



# Problems and Dispute Resolution of Hongkong Market Development and Management Cooperation

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## *Abstract*

Problem and Dispute Resolution of Hongkong Market Development and Management Cooperation. Contract arrangements for places of business in the context of developing and managing the Hong Kong Market, when viewed from Article 1320 of the Civil Code, do not meet the first requirement, namely an agreement which is a subjective requirement. Because there is an element of error (dwaling, mistake). Because the authority of the Board of Directors based on the laws and regulations can make and sign contracts. Therefore, the contract can be canceled by referring to Articles 1266 and 1267 of the Civil Code, namely the cancellation is requested through a judge and the losses incurred as a result of the cancellation are calculated. The authority of PD. Pasar Kota Medan in making cooperation contracts has been fully granted by the legislation, the legal aspects that are the basis for the establishment of PD. Medan City Market, namely Law Number 5 of 1962 concerning Regional Enterprises, Law Number 32 of 2004 concerning Regional Government, Ministry of Home Affairs Number 50 of 1999 concerning BUMD Management.

**Keyword:** Dispute Resolution, Hongkong Market, Management Cooperation

## 1. Introduction

Agreements/contracts for places of business in the context of the restoration/rejuvenation of the Medan City Hongkong Market project made and signed by the Medan City government and PT. Tria Sumatera Corporation on July 4, 1988 was represented by AS Rangkuti as the Mayor of the Level II Regional Head of Medan with Karman Wijaya as Director of PT. Tria Sumatra Corporation Medan and Addendum I to Agreement Number: 511.2/10962 dated July 4, 1988 regarding the rebuilding and management of the market. New Hong Kong owned by the Government KDH TK II Medan number 511.2/16482 dated September 13, 1993 which was signed by Bachtiar Djafar as Mayor of KDH TK II Medan with Hartono Utomo as Director of PT. Tria Sumatera Corporation Medan.

This collaboration was carried out due to the lack of financial capacity of the Medan City Government to carry out the restoration/rejuvenation of the Medan Hong Kong

Market. Changes in the legal status of the agency that manages markets in Medan City, namely the Medan City Market Service to become a Medan City Market Company, then all The assets of the PasarDinas were handed over to PD.Pasar Kota Medan with an official report on July 7, 1993.

Law number 5 of 1962 concerning Regional Companies which is the legal umbrella for the establishment of Regional Companies throughout Indonesia. Then Law number 22 of 1999 concerning Regional Government was enacted, the introduction of the widest possible autonomy and giving effect to the mechanism for advancing the management of regional companies or Regional Owned Enterprises (BUMD), which was later amended by Law number 23 of 2014 concerning Government Regions which are further described in Government Regulation number 54 of 2017 concerning Regional Owned Enterprises (BUMD).

All of the laws and regulations concerning BUMD are closely related to the law governing regional autonomy which began since the independence of the Republic of Indonesia. Starting with Law No. 1 of 1945, it adopted a formal household regional autonomy system, and continued to experience changes until the birth of the widest possible regional autonomy with Law No. 22 of 1999 concerning regional government which was amended by Law No. 32 of 2004. and lastly it was amended again by Law number 23 of 2014 on Regional Government.

The provision of a place to sell is carried out by PD. Medan City Market in various ways to obtain development funds. In addition to their own funds from traders and PD. Pasar Kota Medan, Medan City Government assistance obtained both from the State Budget (APBN) and from the Medan City Regional Revenue Budget (APBD), can also be obtained from development funds originating from cooperation with third parties or developers (developers). Cooperation with third parties for market development has been carried out since the previous period of the Market Service for Traditional Markets.

The purpose of market development through revitalization apart from what has been explained above is also a manifestation of the Government's desire to adjust the market face to the development of urban spatial planning, since most of the markets are managed by the City of Medan and then handed over to the PD. Medan City Market is located at the heart of the city, especially the five markets. The provision of a place to sell Traditional Markets carried out with development cooperation still fulfills the principles of Pancasila from the socio-cultural aspect, namely the principle of deliberation to reach consensus and the principle of mutual cooperation.

## **2. Literature Review**

### **2.1 Definition of cooperation agreement**

According to the Sudarsono Legal Dictionary, the meaning of contracts and agreements are as follows:

“Contract:1. A written agreement between two parties in a lease trade and so on; 2. An agreement with legal disputes between two or more parties to do or not to carry out activities; an agreement made by two or more parties in writing or verbally, each of

whom agrees to comply with the contents of the agreement that has been made together, this is regulated in Article 1313,1314 of the Civil Code.

The word agreement can be constrained very popular among the people. If only seen from a translation perspective, it is more in line with the Dutch word *overeenkomst* used by the Civil Code. The word "contract" is usually intended for an agreement that is made in writing or held in the business community (business world).

Before contract law was considered a Civil Law Institution after the 20th century because of the emergence of functional legal teachings that gave birth to standard contracts with the principle of freedom of contract controlled by the regulations of State Administrative Law (HAN) which contained elements of public interest. Contract law in the field of business is part of Economic Law (*Droit de l'economie*) rather than Civil Law.

R. Wirjono Prodjodikoro argues about the limitations of the agreement, namely that the agreement is defined as a legal relationship regarding assets between two parties, in which one party promises or is deemed to have promised to do something or not to do something, while the other party has the right to demand the implementation of the promise. that.

## **2.2 Definition of management**

Management has four meanings and comes from the word *manage*, in the Big Contemporary Indonesian Dictionary, which means to lead, control, regulate, and strive to be better, more advanced and so on and be responsible for certain jobs. Management is the process that helps formulate policies and objectives providing oversight on all matters involved in implementing and achieving goals.

Management is a homonym because it has the same spelling and pronunciation but different meanings. Management has meaning in a noun or noun class so that management can state the name of a person, place or all objects and everything that is objected.

According to experts the definition of management is:

- a. Rebert T. Kiyosaki and Sharon L; Management is a very big word, which includes the management of money, time, people, resources, and especially information management.
- b. Prajudi Admosudirjo; Management is the control and utilization of all resource factors which, according to a plan, are required for the completion of a particular work objective.
- c. Andrew F Sikul; Management is a series of activities for coordinating activities that include planning, organizing, directing, controlling, placing and making decisions to produce products and services that are effective and efficient.

## **3. Research Methods**

### **3.1 Type of Research**

This type of research method is normative juridical and empirical juridical which combines a normative legal approach with the addition of various empirical elements. This method explains the implementation of normative provisions (laws) in their actions

on certain legal events that occur in society. This research category is a Live Case Study, which is an approach to a legal event whose process is still ongoing/not over yet.

As SoerjonoSoekanto's opinion that the law in its complete description consists of two aspects, namely the normative aspect (*das solen*) and the empirical aspect (*das sein*), it has been accepted by legal academics in general. library research (normative legal research), but equipped or supported by field research (empirical research), because the rules are not only found in laws and regulations but there are also unwritten ones that are embodied in the law of freedom and even exist in human behavior.

### 3.2 Types and Sources of Data

Data (singular datum) is information about an object of research obtained at the research location. The definition of data is actually similar to the definition of information, it's just that information is more emphasized in terms of service, while data is more focused on material aspects.

Research materials/materials can be in the form of data and/or information. Data in legal research is divided into primary data and secondary data.

#### a. Primary data

Primary data in the form of data obtained directly from respondents. The primary data is in the form of data and information, namely the legal behavior of both individuals and groups as well as in the form of opinions, perceptions or attitudes of individuals and groups. Thus, primary data is obtained from primary data sources, namely the first source where data is generated. This data is obtained either through observation, or interviews.

#### b. Secondary Data

Secondary data is data obtained from the second data source or secondary data that we need. Secondary data is classified into two, namely:

1) The available internal data is written on the secondary data source.

For example, in a written company in the form of sales reports, invoices, shipments, etc.

2) External data, namely: data obtained from outside sources, such as register data, census data, etc.

#### 3) Data Collection Techniques

Data collection techniques are very important in research methodology because the success or failure of a research is determined by the technique or method of data collection. This data collection method or technique is a very important instrument because of errors that occur or are carried out in this study, so the data cannot be used properly. Techniques or methods or interviews with directed interviews, observations with direct and unstructured observation methods and documentary methods in the form of official documents, which are used in this study.

It can also be explained about the meaning of the interview method, which is a process of obtaining information for research purposes by means of question and answer while face to face between the interviewer and the respondent /

interviewee with or without using an interview guide. The interview guide is an instrument to guide the course of the interview.

#### 4) Data Analysis

Qualitative data analysis (Bogdan&Bilen, 1982) is an effort made by working with data, organizing data, sorting it into manageable units, synthesizing it, searching for what is learned and deciding what to tell others.

On the other hand, qualitative data analysis (Seiddel, 1998), the process goes as follows:

- a. The note that produces field notes with it is coded to keep the data source traceable.
- b. Collecting, sorting, classifying, synthesizing, making an overview and indexing it.

## 4. Discussion

### 4.1 Problems Related to Development

During the construction stage of the Hong Kong Market, there was a problem with the implementation of the development that was not in accordance with the time period specified in the contract, causing a contract addendum.

When the construction started, there were problems, this was proven by the issuance of addendum I which was signed on July 4, 1988 which changed or added several articles, namely:

Article 4 which reads:

- a. In the master agreement: "dependant for a debt and not burdened with other obligations because of anything now or in the future and for that the second party is free from lawsuits".
- b. In addendum I: "The period of implementation of the construction is extended for 2 (two) years, starting from October 1, 1992 and must be completed by September 30, 1994".
- c. The addition of Article 20 to addendum I which reads: "The changes mentioned above are only area adjustments to the types of sales and other facilities, while the distribution of the area is not changed (fixed) and the addendum to this agreement is an inseparable part of the original agreement letter, namely Number : 511.2/10962 dated 04 July 1988".

This addendum arises apart from the delay in the completion of development work for each stage. Also because there is an adjustment as in Article 10 paragraph (1), namely the adjustment of the wholesale area, market, place for selling merchandise and recreation area located on the I, II, III and IV floors of the building to the type of sale because in this collaboration there are different forms of buildings. exclusive compared to other BOT cooperation agreements. So there is a combination of Traditional Markets, Modern Markets and Hospitality in one building. In this building, the Traditional Market is placed in the basement I, the Modern Market is placed on the third floor and the hotel is placed on the V to XI floors in accordance with Article 10 paragraph (1) of addendum I.

In addition, the Ministry of Home Affairs stipulates that construction can begin if traders have been placed in shelter locations. The location of the shelter is a physical market building that is not permanent or an emergency building so that based on the market clarification that has been stipulated in the Decree of the Mayor of Medan No. 188.342/835/SK/1994 concerning the implementation of the Medan City Regional Regulation No. 31 of 1993 concerning the use of a place to sell.

This unification of the market and hotel in the end becomes a problem for the Regional Company Supervisory Board at this time because the hotel is considered the object of PD management. Development even though every meeting of the Financial Audit Board (BPK) and the Provincial Financial Audit Board (BPKP) this unification did not become a finding.

#### **4.2 Problems Related to Management**

In the implementation of the Hong Kong Market management, conflicts of interest often occur between PD. Pasar Kota Medan and PT. TSC based on their respective authorities. PD. Pasar Kota Medan has the authority based on regulations, while PT. TSC on a contract basis. Such as the imposition of costs to traders proportionally including order, security and cleanliness services carried out by each party so that services to traders and consumers can be carried out properly and sustainably in their respective regions.

The obligation to pay contributions as stipulated in the Medan City Regulation No. 31 of 1993 concerning places to sell Article 2 paragraphs (1) and (6), paragraph (1) states as follows: "The tenant is required to have a temporary certificate or a permanent certificate containing a period of time. validity and the picture he uses and the number of the kiosk or stand designated for him by paying the fee determined for it". Furthermore, paragraph 6) states as follows: "Contribution payments are made monthly and daily".

The determination of the contribution rate has undergone three changes, starting with the Decree of the Mayor of KDH.TK. I Medan Number 511.2/2222/SK/1993, Mayoral Decree KDHMedan Number 511.2/2192/SK/1999 and because of the birth of Regional Autonomy No.22/1999 on Regional Government giving broad authority to the directors, the application of contribution rates is no longer stipulated by the Mayor of Medan (the word from the Regional Head changed from the Medan City Level II Region to the Mayor of the KDH Tk II Medan changed to the Medan Mayor). The determination of contribution rates is enough to be determined by the Directors of PD. Medan City Market which begins with the decision of the Board of Directors of PD. Medan City Market No. 511.3/2132/PDPKM/2003 and underwent several changes adjusted to the level of economic inflation.

The types of contributions charged to traders are:

- a. From the service sector includes; contribution to the use of the kiosk/stand/lapak area (calculated based on the standard rate that has been set for each type of sale/meter), cleaning services. use of WC bathrooms managed by PD. Medan City Market (selling water, bathing, defecating and urinating), and parking managed by PD. Pasar Kota Medan.

- b. From the licensing sector includes; temporary appointment letter, rental rights permit, license to use coconut courgette machine, meat milling machine and dynamo machine which does not exceed 3 PK. Permits to repair kiosks, permits to exchange types of sales, permits to enter motorbikes, permits to unload merchandise, permits to enter motorbikes (the amount of contribution is adjusted to the shape of three- and four-wheeled vehicles). Permit to rent a place to sell (a place to sell that is rented by a Rental Right Holder who is appointed by PD. Pasar to other parties). And transfer fees (sales of lease rights from rental rights holders appointed by PD Pasar to other parties) and permits to manage private markets (the contribution is 50% of the contribution of the place to sell).
- c. From the sector of cooperation include; market development cooperation (building new physical markets, rehabilitation and rebuilding/rejuvenating physical markets). Partners who manage potential sources of income are given a permit which must be paid in accordance with the amount stipulated in the Decree of the Board of Directors. Such as managing toilets, parking lots, night watch and other quoting that is not possible to be carried out by PD. Medan City Market because its operating hours are outside working hours (early morning) such as unloading merchandise. Motorbike permits and use of places to sell on public roads that have been designated as temporary markets, namely JalanSutomo and its surroundings.
- d. From the certificate sector, it includes a certificate as an Informal Trader (especially Informal Traders managed by PLD.Pasar Kota Medan). Description of the price of merchandise in the market (this certificate is used for hospitals and offices that provide buffets). Information for entering water, electricity and telephone as well as information for banking credit.
- e. From the leasing sector, it includes renting a place for promotion and selling merchandise. Installation of billboards for merchandise products (banners and billboards) and installation of antennas to strengthen cellular telephone networks (antenna base transeiver stations).

The problem that occurs in this management is only in determining the amount of payment for the contribution of the private market for each floor, in contrast to other BOT cooperation agreements. The problems that arise tend to be in the management of the arrangement of traders, namely between formal and informal traders which causes overlapping responsibilities between PD. Medan City Market and partners or third parties in BOT cooperation. however, the problem with PT. The TSC caused quite a long debate with the measurement results between the Medan City Building Service and PD. Medan City Market with PT. TSC to determine the effective area and the actual area of the facility with the results signed with the three parties on 27 May 1997.

#### **4.3 Dispute Resolution**

Basically, every contract that has been made is expected by the parties who agreed there will be no problems because it is carried out voluntarily and in good faith. If a problem occurs, it is hoped that it can be resolved by deliberation as the main way, but if it cannot be resolved, legal institutions can take it. There are two types of settlement

patterns with legal institutions, namely through the courts and alternative dispute resolution.

Usually the dispute resolution has been explicitly regulated in the contract. The parties are free to choose to mutually agree on how to resolve the dispute through court or out of court (ADR). Both of these methods have advantages and disadvantages of each as a material consideration for choosing it. If through the court, it will be seen the authority in adjudicating, whether it can be carried out in full, the time and cost required during the process. If it is out of court, then the content of the decision is not binding on the parties, meaning that the parties can accept and reject the contents of the decision.

In the Hong Kong Market contract, this settlement has been explicitly regulated in Articles 14, 16 and 18. However, up to now, the only approach is through deliberation through a meeting held by PD. Medan City Market in the PD meeting room. Medan City Market and meetings held by the Medan City Government in the meeting room of the Medan Mayor's Office. But PT. TSC always does not implement the results of meeting decisions because the Director of PT. TSC HusniGunawan never attended any meeting at either the Medan Mayor's office or the PD. Medan City Market is always represented by management staff. Therefore, each meeting result can never be decided completely by representatives of PT. TSC.

Though there should be many ways that can be taken. As stated by Salim HS in his book *Contract Law Theory & Contract Drafting Techniques* that based on Article 1 paragraph (10) of Law Number 30 of 1999 concerning Arbitration and Alternative Options and Dispute Resolution there are 5 ways to resolve disputes, namely consultation, negotiation, mediation, conciliation, and expert judgment.

Then he also stated that in the literature there are two patterns of dispute resolution, namely:

- a. The binding adjudicative procedure is a dispute resolution procedure in which the judge decides the case binding the parties. This form of dispute resolution can be divided into four types, namely:
  - 1) Litigation.
  - 2) Arbitration.
  - 3) Mediation-Arbitration, and
  - 4) Particle Judge.
- b. The non-binding adjudicative procedure, which is a dispute resolution process in which the decision of the judge or the person appointed is not binding on the parties. Settlement of disputes in this way is divided into six types, namely:
  - 1) Conciliation,
  - 2) Mediation,
  - 3) Mini-Trials,
  - 4) Trial Jury Summary,
  - 5) Neutral Expert fact-Finding, and
  - 6) Early Expert Neutral Evaluation.

An understanding of legal reasoning at this time is not only necessary for judges but also for lawyers because the activities of the lawyer profession are directly related to legal reasoning.

Legal analysis through legal reasoning is important for practitioners in terms of:

- a. Decide how to resolve the dispute (what is more beneficial through deliberation or through a court process);
- b. File a claim on behalf of the client before a court or ADR;
- c. File a defense against the client's interests before the court or ADR;
- d. Participate in building jurisprudence.

To carry out legal reasoning, both judges and layers must master various fields of legal science or other sciences related to legal science, such as mastering material law, formal law, legal theory, legal philosophy, sociology of law, legal research, how to conduct legal investigations, how to make legal discoveries and others.

## **5. Conclusion**

- a. Contract arrangements for places of business in the context of developing and managing the Hong Kong Market, when viewed from Article 1320 of the Civil Code, do not meet the first requirement, namely an agreement which is a subjective requirement. Because there is an element of error (dwaling, mistake). Because the authority of the Board of Directors based on the laws and regulations can make and sign contracts. Therefore, the contract can be canceled by referring to Articles 1266 and 1267 of the Civil Code, namely the cancellation is requested through a judge and the losses incurred as a result of the cancellation are calculated. However, based on the provisions in the contract that the cancellation cannot be arbitrary, it can be carried out by deliberation first, if not reached, proceed to the Court or Arbitration Board. Then a PD is formed. Medan City Market from management science is a permanent delegation of power from the Medan City government for the purpose of APBD efficiency and reducing the burden of managing public facilities that have economic value, namely the market. From the delegation mechanism, through the formation of a company, the Medan City government becomes a shareholder or a limited liability company (priority shareholder) who should not be able to directly become the executor in managing the facilities that have been delegated.
- b. The authority of PD.Pasar Kota Medan in making cooperation contracts has been fully granted by the legislation, the legal aspects that are the basis for the establishment of PD. Medan City Market, namely Law Number 5 of 1962 concerning Regional Enterprises, Law Number 32 of 2004 concerning Regional Government, Ministry of Home Affairs Number 50 of 1999 concerning BUMD Management. Kepmdagri Number 41 of 2000 concerning Procedures for Cooperation of Regional Companies with Third Parties and other regulations.
- c. Many problems and their resolutions in the Hong Kong Market development cooperation did not work and the management was as expected because the

parties in the contract had not been changed and PT. TSC only feels tied to the Medan City Government.

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