

APPLICATION OF BASIC PACTA SUNT SERVANDA IN COOPERATION AGREEMENT BETWEEN PT SURYA CIPTA SWADAYA AND PT LAMPIRI DJAYA ABADI

DANANG SWANDARU

*Krisnadwipayana University, Master of Law, Master of Law Science Program,
Jalan Raya Jatiwaringin, RT. 03 / RW. 04, Jatiwaringin, Pondok Gede, RT.009/RW.005,
Jaticempaka, Pondok Gede District, Bekasi City, West Java 13077.*

Received 25 January 2021; Revised 15 March 2021; Accepted 1 May 2021

Abstract

The principle of pacta sunt servanda is also called the principle of legal certainty. This principle relates to covenant consequences. The principle of pacta sunt servanda underlines that the judge or third party must respect the substance of the contract made by the parties, as befits a law. The problem in this research is how is the application of the pacta sunt servanda principle in the cooperation agreement between PT Surya Cipta Swadaya and PT Lampiri Djaya Abadi? The research method used is normative juridical using secondary data and analyzed using qualitative methods. The results show that the application of the pacta sunt servanda principle in the cooperation agreement between PT Surya Cipta Swadaya and PT Lampiri Djaya Abadi did not occur. This is due to the absence of fine sanctions given to PT Lampiri Djaya Abadi for default, even though PT Lampiri Djaya Abadi has been proven to have defaulted. Apart from that, the failure to realize the pacta sunt servanda is due to the agreement Number 016 / SCS-EDM / SPP / XI / 2019 concerning repair work / overlay of Surya Utama (Segment 3) Phase I and Surya Utama (Segment 4) Phase II roads between PT. Lampiri Djaya Abadi with PT Surya Cipta Swadaya was made in an underhand agreement, so that no party controls or explains the contents of article by article in the cooperation agreement.

Keyword: Pacta Sunt Servanda, Cooperation Agreement, Cooperation

A. INTRODUCTION

A business cooperation agreement, that is, there will be a cooperative relationship between the two parties. Cooperation is an interaction that is very important for humans because human beings cannot live alone without other people, so they always need other people.¹ Cooperation can take place when a person or group concerned has the same interests and has the awareness to work together to achieve their interests.² Business cooperation is a joint effort between individuals or groups to achieve a common goal. One form of cooperation agreement is a joint venture.

A joint venture is a form of general cooperation, which can be carried out in various forms of business, where each party submits capital to form a business entity that manages the joint venture. The purpose of a joint venture (joint venture) is so that the business can be more developed and can jointly manage the running of the company.

As part of the agreement in general, the business cooperation agreement must meet the legal requirements of the agreement as stated in Article 1320 of the Civil Code, namely:

1. Agree, on behalf of the parties;
2. The ability of the parties to form an alliance;
3. A certain thing;
4. Not against the law.³

The terms of the agreement as mentioned above, include subjective terms and objective terms. If the agreement does not comply with the subjective conditions of number 1 and number 2, then the agreement may be revoked, and if the agreement does not comply with the objective conditions of number 3 and number 4, then the agreement is void by law.

An agreement that has been made legally as regulated in Article 1320 of the Criminal Code, then the agreement applies to the parties in the agreement. This is called the basic *pacta sunt servanda*. This principle is also referred to as the basis for the binding of an agreement, which means that the party making the agreement is bound by an agreement in the agreement they have made. In other words, a legally binding agreement takes place as the law applies to the parties who made it.⁴

The basis of *pacta sunt servanda* is also called the principle of legal certainty. This basis relates to the consequences of the agreement. The principle of *pacta sunt servanda* states that the judge or third party must respect the substance of the contract made by the parties, as is the case with a law. They should not intervene in the substance of the contract made by the parties. The basis of *pacta sunt servanda* can be concluded in Article 1338 paragraph (1) of the Criminal Code, which reads: "All agreements made legally apply as law to those who make them. Such agreements may not be withdrawn without the consent of both parties, or for reasons reasoned by law to be sufficient for that purpose".⁵

Problems arise when the agreed agreement, then one of the parties defaults, but is not subject to sanctions as stipulated in the agreement, so that the *pacta sunt servanda* principle has the potential not to occur. This is as happened in the case between PT Surya Cipta Swadaya and PT Lampiri Djaya Abadi.

On November 5, 2019, PT Surya Cipta Swadaya and PT Lampiri Djaya Abadi entered into a collaborative work number 016 / SCS-EDM / SPP / XI / 2019 regarding repair work / overlay of Surya Utama (Segment 3) Phase I and Surya Utama roads (Segment 4) Phase II. In the cooperation agreement, it was agreed that the contract value was Rp. 18,666,857,000 (Eighteen Billion Six Hundred Sixty Six Million Eight Hundred Fifty Seven Thousand Rupiah) with a down payment of 10% of the contract value.

The implementation of the agreement is carried out for 150 (one hundred and fifty) calendar days from 11 November 2019 and the work is completed no later than 9 April 2020, with a maintenance period of 356 (three hundred and fifty) calendar days from the Temporary (First) Handover Report. Work results are signed. In Article 10 paragraph 5 of the Letter of Agreement Number 016 / SCS-EDM / SPP / XI / 2019 concerning repair work / overlay of Surya Utama road (Segment 3) Phase I and Surya Utama

¹ Departemen Pendidikan dan Kebudayaan (Tim Penyusunan Kamus Pusat Pembinaan dan Pengembangan Bahasa), *Kamus Besar Bahasa Indonesia*, Jakarta: Balai Pustaka, 1990, p. 728.

² *Ibid.*

³ Subekti, *Hukum Perjanjian*, Jakarta: Intermasa, 2010, p. 17.

⁴ *Ibid.*

⁵ Abdulah Salim, *Perancangan kontrak & Memorandum of Understanding*, Jakarta: Sinar Grafika, 2007, p. 2—3.

road (Segment 4) Phase II, it is stated that if PT Lampiri Djaya Abadi is unable to complete the work within the implementation period specified in the contract document, he will be subject to a fine of 2% 0 (two thousandths) and with a maximum overall fine of 5% (five percent) of the total contract value.

In its implementation, PT Lampiri Djaya Abadi was unable to carry out its obligations in relation to the completion date, namely April 9, 2020. This can be seen on July 8, 2020, PT Lampiri Djaya Abadi sent letter Number 045 / SK / 19.07 / LDA / VII / 2020 concerning application for an extension of the implementation time. In the application letter, PT Lampiri Djaya Abadi gave the reason for the extension of the implementation time because in an effort to optimize the volume of work against the contract, the additional length of the U Ditch channel was 240 x 160 outside the contract area (STA. 2 + 500 - 2 + 473) R of 26 , 9 m according to Memo No. 008 / M.AC-Memo / VII / 2020 dated 19 July 2020, where at that location there are many utility networks, so they have to be done manually. As a result of this work, PT Lampiri Djaya Abadi proposed an extension of the implementation time until September 30, 2020.

Based on the application letter from PT Lampiri Djaya Abadi, then on August 4, 2020, PT Surya Cipta Swadaya issued letter Number 0684 / SCS-EDM / VIII / 2020 concerning an extension of the implementation time. In the letter, PT Surya Cipta Swadaya agreed to extend the time until September 30, 2020, provided that the implementation of hot mix work could be carried out after the completion of the implementation of large-scale social restrictions.

B. PROBLEM STATEMENT

Based on the above background, the problem in this study is how the basic application of *pacta sunt servanda* in cooperation agreement between PT Surya Cipta Swadaya and PT Lampiri Djaya Abadi?

C. RESEARCH METHODS

1. Types of Research

This research is basically a normative juridical research, because the target of this research is law or normative principles in the form of legal principles and legal systems. Normative research in this study is a study that describes or describes in detail, systematically, thoroughly and deeply the rationale for the basic application of *pacta sunt servanda* in cooperation agreement between PT Surya Cipta Swadaya and PT Lampiri Djaya Abadi.

2. Nature of Research

This research is descriptive in nature because it describes the prevailing laws and regulations and is associated with legal theories in their implementation practice relating to the problems to be investigated.

3. Data Analysis

The data obtained will be analyzed using qualitative analysis.

D. ANALYSIS AND DISCUSSION

Basic Application Of Pacta Sunt Servanda In Cooperation Agreement Between PT Surya Cipta Swadaya and PT Lampiri Djaya Abadi

The fact that people close a contract is usually based on a specific purpose or intent. Through an agreement, changes can be sought regarding the division and exchange of economic objects and services. The achievement of the purpose of an agreement is based on the requirements that have been expressed, namely in the form of promises between the relevant parties.⁶

In the world of economics, contracts are the most important instrument for bringing about economic changes in the distribution of goods and services. The rationale for the contract refers to the objective of the shift in assets fairly and to give rise to legal consequences for the enrichment of the parties equally. The contract has the objective of creating better conditions for both parties

In Atiyah's view, the contract has three basic objectives, namely:

1. The first purpose of a contract is to enforce a promise and protect reasonable expectations arising from it;

⁶ Anita Kamilah, *Bangun Guna Serah Build Operate Transfer (BOT): Membangun Tanpa Harus Memiliki Tanah Perspektif Hukum Agraria, Hukum Perjanjian dan Hukum Publik*, Bandung: Keni Media, 2012, p. 105.

2. The second purpose of a contract is to prevent enrichment (self-enrichment efforts) done unfairly or unjustly;
3. The third purpose is to prevent certain kinds of harm.⁷

When referring to the notion of an agreement as a legal relationship between two or more people in which the first party is entitled to achievement, while the other party is obliged to fulfill the achievement, then an agreement as one of the sources of the engagement has two attributes, namely legal rights and obligations. A legal obligation is to bind oneself to do something to another party, while what is called a right or benefit is a demand to carry out something that is agreed in the agreement. Therefore, in every agreement, each party must keep its promise to carry out its obligations and respect the rights of the other party.

Grotius seeks to base this consensus in natural law by saying that "the promise is binding" (*pacta sunt servanda*), and "we must fulfill our promise" (*promissorum implendorum obligati*). Furthermore, according to Grotius, the principle of *pacta sunt servanda* arises from the premise that contracts are binding in nature and are based on two reasons. The first reason is the nature of simplicity that people have to interact and cooperate with others, which means that people must trust each other, which in turn will provide honesty and loyalty. The second reason is that every individual has rights, where the most basic rights are transferable property rights. If an individual has the right to give up his property, there is no reason why that person should be prevented from relinquishing his right as through a contract.⁸

Adagium pacta sunt servanda has had a very big meaning since the sixteenth century, not only in the field of private law but also in the field of constitutional law and international law. The application of the *pacta sunt servanda* principle in a covenant was originally a church law which was strengthened by an oath. But under the influence of moral theologians it has gradually been developed, that agreements which are not strengthened by oath also have binding power.⁹ Thus, the *pacta sunt servanda* principle is accepted as a general principle in international trade and agreements between countries, as regulated in Article 26 of the 1969 Vienna Convention states that: "Every treaty in force is binding upon the parties to it and must be performed by them in good faith ", which can be translated as "Every treaty is binding on the parties and must be carried out in good faith ".

In addition to the three objectives mentioned above, Herlien Budiono added the fourth objective of the contract, namely to achieve a balance between one's own interests and those of the related party and the opposing party, which is derived from the principle of *laras* (harmony) in customary law.¹⁰ The closure of a contract that runs completely as the parties want means that the final goal of the contract will be achieved and in general "satisfaction" has been created, so that the spirit or spirit of balance is a principle that harmonizes legal institutions and the basic principles of contract law found. In the Civil Code, on the one hand, the way of thinking of the Indonesian nation on the other hand has been functioned.

The word balanced "evenwicht", which is interpreted in everyday life refers to the meaning of a "state of distribution of the burden on both sides is in a balanced state". Balance is also understood as "a state of silence or harmony because of the various forces working neither one dominates the other, or because no one element controls the other".¹¹

Mariam Darus Badruizaman and Salim H.S., mentioned that the principle of balance, which is a principle that requires both parties to fulfill and implement the agreement. The basis of this balance is a continuation of the principle of equation, where the lender has the power to demand amortization of performance through the debtor's wealth, but the lender also bears the burden of carrying out the agreement in good faith, so that the creditors and debtors are balanced.¹²

According to Herlien Budiono, an agreement (contract) has a number of aspects, namely the actions of the parties (*handeling*), the contents of the contract (*inhoud*), and the implementation of the contract that the parties have agreed upon (*nakoming*). Three interrelated aspects of the agreement

⁷ P.S. Atiyah, *An introduction to the Law of Contract*, 5th. Ed. New York: Oxford University Press Inc., 1995, p. 35.

⁸ Grotius, H., *The Law of War and Peace: De lure Belli et Pads*, 1964 ed., Kelsey, F.W. trans., Oxford, 1916 — 25 dan Pufendorf, S., *The Law of Nature and Nations: De lure Naturae et Gentium*, 1988 ed. Oxford, 1934.

⁹ Soedjono Dirdjosisworo, *Kontrak Bisnis (Menurut Sistem Civil Law, Common Law dan Praktek Dagang Internasional)*, Bandung: Mandar Maju, 2003, p. 104.

¹⁰ Herlien Budiono, *Asas Keseimbangan Bagi Hukum Perjanjian Indonesia: Hukum Perjanjian Berdasarkan Asas-Asas Wigati Indonesia*, Bandung: Citra Aditya Bakti, 2006, p. 310.

¹¹ Van Dale, *Groot Woordenboek der Nederlandse Taal*, Utrecht/Antwerpen: Tiende Druk, 1982, p. 651.

¹² Mariam Darus Badruizaman, *Aneka Hukum Bisnis*, Bandung: Alumni, 1994, p. 43; dan Salim H.S., *Hukum Kontrak Teori dan Teknik Penyusunan Kontrak*, Jakarta: Sinar Grafika, 2003, p. 13-14.

can be raised as a criterion with respect to the condition of balance, but also a criterion for imbalance if the balance conditions of the three aspects are not met.¹³ This also applies to business cooperation agreements.

A business cooperation agreement is a consensual agreement, that is, the agreement is considered valid if there is an agreement between the two parties who entered into the agreement. A business cooperation agreement as a forum that brings together the interests of one party with another demands a form of fair exchange of interests. Therefore, in such business cooperation, the rights and obligations of the parties must be balanced and proportionate. The business relationship that exists between the parties in a business cooperation agreement generally aims to exchange interests, Roscoe Pound provides a definition of interest is "a demand or desire which human beings, either individually or through groups or associations an relations seek to satisfy" (interest as a demand or desire that humans want to satisfy, either individually or in association groups).¹⁴

From the point of view of a sense of justice, that the need for people to make an agreement means that each party will definitely be bound by the agreement and fully aware of the responsibility it bears through the actions that are carried out, whereas from a legal standpoint because the parties making an agreement mean the parties it will stake its interests. Likewise with business cooperation agreements, to guarantee legal certainty, this business cooperation agreement refers to the agreement arrangements contained in Article 1313 of the Civil Code which states that an agreement or agreement is an act that occurs between one person or more binding himself to one or more other people. This also applies to the business cooperation agreement between PT Surya Cipta Swadaya and PT Lampiri Djaya Abadi.

PT Surya Cipta Swadaya is located at the Manor Office Park, Jalan Surya Utama Kav. C-1 Karawang 41363, is a member company of PT Surya Semesta Internusa, Tbk which is engaged in real estate development and management, construction and hospitality. PT Surya Cipta Swadaya focuses on developing and managing:

1. Industrial area (Suryacipta City of Industry);
2. Office building (the Manor);
3. Commercial area (the Promenade).

PT Lampiri Djaya Abadi was founded in 1972 with the main activity of PT Lampiri Djaya Abadi in the field of construction services industry. In the construction service industry, the Indonesian people are familiar with PT Lampiri Djaya Abadi through the company's participation in government projects that are carried out as well as jobs in the private sector. Experienced in large projects ranging from toll road and highway works, bridge construction, irrigation and drainage, housing to building construction. This includes buildings for industrial use, where the work of PT Lampiri Djaya Abadi spans every archipelago.

PT Lampiri Djaya Abadi was founded by Mr. Jan Darmadi as the founder in his journey, from 1982 to 2007, under the leadership of Mr. Tagor Lumban Raja as President Director of PT Lampiri Djaya Abadi experiencing the ups and downs of his life. Including the principle of survival when facing the economic crisis in Indonesia in 1998. However, slowly, starting in 2000, the company could grow between 10 and 15 percent each year continuously, until 2007. In that year Mr Tagor Lumban Raja died and his leadership replaced by Mr. Trisno Ario Sutanto as President Director of PT Lampiri Djaya Abadi (2008).

On November 5, 2019, PT Surya Cipta Swadaya and PT Lampiri Djaya Abadi entered into a collaborative work number 016 / SCS-EDM / SPP / XI / 2019 regarding repair work / overlay of Surya Utama (Segment 3) Phase I and Surya Utama roads (Segment 4) Phase II. In the cooperation agreement, it was agreed that the contract value was Rp. 18,666,857,000 (Eighteen Billion Six Hundred Sixty Six Million Eight Hundred Fifty Seven Thousand Rupiah) with a down payment of 10% of the contract value.

The implementation of the agreement is carried out for 150 (one hundred and fifty) calendar days from 11 November 2019 and the work is completed no later than 9 April 2020, with a maintenance period of 356 (three hundred and fifty) calendar days from the Temporary (First) Handover Report. Work results are signed. In Article 10 paragraph 5 of the Letter of Agreement Number 016 / SCS-EDM / SPP / XI / 2019 concerning repair work / overlay of Surya Utama road (Segment 3) Phase I and Surya Utama road (Segment 4) Phase II, it is stated that if PT Lampiri Djaya Abadi is unable to complete the work within the implementation period specified in the contract document, he will be subject to a fine of 2‰ (two thousandth) and with a maximum overall fine of 5% (five percent) of the total contract value.

¹³ Anita Kamilah, *Op. Cit.*, p. 106.

¹⁴ Johannes Ibrahim dan Lindawaty Sewu, *Hukum Bisnis (Dalam Persepsi Manusia Modern)*, Bandung: Reika Aditama, 2003, p. 227.

In its implementation, PT Lampiri Djaya Abadi was unable to carry out its obligations in relation to the completion date, namely April 9, 2020. This can be seen on July 8, 2020, PT Lampiri Djaya Abadi sent letter Number 045 / SK / 19.07 / LDA / VII / 2020 concerning application for an extension of the implementation time. In the application letter, PT Lampiri Djaya Abadi gave the reason for the extension of the implementation time because in an effort to optimize the volume of work against the contract, the additional length of the U Ditch channel was 240 x 160 outside the contract area (STA. 2 + 500 - 2 + 473) R of 26 , 9 m according to Memo No. 008 / M.AC-Memo / VII / 2020 dated 19 July 20020, where at that location there are many utility networks, so they have to be done manually. As a result of this work, PT Lampiri Djaya Abadi proposed an extension of the implementation time until September 30, 2020.

Based on the application letter from PT Lampiri Djaya Abadi, then on August 4, 2020, PT Surya Cipta Swadaya issued letter Number 0684 / SCS-EDM / VIII / 2020 concerning an extension of the implementation time. In the letter, PT Surya Cipta Swadaya agreed to extend the time until September 30, 2020, provided that the implementation of hot mix work could be carried out after the completion of the implementation of the large-scale social restrictions.

Due to the failure of PT Lampiri Djaya Abadi, it resulted in injustice and imbalance for PT Surya Cipta Swadaya as the party that had provided work to obtain its rights over defaults committed by PT Lampiri Djaya Abadi. Based on this case, the application of the principle of balance for the parties to the business cooperation agreement did not occur. This is because in an effort to realize the principle of balance in a business cooperation agreement, it is necessary to pay attention to three phases, namely:¹⁵

1. The pre-contract / action phase of the parties making the agreement.

In order for an act of the parties to cause legal consequences, then the act of law can be seen from two categories of deeds, namely:

a. Statement of will of the person who made or acted in committing a legal act.

The actions of PT Surya Cipta Swadaya and PT Lampiri Djaya Abadi in collaborating work Number 016 / SCS-EDM / SPP / XI / 2019 regarding repair work / overlay of Surya Utama road (Segment 3) Phase I and Jalan Surya Utama (Segment 4) Phase II is a self-manifestation as a will that has been stated in the form of an agreement through an offer and acceptance aimed at obtaining a legal consequence that can be accounted for to the parties who commit the legal act, the way of disclosure can be done either verbally or in writing. In this case, PT Surya Cipta Swadaya as the first party provided work to PT Lampiri Djaya Abadi as the second party in the form of repair work / overlay of Surya Utama (Segment 3) Phase I and Surya Utama (Segment 4) Phase II roads with a contract value of Rp. . 18,666,857,000 (Eighteen Billion Six Hundred Sixty Six Million Eight Hundred Fifty Seven Thousand Rupiah).

Both parties have reciprocal trust with respect to the will (intent and purpose) of the opposing party, namely PT Surya Cipta Swadaya as the first party is entitled to the work of PT Lampiri Djaya Abadi to repair / overlay Jalan Surya Utama (Segment 3) Phase I and Jalan Surya Utama (Segment 4) Phase II. Will and trust as interpreted above are the determining factors in determining the contractual binding strength and at the same time reflecting the spirit and spirit of balance.

b. Legal authority and skill of acting.

In civil law traffic, the occurrence of legal relations between legal subjects is unavoidable. Therefore, recognition of the existence of legal authority and the ability to act of legal subjects is another criterion of the principle of balance.¹⁶

One of the legal provisions that set strict limits on competence to act is regulated in Article 1330 of the Criminal Code. According to the provisions of Article 1330 of the Criminal Code, that a person who is not old enough, and those who are placed under remission in principle do not speak to take legal action, because they are considered not yet able to understand and take into account the consequences of the statement of will manifested through their actions.

In the event that a person (presumed and stated) does not speak to act, then the interests of the party who do not speak and are underage or placed under such pardon will be protected. One form of legal protection against parties who have incompetence in committing an act of law, then in accordance with Article 1331 of the Criminal Code "Those who in Article 1330 of the Criminal Code are declared speechless, may sue for cancellation of alliances that have been parties make".

Through the provisions of Article 1331 of the Criminal Code, lawmakers have placed a balance between the interests of non-speakers to apply for cancellation of the agreement, and the interests of

¹⁵ Mariam Darus Badruizaman, *Aneka Hukum Bisnis*, *Op.Cit.*, p. 36.

¹⁶ Anita Kamilah, *Op.Cit.*, p. 108.

the opponent to maintain the agreement, because as long as the agreement is not canceled then the agreement can continue.

Furthermore, with regard to the power of action, the provisions of civil law have provided for it in Articles 1467-1470 of the Civil Code, one of which is that judges, prosecutors, secretaries, lawyers, lawyers, appraisers and notaries are not allowed for submission as owners of rights and claims- claims that form the basis of matters that are dependent on the State Court which in its territory performs such work. The ban is based on the spirit of applying the principle of balance, because it is not fair when the legal actions taken by unauthorized people arise as a result of the law. For these reasons, in order to protect the public interest and legal certainty, the sanctions imposed on it are void for the sake of the law, and the threat of reimbursement of costs, losses, and interest.

Based on this, it is known that the parties, namely PT Surya Cipta Swadaya and PT Lampiri Djaya Abadi are people who speak and can take legal action. This can be proven in agreement Number 016 / SCS-EDM / SPP / XI / 2019, it is known that the representative of PT Surya Cipta Swadaya is Johannes Suriadjaja as President Director and Didi Wihardi as director, while at PT Lampiri Djaya represented by Jimmy Lumban Raja as Director.

2. Contract phase, which is in the form of the contract content agreed by the parties;

The contents of the contract are the achievements / objects of the agreement that have been agreed upon by the parties, either explicitly or secretly. Even in accordance with the principle of freedom of contract, in principle everyone is given the freedom to determine the contents of a contract by themselves. However, even if the freedom to determine the contents of the contract by yourself is not expressly stated in the law, the scope of this principle is limited by law, namely that any legal action that is contrary to law, good morals, or public order, can be invalid, revocable or null and void.

An agreement whose content is contrary to law, decency, or public order results in an imbalance, and the agreement based on the principle of balance causes the validity of the agreement to be disturbed. Good decency is an area of unwritten law. The definition of this concept will not be found in the legal literature and even the law does not properly define decency. How to formulate and determine whether or not there is a violation of decency is the duty of the judge who is faced with a concrete situation to give consideration in his decision.

Good morality varies according to place and according to time. Like "lottery", what was previously considered to be contrary to decency, may now be accepted as fairness, and this change in perspective also affects how "good morality" is interpreted today, so that due to changes in society's perspective, legal actions are prohibited by law may still be considered valid.¹⁷

In the spirit of the principle of balance, legislators in this case choose to side with the public interest. The principle of balance respects the justification of the legal action and adapts itself in line with changes in place and time, and the judge, however, for each case seeks a view of the values that live in the community concerned. Then a legal act is considered "contrary to public order", if the act is against the law, violates or contradicts the basic principles (fundamentals) and social order. Pure forms contrary to public order are rarely found.

In literature and jurisprudence there is no sharp distinction made between contrary to public order and against good morality. However, it is often a legal act that is against public order and is also against the statutory provisions. The provisions of the Civil Code stipulate that legal actions whose purpose and purpose or substance are prohibited by law are generally viewed as contrary to good morality, and contrary to public order.

If it has been determined that an agreement is contrary to good morals or public order, in principle, by law it is considered as an agreement that creates an unbalanced situation and condition. As for the consequences of a legal act that is contrary to a statutory regulation that is forcing, causing the balance of position criteria to not be realized, which can be subject to a number of alternative sanctions, namely:

- a. The legal action is null and void;
- b. The legal act in question can be canceled, especially if the provision is only intended to protect the interests of one of the parties; and
- c. The legal actions are still considered valid and binding.¹⁸

Based on this, if it is related to the case in this study, the contents of the agreement made by PT Surya Cipta Swadaya and PT Lampiri Djaya Abadi are not against the law, good morals, or public order. It can be seen that the cooperation agreement between PT Surya Cipta Swadaya and PT Lampiri Djaya Abadi is the repair / overlay of Jalan Surya Utama (Segment 3) Phase I and Jalan Surya Utama

¹⁷ *Ibid.*, p. 110.

¹⁸ *Ibid.*

(Segment 4) Phase II. In the cooperation agreement, it was agreed that the contract value was Rp. 18,666,857,000 (Eighteen Billion Six Hundred Sixty Six Million Eight Hundred Fifty Seven Thousand Rupiah) with a down payment of 10% of the contract value, so based on this, the cooperation agreement is legally valid.

3. Post-contract / implementation phase of the agreed agreement.

In connection with the implementation of this contract, it is appropriate that a contract be fulfilled by both parties in good faith, so that the objective of closing the contract for the parties to obtain mutual benefits can be realized. The balance is not limited only to a reciprocal agreement, which imposes equal rights and obligations on both parties, but also to a one-sided agreement such as a grant, even though there are conditions that benefit the other party for own loss.¹⁹

Balance does not absolutely have to be based on profit and loss in a material sense, but the principle of balance must be understood in the sense of "achieving or fulfilling" all the objectives of the contract, namely the achievement of immaterial existence, thereby enabling the functioning of the contract mechanism in a balanced manner, seen from the way the agreement is formed itself.²⁰

A new legally concluded agreement will end when all alliances born of the agreement have been fulfilled, and in essence the parties have been bound and will still be bound by the agreement. Even then the implementation of the agreement for one of the parties burdens it.

Based on this, if it is related to the case in this study, it is known that the parties, namely PT Surya Cipta Swadaya and PT Lampiri Djaya Abadi have agreed that PT Surya Cipta Swadaya pays PT Lampiri Djaya Abadi for repair work / overlay of Surya Utama road (Segment 3) Phase I and Jalan Surya Utama (Segment 4) Phase II amounting to Rp. 18,666,857,000 (Eighteen Billion Six Hundred Sixty Six Million Eight Hundred Fifty Seven Thousand Rupiah), and the work is completed no later than 9 April 2020, with a maintenance period of 356 (three hundred and fifty five) calendar days from the news. (First) Temporary Handover of Work Results signed.

The agreement was made when the collaboration was formed, namely on November 5, 2019, which later in its implementation, PT Lampiri Djaya Abadi was unable to carry out its obligations regarding the completion date, namely April 9, 2020. This was seen on July 8, 2020, PT Lampiri Djaya Abadi sent a letter Number 045 / SK / 19.07 / LDA / VII / 2020 concerning applications for an extension of the implementation time. In the application letter, PT Lampiri Djaya Abadi gave the reason for the extension of the implementation time because in an effort to optimize the volume of work against the contract, the additional length of the U Ditch channel was 240 x 160 outside the contract area (STA. 2 + 500 - 2 + 473) R of 26 , 9 m according to Memo No. 008 / M.AC-Memo / VII / 2020 dated 19 July 2020, where at that location there are many utility networks, so they have to be done manually. As a result of this work, PT Lampiri Djaya Abadi proposed an extension of the implementation time until September 30, 2020.

The author is of the opinion that the implementation of the principle of balance in the repair work agreement / overlay of the Surya Utama (Segment 3) Phase I and Surya Utama (Segment 4) Phase II roads does not occur. The absence of fine sanctions given to PT Lampiri Djaya Abadi for its default, making the cooperation agreement experience the potential for not realizing the *pacta sunt servanda*.

The principle of *pacta sunt servanda* is also referred to as the principle of legal certainty as regulated in Article 1338 paragraph (1) of the Civil Code, which states that an agreement made legally applies as law. According to Satjipto Rahardjo, legal certainty is when people obey these legal regulations.²¹ The author agrees with what Satjipto Rahardjo stated, so that when PT Lampiri Djaya Abadi defaulted and did not receive a fine as stipulated in Article 10 number 5 of agreement Number 016 / SCS-EDM / SPP / XI / 2019, it created legal uncertainty in PT Surya Cipta Swadaya for its rights to complete the repair / overlay work of Surya Utama (Segment 3) Phase I and Surya Utama (Segment 4) Phase II roads by April 9 2020.

The author is of the opinion, the failure to realize the *pacta sunt servanda* is due to the agreement Number 016 / SCS-EDM / SPP / XI / 2019 concerning repair work / overlay of Surya Utama road (Segment 3) Phase I and Jalan Surya Utama (Segment 4) Phase II between PT Lampiri Djaya Abadi with PT Surya Cipta Swadaya was made in an underhand agreement, so that no party controls or explains the contents of the article by article in the cooperation agreement. Therefore, in the future, there needs to be a notary's involvement in making a cooperation agreement, so that the agreement is an authentic deed. This is necessary so that the notary can explain the contents of article by article in the cooperation agreement to the parties, so that matters that still need further explanation in one article,

¹⁹ *Ibid.*

²⁰ Herlien Budiono, *Op. Cit.*, p. 349.

²¹ Satjipto Rahardjo, *Biarkan Hukum Mengalir*, Jakarta: Kompas, 2007, p. 79.

can be made a statement by the notary, which in the end the parties clearly know their rights and obligations.

E. CONCLUSION

The application of the *pacta sunt servanda* principle in the cooperation agreement between PT Surya Cipta Swadaya and PT Lampiri Djaya Abadi did not occur. This is due to the absence of fine sanctions given to PT Lampiri Djaya Abadi for default, even though PT Lampiri Djaya Abadi has been proven to have defaulted. Apart from that, the failure to realize the *pacta sunt servanda* was due to the agreement Number 016 / SCS-EDM / SPP / XI / 2019 concerning repair work / overlay of Surya Utama (Segment 3) Phase I and Surya Utama (Segment 4) Phase II roads between PT. Lampiri Djaya Abadi with PT Surya Cipta Swadaya was made in an underhand agreement, so that no party controls or explains the contents of article by article in the cooperation agreement.

REFERENCE

Books:

- Abdulah Salim, *Perancangan kontrak & Memorandum of Understanding*, Jakarta: Sinar Grafika, 2007.
- Anita Kamilah, *Bangun Guna Serah Build Operate Transfer (BOT): Membangun Tanpa Harus Memiliki Tanah Perspektif Hukum Agraria, Hukum Perjanjian dan Hukum Publik*, Bandung: Keni Media, 2012.
- Departemen Pendidikan dan Kebudayaan (Tim Penyusunan Kamus Pusat Pembinaan dan Pengembangan Bahasa), *Kamus Besar Bahasa Indonesia*, Jakarta: Balai Pustaka, 1990.
- Grotius, H., *The Law of War and Peace: De Iure Belli et Pads*, 1964 ed., Kelsey, F.W. trans., Oxford, 1916.
- Herlien Budiono, *Asas Keseimbangan Bagi Hukum Perjanjian Indonesia: Hukum Perjanjian Berdasarkan Asas-Asas Wigati Indonesia*, Bandung: Citra Aditya Bakti, 2006.
- Johanes Ibrahim dan Lindawaty Sewu, *Hukum Bisnis (Dalam Persepsi Manusia Modern)*, Bandung: Reika Aditama, 2003.
- Mariam Darus Badruizaman, *Aneka Hukum Bisnis*, Bandung: Alumni, 1994, p. 43; dan Salim H.S., *Hukum Kontrak Teori dan Teknik Penyusunan Kontrak*, Jakarta: Sinar Grafika, 2003.
- P.S. Atiyah, *An introduction to the Law of Contract*, 5th. Ed. New York: Oxford University Press Inc., 1995.
- Pufendorf, S., *The Law of Nature and Nations: De Iure Naturae et Gentium*, 1988 ed. Oxford, 1934.
- Satjipto Rahardjo, *Biarkan Hukum Mengalir*, Jakarta: Kompas, 2007.
- Soedjono Dirdjosisworo, *Kontrak Bisnis (Menurut Sistem Civil Law, Common Law dan Praktek Dagang Internasional)*, Bandung: Mandar Maju, 2003.
- Subekti, *Hukum Perjanjian*, Jakarta: Intermasa, 2010.
- Van Dale, *Groot Woordenboek der Nederlandse Taal*, Utrecht/Antwerpen: Tiende Druk, 1982.

Legislative Regulations:

- 1945 Constitution of the Republic of Indonesia.
- Code of Civil law.
- Law Number 2 of 2017 concerning Construction Services.