

LEGAL IMPLICATIONS OF THE ADMISSION OF EXCEPTIO NON ADIMPLETI CONTRACTUS ON A COUNTERCLAIM IN A BREACH OF CONTRACT CASE

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Abstract

In Indonesian judicial practice, there is a divergence of opinions among judges regarding the legal consequences/implications of the acceptance of Exceptio non adimpleti contractus on counterclaim. This has prompted the author to research the legal implications of the acceptance of Exceptio non adimpleti contractus on the counterclaim in breach of contract cases. This research utilizes a normative legal research method. If Exceptio non adimpleti contractus is granted, the counter claim may still be considered by the panel of judges to fulfill the principles of simple, swift, and low-cost justice. This approach is considered more efficient and avoids delays also additional costs that would arise if the defendant were required to file a new lawsuit. Moreover, within the framework of progressive legal theory, adjudicating a case while considering the counterclaim, even after Exceptio non adimpleti contractus is granted, can provide real benefits to society by ensuring prompt and more affordable access to justice.

Keywords: *Implications , Exceptio non adimpleti contractus, , Counterclaim*

INTRODUCTION

Human beings are inherently interdependent, and to meet their needs, they frequently engage in agreements. In the context of business, such agreements function as a mechanism to govern the relationships between individuals and ensure the attainment of shared objectives.(Juliati Br Ginting 2022). Agreements play a pivotal role in providing legal certainty for all parties involved. They act as binding instruments that govern the rights and obligations of both parties, thereby forming the legal foundation for their relationship, akin to a statute that must be adhered to .(Faisal Santiago 2012) Under contract law, reciprocal agreements give rise to obligations or performances that each party must fulfill in accordance with the terms agreed upon (Gunawan Widjaja 2001). The performance within an agreement may entail delivering something, performing an act, or refraining from an act, all of which constitute the execution of duties mutually agreed upon by the parties. In conclusion, in reciprocal agreements, each party is obligated to perform the agreed-upon duties. If one party fails to fulfill its obligations in accordance with the agreement, such failure constitutes a breach of contract .

A breach of contract may take the form of non-performance, delayed performance, or defective performance. The aggrieved party as a result of the breach may file a lawsuit in court seeking enforcement of the obligations or compensation for damages. (Soedjono Dirdjosisworo 2001) Under the Indonesian legal system, the aggrieved party in a breach of contract case may file a breach of contract lawsuit in court. The party initiating the lawsuit is referred to as the plaintiff, while the party alleged to have failed to fulfill its obligations is referred to as the defendant. In civil litigation proceedings, both the plaintiff and the defendant are required to undergo mediation as an initial step in accordance with applicable legal provisions. If mediation fails, the process proceeds with the reading of the lawsuit, during which the defendant is given the opportunity to respond to the allegations. In the Indonesian judicial system, the defendant has the right to submit a response to the plaintiff's lawsuit. This response serves as a means for the defendant to defend their rights and counter the arguments presented by the plaintiff. (Ery Agus Priyono 2019). One common form of response is an objection, known as an exception, which focuses on procedural or formal defects in the lawsuit. Such objections may argue that the lawsuit contains formal defects rendering it invalid or

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inadmissible. (M Yahya Harahap 2019) One frequently raised exception in breach of contract cases is the Exceptio Non Adimpleti Contractus. This exception challenges allegations of breach by asserting that the defendant is entitled to withhold performance and reject claims until the other party has fulfilled its obligations under the contract. In other words, the defendant may suspend its obligations if the plaintiff has not properly performed their contractual duties (Hasna Farida Brilianto dan Devi Siti Hamzah Marpaung 2019)

In Indonesian judicial practice, in addition to raising an Exceptio Non Adimpleti Contractus, a defendant in a breach of contract case may also file a counterclaim (gugatan rekompensi) against the plaintiff. Such a counterclaim can be submitted alongside the defendant's response to the original lawsuit without requiring the initiation of a new lawsuit (Yulia 2018)

Pursuant to Article 132b paragraph (2) of the *Herziene Indonesisch Reglement* (HIR) and Article 158 paragraph (2) of the *Rechtsreglement voor de Buitengewesten* (RBG), when a defendant simultaneously raises an Exceptio non adimpleti contractus and files a counterclaim, the panel of judges must consider both the exception and the counterclaim in their final decision. If the exception is granted, the original claim and the counterclaim may both be deemed inadmissible. Conversely, if the exception is rejected, the merits of both the original claim and the counterclaim will proceed to further examination (Endang Hadrian dan Lukman Hakim 2019)

Although the Indonesian legal system does not explicitly regulate the legal consequences of a counterclaim when an Exceptio non adimpleti contractus is granted or rejected, prevailing judicial practice suggests that if the exception is granted, the counterclaim is typically declared inadmissible. However, in some decisions, such as Decision No. 29/Pdt.G/2021/PN Bgl and Decision No. 612/Pdt.G/2017/PN Jkt Sel, counterclaims were still considered even though the Exceptio non adimpleti contractus was granted.

Based on the foregoing, it can be concluded that there is a divergence of opinion among judges regarding the legal implications of granting an Exceptio non adimpleti contractus on counterclaims. Thus, the author is interested in exploring the precise legal implications of granting an Exceptio non adimpleti contractus on counterclaims in breach of contract cases.

Based on the introduction above, the focus points for discussing the problems in this article are first How are Exceptio non adimpleti contractus and counterclaims regulated in the Indonesian legal system? Second, What are the legal implications/effects of the granting of Exceptio Non Adimpleti Contractus on Relation to the Principal Claim? Third, What What is the legal impact of the granting of Exceptio Non Adimpleti Contractus on the Counterclaim.?

LITERATURE REVIEW

Chika Gunawan and Albert Tanjung with the research title "Application of the Principle of Exceptio Non Adimpleti Contractus in Contract Law: Based on Decision Number 1796 K/Pdt/2015". This research discusses the application of the principle of exceptio non adimpleti contractus in contract law in Indonesia and the implications of the application of this principle on the validity of a contract in contract law in Indonesia. Yulia with the research title "Application of the Exceptio Non Adimpleti Contractus Principle in Bankruptcy Cases (Case Study of Supreme Court Decision No. 704 K / Pdt.Sus / 2012 Between PT. Telkomsel Against PT. Prima Jaya Informatika)". This research discusses in essence the application of the exceptio non adimpleti contractus principle in the decision of the Supreme Court of the Republic of Indonesia Number 704 K / Pdt.Sus / 2012 between PT. Telkomsel against PT. Prima Jaya Informatika.

Linda Rachmainy, S.H., M.H.vd and Ema Rahmawati, S.H., M.H with the research title "Implementation of Counterclaims as the Defendant's Privilege in Divorce (Divorce) Cases in Religious Courts". This research discusses in essence what counterclaims can be filed by the defendant (respondent) in a divorce lawsuit/divorce application in the Religious Court in relation to Civil Procedure Law and the attitude of judges in providing considerations and decisions related to counterclaims in divorce lawsuits/divorce applications in practice in the Religious Courts. Rezky Mokodongan, with the research title "Reconventional Lawsuits in Land Disputes According to the Perspective of Civil Law". This research discusses in essence the reconventional lawsuit according to statutory regulations and the application of reconventional lawsuits in land disputes according to the perspective of civil law.

METHOD

This research utilizes a normative legal research method, focusing on the analysis of library materials or secondary data, including legislation, court decisions, legal theories, and the opinions of legal scholars. This research also includes a study of the legal principles and norms contained in relevant regulations and legal literature related

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to the issues discussed. The approach used in this research is the Statute Approach, where the author examines regulations related to the research topic and analyzes the application of legal norms in relevant court decisions.

RESULTS AND DISCUSSION

Exceptio non adimpleti contractus in the Indonesian legal system

In civil procedural law, one of the responses submitted by a defendant in court proceedings is an exception. An exception is a response or objection raised by the defendant against the substance of the plaintiff's claim. However, exceptions generally relate to the formal requirements of the plaintiff's claim. The defendant submits an exception when they believe that the plaintiff's claim does not meet the formal requirements of a valid claim, thereby arguing that the claim is invalid and that the substantive aspects of the claim need not be considered by the panel of judges (Elfrida Ratnawati 2024)

One type of exception recognized in Indonesian judicial practice is the material exception (eksepsi materil), which pertains to the substance of the plaintiff's claim. Among the known forms of material exceptions is the Exceptio Non Adimpleti Contractus (H. Danialsyah, Muhammad Ridwan Lubis, and Gomgom T.P. Siregar 2023)

Although the Exceptio non adimpleti contractus is recognized in Indonesian judicial practice, there is no specific regulation governing it within Indonesia's existing civil procedural laws. It is acknowledged in practice because it is classified as an exception other than those related to jurisdiction, as provided under Articles 136 of the *Herziene Indonesisch Reglement* (HIR) and 162 of the *Rechtsreglement voor de Buitengewesten* (Rbg).

Exceptio non adimpleti contractus is recognized in Indonesian judicial practice as a defense distinct from exceptions concerning the court's jurisdiction, as stipulated in Article 136 of the HIR/162 of the RBg.

Pursuant to Article 136 of the HIR/162 of the RBg, it is stipulated that any exception raised by the defendant, aside from an exception to jurisdiction, must be considered by the panel of judges alongside the principal claim.

Based on the provisions of Article 136 of the HIR/162 of the RBg, the author opines that if the defendant raises Exceptio Non Adimpleti Contractus, the panel of judges must assess this defense in conjunction with the principal claim, as Exceptio non adimpleti contractus is not an exception related to jurisdiction (Chika Gunawan and Albert Tanjung 2024)

The Exceptio non adimpleti contractus is an exception that can be raised by the defendant in breach of contract cases. This exception typically arises in reciprocal agreements, where each party has obligations to perform under the terms of the agreement. (Diva Rombot dan Djefry W. Lumintang 2020)

The Exceptio non adimpleti contractus is closely linked to reciprocal agreements because it is an exception raised by one party to the agreement against the other party, alleging that the latter has failed to fulfill their obligations under the agreement. The exception is raised because one party contends that they are unable to perform their obligations as agreed upon, as the other party has first failed to fulfill their own obligations (Ray Irawan Al-Madrusi dan Fully Handayani Ridwan 2022)

From this explanation, it can be concluded that the Exceptio non adimpleti contractus is essentially an exception invoked when one party to an agreement has committed a breach of contract because the other party has clearly and demonstrably breached the agreement beforehand. In breach of contract cases, the Exceptio non adimpleti contractus can serve as a legal basis for the panel of judges to dismiss the plaintiff's claim if it is proven that the plaintiff was the first to commit a breach (Al Fath 2024)

Considering the concept of the Exceptio non adimpleti contractus in the context of Indonesian civil procedural law, the author concludes that the Exceptio non adimpleti contractus is an exception raised by the defendant in breach of contract cases. The defendant asserts that they have not performed their obligations under the agreement because the plaintiff failed to perform their obligations first. The purpose of raising the Exceptio non adimpleti contractus is to persuade the panel of judges to dismiss the plaintiff's claim in its entirety. In breach of contract cases, if the defendant raises the Exceptio Non Adimpleti Contractus, the panel of judges must consider the exception alongside the merits of the case.

Counterclaims regulated in the Indonesian legal system

As previously stated in the introduction, aside from filing an exception, a defendant may also file a counterclaim. When the defendant submits a counterclaim, they are referred to in judicial practice as the plaintiff in reconvention/defendant in convention, while the plaintiff is referred to as the defendant in reconvention/plaintiff in convention. (Sophar Maru Hutagalung 2019) The right to file a counterclaim is an exclusive privilege granted to the

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defendant in judicial practice. It is considered exclusive because it allows the defendant to file a claim against the plaintiff alongside the principal or original claim. (Linda Rachmainy dan Ema Rahmawati 2017) The definition of a counterclaim is provided in Article 132a of the *Herziene Indonesisch Reglement* (HIR) and Article 157 of the *Rechtsreglement voor de Buitengewesten* (RBg). From these provisions, a counterclaim can be understood as a claim filed by the defendant during the examination of the plaintiff's principal claim (Fauziyah Rahmah Izzati, Linda Rachmainy, dan Sherly Ayuna Putri 2024)

The substantive requirements for counterclaims in civil procedural law are outlined in Article 132a(1) of the HIR and Article 157(1) of the RBg. These requirements can be summarized as follows (Rezky Mokodongan, Dani R. Pinasang, dan Nixon S. Lowing 2020), first If the claim filed by the plaintiff is made in their capacity in an official position, the counterclaim must not pertain to the personal matters of the plaintiff. Similarly, if the claim filed by the plaintiff is made in their personal capacity, the counterclaim must not relate to the plaintiff's capacity in an official position. For example, if the plaintiff files a claim in their capacity as a representative of a limited liability company (limited liability company), the defendant cannot file a counterclaim against the plaintiff in their personal capacity, second, If the Court lacks jurisdiction to adjudicate the principal claim filed by the plaintiff, the counterclaim cannot be submitted, and third A counterclaim cannot be filed if it concerns matters related to the enforcement of a court decision. For instance, in cases involving thirdparty opposition (*derden verzet*) during the enforcement of a court decision, the opponent cannot submit a counterclaim.

In Indonesian civil procedural law, there are no explicit provisions regarding the formal requirements of a counterclaim. However, based on judicial practice, the formal requirements for a counterclaim can be summarized as follows (I Nyoman Setiadi Sabda 2015) first It must explicitly state who is designated as the defendant in the counterclaim. Referring to the concept of a counterclaim previously outlined, the defendant in the counterclaim is necessarily the original plaintiff, second, It must clearly detail the basis (*posita*) or grounds of the claim. The *posita* or grounds of the claim should include both the factual basis and legal foundation supporting the submission of the counterclaim., third, It must explicitly state the prayer for relief (*petitum*) in the counterclaim, and Fourthly The counterclaim must be submitted together with the defendant's Answer. This requirement is as stipulated under Article 132b paragraph (1) of the HIR/Article 158 paragraph (1) of the Rbg.

As mentioned, counterclaims must be submitted alongside the defendant's answer. The purpose is to enable both the principal claim and the counterclaim to be examined and decided by the panel of judges in a single judgment, unless they determine that one of the claims, either the principal claim or the counterclaim, should be examined and decided first. Regardless of the order of examination, both the principal claim and the counterclaim must be decided by the same panel of judges (Sarwoni 2011) The requirement that the same panel of judges decide both the principal claim and the counterclaim serves to streamline case examination and prevent conflicting judgments. Additionally, by filing a counterclaim, litigation costs are reduced, as the counterclaim does not require a separate case registration number, thereby eliminating the need for additional court fees. (Muhammad Helmi 2014)

legal implications/effects of the granting of Exceptio Non Adimpleti Contractus on Relation to the Principal Claim

In the preceding section, it was explained that an exception primarily refers to the defendant's response or objection regarding the formal requirements or formalities of the plaintiff's claim. A defendant raises such exceptions when they believe that the plaintiff's claim contains formal defects Same as the first aspect, please write the article on the same way including sub-section if required. (Hamzah Pai'pin, Sufirman Rahman, dan Salle 2022)

Indonesian civil procedural law does not explicitly regulate the legal consequences of the principal claim when an exception is granted during the adjudication of a civil case. However, based on the decisions of the Supreme Court of the Republic of Indonesia (No. 1149/K/Sip/1975 dated April 17, 1975; No. 565/K/Sip/1973 dated August 21, 1973; and No. 1149/K/Sip/1979 dated April 7, 1979), it has been established that when the subject matter of a claim is unclear, the claim must be declared inadmissible.

From these decisions, it can be concluded that an unclear subject matter constitutes an exception known as *exceptio obscur libel*. Therefore, when the subject matter is deemed unclear, the Supreme Court has determined that if the exception is granted, the claim must be declared inadmissible. Based on this reasoning, it can be concluded that if the defendant raises an exception in a civil case and the exception is granted by the panel of judges, the principal claim must be declared inadmissible. In the previous section, the doctrine of *Exceptio non adimpleti contractus* was explained as an exception raised when one party to a contract alleges breach of contract on the grounds that the other party has already materially breached the contract. Given the above considerations, *Exceptio non*

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adimpleti contractus is recognized as an exception applicable in breach of contract cases. If a defendant raises this exception and it is granted by the panel of judges, the principal claim must be declared inadmissible.

In Indonesian judicial practice, several decisions have stated that the original lawsuit was not accepted because the judge granted Exceptio non adimpleti contractus, while the decisions are as follows:

First Decision No. 229/Pdt.G/2024/PN Dps. In this case, the Original plaintiff /Counterclaim Defendant in this case is Ebenezer Sowah Agginie and the Original Defendant/Counterclaim plaintiff in this case is PT Paradigm Divitae Nusantara. The Original plaintiff /Counterclaim Defendant argued that on 25 November 2023, the Original plaintiff /Counterclaim Defendant and the Original Defendant/Counterclaim plaintiff agreed to a cooperation agreement regarding the 'WE OUTSIDE' event to be held every Friday of the month, from 20 October 2023 to 20 October 2024, at the location of the Original Defendant/Counterclaim plaintiff in Mesa Bali.

The agreement specified that payment of revenue sharing should be made no later than two working days after the event. However, the Original Defendant/Counterclaim plaintiff did not fulfil its obligation to pay profit sharing to the Counterclaim Plaintiff for the events held on 31 December 2023 and 5 January 2024. The total unpaid profit sharing by the Original Defendant/Counterclaim plaintiff to the Original plaintiff /Counterclaim Defendant is Rp 66,384,750. As the Original Defendant/Counterclaim plaintiff did not fulfil its obligations, the Original plaintiff /Counterclaim Defendant is of the opinion that the Original Defendant/Counterclaim plaintiff has committed an act of default against the Original plaintiff /Counterclaim Defendant. Against the arguments of the lawsuit, the Original Defendant/Counterclaim plaintiff filed an Exceptio non adimpleti contractus which basically argued that the Original plaintiff /Counterclaim Defendant had first committed a default because it had not agreed with the Original Defendant/Counterclaim plaintiff to discuss P&L (Profit and Loss), and had not provided official invoices and tax invoices to the Original Defendant/Counterclaim plaintiff. As a result, the Original plaintiff /Counterclaim Defendant has not performed its obligations properly.

To consider the proposed Exceptio non adimpleti contractus, the Panel of Judges considered that based on the agreement between the Original plaintiff/Counterclaim Defendant and Original Defendant/Counterclaim plaintiff dated 25 November 2023, the Original Defendant/Counterclaim plaintiff would share profits if the Original plaintiff /Counterclaim Defendant provided official invoices and tax invoices to the Original Defendant/Counterclaim plaintiff. Based on the facts of the trial, the Panel of Judges was of the opinion that the Original plaintiff /Counterclaim Defendant had not provided an official invoice and tax invoice to the Original Defendant/Counterclaim plaintiff, so that the Original Defendant/Counterclaim plaintiff had not made profit sharing. Based on the aforementioned considerations, the Panel of Judges concluded that the Original plaintiff /Counterclaim Defendant had made a default and the Exceptio non adimpleti contractus submitted by the Original Defendant/Counterclaim plaintiff had legal grounds to be granted. Because the Panel of Judges granted the Exceptio non adimpleti contractus, the Panel of Judges also held that the Original Claim was not accepted.

Second Decision No 1023/Pdt.G/2021/PN Jkt.Sel. In this case, the Original plaintiff /Counterclaim Defendant in this case is PT. Pakkodian and the Original Defendant/Counterclaim plaintiff in this case is Devina Yasmine Ayurani. The Original plaintiff /Counterclaim Defendant argues that the Original plaintiff /Counterclaim Defendant is the manager of the Cervino Village Apartments, while the Original Defendant/Counterclaim plaintiff purchased the apartment unit based on a Sale and Purchase Agreement (PPJB) dated 8 August 2012. Based on the terms of the PPJB, the Original Defendant/Counterclaim plaintiff had an obligation to pay various fees such as electricity, clean water, management fees, sinking funds, and other fees. However, the Original Defendant/Counterclaim plaintiff was proven not to have fulfilled its obligation to pay these fees for several periods (November 2018 to May 2019) with a total unpaid amount of Rp 14,544,522. Therefore, Original Defendant/Counterclaim plaintiff is deemed to have committed an act of default to the Original plaintiff /Counterclaim Defendant in accordance with the agreed agreement, and by law Original Defendant/Counterclaim plaintiff must be declared to have committed a default. Against the arguments of the lawsuit, the Original Defendant/Counterclaim plaintiff filed an Exceptio non adimpleti contractus which essentially argued that the Original Defendant/Counterclaim plaintiff had fulfilled all of its obligations in accordance with the Agreement of Sale and Purchase (PPJB) for the 19th floor of Unit B, including paying for the apartment unit and all bills submitted by the Original plaintiff /Counterclaim Defendant, Original Defendant/Counterclaim plaintiff also presented proof of payment to support this claim. However, the Counterclaim Plaintiff/Counterclaim Defendant was unable to fulfil its obligations, namely to sign the Deed of Sale and Purchase (AJB) in front of a Notary (PPAT) and to hand over the Certificate of Title to the Flat Unit (SHMSRS) to the Original Defendant/Counterclaim plaintiff Defendant, as stipulated in Article 10 and Article 11 of the PPJB. To consider the proposed Exceptio non adimpleti contractus, the Panel of Judges considered that based on the evidence of the Sale and Purchase Agreement (PPJB), which regulates

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the rights and obligations of both parties, Original Defendant/Counterclaim plaintiff has fulfilled its obligations by paying off the payment and signing the minutes of handover. Therefore, Original Defendant/Counterclaim plaintiff was entitled to sign the Deed of Sale and Purchase (AJB) and obtain a Certificate of Title to the Flat Unit (SHMRS) for the apartment unit. However, until the lawsuit was filed, these obligations had not been fulfilled by the Counterclaim Plaintiff/Counterclaim Defendant. Based on the aforementioned considerations, the Panel of Judges concluded that the Original plaintiff /Counterclaim Defendant had made a default and the Exceptio non adimpleti contractus submitted by the Original Defendant/Counterclaim plaintiff had legal grounds to be granted. Because the Panel of Judges granted the Exceptio non adimpleti contractus, the Panel of Judges also held that the Original Claim was not accepted.

Third Decision No 1023/Pdt.G/2021/PN Jkt.Sel. In this case, the Original plaintiff /Counterclaim Defendant in this case is PT. Mysalon International and the Original Defendant/Counterclaim plaintiff in this case is Ratnasari Lukitaningrum. Original plaintiff /Counterclaim Defendant argued that the Original plaintiff /Counterclaim Defendant is a company engaged in the field of salon services with the trademark My Salon, which has been legally registered, while the Original Defendant/Counterclaim plaintiff opened a salon business using the trademark in several locations. Original plaintiff /Counterclaim Defendant and Original Defendant/Counterclaim plaintiff have entered into a franchise and licence agreement for MySalon outlets in Jababeka and Galaxi Bekasi. However, Original Defendant/Counterclaim plaintiff have defaulted on both agreements, including by not paying the royalty fee obligations since June 2016 for MySalon outlets in Jababeka and Galaxi, not paying BPJS Labour, and not reporting the turnover or finances of the Galaxi outlet. In addition, the Original Defendant/Counterclaim plaintiff also hired employees without authorisation from Original plaintiff /Counterclaim Defendant, which caused uncertainty in the outlet's financial and operational reports. All of these actions are considered to be a default of the agreed franchise and licence agreements, to the detriment of the Original plaintiff /Counterclaim Defendant. Original Defendant/Counterclaim plaintiff filed an answer that implicitly contained the concept of Exceptio non adimpleti contractus. Original Defendant/Counterclaim plaintiff argued that Original Defendant/Counterclaim plaintiff confirmed the existence of the Franchise and License agreements on 25 April 2015 and 18 June 2015, and acknowledged that it had not paid the royalty fee for MySalon Jababeka and Galaxi since August 2016 until now. However, Original Defendant/Counterclaim plaintiff states that the reason for the non-payment is because there is no support and CCTV facilities from the Original plaintiff /Counterclaim Defendant as the franchisor. Therefore, the Original Defendant/Counterclaim plaintiff denied having committed a default, on the grounds that the facilities promised by Original plaintiff /Counterclaim Defendant were not fulfilled or in other words the Original plaintiff /Counterclaim Defendant had first committed a default. In considering the case, the Panel of Judges has implicitly considered the concept of Exceptio non adimpleti contractus. The Panel of Judges was of the opinion that based on the provisions in Article 10.1.5 of the franchise agreement dated 18 June 2015, Original plaintiff /Counterclaim Defendant was responsible for providing a minimum of 12 skilled staff, but Original plaintiff /Counterclaim Defendant did not fulfil this obligation. Because the number of staff provided was not in accordance with what was agreed. Original plaintiff /Counterclaim Defendant was deemed to have first defaulted and the Panel of Judges was of the opinion that in treaty law, the party who breaches its obligations first loses the right to sue the other party on the basis of default. Based on the above considerations, the Panel concludes that the Original Defendant/Counterclaim plaintiff cannot be sued for default, and therefore the Original plaintiff /Counterclaim Defendant claim must be declared unacceptable.

Fourthly Decision No 29/Pdt.G/2021/PN Bgl In this case, the Original plaintiff /Counterclaim Defendant in this case is Edi Mustakiman and the Original Defendant/Counterclaim plaintiff in this case is PT. Toyota Astra Finance Service. Original plaintiff /Counterclaim Defendant argued that the Original plaintiff /Counterclaim Defendant and the Original Defendant/Counterclaim plaintiff entered into a financing agreement for a Toyota Rush vehicle on 27 August 2014, with Original plaintiff /Counterclaim Defendant agreeing to pay 48 instalments. However, Original plaintiff /Counterclaim Defendant experienced financial difficulties and was late in paying 7 instalments, which caused an increase in the interest to be paid. Original plaintiff /Counterclaim Defendant also requested a rescheduling of the instalments, but this request was ignored by the Original Defendant/Counterclaim plaintiff. As a result of disagreement regarding the rescheduling, the Original Defendant/Counterclaim plaintiff forcibly towed the car, which triggered a dispute between the two parties. Original plaintiff /Counterclaim Defendant then took the car back by force with the help of debt collectors, which led to a police report against Original plaintiff /Counterclaim Defendant on charges of theft. Original plaintiff /Counterclaim Defendant considered that the police report was an attempt by Original Defendant/Counterclaim plaintiff to pressure Original plaintiff /Counterclaim Defendant to hand back the car. Original plaintiff /Counterclaim Defendant considered the Original

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Defendant/Counterclaim plaintiff actions in taking the car through debt collectors and reporting Original plaintiff /Counterclaim Defendant to the police to be unlawful, because the object of the agreement was still in dispute. Against the arguments of the lawsuit, Original Defendant/Counterclaim plaintiff filed an Exceptio non adimpleti contractus which basically argued that the Original plaintiff /Counterclaim Defendant was proven to have committed an act of default by not paying off the 42nd instalment until now, so that Original plaintiff /Counterclaim Defendant had no right to sue Original Defendant/Counterclaim plaintiff, because Original plaintiff /Counterclaim Defendant itself did not fulfil its obligations; To consider the proposed Exceptio non adimpleti contractus, the Panel of Judges considered that between the Original plaintiff /Counterclaim Defendant and Original Defendant/Counterclaim plaintiff there was a legal relationship in the form of a reciprocal agreement, whereby the Original Defendant/Counterclaim plaintiff as a creditor had fulfilled its obligations by providing a financing facility, while Original plaintiff /Counterclaim Defendant as a debtor had received and utilised the facility by receiving a vehicle unit and making instalment payments. However, Original plaintiff /Counterclaim Defendant experienced delays in payment of 7 instalments due to financial problems, and this admission was not denied by the Original Defendant/Counterclaim plaintiff. Because Original plaintiff /Counterclaim Defendant did not perform all of its obligations under the agreement, the Panel of Judges was of the opinion that Original plaintiff /Counterclaim Defendant was not entitled to sue the Original Defendant/Counterclaim plaintiff. This refers to the principle of Exceptio Non Adimpleti Contractus, which states that a person cannot sue another party for default if he himself has not fulfilled his obligations. Based on the above considerations, the Panel of Judges concluded that the Exceptio non adimpleti contractus filed by Original Defendant/Counterclaim plaintiff has legal grounds to be granted. Because the Panel of Judges granted the Exceptio non adimpleti contractus, the Panel of Judges is also of the opinion that the original lawsuit is not accepted.

Based on the Decisions described above, it can be concluded that in general the Panel of Judges will grant Exceptio non adimpleti contractus if based on the facts of the trial it has been proven that the Original plaintiff /Counterclaim Defendant has first committed a default so that based on the concept of Exceptio non adimpleti contractus Original plaintiff /Counterclaim Defendant does not claim that someone else has committed a default because he first committed a default. In addition, from the Decisions that have been described above, in general, if the Panel of Judges grants Exceptio non adimpleti contractus, the Panel of Judges declares that the original lawsuit cannot be accepted.

legal implications/effects of the granting of Exceptio Non Adimpleti Contractus on Relation to the Principal Claim

In the earlier discussion, it was explained that in breach of contract cases, a defendant may raise Exceptio non adimpleti contractus alongside a counterclaim in their response. The legal question then arises: what is the consequence for the counterclaim if Exceptio non adimpleti contractus is granted?

Indonesian civil procedural law does not provide explicit guidance on the legal consequences for the counterclaim if Exceptio non adimpleti contractus is granted. However, in many Indonesian court decisions, it has been observed that when Exceptio non adimpleti contractus is granted, the panel of judges declares the principal claim inadmissible. Consequently, the substance of the counterclaim is not considered and is also declared inadmissible. In existing decisions in Indonesia, the legal consequences of a Counterclaim if Exceptio non adimpleti contractus is granted by the Panel of Judges can be seen from several decisions which will be described as follows:

First, Decision No. 229/Pdt.G/2024/PN PN Dps. In this case, as previously described, the Panel of Judges concluded that the Original plaintiff /Counterclaim Defendant had made a default and that the Exceptio non adimpleti contractus filed by the Original Defendant/Counterclaim plaintiff had legal grounds to be granted. Because the Panel of Judges granted the Exceptio non adimpleti contractus, the Panel of Judges also held that the original lawsuit was not accepted. In this case, the Panel of Judges is also of the opinion that the Counterclaim is irrelevant or need not be considered anymore and the Counterclaim must be declared inadmissible. The Panel of Judges was of this opinion because the Original Lawsuit was not accepted.

Second Decision No 1023/Pdt.G/2021/PN Jkt.Sel. In this case, as previously described, the Panel of Judges concluded that the Original plaintiff /Counterclaim Defendant had made a default and that the Exceptio non adimpleti contractus filed by the Original Defendant/Counterclaim plaintiff had legal grounds to be granted. Because the Panel of Judges granted the Exceptio non adimpleti contractus, the Panel of Judges also held that the original lawsuit was not accepted. In this case, the Panel of Judges also held that the Counterclaim did not need to be considered and should be declared inadmissible. The Panel of Judges is of this opinion because the subject matter of the convention has not been considered and the original claim is not accepted.

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Third Decision No 1023/Pdt.G/2021/PN Jkt.Sel. In this case as previously described, the Panel of Judges has implicitly considered the concept of Exceptio non adimpleti contractus. The Panel of Judges concluded that Original plaintiff /Counterclaim Defendant was deemed to have made a default and the Panel of Judges was of the opinion that in treaty law, the party who violates its obligations first loses the right to sue the other party on the basis of default. Based on the above considerations, the Panel concludes that the Original Defendant/Counterclaim plaintiff cannot be sued for default, therefore Original plaintiff /Counterclaim Defendant claim must be declared unacceptable. In this case the Panel of Judges continues to consider the merits of the Counterclaim even though the Panel of Judges is of the opinion that the actions of Original plaintiff /Counterclaim Defendant have fulfilled the concept of Exceptio non adimpleti contractus and the Original plaintiff /Counterclaim Defendant is declared inadmissible.

Fourthly Decision No 29/Pdt.G/2021/PN Bgl. In this case as previously described, that the Panel of Judges is of the opinion that the Original plaintiff /Counterclaim Defendant did not perform all of its obligations in the agreement, the Panel of Judges is of the opinion that the Original plaintiff /Counterclaim Defendant is not entitled to sue Original Defendant/Counterclaim plaintiff. This refers to the principle of Exceptio Non Adimpleti Contractus. The Panel of Judges is also of the opinion that the Exceptio non adimpleti contractus filed by Original Defendant/Counterclaim plaintiff has legal grounds to be granted and therefore the Original Lawsuit is not accepted. In this case the Panel of Judges continued to consider the merits of the Counterclaim even though the Panel of Judges granted the Exceptio non adimpleti contractus filed by the Original Defendant/Counterclaim plaintiff and the Original Lawsuit is not accepted was declared inadmissible.

From the several Decisions described above, there are differences between the Judges regarding the legal consequences of the Counterclaim if Exceptio non adimpleti contractus is granted by the Panel of Judges. In Decision Number 229/Pdt.G/2024/PN Dps and Decision Number 1023/Pdt.G/2021/PN Jkt.Sel, the Panel of Judges stated that the original lawsuit was unacceptable and because the original lawsuit was unacceptable, the subject matter of the counterclaim did not need to be considered and must be declared unacceptable, whereas in Decision Number 29/Pdt.G/2021/PN Bgl and Decision Number 612/Pdt.G./2017/PN Jkt Sel although the Panel of Judges granted Exceptio non adimpleti contractus and declared the original lawsuit inadmissible, the Panel of Judges still considered the subject matter of the counterclaim.

The difference of opinion in the aforementioned Decisions is because there is no clear regulation on the legal consequences of the Counterclaim if Exceptio non adimpleti contractus is granted. Due to the absence of clear regulation, pursuant to the provisions of Article 10 paragraph (1) of Law No. 48 of 2009 concerning Judicial Powers, judicial discovery (*rechtsvinding*) must be conducted. Judicial discovery or legal interpretation (*rechtsvinding*) is the process whereby judges or legal officers seek and establish the applicable law when handling cases that lack explicit or complete statutory regulation. *Rechtsvinding* occurs when existing laws do not address the legal issues at hand, or when the laws are unclear or incomplete in their application to the actual circumstances being adjudicated. In such instances, judges play a role in "discovering" the applicable law through appropriate approaches and considerations (*rechtsvinding*). (Muwahid 2022)

According to the author, the most appropriate method of legal discovery used to answer the legal consequences of the Reconpens Lawsuit if Exceptio non adimpleti contractus is granted is the Legal Fiction Method or the Legal Discovery Method which emphasises that the Judge is considered to know the Law which is in accordance with one of the legal principles, namely the principle of *Ius curia Novit* or the principle that means the judge is considered to know all the laws. Based on the foregoing understanding of *rechtsvinding* and legal discovery methods above, the author presents a legal argument on how the legal consequences of a counterclaim should be determined when an Exceptio non adimpleti contractus is granted. The author's argument is that if an Exceptio non adimpleti contractus is granted by the panel of judges, the principal claim must be declared inadmissible, while the counterclaim may still be considered by the panel of judges Based on the foregoing explanation, the author concludes that if the Exceptio non adimpleti contractus is granted, the counterclaim may be considered by the panel of judges. The author's reasoning for this argument is as follows:

First To Fulfill the Principle of Simple, Swift, and Low-Cost Justice. Under Indonesia's legal system, the principle of simple, swift, and low-cost justice is regulated in Article 2(4) of Law No. 48 of 2009 on Judicial Power. The principle of simple justice emphasizes that case examinations should not be convoluted or overly complicated, aiming instead for effective and efficient adjudication. (M. Usrin 2018) The principle of swift justice underscores the need for case examinations to be resolved in a short timeframe and not prolonged unnecessarily. (Adi Syahputra Sirait 2021) The principle of low-cost justice stresses that the cost of case examinations must remain affordable for society to ensure access to court proceedings. Mizaj Iskandar dan Liza Agustina 2019) If the Exceptio non adimpleti

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contractus is granted, the counterclaim may be considered by the panel of judges. This would fulfill the principle of simple justice, as it ensures more efficient and effective case examinations. The author argues this because if the panel of judges grants the Exceptio non adimpleti contractus, it would mean that the plaintiff has been deemed to have first committed a breach of contract.

Therefore, the author believes there would be no legal impediment to the panel of judges considering the counterclaim, particularly if the defendant files a breach of contract claim against the plaintiff through the counterclaim. If the Exceptio non adimpleti contractus is granted, the counterclaim may be considered by the panel of judges. This would fulfill the principle of swift justice, as it ensures that case examinations are concluded promptly. If the panel of judges grants the Exceptio non adimpleti contractus but does not consider the counterclaim, it would result in the defendant having to file a new lawsuit against the plaintiff, which would further prolong the resolution of the case. This would undermine the principle of swift justice. If the Exceptio non adimpleti contractus is granted, the counterclaim may be considered by the panel of judges. This would fulfill the principle of low-cost justice, as it ensures that the cost of case examinations is minimized. If the panel of judges grants the Exceptio non adimpleti contractus but does not consider the counterclaim, it would force the defendant to file a new lawsuit against the plaintiff, thereby incurring additional case registration fees. This would undermine the principle of low-cost justice.

Second To Provide Benefits to Society. Law must provide benefits to society, which is the core of the Progressive Legal Theory put forward by Prof. Satjipto Rahardjo. According to the Progressive Legal Theory, the purpose of law is not solely to view it from the perspective of positivism but also to see law as a social reality. In other words, under this theory, the application of law must benefit society. (Mukhidin 2014), Based on the Progressive Legal Theory, the author opines that in deciding a case, the panel of judges must provide benefits to society. If the panel of judges grants the Exceptio non adimpleti contractus while also considering the counterclaim, the author believes that such a decision would benefit society because it fulfills the principles of simple, swift, and low-cost justice, as previously outlined by the author.

Although the author is of the opinion that if Exceptio non adimpleti contractus is granted then the Counterclaim can be considered by the Panel of Judges, according to the author there are important conditions that must be considered by the Panel of Judges before considering the Counterclaim, namely the arguments submitted by the Original Defendant/Counterclaim plaintiff when submitting Exceptio non adimpleti contractus must be the same as the arguments submitted in the Counterclaim.

CONCLUSION

Exceptio non adimpleti contractus is an exception raised by the defendant in breach of contract cases, asserting that the defendant failed to perform their obligations under the agreement because the plaintiff had first failed to fulfill their own obligations as stipulated in the agreement. In the adjudication of breach of contract cases, if the defendant raises Exceptio non adimpleti contractus, the panel of judges must consider this exception alongside the principal claim.

A counterclaim is an exclusive right granted to the defendant in judicial practice, enabling the defendant to file a counterclaim against the plaintiff alongside the principal claim. A counterclaim is subject to certain substantive and formal requirements that must be met, such as: it must not concern matters conflicting with the plaintiff's capacity, it cannot be filed if the court lacks jurisdiction, and it must be submitted together with the defendant's answer. Furthermore, a counterclaim must be decided in the same judgment as the principal claim by the same panel of judges to prevent conflicting decisions and to reduce costs.

In a breach-of-contract case, if the defendant submits an Exceptio non adimpleti contractus and the panel of judges grants the exception, the panel must declare the Principal Claim/Original Lawsuit inadmissible.

If the Exceptio non adimpleti contractus is granted, the counterclaim may still be considered by the panel of judges to adhere to the principles of simple, swift, and low-cost justice. This is deemed more efficient and avoids delays also additional costs that would arise if the defendant had to file a new claim. Moreover, within the framework of progressive legal theory, resolving a case by considering the counterclaim even if the exceptio non adimpleti contractus is granted can provide tangible benefits to society by ensuring prompt and more affordable access to justice. Although the author argues that if Exceptio non adimpleti contractus is accepted, then the counterclaim can be considered by the Panel of Judges, there are important conditions that must be considered by the Panel of Judges. The condition is that the arguments raised by the Counterclaim Defendant/ Plaintiff in filing the Exceptio non adimpleti contractus must be consistent or the same as the arguments raised in the Counterclaim.

The author suggests that the Supreme Court issue a regulation either through Perma, SEMA which contains that if Exceptio non adimpleti contractus is granted by the Panel of Judges, then the Main Lawsuit or the

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Counterclaim must be declared unacceptable and the Counterclaim can be considered by the Panel of Judges on the condition that the arguments submitted by the Counterclaim Defendant/Counterclaim Plaintiff in submitting Exceptio non adimpleti contractus must be consistent or the same as the arguments submitted in the Counterclaim. This is so that there is no difference of opinion between the Judges regarding the legal consequences of the Counterclaim if the Exceptio non adimpleti contractus is granted.

REFERENCES

Book:

- Abdurrahman, S. d. (2003). *Metode Penelitian Hukum*. Jakarta: Rineka Cipta,
- Dirdjosisworo, S. (2001). *Pengantar Ilmu Hukum*. Jakarta: PT Raja Grafindo Persada.
- H. Danialsyah, M. R. (2023). *Hukum Acara Perdata Teori dan Praktek*. Medan: CV. Sentosa Deli Mandiri.
- Hakim, E. H. (2019). *Hukum Acara Perdata di Indonesia pemasalahan eksekusi dan mediasi*. Yogyakarta: Deepublish Publisher,.
- Harahap, M. (2019). *Hukum Acara Perdata Edisi Kedua*,. Jakarta: Sinar Grafika,.
- Hutagalung, S. M. (2019). *Praktik Peradilan Perdata, Kepailitan, Alternatif Penyelesaian Sengketa Edisi 2*. Jakarta: Sinar Grafika,.
- Ratnawati, E. (2024). *Hukum Acara Perdata*,. Jakarta: Mitra Wacana Media,.
- Santiago, F. (2012). *Pengantar Hukum Bisnis*. Jakarta: Mitra wacana Media.
- Widjaja, G. (2001). *Seri Hukum Bisnis Waralaba*. Jakarta: PT Raja Grafindo Persada.
- Yulia. (2018). *Hukum Acara Perdata*. Lhokseumawe: Unimal Press.

Article:

- Agustina, M. I. (2019). Penerapan Asas Peradilan Sederhana, Cepat dan Biaya Ringan dalam Kumulasi Cerai Gugat dan Harta Bersama di Mahkamah Syar'iyah Banda Aceh. *Samarah: Jurnal Hukum Keluarga dan Hukum Islam*, 3, No.1, Hlm 242.
- Ery Agus Priyono, d. (2019). Arti Penting Jawaban Atas Gugatan Sebagai Upaya Mempertahankan Hak-Hak Tergugat. *Law,Development & Justice Review*, 2, No. 2019 , Hlm 1.
- Fath, A. (2024). Pertanggungjawaban Hukum dengan Asas Exceptio Non Adimpleti Contractus Terhadap Tindakan Wanprestasi Perjanjian Waralaba. *Peran Perguruan Tinggi dalam Aktualisasi Bela Negara*, 6, No.1 , Hlm 333.
- Fauziyah Rahmah Izzati, L. R. (2024). Studi Kasus Gugatan dalam Rekonvensi tentang Pengangkatan Sita Jaminan pada Perkara Perlawanan dalam Putusan Nomor 452/Pdt.G/2023/PA JT. *Mandub: Jurnal Politik, Sosial, Hukum dan Humaniora*,, Hlm 141.
- Ginting, J. B. (2022). Kekuatan Mengikat Perjanjian Secara Lisan. *Jurnal Ilmu Hukum "THE JURIS* 6, no. 2 , hlm. 430.
- Hamzah Pai'pin, S. R. (2024). Analisis Yuridis Terhadap Putusan Hakim Yang Menyatakan Gugatan Penggugat Tidak Dapat Diterima. *Journal of Lex Generalis (JLS)*, 3, No.4 , Hlm 620.
- Helmi, M. (2014). Penerapan Asas Persidangan Gugatan Rekonvensi Perkara Perceraian Dengan Harta Bersama. *Ittihad Jurnal Kopertais Wilayah XI Kalimantan*, 12, No.21 , Hlm 46.
- Lumintang, D. R. (2020). Wanprestasi Terhadap Sewa Beli Dan Akibat Hukumnya Menurut Hukum Perdata Di Indonesia. *Lex Administratum*, 8, No.4 , Hlm 120.

LEGAL IMPLICATIONS OF THE ADMISSION OF EXCEPTIO NON ADIMPLETI CONTRACTUS ON A COUNTERCLAIM IN A BREACH OF CONTRACT CASE

Sinar Tamba Tua Pandiangan *et al*

- Marpaung, H. F. (2022). Exceptio Non Adimpleti Contractus Pada Kasus Wanprestasi Dalam Perjanjian Jual Beli. *Widya Yuridika: Jurnal Hukum*, 5, No.2 , Hlm 255.
- Mukhidin. (2014). Pendekatan Hukum Progresif Sebagai Solusi Hukum Yang Mensejahterakan Rakyat. *Jurnal Pembaharuan Hukum*, 1, No.3 , Hlm 269.
- Rahmawati, L. R. (2017). Penerapan Rekonvensi Sebagai Hak Istimewa Tergugat Dalam Perkara Perceraian (Talak) Di Pengadilan Agama. *Jurnal Ilmiah Hukum De'Jure: Kajian Ilmiah Hukum*, 2, No.2 , Hlm 302.
- Rezky Mokodongan, D. R. (2020). Gugatan Rekonvensi Dalam Sengketa Pertanahan Menurut Perspektif Hukum Perdata. *Lex Privatum*, 8, No.2 , Hlm 127-128.
- Ridwan, R. I.-M. (2022). Implikasi Penerapan Prinsip Exceptio Non Adimpleti Contractus Dalam Perjanjian Terhadap Akta Yang Dibuat. *Jurnal Kertha Semaya*, 10, No.8 , Hlm 1870. .
- Sabda, I. N. (2015). Syarat Materil Dan Formal Gugatan Rekonvensi Dalam Perkara Perdata. *Lex Privatum*, 3, No.2 , , Hlm 76-77.
- Sirait, A. S. (2021). Asas Peradilan Sederhana, Cepat Dan Biaya Ringan Dalam Peradilan Tindak Pidana Korupsi Di Pengadilan Negeri Medan. *Jurnal Al-Maqasid*, 7, No.1 , Hlm 22.
- Tanjung, C. G. (2024). Penerapan Prinsip Exceptio Non Adimpleti Contractus Dalam Hukum Perikatan: Berdasarkan putusan Nomor 1796 K/Pdt/2015”, . *Jurnal Ilmiah Multidisiplin*, 1, No.6 , Hlm 471.
- Utrin, M. (2018). Analisis Yuridis Asas Peradilan Sederhana Cepat Dan Biaya Ringan Dalam Sistem Peradilan Pidana. *Solusi:Jurnal Fakultas Hukum Universitas Palembang*, 16, No.1 , Hlm 61.