



Legal Consequences of Canceling the Agreement Unilaterally

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ARTICLE INFO

Keywords:

Agreement;
Consequences;
Unilaterally.

Article history:

Received Apr 17, 2024;
Revised Apr 19, 2024;
Accepted Apr 27, 2024;
Online Apr 30, 2024

ABSTRACT

Termination of an agreement unilaterally can be sued with a lawsuit for violating the law, because unilateral cancellation is an action that is not justified if it is not based on clear reasons according to the agreement and this of course violates the legal obligations of each party, namely to always act in good faith, act in accordance with propriety, prudence, and do not conflict with the law. Legal research has the aim of finding a way out of a particular problem related to legal issues. The legal research used is normative legal research or doctrinal legal research. Cancellation of an agreement will definitely have legal consequences for the parties entering into the agreement. The consequences of canceling the agreement are regulated in Article 1451 of the Civil Code and Article 1452 of the Civil Code. Cancellation of the agreement results in a return to the original position as before the agreement was made by both parties. Unilateral termination of the agreement is an unlawful act. For these unlawful acts, a person can file a lawsuit for unlawful acts to ask for compensation, either in the form of material or immaterial compensation for the actions of one of the parties who cancel the agreement unilaterally.

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1. Introduction

Relationships that arise and are created from social interactions ultimately give rise to a form of agreement and are then often referred to as a legal event or legal act. The bond that has been established can continue well if there is equality of will in the relationship. From this, it can be interpreted that the parties have implemented an agreement, so that between the parties who have agreed to enter into an agreement, a legal relationship which is called an agreement arises (Salim, 2021).

Law provides an overview relating to laws, regulations and provisions that can affect a person's life and every activity (Tikkinen-Piri et al., 2018). In every society or group of people, laws will continue to develop in order to control and limit the relationships carried out between its members. The law provides guarantees and certainty between people who carry out activities

involving other people. Among the many types of legal acts, one of them is regarding agreements (Shoim, 2022).

Humans as social creatures certainly cannot live alone in carrying out their lives, in other words humans need interaction and relationships with other people, therefore humans establish relationships with other people to carry out legal actions called agreements in order to achieve certain goals (Sinaga, 2018). In carrying out this agreement, a harmonious relationship, an attitude of tolerance, mutual respect, and mutual help between one another is required. In carrying out the contents of the agreement, the interests of all parties involved must be taken into account and the parties must be treated equally, no one has a higher or lower position, and must not use their dominant position to regulate the course of the agreement (Viscusi et al., 2018). Each party has the same rights and obligations in developing and implementing the contents of the agreement so that it runs well, so that the profits to be achieved can be fulfilled in the agreement (Sativa, 2022).

An agreement itself is an event where someone makes a promise to someone else or where two people promise each other to do something. From this incident, a relationship arose between the two people which was called an agreement. The agreement publishes an agreement between the two people who make it. In its form, the agreement is in the form of a series of words containing promises or commitments that are spoken or written (Santoso, 2019).

The source of Indonesian contract law is found in the Civil Code, namely Article 1339 of the Civil Code, which in principle adheres to an open system, so that the parties are free to determine and enter into a form or type of agreement with anyone and determine the rules, both in written form and verbally, provided that both parties have agreed, as regulated in Article 1320 of the Civil Code (Zoller, 2023). By fulfilling the conditions for the validity of an agreement, it makes the agreement valid and binding for the parties who make it, therefore it can be understood that the conditions for the validity of an agreement are absolute and important things that must be taken into account by the parties who make it. If these conditions are not implemented, then there will be legal consequences arising from the implementation of the agreement (Fuady, 2002).

In entering into an agreement, both parties must reach an agreement and unite them will so that later entering into a legal relationship that binds both parties can run well and minimize the risks that will be faced in the future. This has been clearly regulated in Article 1320 of the Civil Code regarding the conditions for the validity of an agreement, which begins with the agreement of those who bind themselves. Agreeing is an important thing to start with and becomes a guideline for where the agreement will be implemented. Apart from agreeing, there are also other conditions, including being competent in making agreements (someone who is considered incompetent cannot make an agreement), a certain thing (achievement), and a halal cause (Frans Thiodoris et al., 2022).

Apart from recognizing the term freedom of contract in contract law, there are other significant principles that must be taken into account when making an agreement, namely the principles of consensualism and good faith. Consensualism comes from the Latin word, namely consensus, which means agreement. The principle of consensualism is regulated in Article 1320 paragraph (1) of the Civil Code (SUTIYOSO & PARMITASARI, 2023). This principle is generally not implemented formally, but it is sufficient to have an agreement between both parties. This means that in principle the agreement is binding and applies as an agreement for the promising parties without requiring formalities. However, to safeguard the interests of the debtor (or those who are obliged to fulfill performance) forms of formality are implemented, or certain concrete actions are required (Salim, 2021). In making an agreement, both parties must have good faith and this must be put forward. Good faith is very important to implement in establishing

contractual relationships. Good faith is closely related to propriety or justice and the measure of good faith in an agreement must always be present within each party (Moravcsik, 2013). As time goes by, amidst conditions of free trade and increasingly universal business companies, interactions and relationships in contract law are progressing very rapidly (I. Sujana, 2022). Contract law develops from time to time to keep up with increasingly developing and diverse times, which then gives birth to new forms of agreement, giving rise to new legal problems because there are no legal rules that regulate it so that it can result in disputes, one of the forms of which is the termination of the agreement automatically unilateral (Zoller, 2023).

Often the implementation of the agreement does not go well, not as expected in the agreement that was built at the beginning before the agreement was implemented, which ultimately gives rise to conflict or dispute between the parties. Arbitrary actions of the parties, not implementing the legal terms of the agreement, and also violating an agreement are things that are often encountered when entering into an agreement. With this conflict or problem, legal means are needed to decide and resolve the case (Cahyono et al., 2018). The existence of law is very necessary to be respected and legal principles must be upheld. Principles in law function as a tool to protect the interests of society, so that later the conflict can be resolved properly and disputes do not occur in the future (Dr. Muhaimin, SH, 2020). It cannot be denied that the resulting agreement can give rise to conflict among the parties who make it. This conflict ultimately creates negative risks and causes losses for each party that binds itself to an agreement. This dispute ultimately also causes instability in society. In daily practice, there are still many cases of unilateral cancellation of agreements in the community, resulting in losses for the parties who made the agreement (Zuhri, 2023).

A legal mechanism is needed to restore and restore good relations by involving state institutions that are authorized and have the function of enforcing and implementing applicable and binding laws for every legal subject. The dispute resolution mechanism in the form of filing a lawsuit through the judicial system is one of the mechanisms provided by law. which applies in the Unitary State of the Republic of Indonesia (NKRI) (IN Sujana, 2018). Termination of an agreement unilaterally can be sued with a lawsuit against the law, because unilateral cancellation is an action that is not justified if it is not based on clear reasons according to the agreement and this of course violates the legal obligations of each party, namely to always act in good faith, act in accordance with propriety, prudence, and do not conflict with the law (Sewu, 2019). If the parties have previously agreed and desired that if a conflict or dispute occurs, the matter can be resolved by the parties themselves without involving other parties or through peaceful means in a family manner, this can also be implemented. This is in line with the wishes of the parties (Frans Thiodoris et al., 2022).

Almost every aspect of human life cannot escape from agreement, agreements have become part of human life (Bakir & Parura, 2023). However, it turns out that not all people understand the meaning and understand the influence and consequences of making an agreement (Amalia, 2012). In reality, humans will always make mistakes, whether in the form of not implementing the agreement properly, violating other people's rights, or committing an act that is not in accordance with the law entering into or implementing an agreement. Therefore, this article explores the following research questions; How does the perspective of international law on transboundary haze pollution based on the Law of State Responsibility.

2. Method

The Research is one of the fundamental factors in efforts to develop existing legal science. Legal research is defined as a scientific activity carried out based on certain methods, systematics and thinking, which aims to study one or several particular legal phenomena by analyzing them (Dr. Muhaimin, SH, 2020). Research methodology is a science that presents the methods or procedures and steps that must be taken in a research regularly and logically so that its truth can be accounted for. Legal research has the aim of finding a way out of a particular problem related to legal issues. The legal research used is normative legal research or doctrinal legal research. Normative legal research is a process of finding the truth of coherence, namely whether there are legal rules in accordance with legal norms and whether there are norms in the form of orders or prohibitions in accordance with legal principles, as well as whether a person's actions are in accordance with legal norms or legal principles. Legal research has 5 (five) approaches that can be used, including the statutory approach, case approach, historical approach, comparative approach and conceptual approach (Dr. Muhaimin, SH, 2020)

3. Analysis and Results

An agreement is a form of an agreement, therefore in the implementation process there must be several conditions that must be fulfilled so that the agreement can be said to be valid and binding for the parties. The conditions for the validity of an agreement are expressly regulated in Article 1320 of the Civil Code, including the following: 1. Those who bind themselves agree; 2. Ability to create engagement; 3. A certain thing; 4. A valid reason.

The terms of agreeing and being competent are subjective terms, because they relate to the subject, namely the person or parties entering into the agreement. If the subjective conditions are not fulfilled or one of the conditions is not implemented, then the agreement can be canceled (*vernietigbaar*), while the conditions for a certain thing and a legal cause include objective conditions, namely conditions related to the object of the agreement. If these conditions are not fulfilled or one of the conditions is not implemented in the agreement, then the agreement is null and void or the agreement is deemed to have never existed in the first place. These two conditions must be paid attention to, because if you do not pay attention to them, it could lead to the cancellation of an agreement (Sodikin, 2015).

Under normal conditions, agreements can be implemented well and run as they should without obstacles or conflicts, but at certain times and times, the bad possibility in an agreement is that the activity is faced with a conflict or dispute which causes the implementation of the agreement to be hampered and unable to be implemented. done properly, thereby causing the cancellation of an agreement.

Cancellation of an agreement will definitely have legal consequences for the parties entering into the agreement. The consequences of canceling the agreement are regulated in Article 1451 of the Civil Code and Article 1452 of the Civil Code. Cancellation of the agreement results in a return to the original position as before the agreement was made by both parties. The consequences of canceling the agreement can be seen from two aspects, including: Cancellation of an agreement that violates the subjective conditions of the validity of the agreement resulting in the agreement being voidable (*avoid of law*); Cancellation of an agreement that violates the objective conditions of the agreement, thus causing the agreement to be null and void of law/*nietig*anrechtswege.

The consequence of canceling the agreement is that one of the two parties can request and apply for cancellation of the agreement. If the agreement is not canceled by a judge's decision through the court, then the agreement remains binding on the parties who made the agreement. Certain parties have the right to request cancellation from the other party if there is some form of violation committed by one party and it is felt to be detrimental to the other party. In the agreement, each party has the right to request cancellation of the agreement, demand recovery, apply for compensation, which are the rights of parties who feel disadvantaged by the other party. On the other hand, other parties who have obtained and received achievements from the agreement are obliged to return them.

The legal consequence of an agreement that is null and void is that the agreement is deemed to be void or the agreement is deemed to have never existed in the first place and the agreement is deemed to have never occurred. A further consequence of canceling an agreement is that if after cancellation one of the parties does not carry out its obligation to return what it has obtained, then the other party can file a lawsuit. This is solely to carry out the purpose of the cancellation, namely to restore the situation or position as it was before the agreement was entered into.

Thus, canceling the agreement will bring the parties to their original condition or position, namely the previous situation where the parties were deemed to have never made, implemented or planned the agreement between them. It is very clear that an agreement can only be canceled unilaterally by one of the parties if the agreement does not fulfill the subjective and objective legal requirements of an agreement.

Termination of an agreement is regulated in the Civil Code, namely in Article 1266 of the Civil Code, cancellation must meet the requirements that the agreement must be reciprocal, there is a default, and the cancellation must be requested from a judge (court). A dispute or conflict in an agreement that is canceled unilaterally can be sued with a claim for unlawful action. This act shows that there are similarities between unlawful acts and breaches of contract, because in principle both are acts that violate the principles of decency in society and cause harm to other parties. This is closely related to the legal consequences of losses that can later be sued.

Basically, every party who commits a violation of the law and from this action causes harm to other people, that person must be responsible for the actions they have committed. This legal responsibility is very important, because it is related to a person's obligation to compensate for losses, because something that has been done has resulted in losses for other people (Subagiyo & Salviana, 2016). Every violation of the law is of course accompanied by a legal error, which can originate from the agreement itself or because of the law, as regulated in Article 1233 of the Civil Code. Mistakes originating from agreements result in default/broken promises, while those originating from the law result in unlawful acts (Sativa, 2022).

Acts that violate the law do not only violate written regulations, but also result from violations of other people's subjective rights, conflict with the perpetrator's legal obligations, violate moral rules and regulations, and conflict with the principles of decency that exist in society, which are actually shared by every person. People in establishing relationships with society or with other people's property in a sense that is contrary to the good attitudes that exist in society. If the source of the agreement is law, then what can be sued is based on Article 1370 of the Civil Code to Article 1372 of the Civil Code in the form of material losses and immaterial losses.

Regarding unlawful acts, apart from being regulated in Article 1365 of the Civil Code, it is also regulated based on Arrest Hoge Raad 31 January 1919, namely: Violates other people's rights; Contrary to its legal obligations; Contrary to decency; This is contrary to his obligation to pay

attention to his own interests and the assets of other people in social life. Apart from violating the law, acts of default also have consequences for the agreed party's right to sue the party who committed the default to provide compensation, so that by law it is hoped that no party will be harmed due to the default. An act of default can occur due to intention, negligence, and without fault (without intention or negligence).

The word loss comes from the word *loss*, therefore you can easily know the true meaning of this loss. If a default occurs, the material losses that can be claimed are as explained in Article 1243 of the Civil Code. Article 1243 of the Civil Code explains losses in a broad sense into three categories, including: Costs, what is meant by costs are any costs that must be actually incurred by the injured party, in this case as a result of a breach of contract including an agreement due to an unlawful act. Loss (in the narrow sense), what is meant by loss is the decline (reduction) in the value of the creditor's assets as a result of a default on part of the debtor, including an agreement due to an unlawful act. Interest, which is meant by interest, is a profit that should have been obtained but was not obtained by the creditor because of an act of default on the part of the debtor.

With this default, sanctions can usually be imposed in the form of compensation, cancellation of the agreement, transfer of risk, or payment of court costs. Default results in one party being harmed, because the other party is harmed as a result of the default, the party committing the default must bear the consequences of the opposing party's demands which can be in the form of claims: Cancellation of the contract (accompanied by or without compensation); Fulfillment of the contract (accompanied by or without compensation).

From the differences that have been explained between unlawful acts and breaches of contract in civil law, it can be concluded that there are two types of lawsuits, namely breach of contract lawsuits based on agreements and lawsuits for unlawful acts based on laws or statutory regulations. In practice, a claim for an unlawful act occurs if the conflicting parties do not have a contractual relationship. Therefore, the law guarantees protection for the injured parties.

According to Article 1365 of the Civil Code, every person who commits a form of unlawful act is obliged to compensate other people for the losses they cause. In unlawful acts, there are four elements that must be proven if you want to sue based on unlawful acts, namely:

3.1. There is an act that violates the law

In this element, more emphasis is placed on actions that are considered to violate legal norms that apply and develop in society. Since 1919, the meaning of the word law has been expanded to include not only acts that violate statutory regulations, but also every act that results in a violation of propriety, prudence and decency in relations between fellow citizens and towards other people's objects. Thus, actions that are deemed to violate the law are not only based on written legal rules, but also on unwritten legal rules that exist in society, including the principles of propriety and decency.

Before January 31 1919, under the influence of legalism, *onrechtmatige daad* or unlawful acts were defined in a narrow sense, which explained that unlawful acts were acts that violated the law. Violating the law is an act that violates another person's subjective rights or is not in accordance with the perpetrator's legal obligations (Frans Thiodoris et al., 2022).

HR (Hoge Raad) in his famous decision with *Arrest Cohen-Lindenbaum* (HR 31 January 1919), expanded the definition of breaking the law to: Violating other people's subjective rights means violating personal rights, material rights or individual rights. In contrast to the legal obligations of the perpetrator, this means that the legal obligations in question are legal obligations, both written and unwritten, including public law. Contrary to the rules of morals,

the rules of morals in this case are moral rules (Article 1335 in conjunction with Article 1337 of the Civil Code); Contrary to propriety, thoroughness and prudence, basically this is based on unwritten (relative) law, by considering one's own interests with the interests of other people based on what is considered appropriate and suitable in society.

This element of fault is very important, meaning that every result of an unlawful act committed and causing harm to another person cannot be held responsible if there is no element of fault. The element of error consists of errors committed intentionally and errors due to negligence or lack of caution. The legal consequences arising from intentional mistakes whether or due to lack of care have the same consequences in law, this means that every perpetrator is obliged to compensate for losses resulting from unlawful acts that have been committed.

3.2. There is a loss

Losses in civil law consist of material losses and immaterial losses. Material loss is a loss that is actually suffered, while what is meant by immaterial loss is a loss of benefits or advantages that may be received at a later date. Basically, immaterial losses are delegated authority to the court, this causes difficulties in determining the amount of immaterial losses that will be decided later, because this is related to the subjectivity of the judge in deciding the case.

The Civil Code does not mention compensation that must be paid for unlawful acts, while Article 1243 of the Civil Code in conjunction with Article 1246 of the Civil Code contains regulations regarding compensation for default. In Jurisprudence it is explained that the provisions for compensation for breach of contract can be applied to determine compensation for the unlawful act (Endro Martono, 2016). This element emphasizes that before asking for responsibility, it is necessary to first prove the causal relationship from the perpetrator to the victim. This causal relationship relates to the losses experienced by the victim as a result of unlawful acts committed by the perpetrator.

If there is a violation of the agreed agreement, a breach of contract lawsuit can be filed, this is because there is a contractual relationship between the party who caused the loss and the party who suffered the loss. If there is no contractual relationship between the party who caused the loss and the party who suffered the loss, then they can be sued for an unlawful act. According to the classical theory which shows the difference between a lawsuit for breach of contract and a lawsuit for an unlawful act, one of the purposes of a lawsuit for breach of contract is to put the plaintiff in a position if the agreement has been fulfilled. Thus, the compensation is in the form of loss of expected profits or what is known as expected loss or winnings. The purpose of a lawsuit for an unlawful act is to place the plaintiff in the original position before the unlawful act occurs, so that the compensation given is a real loss or reliance loss (Tavinayati, 2020).

The existence of a contractual relationship between the plaintiff and the defendant does not constitute an obstacle for the plaintiff to file a lawsuit for the unlawful act. Termination of the agreement or breach of agreement committed by the defendant may also be a violation of statutory provisions or an act that violates propriety and prudence that must be observed in relations between people and other people's property.

Regarding the relationship between default and unlawful acts, M. Yahya Harahap in his book entitled legal aspects of agreements states that breach of contract is a special form of unlawful act (Multazam et al., 2023). The definition of unlawful acts is also in line with the development of theory in contract law that agreements must be made in good faith, which means they must pay attention to the principles of propriety, so that the content of an agreement is one-sided is not in accordance with propriety so that the one-sided clause cannot be declared null and void by law and does not bind the parties making the agreement.

In the event of a serious unlawful act, for example an act that contains an element of intent, but does not result in real loss, the victim can be given a certain amount of money in accordance with a sense of justice without calculating the exact amount of the loss. What is meant by compensatory damages is compensation which is a payment to the victim for and in the amount of the loss actually experienced by the victim as a result of the resulting unlawful act. What is meant by punitive compensation is compensation in a large amount that exceeds the actual amount of loss. Usually the amount of compensation is a punishment for the perpetrator. This punitive compensation is appropriate to apply in cases of serious intent. Compensation for losses that have actually been experienced. Actual compensation is the most common compensation and is easily accepted by law, both in cases of unlawful acts and in cases of breach of contract. Compensation related to mental stress. Compensation is usually a sum of money given to the victim of an unlawful act because the victim has suffered mental stress. This type of compensation is also called immaterial compensation.

This compensation must be for future losses, which can be imagined and will actually occur, so it is not a loss that is only imagined. If the damages due to an act of breaking the law are more severe while the damages due to the agreement are softer it is one of the characteristics of the law in modern times. Based on the Civil Code and the judge's considerations in jurisprudence, the rules imposed to compensate for losses are by analogy using the rules for compensation for damages due to default as regulated in Article 1243 of the Civil Code to Article 1252 of the Civil Code, in addition to restoration back to its original state (Sari, 2020).

In compensation for damages due to breach of contract, usually the amount of loss has been previously determined in the agreement, whereas in the case of compensation for damages due to unlawful acts, the judge has the freedom to apply the amount of compensation in accordance with the principles of propriety, as long as this is requested by the plaintiff. In fact, it has become permanent jurisprudence from the Indonesian Supreme Court that judges in determining the amount of compensation must be determined according to justice, although this is very dependent on the subjective assessment of the judge in charge. Sometimes, for the purposes of determining the amount of compensation, you must first ask an expert to carry out a transaction regarding the amount of loss.

Losses are determined objectively according to the wealth of the person against whom the breach of contract has been committed. The Civil Code itself regarding the amount of compensation resulting from unlawful acts regulates it in Article 1371 (2) of the Civil Code which states that compensation is assessed according to the position and abilities of both parties and according to the circumstances. If in unilateral cancellation of the agreement they have made, all the contents and provisions contained in the agreement have not been implemented at all by both parties, then unilateral cancellation of the agreement by one of the parties will not give rise to any legal consequences. -What. The cancellation of the agreement only brings the parties to their original state, namely the previous state where the parties were deemed to have never entered into or entered into an agreement between them. Thus, it is clear that an agreement can only be canceled unilaterally by one of the parties if it does not fulfill the subjective legal requirements of an agreement. Cancellation can only be done by submitting it to the court or by defending or suing the party who wants to cancel the agreement.

Meanwhile, for an agreement that is canceled unilaterally without a valid reason, a lawsuit can be filed against the party who canceled it as long as the agreement has been in existence, on the other hand, if the unilateral cancellation occurs before the implementation of the agreement then the cancellation will only lead to the original condition, namely a situation that is considered to have never been an agreement occurred.

4. Conclusion

Unilateral termination of the agreement is an unlawful act. For these unlawful acts, a person can file a lawsuit for unlawful acts to ask for compensation, either in the form of material or immaterial compensation for the actions of one of the parties who cancel the agreement unilaterally. It is hoped that parties who want to cancel an agreement should provide information and have obtained approval from the other party, so that if they want to cancel the agreement, both parties already know and an agreement has been reached to cancel it, so that there is no form of unlawful action that results in loss for other people. And the parties can understand the difference between breach of contract and unlawful acts from the actions that have been carried out, so that the lawsuit filed in court can be in accordance with the losses that have been experienced.

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