



Unilateral Termination of Contract Cooperation by The Client Against The Consultant In The Legal Perspective of The Agreement

Herman Bakir, Desiana Parura

Universitas Borobudur

Email: herman_bakir@borobudur.ac.id, desyaparura@gmail.com

Keywords

contract termination;
agreement law; consultant

Abstract

The aims of study unilateral termination of contract cooperation by the client against the consultant in the legal perspective of the agreement. Book III of the Civil Code adheres to an open system, parties are free to enter into agreements with anyone and determine the terms, implementation, and agreement form. One of the reasons why an agreement will end is that it has been determined in the agreement by the parties. When one party terminates an agreement before the time specified in the agreement, that party has terminated the agreement unilaterally. A unilateral termination of an agreement can be categorized as an unlawful act, if there is arbitrariness by one of the parties in terminating and discontinuing the agreement, thereby causing the violation of the subjective rights of other people and contrary to the legal obligations of the perpetrator and resulting in causing losses to one of the parties and obligating the party who caused the loss to compensate for the loss



© 2023 by the authors. Submitted for possible open access publication under the terms and conditions of the Creative Commons Attribution (CC BY SA) license (<https://creativecommons.org/licenses/by-sa/4.0/>).

1. Introduction

Humans are social creatures who cannot be separated from other humans. Therefore, in everyday life, humans are bound to other parties. Through this bond, it is relatively easy to fulfill needs rather than being carried out individually. Interaction between group members is a pattern of human life that is characterized as the *zoon politicon* described by Aristotle. Through this interaction, it is impossible to avoid fulfilling life's needs, whether to obtain clothing, food, or shelter, and regeneration is no exception as a natural demand (Isnaeni, 2016).

Everyone can fulfill their needs by interacting by carrying out business activities such as buying and selling, renting, leasing, as well as consulting services in the business and legal world. The process of creating business activities usually always has an agreement in it which is the basis for carrying out the business activities, either using the form of a written agreement or an unwritten agreement known as an oral agreement (Keban, 2022).

Contract law in Dutch terms is *overeenscomstrecht*. Lawrence M. Friedman defines contract law as a legal device that only regulates certain aspects of the fund market and regulates certain types of agreements (Friedman, 2021). Lawrence M. Friedman does not elaborate on certain aspects of the market and certain types of agreements. If you study market aspects, you will of course examine the various business activities that live and develop in a market. In these various markets, various kinds of contracts will be entered into by business actors. This means that contract law is a legal rule relating to the implementation of agreements or agreements.

The law of agreements or contracts has existed for centuries before Christ. And it is still growing today. At this time, contracts are very important in determining the validity of contracts and cannot be separated from everyday life.

For example, when someone wants to use consulting services, that person must also sign a contract agreement (Agrianto, 2021).

In Indonesia itself, most people still don't pay much attention to contract law, and there are still many people who don't understand contract law. Contract law in Indonesia currently still uses regulations from the Dutch Colonial Government contained in Book III of the Civil Code. The book adheres to an open system, which means that parties are free to enter into contracts with anyone, and then determine the clauses, implementation, and form of the contract.

An agreement is an event where a person makes a promise to another person, or two people promise each other to carry out something. From this event, a relationship arises between the two people is called an alliance. The agreement publishes an agreement between the two people who make it. In its form, the agreement is a series of words containing spoken or written promises or commitments (Salim, 2015).

In contract law, several important principles are known, including the principle of consensual. The term comes from the Latin word *consensus*, which means to agree. This principle means that for an accord to occur, an element of the agreement is required from the parties agreeing. The principle of consensual is contained in the provisions of Article 1320 of the Civil Code, which determines that for a valid contract to be valid, conditions are required, including a self-binding agreement which is a subjective condition, because it concerns the people or subjects agreeing (Subekti, 2017).

The meaning of the principle of consensual is that the agreement and the commitment that arises from it have been born since the moment the agreement was reached. In other words, the agreement is valid if it is agreed on the main things and no formalities are needed. There are also exceptions to the principle of consensualism, namely that the law stipulates certain formalities for several types of agreements, with the threat of the concurrence being annulled if it does not comply with certain forms or methods (Elfani & Azheri, 2023).

Apart from that, the *Pacta Sunt Servanda* principle is also known or also known as the principle of legal certainty. This principle relates to the consequences of the agreement. The principle of *Pacta Sunt Servanda* is the principle that a judge or third party must respect the substance of the contract made by the parties, as befits a law. The principle of *Pacta Sunt Servanda* can be summed up in Article 1338 paragraph (1) of the Civil Code, which reads: "Agreements that are legally made are valid as law for those who make them." In its development, the principle of *Pacta Sunt Servanda* was given the meaning of *pactum*, which means that an agreement does not need to be confirmed by oaths and other formal acts. Meanwhile, *nudus pactum* is enough to just agree (Alvandy, 2022).

In building a working relationship to protect all risks that will arise, a work agreement is prepared that will guarantee legal certainty and accommodate the interests of both parties in the agreed contract, and the benefits can be enjoyed by those who make the contract. Therefore, various matters relating to contract law must be understood broadly and correctly, so as not to be trapped in misunderstandings in making a contract that contains an agreement and is legally binding on the parties participating in the agreement.

Laws drafted during the reform era were predominantly sectoral laws, while targeted laws were not paid attention to. The contract law used is based on Dutch colonial law contained in open legislation. This means every person is free to carry out a contract and determine the terms, realization, and format of the contract, both orally and in writing (Pangestu, 2019). a contract is a real event, whether an oral or written contract, (Salim, 2021) A contract is a generalization of legal rules determining the legal relationship that causes legal consequences, namely the existence of rights and obligations.

Based on the background described above, the problem of this research can be formulated as follows: What is the legal review of agreements regarding unilateral contract termination by clients towards consultants? What are the legal consequences of the client's unilateral act of terminating the contract against the consultant?

2. Materials and Methods

The research used in writing is normative empirical. The sources of legal materials used in this research are primary legal materials and secondary legal materials. The primary materials used are legal books. The approaches used in this research are the statutory regulation technique and the legal concept analysis approach. The data processing used is an analytical method which is then outlined in descriptive-analytical writing.

3. Results and Discussions

Contracts are regulated in the Civil Code in the third book concerning engagements. Apart from that, the third book not only regulates obligations arising from agreements but also regulates obligations arising from laws. So that the third book of the Civil Code adheres to an open system. The meaning of an open system is that a person can agree on anything, even if he has deviated from what has been stipulated in the third book according to his wishes, both in the form of the agreement and also the contents of the agreement in it, as long as it does not conflict with the public

order and decency. So the rules in the third book of the Civil Code are complementary laws that apply to the parties as long as they do not override their agreement. The basics of national contract law are also contained in the Civil Code so the Civil Code is the main source of a contract.

The term agreement comes from the term *overeenkomst*, where *overeenkomst* comes from the verb *overeenkomen* which means to agree or agree, some scholars translate this term as agreement, and some translate it as agreement. In Article 1313 of the Civil Code, an agreement is an act by which one or more people bind themselves to one or more other people.

The provisions of Article 1338 paragraph (1) of the Civil Code give parties the freedom to make or not make an agreement, enter into an agreement with anyone, determine the content of the agreement, its implementation, and requirements, and determine the form of the agreement, namely written or oral. Meanwhile, Article 1338 paragraph (3) of the Civil Code states that an agreement must be executed in good faith, and determines the principle of freedom of contract, the principle of *pacta sunt servanda*, the principle of legal certainty, and the principle of good faith.

This norm of good faith is one of the most important aspects of an agreement because what is meant by good faith in an agreement is that the agreement must be implemented according to obedience and fairness. Based on Article 1338 paragraph (1) of the Civil Code, parties are given the freedom to determine the contents of an agreement based on the agreement of both parties. Sometimes in an agreement, there is a clause that states that if one party does not carry out its obligations, the other party to the agreement can cancel the agreement.

Basically, an agreement is made based on the agreement of both parties, and the agreement applies as law to those who make it, so what is contained in the agreement must apply and be obeyed by both parties. The emergence of a clause that states that if one party does not carry out its obligations, the other party in the agreement can cancel the agreement, of course, it has been made based on the agreement of both parties.

This is also related to the existence of an exoneration clause, which is a clause that aims to release or limit the responsibility of one of the parties if they do not carry out or are not supposed to carry out the obligations specified in the agreement. However, because the agreement is a relationship between the two parties, if one is deemed not to be carrying out its obligations, the other party should not simply terminate the agreement, even though this has been stated in a clause in the agreement.

It is related to Article 1266 of the Civil Code which stipulates that even though the conditions for cancellation or termination of an agreement are specified in an agreement, the cancellation must still be submitted to the court. The text of Article 1266 of the Civil Code is as follows:

"The condition of cancellation is considered to always be included in reciprocal agreements when one of the parties does not fulfill its obligations. In such cases, the agreement is not null and void, but cancellation must be requested from the Judge. This request must also be made, even though the conditions for non-fulfillment of obligations stated in the agreement are void. "If the conditions for cancellation are not stated in the agreement, then the judge, considering the circumstances, at the request of the defendant, is free to give a duration to fulfill the obligation, but this period cannot be more than one month."

Thus, according to Article 1266 of the Civil Code, for the reason that one party does not carry out its obligations, the other party to the contract can cancel the contract in question, however, this cancellation cannot be done just like that, but must be done through a court. The existence of Article 1266 of the Civil Code when linked to Book III of the Civil Code which has an open system (open system), means that the parties are free to enter into an agreement with anyone and determine the terms, implementation, and form of the agreement, which can be in oral and written form, including The agreement made by the parties contains a condition that it will be void if one of the parties defaults or does not carry out the contents of the agreement (Miru, 2017)

Apart from having an open nature in Book III of the Civil Code, it also has a complementary nature, meaning that for matters that are not regulated and determined in the agreement made by the parties, the provisions contained in Book III of the Civil Code apply, so that their nature only complements the rules in the agreement, the length is not regulated and specified in the agreement.

With the open nature of Book III of the Civil Code, if it is linked to Article 1338 paragraph (1) of the Civil Code, which determines that every agreement made by the parties, applies as law for the parties who make it, so that the inclusion of the terms of cancellation as in Article 1266 of the Civil Code, also binding for the parties who have agreed to an agreement, but sometimes Article 1266 of the Civil Code is overridden by the parties.

The waiver of Article 1266 of the Civil Code means that the parties have agreed that if one party is deemed not to have implemented the contents of the agreement. So the other party can cancel the agreement unilaterally, without going through court, as stipulated in Article 1266 of the Civil Code, which states that if you want to cancel the agreement, you must ask the judge before the court.

Usually, in practice, clauses regarding unilateral cancellation of agreements often occur, to avoid court proceedings which usually take a lot of energy, time, and money, as well as avoiding long-winded and tedious proceedings. However, it could also happen that the purpose of the clause is to discharge the responsibility of one party in the agreement towards the other party. However, usually one of the parties to the agreement is in a weak position and inevitably has to comply with the clauses in the agreement.

As in the agreement made between the client who had a money fraud case and the company PT. Cyber Future, the fraud carried out has a very large nominal value. Both parties, the client and the consulting service, agree to agree to help resolve the client's case problems. The agreement was agreed upon by both parties, but in the process of resolving the case, the client decided to unilaterally cooperate with the consultant (Fuady, 2018).

Unilateral termination of contractual cooperation by a client towards a consultant is a very relevant aspect of contract law in the business and legal world. A consulting agreement is an agreement that includes the provision of consulting services by a professional or consultant to a client to provide advice, guidance, or solutions related to business, technical, legal, or other problems. In this kind of consulting relationship, understanding and applying the principles of contract law is very important to safeguard the rights and obligations of the parties involved.

The agreement that has been agreed upon by the parties follows the principle of *pacta sunt servanda*. This means that the parties must carry out all the contents of the agreed agreement. The agreement cannot be withdrawn without the consent of the other party. This principle is regulated in Article 1338 of the Civil Code which states: "All agreements made legally are valid as law for those who make them (Marilang, 2013).

Unilateral termination of an agreement is something that often happens in business contracts. This is done by parties who are dissatisfied with the implementation of the agreement and therefore want the agreement to be terminated immediately. In this context, the question arises whether this action can be categorized as a breach of contract or an unlawful act (PMH).

The Supreme Court (MA) considers that if one of the parties who has agreed with another party, unilaterally cancels the agreement, then the party who has unilaterally canceled the agreement has committed an unlawful act. This is contained in the Supreme Court (MA) Decision Number 4/Yur/Pdt/2018 which states: "Unilateral termination of an agreement is included in action against the law."

As is known, the legal consequences based on unlawful acts are losses suffered by other people, which can be in the form of material or immaterial losses. Material loss is a loss in the form of material, the extent of which must be proven. Meanwhile, immaterial losses involve honor, self-esteem, etc., and their value is estimated in money according to social status (Nasution, 2016).

In the field of civil law, the doctrine of causality is very important, because it ensures that there is a causal relationship between an unlawful act and the losses incurred so that the perpetrator can be held accountable. In this case, one must pay attention to the terms of the agreement made by the parties, so that to state that an agreement has been terminated unilaterally by one of the parties, one must refer to when the agreement is supposed to end. If an agreement has not ended according to the agreed time, then if it is terminated by one of the parties, the action is an unlawful act, because it terminates the agreement unilaterally, whereas if the expiry time of the agreement has ended, then all actions, even though they are related to the agreement, has no legal consequences.

Termination of the contract or what can also be called cancellation of the agreement is one of the causes of the end of the agreement. Several things resulted in the end of the agreement, namely:

- a. Determined in the agreement by the parties, so that an agreement ends at the time specified by the parties in the agreement.
- b. A statement to terminate the agreement either by both parties or by one of the parties
- c. There is a judge's decision
- d. If the objectives of the agreement have been achieved. Once the goal of the agreement is achieved, the agreement will end.
- e. With an agreement between the parties. Article 1338 paragraph (2) of the Civil Code provides for the possibility of ending an agreement with the agreement of both parties.

Terminating a contract without the consent of the party concerned can be interpreted as a failure of one of the parties to perform the services promised in the contract. When the party concerned still intends to perform as promised and still wants to receive a performance contract from the other party. Termination of the contract carried out by the client causes the consultant to experience a detrimental event due to the loss suffered by the termination being carried out without confirmation from the party concerned.

Contracts cannot be terminated unilaterally, because if a contract is terminated unilaterally, it means that the contract is not binding on the party concerned who entered into it. The requirements become invalid if the other party

does not carry out the performance. Termination must be requested in court, namely to prevent one party from being able to terminate the contract unilaterally because the other party has not fulfilled its performance (negligence).

If the contract is terminated by one of the parties without proper reason, in the case of a long-term contract, the party who is harmed by the termination submits a claim for compensation to the party who terminated the contract. The compensation requested by a party whose performance is not fulfilled for unilateral termination can be in the form of costs and losses suffered. As a result of losses incurred by the parties concerned, the law gives them, among other things, the right to file a lawsuit:

1. Fulfill their obligations,
2. Execute the agreement accompanied by compensation,
3. Compensation,
4. Termination of the agreement, and
5. Termination of the dissertation for compensation.

Thus, it is clear that each party can only terminate the contract unilaterally if it does not fulfill the subjective legal requirements of the contract. Termination can only be implemented by filing a lawsuit with the court and taking action by the party terminating. However, if the unilateral termination is a breach of contract, even though not all the contents and provisions of the contract have been implemented by the party concerned, unilateral termination of the party does not give rise to any legal consequences. Termination of the contract simply returns the parties to their previous state, i.e. previous circumstances the parties had never made and registered a contract between them (Weydekamp, 2013).

4. Conclusion

An agreement that is terminated by one of the parties, when the agreed period in the agreement turns out to have ended, is not an act of unilateral termination of the agreement. Unilaterally terminating an agreement is an unlawful act, if the agreement is terminated before the end of the agreed period, thereby causing a violation of the subjective rights of other people and conflicting with the legal obligations of the perpetrator.

Termination of the agreement should not simply be carried out by one of the parties, because by article 1266 of the Civil Code, cancellation of the contract must be carried out through the Court. Unilateral termination of an agreement is an unlawful act, so it needs to be done carefully and pay attention to the applicable provisions in the contract and applicable laws and regulations.

5. References

- Agrianto, Muhammad Iman. (2021). Pelaksanaan Perjanjian Franchise Menurut Hukum Perdata Di Kota Samarinda. *Journal Of Law (Jurnal Ilmu Hukum)*, 6(2), 720–734.
- Alvandy, Addryyan. (2022). *Tinjauan Yuridis Terhadap Pandemi Covid-19 Dijadikan Force Majeure Dalam Pemutusan Hubungan Kerja*. Universitas Islam Riau.
- Elfani, Radella, & Azheri, Busyra. (2023). Pemutusan Kontrak Pekerjaan Jasa Konstruksi Pt. Inanta Bhakti Utama Dalam Proyek Drainase Oleh Dinas Pekerjaan Umum Dan Penataan Ruang Kota Bukittinggi. *Jurnal Preferensi Hukum*, 4(2), 245–254.
- Friedman, Lawrence M. (2021). *American Law: An Introduction*. Jakarta: Pt. Tata Nusa.
- Fuady, Munir. (2018). *Hukum Bisnis Dalam Teori Praktek Buku Ketiga*. Pt Citra Aditya Bakti.
- Isnaeni, Moch. (2016). *Perjanjian Jual Beli*. Bandung: Refika Aditama.
- Keban, Angelina Bernadina Linojawa. (2022). Sengketa Akibat Pemutusan Kerja Sama Antara Pt. Sarana Investama Manggabar Dengan Provinsi Nusa Tenggara Timur. *Bureaucracy Journal: Indonesia Journal Of Law And Social-Political Governance*, 2(2), 649–666.
- Marilang. (2013). *Hukum Perikatan Perikatan Yang Lahir Dari Perjanjian*. Makassar: Alauddin University Press.
- Miru, Ahmadi. (2017). *Hukum Kontrak Perancangan Kontrak*.
- Nasution, Bahder Johan. (2016). *Metode Penelitian Ilmu Hukum, Cetakan Kedua*. Mandar Maju, Bandung.
- Pangestu, Muhammad Teguh. (2019). *Pokok-Pokok Hukum Kontrak*. Cv. Social Politic Genius (Sign).
- Salim, H. S. (2015). *Hukum Kontrak: Teori & Teknik Penyusunan Kontral*.
- Salim, H. S. (2021). *Hukum Kontrak: Teori Dan Teknik Penyusunan Kontrak*. Sinar Grafika.
- Subekti, Hukum Perjanjian. (2017). Jakarta: Penerbit Pt. *Pembimbing Masa*.
- Weydekamp, Gerry. (2013). Pembatalan Perjanjian Sepihak Sebagai Suatu Perbuatan Melawan Hukum. *Lex Privatum*, 1(4).