannya atas hutang dan ditaksir beserta bunga totalnya 800 milliar. Akan tetapi, kurun waktu 13 tahun Hutang tersebut tak kunjung diselesaikan oleh Pemerintah. Berdasarkan hal di atas, penelitian ini bertujuan menganlisis kedudukan Hutang pemerintah terhadap CMNP dari perspektif kepatutan dan keadilan. Penelitian ini merupakan metode normatif dengan pendekatan yuridiis normatif yang menggunakan tenik analsis gramatikal dan sistematis. Bahan hukum sekunder dari penelitian ini terdiri atas putusan pengadilan, pertauran-undnagan yang terkait, doktrin hukum, dan pendapat ahli. Hasil penelitian menujukkan tindakan pemerintah yang belum melunasi utang CMNP merupakan tindakan yang melanggar asas itikad baik dan kepatutan dalam hukum karena salah satu indikasi dalam melaksanakan asas tersebut adalah memenuhi perjanjian yang dibuat. Sehingga pelarangan perjanjian dengan CMNP merupakan perbuatan yang tidak tepat dan tidak beritikad baik. Selain itu, perbuatan tersebut juga melanggar asas keadilan karena Pemerintah tidak menaati keputusan pengadilan dan perjanjian dengan CMNP.

Kata Kunci: Hutang, Keadilan, Kepatutan.

Introduction

Republic of Indonesia Government Debt to PT. Cipta Marga Nusaphala Persada started with a CMNP deposit with Bank Yama in 1998 worth 98 billion. The 1998 crisis caused people to panic and it happened*rush money.* Rush Money is an event where people will massively withdraw cash from banks simultaneously and on a large scale. In this case, the Minister of Finance together with institutions that play a role in protecting the economy in Indonesia, namely Bank Indonesia, the Financial Services Authority and the Deposit Insurance Corporation, which are members of the Financial System Stability Committee based on Article 4 of Law Number 9 of 2016 concerning Prevention and Handling of Financial System Crises. The crisis started in Thailand and hit all corners of Southeast Asia, one of which is Indonesia. Indonesia is one of the hardest-hit countries because the Rupiah currency has weakened by up to 75%. Not only the people, this crisis has also affected

companies, both state-owned and private companies, banks, and so on. To stabilize Indonesia's finances, the government issued a BLBI (Bank Indonesia Liquidity Assistance) policy. BLBI is a non-program facility in response to large-scale withdrawals of customer funds causing banks to experience liquidity difficulties individually. However, the BLBI policy does not pay attention to CMNP's deposits with Bank YAMA (Yakin Makmur), which should be the responsibility of the Government (Putusan Peninjauan Kembali No.564 PK/Pdt/2007, 2007).

Based on this, CMNP made several lawsuits up to the PK (Review) stage against the Government at the South Jakarta district court to the Supreme Court with no. Case Number 137/Pdt.G/2004/PN. Jkt . Sel .jo.No. 128/ Pdt/ 2005/ PT.DKI.jo. No.1616 K/ pdt/ 2006 jo No.564 PK/Pdt/2007 on name PT Citra Marga Nusaphala Persada Tbk Number: 004/BA/inkracht/2016, PT Citra Marga Nusaphala Persada Tbk. In essence, the decision favored CMNP and required the Government to pay 78 billion in term deposits and 76 million in current accounts. In addition, the Government is also charged 2% interest every month. However, until 2016 the decision was never executed. To realize this decision, CMNP sent a letter of request to the Supreme Court. By order of the Supreme Court, the Ministry of Finance finally formed a Team for the Acceleration of Completion of Legal Decisions. In the end, the CMNP and the Government agreed to pay 179 billion Rupiah of Principal and Interest Debt in a period of 2 years, namely in the 1st half of 2016 and 1st half of 2017 budgets (Putusan Peninjauan Kembali No.564 PK/Pdt/2007, 2007).

Unfortunately, until now this debt has not been settled by the Government until June 13, through Jusuf Hamka's Instagram account, the majority shareholder of CMNP, has openly collected the debt from the Government. Therefore, this research aims to analyze in depth the position of the Government towards CMNP which is analyzed through the perspective of decency and justice. In addition, there is no research that discusses the position of Government Debt to CMNP which is analyzed through the perspective of decency and fairness.

Literature Review

There are a number of studies that discuss debt, two of which are (Romadhina, 2018) & (Affandi, 2015) Research entitled The Effect of Free Cash Flow, Non Debt Tax Shield on Debt Policy. Almost similar to (Romadhina, 2018), research (Romadhina, 2018) & (Affandi, 2015)entitled Company Growth, Profitability, and Company Size on Debt Policy in Manufacturing Companies Listed on the Indonesian Stock Exchange. The difference with research (Romadhina, 2018) & (Affandi, 2015) lies in the object of debt, namely government debt to PT. Cipta Marga Nusaphala Persada which has not been paid off. Meanwhile (Romadhina, 2018) & (Affandi, 2015) focus on the effect of free cash flow, non-debt tax shield on debt policy. Apart from the research focus, there are other differences in the research method where (Romadhina, 2018) & (Affandi, 2015) use a quantitative method with an explanatory approach, while this study uses a qualitative method with a normative approach.

More specifically, there are a number of studies that discuss default, namely (Kurniawan, 2013) the concept of default in contract law and the concept of debt in bankruptcy law (comparative study in the perspective of agreement and bankruptcy law). The results of this study indicate that the concept of default is an act of

deviation by the party entering into an agreement in circumstances that are not coercive towards the agreement that has been agreed upon so that it results in losses for the opposing party in the agreement. Default can only occur in the implementation process after an agreement is stated to have been legally agreed upon. While the concept of debt referred to in bankruptcy law emphasizes that there has been an exchange between rights and obligations that only occur unilaterally and refers to obligations in the business sector or at least concerns matters of property wealth and is related to this concept based on the inability of the debtor to pay his obligations to all creditors Based on the discussion, not all concepts of default in contract law can be applied to the concept of debt in bankruptcy law. The difference between the above research and this research lies in the research object where the research above discusses the concept of Default from a theoretical and conceptual order, while this research discusses Default from a conceptual and practical perspective regarding government debt to Pt. Cipta Marga Nusaphala Persada.

Besides that, research (Fajri, 2021) entitled Settlement of Defaults in Credit Agreements with Fiduciary Guarantees (Case Study at the Sendang Artha Mandiri Madiun Savings and Loans Cooperative). The results of this study indicate that the settlement of defaults in credit agreements with fiduciary guarantees carried out by KSP Sendang Artha Mandiri includes: 1) Direct approach; 2) Warning Letter; 3) Novation; and 4) Confiscation and auction of the general assets of the debtor. Meanwhile, according to the Fiduciary Guarantee Law, if there is an act of the fiduciary giver (debtor) who transfers the object of the fiduciary guarantee without the written consent of the fiduciary recipient (creditor), then the debtor can be legally prosecuted. In this case there is a difference in the settlement of defaults in the credit agreement with a fiduciary guarantee between KSP Sendang Artha Mandiri and the Fiduciary Guarantee Law.

This is because KSP Sendang Artha Mandiri as a cooperative engaged in savings and loans continues to adhere to cooperative principles, namely the principle of kinship. The principle of kinship can be interpreted as the basis of a cooperative which in carrying out its activities and solving the problems it faces with the principle of a win-win solution. The difference lies in the research focus, where the research above focuses on settlement of defaults in credit agreements with fiduciary guarantees at KSP Senda Artha Mandiri Madiun. Meanwhile, this research focuses on government defaults against PT. Cipta Marga Nusaphala Perasda in terms of the principles of good faith and fairness.

Furthermore, research (Adiningtyas, 2019)entitled Efforts to Settle for Defaults in the Implementation of Unsecured Loans (Study on Artha Central Java Savings and Loans Cooperative). The results of the research above show that the form of default in the unsecured credit agreement at the Artha Central Java Savings and Loans Cooperative is delays in installment payments starting from 1 time to 6 installments but not consecutively on the grounds that there is no money at maturity, forgetting the due date and use money for family needs or interests. In addition, how to solve problems that occur in granting unsecured loans at Kospin Artha Central Java with procedures namely (1) contacting the debtor to remind the installment payment due date; (2) visiting the debtor's house to remind the installment payment due date by giving a warning letter or collecting installments;

(3) payment of late fines by the debtor; (4) expropriation of the debtor's valuables as collateral; (5) auction of the debtor's valuables; (6) the unsecured credit agreement is completed with the settlement of payments from the auctioneer of goods or direct payments by the debtor. In practice, all debtors of Central Java Kospin Artha have good faith so that problems are only resolved by giving warnings and fines. The difference between this research and the research above lies in the focus of the research, where this research focuses on default legal remedies on non-credit agreements, while this research focuses on default cases of the Government of Indonesia with Pt. Cipta Marga Nusaphala Persada.

Finally, there is research (Nursariani Simatupang, 2020) Agreed in the Agreement and Its Relevance as an Effort to Prevent Default. The results of this study show that agreement in an agreement as an effort to prevent default is legally very relevant. Because, the agreement that arises is an agreement that is not lost, not forced, not deceived, and has not been given because of misuse of circumstances. In addition, the agreement born from the agreement can be carried out properly and protect both parties/the parties. In addition, the ideal format for fulfilling the agreement in the agreement must meet the formal requirements (identity of the parties in making the agreement; the authority of the parties in making the agreement; the competence of the parties is in accordance with the law or not; the identity of the object to be agreed upon; the halalness of the object to be agreed upon; time and place where the parties made an agreement; and there is evidence of the agreement made by the parties as evidence in resolving disputes) and material requirements (clarity of the parties conveying their respective wishes; conformity of the parties' wishes with the applicable legal regulations; agreement are not lost, are not forced, are not deceived, and have not been given due to misuse of circumstances; acceptance and trust of the other party in the agreement in accordance with the will (agreement); and an express statement from the parties to agree on all contents of the agreement). The difference with this research lies in the focus of the discussion, where this research discusses the agreement as an effort to prevent Default. While this research focuses on cases of default by the Government of Indonesia and PT. Cipta Marga Nusaphala Persada.

Research Method

This research is a qualitative research with a normative juridical approach, namely research that uses legal norms in the form of literature or only secondary(Sugiyono, 2019). In this study, secondary legal materials were used including court decisions at first level, appeals, cassation, and extraordinary legal remedies namely PK (Reconsideration), Civil Code, Legislation related to this research, legal doctrine, and legal theory related to this research. The technique of collecting legal material was carried out using the library method and analytical techniques. In this study, the technique of grammatical legal analysis was carried out, namely analyzing every word in court decisions and statutory regulations which were examined and systematic legal analysis techniques, namely juxtaposing one statutory regulation with another related with this research.

Chronology

Republic of Indonesia Government Debt to PT. Cipta Marga Nusaphala Persada started with a CMNP deposit with Bank Yama in 1998 worth 98 billion. The 1998 crisis caused people to panic and it happened*rush money.* Rush Money is an event where people will massively withdraw cash from banks simultaneously and on a large scale. In this case, the Minister of Finance together with institutions that play a role in protecting the economy in Indonesia, namely Bank Indonesia, the Financial Services Authority and the Deposit Insurance Corporation, which are members of the Financial System Stability Committee based on Article 4 of Law Number 9 of 2016 concerning Prevention and Handling of Financial System Crises.

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Good Faith and Propriety in The Case of Government Debt to PT. Cipta Marga Nusaphala Persada

Good faith is one of the important principles in contract law, but the meaning of the principle of good faith itself is still abstract, so that different understandings arise both from the perspective of time, place and person. Besides there is no single meaning of good faith, in practice problems also arise. regarding benchmarks, and the function of good faith. As a result, the meaning and benchmarks as well as the function of good faith are more reliant on the attitudes or views of judges which are

determined on a case-by-case basis. Good faith in the agreement is a doctrine that comes from Roman law, the doctrine comes from the ex bona fides doctrine. This doctrine requires the existence of good faith in the contract. Good faith in Roman contract law refers to three forms of behavior of the parties to the contract. First, the parties must adhere to their promises or words. Second, the parties may not take advantage of actions that mislead one of the parties. Third, the parties comply with their obligations and behave as honorable and honest people, even though these obligations are not expressly agreed uponi (Simamora et al., 2015).

Expressly stated in the contract. According to P.L. Werry, this is related to the implementation of the contract as stated in the decision of the Hoge Raad dated February 10, 1921 in a case of competition between firm management that was contrary to good faith. Likewise in the decision of the Hoge Raad dated March 13, 1964, NJ 1964, 188, in the case of implementation of a guarantee contract (borgtocht) which requires creditors to pay attention to good faith in carrying out contracts. 3) The function of limiting or eliminating*(restrictive and derogatory effect of good faith),* meaning that this function can only be applied when there are very important reasons*(only in speaking cases)*(Panggabean, 2010).

Hoge Raad's decision which limits or abolishes the good faith regulation in Article 1338 paragraph (3) of the Indonesian Civil Code stipulates that agreements must be carried out in good faith*(a bonafide contract*) based on good faith). This means that the agreement is carried out according to decency and justice. The good faith contained in Article 1338 paragraph (3) of the Civil Code is always connected with Article 1339 of the Civil Code, that "Agreements do not only bind what is expressly specified in them, but also everything that according to the nature of the agreement is demanded based on decency, custom, or Constitution. Good faith has a very important role in civil law, both related to material rights (zakenrecht) as regulated in Book II of the Civil Code, as well as agreements as regulated in Book III of the Civil Code(Darus, 2016).

Therefore, the position of good faith is not only regulated in Book III of the Civil Code, but also in Books II and Book IV of the Civil Code. In relation to the function of good faith in Article 1338 paragraph (3) of the Civil Code, according to several scholars, including P.L. Werry, Arthur S. Hartkamp and Marianne M. M. Tillem, there are three main functions of good faith, namely: 1) The function teaches that contracts must be interpreted according to good faith (good faith as a general law principle), meaning that contracts must be interpreted fairly and fairly (fair)). 2) The function of adding or completing*(additional effect of good faith)*(Suwardiyati, 2020).

It means that good faith can add to the content or words of the agreement when there are rights and obligations that arise between the parties contract work can be observed in the case of Stork v. N.V.Haarlemshe Katoen Maatschappij (Sarong Arrest), HR 8 January 1926, NJ 1926, 203, Mark is Mark Arrest, HR January 1931 and Saladin v. Hollandsce Bank Union (HBU) Arrest, dated 16 May 1967.21 Hoge Raad and NBW in exercising this function only in cases where performance according to the words of the contract is really unacceptable because it is unfair. This application ratio is understandable because it is a deviation (exceptions) from the principle of pacta sunt servanda (Darus, 2016).

The National Civil Law Symposium organized by the National Legal Development Agency (BPHN) determined that good faith should be interpreted as follows: 1) Honesty in making contracts, 2) At the drafting stage it is stressed, if the contract is made in the presence of an official, the parties are considered in good faith (although there are also opinions that express objections), 3) As propriety in the implementation stage, namely related to a good assessment of the behavior of the parties in carrying out what has been agreed in the contract, solely for the purpose of preventing inappropriate behavior in implementing the contract (Sihotang, 2017).

In connection with the case of CMNP's receivables against the government, researchers view that the Government of the Republic of Indonesia does not yet have the good faith to carry out court decisions, Supreme Court warnings, and the 2016 mutual agreement, namely that the government is obliged to pay debts principal and interest of 179 billion which are paid within 2 years, i.e. in the first period of the 2016 budget and the first period of the 2017 budget. In line with the understanding according to Roman law and the second and third symposium on National Civil Law by BPHN and the joint agreement between CMNP and the Government, they have expressed their objections to CMNP regarding the interest paid. In the end both sides found out*win-win solution* and agreed to pay 179 billion in two years. However, non-payment of the debt is an act that is inappropriate and does not have good faith because it does not adhere to its promises or words, takes advantage of misleading actions against one of the parties, namely not paying its obligations to CMNP, and the parties do not comply with the mutual agreement that has been agreed upon. agreed.

Justice in The Case of Government Debt Against PT. Cipta Marga Nusaphala Persada

Gustav Radbruch argues that there are three basic values that must be contained in law, namely justice, benefit and legal certainty. Almost the same as Radbruch, Antonius Sujata also argues that law enforcement anywhere and anytime has lofty ideals namely justice, certainty, order and benefits. Soenarjati Hatono also stated the same thing that the most important purpose of law is to achieve justice in society. This means that on the one hand legal principles are not only valid but must also constitute fair principles and on the other hand law enforcement and implementation of the law may not be carried out in such a way as to completely eliminate ethical values in general and eliminating human dignity as human beings in particular (Ruman, 2012).

Philosophical descriptions regarding the relationship between justice and law can also be found in the view of John Rawls. Rawls argues that the rule of law is clearly closely related to justice. According to Rawls a legal system is a coercive set of public rules aimed at rational persons with the aim of regulating their behavior and providing a framework for social cooperation. When these rules are fair, they establish a basis for legitimate expectations. They are the cornerstone on which people lean on one another and have the right to object when their expectations are not met. In relation to this law, Rawls defines justice as regularity, justice as regulatory. According to Huijber in a legal system called continental law it is perceived as intertwined with the principles of justice: law is a just law. Huijbers

shows that this understanding is in accordance with traditional philosophical teachings where law is understood as ius or recht. The law in this concept is essentially related to the meaning of law as justice. This means that if a concrete law, i.e. a law contradicts the principles of justice, then that law is no longer normative, and in fact cannot be called law anymore. The law is only law when it is fair(Panjaitan, 2018).

According to Hart , the general principle of justice in relation to law requires that individuals before others are entitled to a relative position in the form of certain equality or inequality. The main rule related to the above principle is 'treat like things in like way'; although we need to add to it 'and treat different things differently'. However, according to Hart, the rules mentioned above are not in themselves clear. For the situation of any human being will be similar to one another in one respect and different from another in another. In that condition, the question is what similarities and differences are considered relevant? To fill this void, Hart asserts that the relevant similarities and differences between individuals, which must be referred to by those who implement the law, are determined by the law itself. Hart gives an example, “to say that the law against murder is justly enacted is to say that it applies impartially to all persons and only to persons who are alike in that they have done what is prohibited by law; there is no prejudice or interest to influence the executor to treat them equally”. Even if there is discrimination, that discrimination must be carried out based on relevant principles, namely the capacity of a person, such as mental capacity and reason (Hayat, 2015).

In line with what was stated by Hart above that equality and difference must be based on law, Kelsen emphasized that justice in the context of law has the meaning of legality. According to Kelsen a general rule is just if it actually applies to all cases to which, according to its content, this rule should be applied. A general rule is "unfair if applied to one case and not applied to other similar cases. Kelsen interprets justice in the sense of legality as a quality related not to the content of a positive legal order, but to its application. Kelsen in this case does not distinguish whether the law is capitalistic, communistic, democratic or autocratic. In the context of Kelsen's explanation, there is no problem of justice with the New Order's authoritarianism which limited freedom to assemble, express opinions, and so on if those restrictions were determined by the law itself. The most important thing for Kelsen is that the application of the law applies to everyone. The statement that a person's actions are fair or unfair in the sense based on law or not based on law, means that the action is in accordance or not in accordance with a legal norm which is considered valid by the subject judging it because this norm is included in a positive legal order (Kelsen, 2016) .

There are several points in the theory of justice according to the theories of Gustrab Radbruch, Hart, Hujiber, and Kelsen, namely laws and regulations that promote welfare, implementation of existing regulations, and equality of parties. In relation to the case of the Government's debt to the CMNP, non-payment of the Government's debt to the CMNP is an act that violates the principle of justice. In law, both the Government and the CMNP have the same position and it is an obligation for the Government to fulfill the rights that belong to the CMNP because how can people want to obey the law if the government itself does not obey the law.

Conclusion

Based on the explanation above, the government's action that has not paid CMNP's debt is an act that violates the principles of good faith and propriety in law because one of the indications in implementing this principle is to fulfill the agreement made. So the prohibition of an agreement with CMNP is an inappropriate act and does not have good faith. In addition, this act also violated the principle of justice because it disobeyed the Government, disobeyed court decisions and agreements with CMNP.

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