



## Third Party Legal Protection in the Cooperation Agreement for Purchasing Company Assets (Analysis of the Decision of the Mataram High Court Number: 10 / PDT / 2018 / PT. MTR)

Michael Anshori<sup>1</sup>; Zainal Asikin; Djumardin<sup>2</sup>

<sup>1</sup> Student of Magister Law Study Program, Postgraduate Program, Mataram University, Indonesia

<sup>2</sup> Lecture of Law Faculty, Mataram University, Indonesia

<http://dx.doi.org/10.18415/ijmmu.v6i4.933>

### **Abstract**

This study aims to determine the legal protection of third parties and analyze the legal protection of the parties and the position of the parties in the Cooperation agreement to purchase assets of companies owned by PT. Wildlife Conservation. This type of research is normative legal research, with the approach used is the legislative approach, conceptual approach and Case study approach. Position of the parties in the Cooperation agreement to purchase assets of a company owned by PT. Biodiversity Tourism, in the Deed of Cooperation Agreement Number 81. Based on the Deed of the Cooperation Agreement the Rights and Obligations of the Parties are subject to the Agreement made by the parties before a Notary. Because of the third party's legal protection in the Cooperation Agreement No. 81 is not contradictory to the provisions of Article 1338, then legally it is the legal basis for filing a default lawsuit at the Mataram District Court, the Mataram High Court.

**Keywords:** Agreement; Asset Purchase; Third Party

### **Introduction**

An agreement is a legal relationship (*rechtsbetrekking*) which is regulated and legalized by the law itself. Therefore, an agreement containing a legal relationship between individuals/person is a relationship that is located and is in a legal environment. Agreements or agreements are regulated in book III of the Civil Code (Civil Code).

Cooperation agreement is an unnamed agreement that is regulated outside the Civil Code but occurs in the community. The birth of cooperation agreements in practice is based on Article 1338 of the Civil Code. Based on Article 1338 Paragraph (1) of the Civil Code, this provision reads "All agreements made legally apply as laws for those who make them".

This research wants to review a Cooperation Agreement Number 81 made before a Notary. The agreement is not mentioned in connection with a third-party Limited Liability Company Lombok Lestari Prosperous Resources (PT. SSL) as a shareholder and as a buyer of the Limited Liability Company PT. Wildlife Conservation (PT.WAH) whose existence is not included in the Cooperation Agreement No. 81 of these. so that third parties do not get legal strength guarantees related to making Cooperation and legal protection agreements.

The No.81 Cooperation Agreement is a provision that must be obeyed by the parties as a legal consequence arising from what has been agreed upon in the Cooperation Agreement No. 81 This is in line with Article 1338 paragraph (1) of the Civil Code which stipulates that the agreement is a law for the parties who make it commonly known as the *Pacta Sund Servanda* Principle. This principle relates to the consequences of the agreement and concludes in the sentence "applies as a law for those who make it" at the end of Article 1338 paragraph (1) of the Civil Code. Thus, agreements made legally by the parties bind the producers as a law so that all provisions must be obeyed and carried out by the parties. The application of the principle of legal certainty is important considering that based on this form in such a way, the parties can know what their rights and obligations are and to what extent the rights and obligations apply. Without the application of the principle of legal certainty, the parties do not know what to do, do not know what their actions are right or wrong, are prohibited or not prohibited based on the agreement and the validity of the parties to make a change to a cooperation agreement.

Based on the description above, it is interesting to study in more detail in detail the problem that occurred so that the researcher raised a title about Third Party Legal Protection (PT. SSL) in the Corporate Asset Purchase Agreement (Analysis of the Mataram High Court Decision Number: 10/PDT/2018/PT.MTR).

The problem raised in this study is how the third-party legal protection (PT. SSL) on the purchase of PT.WAH company assets in the case of the Mataram High Court Decision Number: 10/PDT/2018/PT. MTR. With the aim to find out and analyze the legal protection of third parties (PT. SSL) towards the asset purchase of the company PT. WAH in the case of the Mataram High Court Decision Number: 10 / PDT / 2018 / PT. MTR.

## **Research Methods**

Type of research is normative legal research and the approach to legislation (statute approach), conceptual approach and analytical approach. The types and sources of legal materials, namely primary legal materials, secondary legal materials and tertiary legal materials with legal material collection techniques, are carried out through stages of inventory, systematization, synchronization and harmonization of various relevant legal documents. And analysis of legal material is descriptive qualitative.

## **Result and Discussion**

The analysis of legal issues in this study uses the theory of legal protection proposed by Philipus M. Hadjon, namely the provision of legal protection in a preventive manner, namely, providing legal protection to shareholders using applicable laws. Then regarding the responsibilities of the directors will use the theory of piercing the corporate law means to tear the curtain of the company, whereas in corporate law, the term piercing the corporate law is a doctrine or theory that is defined as a process to burden responsibility on the shoulders of other people or companies, over legal actions carried out by a person or a company of a perpetrator (legal entity).

Forms of legal protection for third parties who are harmed as a result of not carrying out the contents in an agreement made by the Defendant (Adi Nugroho) in civil law regulated Any act that violates the law and brings harm to another person, requires that the person incur losses due to his mistake compensate for these losses.

Unlawful acts are deemed to occur by observing the actions of perpetrators who are thought to have violated the law, contrary to the rights of others, contrary to the legal obligations of the perpetrators, contrary to morality and public order, or contrary to propriety in the community both for themselves and people other, however, an act deemed as an illegal act must still be accountable whether it contains an element of error or not. Thus, the judge must be able to assess and weigh the severity of the mistakes made by someone in his relationship with this illegal act, so that compensation can be determined as possible.

Losses caused by illegal acts can be material losses and / or immaterial losses. Material losses can consist of real losses suffered and expected benefits. Provisions for compensation due to default as specified in Article 1243 to Article 1248 of the Civil Code can be applied analogically to compensation due to illegal acts. Immaterial losses are losses in the form of reducing the comfort of one's life, for example because of insults, disability and so on, but someone who commits an act against the law does not always have to provide compensation for the immaterial losses. To be able to claim compensation for people who commit acts against the law, besides having to make mistakes, Article 1365 of the Civil Code also requires a causal relationship / causal relationship between unlawful acts, errors and losses, thus the losses that can be claimed are only losses caused by acts against the law. Unlawful acts as stipulated in Article 1365 of the Civil Code can also be used as a basis for filing compensation for actions deemed unlawful for the implementation of the precautionary principle by the Defendant, either through litigation settlement or through a court by filing a lawsuit, and dispute resolution in non-litigation or outside the court, for example by way of negotiation, mediation, conciliation or arbitration.

If the dispute settlement chosen is litigation, then the provisions of the civil procedural law must be considered. In Indonesia, in accordance with the legal provisions of the civil procedure, a legal action must be proven through an examination process at the judiciary starting from the first level (District Court) to the final level (High Court or possibly the Supreme Court) on the condition that the judge has the power permanent and definite law (*inkracht van gewijsde*).

The claim filed is based on the provisions of civil law, so in the process of proof, elements must be proven that indicate the existence of an unlawful act through evidence recognized in statutory regulations, both written evidence, witnesses including witness's expert, suspicion, confession and oath. Thus, the judge will get confidence regarding the illegal acts that have occurred.

Seeing the legal problem in this matter is the existence of a Cooperation Deed that is not obeyed by either party, so that there is no intention and purpose of the Cooperation Deed, then it is appropriate and legally feasible from the cooperation deed that the third party must be protected his rights.

The following is a qualitative analysis of the Judge's decision regarding the considerations that form the basis of the decision, namely:

Seeing the object of the case, Defendant I (Adi Nugroho) has cooperated with the Plaintiff (Prajadi Agus Winaktu) which was poured in the form of a cooperation agreement deed, namely the Deed of Cooperation Agreement No.81, in the case of purchasing a land certificate Number 35 / Pemenang Barat Village, covering an area of 139,035 (one hundred thirty nine thousand thirty five) square meters located in West Nusa Tenggara Province, West Lombok Regency (now North Lombok), Tanjung District

(now Pemenang), Pemenang Barat Village (now Gili Indah ), which is registered under the name of the Defendant I, (PT. Wanawisata Alam Hayati). Date 16 April 2009 has occurred the making of the Sale and Purchase Deed No. 46 between Defendant I (Adi Nugroho) as Proxy of Defendant II (PT. Sumber Sejahtera Lestari Lombok) and Defendant I (PT. Wanawisata Alam Hayati) as Seller. The seller of the plot of land is Rp. 13,942,412,320 (Triga Million Billion Nine Hundred Forty Two Million Four Hundred Twelve thousand Three Hundred Twenty Rupiah). Then the Deed of Cooperation Agreement No.81 was made before a Notary PETRA MARIAWATI AMBROSIUS IMAM SEJIADJI Serjana Hukum. The agreement made by the Plaintiff (Prajadi Agus Winaktu) with Defendant I (Adi Nugroho) in order to purchase a plot of land for the Right to Use Building Certificate Number 35 / Pemenang Barat Village, covering 139,035 (one hundred thirty nine thousand thirty five) square meters located in the Province West Nusa Tenggara, West Lombok Regency (now North Lombok), Tanjung District (now Winner), Pemenang Barat Village (now Gili Indah), which was registered in the name of the Defendant I (PT. Wanawisata Alam Hayati) ., But the land that was bought by Defendant I (Adi Nugroho) as the attorney of PT. The Lombok Sustainable Prosperous Source has been denied by Defendant I (Adi Nugroho) because until now Defendant I has never given the Plaintiff's rights (Prajadi Agus Winaktu), which counts 50% according to the cooperation deed made by the parties in order to purchase land the property of the Defendant I. That the Defendant I's action was claimed by the Plaintiff because the Plaintiff could not enjoy the proceeds of the purchase of the land. Thus, legally the Defendant I have committed a default / broken promise to the plaintiff who did not do something that has been received in the contract in the cooperation agreement, therefore the Plaintiff filed a claim with the Mataram District Court. Then from the case process in the Mataram District Court, the proof of evidence is in the form of proof of the letter. Finally, from the Letter of evidence submitted by the Parties in the Default Civil Case Number: 10 / PDT / 2018 / PT. MTR. Encourage the Judge to grant the Claim made by the Plaintiff.

In the judgment of the Judge to decide the case, that the Panel of Judges of Appeals after observing the consideration of the first Level Court decision, especially the consideration of Provision and Exception, argues that the consideration has been correct and correct, so it must be strengthened;

In consideration of the First Level Judge, the Deed of Agreement Number 81 is declared valid and binding on the Parties, so that the Petitem number 2 of the Plaintiff's claim can be granted, as well as the number 3; The Panel of Judges of Appeals believes that the birth of Deed Number 81 dated December 23, 2010 (P-1 = T1-1) which the Plaintiff (Prajadi Agus Winaktu) and Defendant I (Adi Nugroho) bolted cannot be released with Special Power of Attorney (P-19) who was given the Defendant I (PT. Wanawisata Alam Hayati) to Defendant I (Adi Nugroho) who basically contained that the Defendant I (Adi Nugroho) had the right to make a purchase and at the same time acted as a seller of 139,035 land (one hundred thirty nine thousand three fifty-five) square meters located in West Nusa Tenggara Province, West Lombok District (now North Lombok), Tanjung District (now Pemenang), Pemenang Barat Village (now Gili Indah), which is registered in the name of Defendant I, that Special Power of Attorney (P-19) also cannot be released from the Sale and Purchase Deed Number 46 16 April 2009 (P-20) where Defendant I as the Proxy of Defendant II has bound himself as a Purchaser with Suspected Tutut t I as a Seller. The transitional process of the object of lawful disputes between Legal Entities and Legal Entities is in reality the Plaintiff has actually paid off the installments to full payment so that in his position as a good-intentioned buyer, the buyer has the right to obtain legal protection in accordance with the rights which he must obtain according to law . Things that must be implemented in an agreement are called achievements. According to Article 1338 paragraph (3) of the Civil Code all agreements must be carried out in good faith. The intention of good faith from subjective meaning is that an agreement must be carried out in good faith, namely the implementation must be carried out by heeding norms and compliance and decency. According to Article 1338 paragraph (3) of the Civil Code, judges are given the power to oversee the implementation of an agreement not until the implementation violates propriety or justice.

From the description of the judges' considerations above, the panel of judges of the Appeal argued that Defendant I (Adi Nugroho) and Defendant II (PT. Sumber Sejahtera Lestari Lombok). Did not implement the agreement that had been taken for 2 (two) parts, namely half of the South to the Plaintiff, that thus and it is fitting for the Defendant I (Adi Nugroho) and Defendant I (PT. Sumber Sejahtera Lestari Lombok) to be sentenced to surrender half of the land to the Plaintiff to carry out the contents in the Deed of the Cooperation Agreement.

The Defendant I was declared to have defaulted, the Panel of Judges of Appeals argued that because the Plaintiff in this case had bought and paid a plot together with Defendant I and Defendant II as outlined in the Cooperation Agreement No. 81 as proof P.1, where in this case the Plaintiff as the buyer has fulfilled his rights and obligations to the object of the dispute that has been purchased while the Defendant I as the Proxy of the Defendant II has received his rights but the Defendant I in this case has not / fulfilled his obligation as the attorney from Defendant II to submit the certificate in order to reverse the Plaintiff's name against the object of the dispute, by not having submitted the disputed object certificate from Defendant I, II, Defendant I to the Plaintiff, then the Defendant I's action has been proven as a breach of promise or default.

### **Conclusion**

Position of the parties and third parties (PT. SSSL) in the Cooperation agreement to purchase assets of the company owned by PT. WAH, in the Deed of Cooperation Agreement Number 81. Based on the Deed of Cooperation Agreement, the Rights and Obligations of the Parties are subject to the Agreement made by the parties before a Notary. And third parties are not protected in this case as buyers by the decision of the High Court Number: 10 / PDT / 2018 / PT. MTR.

Because of the third party's legal protection (PT. SSSL) in the Cooperation Agreement No. 81 of the parties to the Cooperation Agreement No. 81. Liability Company PT. PT. SSSL Liability Company PT. Wildlife Tourism, must get legal protection from the Agency Court. 102 of the 2007 40 year law concerning Limited Liability Companies.

### **Recommendation**

The need for rules that specifically regulate relating to third parties as buyers of company assets carried out by parties outside the company's structure. It is necessary to add an article in law 40 of 2007 concerning limited liability companies regarding third parties as buyers carried out by parties outside the company's structure.

### **References**

#### *Books*

- A. Qirom Syamsuddin Meliala, 1985, *Pokok-pokok Hukum Perjanjian*, Liberty, Yogyakarta.
- Abdulkadir Muhammad, 1990, *Hukum Perikatan*, Citra Aditya Bakti, Bandung.
- Absori, 1998, *Hukum Ekonomi Beberapa Aspek Pengembangan*, Universitas Muhammadiyah Surakarta.
- Ahmad Yani & Gunawan Widjaja, 1999, *Seri Hukum Bisnis, Perseroan Terbatas*, PT.Raja Grafindo Persada, Jakarta.

- Ahmadi Miru dan Sakka Pati, 2008. *Hukum perikatan penjelasan makna pasal 1233 sampai 1456 BW*, RajaGrafindo Persada, Jakarta.
- Ahmadi Miru, 2007, *Hukum Kontrak dan Perancangan Kontrak*, Rajawali Pers, Jakarta.
- Bab XII Buku III Kitab Undang – Undang Hukum Perdata
- Bambang Waluyo, 1991, *Penelitian Hukum Dalam Praktek*, Sinar Grafika, Jakarta.
- Bryan A. Garner, 2009, *Black's Law Dictionary*, Ninth Edition, St. Paul: West.
- Carl Joachim Friedrich, 2004, *Filsafat Hukum Perspektif Historis*, Nuansa dan Nusamedia, Bandung.
- Diana Tranti C, 2006, *Hukum Kontrak*, Mandar Maju, Yogyakarta.
- Elsi Kartika Sari & Advendi Simangunsong, 2007, *Hukum Dalam Ekonomi*, Cetakan IV, Jakarta.
- Habib Adjie, *Status Badan Hukum Prinsip-Prinsip dan Tanggung Jawab Sosial Perusahaan*, Cetakan pertama, Mandar Maju, Bandung.
- Hans Kelsen, 2009, *Dasar-Dasar Hukum Normatif*, Nusamedia, Jakarta.
- J. Satrio, 1999, *Hukum Perikatan*, Alumni, Bandung.
- Lili Rasyidi, 1988, *Filsafat Hukum*, Remadja Karya, Bandung.
- Munir fuady, 2008, “Pengantar hukum bisnis” bandung, Citra Aditya Bakti.
- Munir fuady, 2008, *Pengantar Hukum Bisnis*, bandung, Citra Aditya Bakti, Bandung.
- Philiphus M. Hadjon, 1987, *Perlindungan Hukum bagi Rakyat Indonesia*, Bina Ilmu, Surabaya.
- R. Hadhikusuma dan Sumantoro, 1996, *Pengertian Pokok Hukum Perusahaan: Bentukbentuk Perusahaan yang berlaku di Indonesia*, Rajagrafindo Persada, Jakarta.
- R. setiawan, 1987, *Pokok-pokok Hukum Perikatan*, Binacipta, Bandung.
- R. Soeroso, 2010, *Perjanjian di bawah tangan*, Sinar Grafika, Jakarta.
- R. Subekti, 1995, *Aneka Perjanjian*, Citra Aditya Bakti.
- Salim H.S, 2008, *Perkembangan Hukum Kontrak Innominat Di Indonesia*, Cet. 4, Sinar Grafika, Jakarta.
- Salim HS dan Erlis Septiana Nurbani, 2013, *Penerapan Teori Hukum Pada Penelitian Desertasi dan Tesis*, Raja Grafindo Persada, Jakarta.
- Salim HS, 2002, *Pengantar Hukum Perdata Tertulis (BW)*, Cetakan Pertama, Sinar Grafika, Jakarta.
- Salim HS, 2003, *Hukum Kontrak (Teori dan Teknik Penyusunan Kontrak)*, Sinar Grafika, Jakarta.
- Satjipto Rahardjo, 2003, *Sisi-Sisi Lain dari Hukum di Indonesia*, Kompas, Jakarta.
- Satjipto Rahardjo, 2006, *Ilmu Hukum*, Citra Aditya Bakti, Bandung.
- Setiono, “*Rule of Law*”, (Surakarta: Disertasi S2 Fakultas Hukum, Universitas Sebelas Maret, 2004).
- Soedjono Dirdjosisworo, 2008, *Pengantar Ilmu Hukum*, Raja Grafindo Persada, Jakarta. Jimly Asshiddiqie dan M. Ali Safa'at, 2006, *Teori Hans Kelsen Tentang Hukum*, Sekretariat Jenderal dan Kepaniteraan MK RI, Jakarta.
- Soerjono Soekanto & Sri Mamudji, 1985, *Penelitian Hukum Normative Suatu Tinjauan Singkat*, Raja Grafindo Persada, Jakarta.
- Sri Soedwei Masjchoen Sofwan, 2000, *Hukum Perdata, Hukum Benda*, Liberty, Yogyakarta.
- Subketi, 1982, *Pokok-pokok hukum perdata*, Intermasa, Bandung.
- Sudikno Mertokusumo, *Mengenal Hukum (Suatu Pengantar)*, Liberty, Yogyakarta.

Syahmin AK, 2005, *Hukum Kontrak Internasional*, Raja Grafindo Persada, Jakarta.

Wirdjono Prodjodikoro, 2003, *Asas-asas Hukum Perjanjian*, Mandar Maju, Bandung.

Zainal Asikin dan Wira Pria Suhartana, 2018, "*Pengantar Hukum Perusahaan*". Prenadamedia Group.

### *Regulations*

Civil Code

Law Number 40 of 2007 concerning Limited Liability Companies

### **Copyrights**

Copyright for this article is retained by the author(s), with first publication rights granted to the journal.

This is an open-access article distributed under the terms and conditions of the Creative Commons Attribution license (<http://creativecommons.org/licenses/by/4.0/>).