

## Settlement of Defaults in the Implementation of Agreements for the Use of Mapping Services with Drones on Mapping Services Drones Indonesia (MSDI)



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**ABSTRACT:** In general, natural human needs are divided into two, namely primary needs and secondary needs. Primary needs are absolute basic needs such as clothing, food and shelter. Meanwhile, secondary needs are needs related to creating a prosperous life such as economic needs. One form of welfare life created by humans is technology. Technology is a concept related to the type of use and knowledge of tools and skills. Various business people utilize technology as a business field, one of which is *Mapping Services Drone Indonesia* (MSDI). MSDI uses *drone* technology to provide mapping services. In the transaction between business actors and clients, an agreement arises. Therefore, researchers are interested in discussing two formulations, namely: 1) how is the concept of *drone* agreement standards in providing balance for various parties? 2) How is the default settlement procedure in the implementation of the agreement on the use of mapping services with *drones* at *Mapping Services Drone Indonesia* (MSDI)? This research uses normative legal research methods, namely collecting and analyzing secondary data using secondary data sources only, namely books related to the problem, related laws and regulations, related court decisions, legal theories and relevant scholars' doctrines, and case studies related to legal issues. Although this type of research is normative law, this research also uses *purposive sampling* technique, which is one of the sampling methodologies used in research to achieve research objectives. The *purposive sampling technique* used in the research is obtained from *Mapping Services Drone Indonesia* (MSDI). The theories used are the theory of responsibility and the theory of legal protection. Based on the results of the analysis, it can be concluded that the agreement provided by the service provider / MSDI to the service recipient / client has fulfilled the principle of balance, such as the rights and obligations of each party, the payment system, and an explanation of risk sharing. This avoids conflicts of interest or possible risks in the future. In the context of the agreement, default resolution can be done in non-litigation or litigation. However, until now the default settlement can still be resolved in a non-litigation / peaceful manner.

**KEYWORDS:** Settlement of Default; Agreement; *Drone* Mapping Services

### INTRODUCTION

Relationships between nations are a natural need as humans who are predicated as social beings or better known as "*Zoon Politikon*"<sup>1</sup> so relations between nations or relations between regions are primary needs.<sup>2</sup> Primary needs are basic needs that must be met by all humans, namely clothing, food and shelter. These primary needs are the most important things to fulfill in order to continue life. In addition to primary needs, there are secondary needs, namely needs related to efforts to create or increase happiness in life. One of the efforts to create or increase the happiness of human life is to fulfill economic needs. Economic needs are one of the secondary needs of a nation in order to create prosperity. One of the secondary needs to create the welfare of life created by humans is technology.

The definition of technology according to Law Number 11 of 2019 concerning the National System of Science and Technology is a way, method, or process of applying and utilizing various scientific disciplines that are useful in fulfilling needs, sustaining, and improving the quality of human life. Technology is a concept related to the type of use and knowledge of tools and expertise. Various examples of technological developments that make it easier for humans to live their daily lives, namely: cell phones are useful for facilitating long-distance communication, internet media is useful for accessing various information and knowledge

<sup>1</sup> Chesters, G. and Welsh, I., 2006. *Complexity and social movements: Multitudes at the edge of chaos*. Routledge.

<sup>2</sup> Gintis, H., Van Schaik, C. and Boehm, C., 2015. *Zoon politikon: The evolutionary origins of human. political systems*. *Current Anthropology*, 56(3), pp.327-353.

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easily and quickly, or in the banking sector the presence of Automated Teller Machines (ATMs) is useful for taking and depositing money anywhere and anytime. In addition to the fields mentioned above, there are many other fields that are helped by the presence of technology. Including in the business sector. Various business people try their luck in starting their business by utilizing technology. One of the business people who utilize technology as their livelihood is *Mapping Services Drone Indonesia (MSDI)*. MSDI is a private company that specializes in surveying and mapping services with *drone* technology.

With the development of this survey and mapping service business, there are often problems in the agreement between the business actor as a *drone* mapping service provider and the client as the recipient of the service.<sup>3</sup> The term used in the breach of the agreement is referred to as "default". Default is not fulfilling or neglecting to carry out obligations (achievements) as specified in the agreement made between the service provider and the service recipient.<sup>4</sup> Default can be in the form of: first, not doing what he promised to do, second, doing what he promised but not as it should, third, doing what he promised but late, fourth, doing something that according to the agreement he should not do. If a party does not carry out or fulfill the performance in accordance with the agreement, then the party has made a default.<sup>5</sup>

Based on this background, the researcher formulates the problem as follows:

1. How does the standard drone agreement concept provide a balance for the various parties?
2. How is the default settlement procedure in the implementation of the agreement on the use of mapping services with drones at Mapping Services Drone Indonesia (MSDI)?

### METHODS

The research method used in this writing is normative legal research, namely research by collecting and analyzing secondary data, normative research usually uses secondary data sources only, namely books related to the problem, related laws and regulations, related court decisions, legal theories and relevant scholars' doctrines, and case studies related to legal issues. The various approaches used in this research are: *statue approach*, *conceptual approach*, and case approach.

In obtaining data that is accurate and can be accounted for both in practical and juridical terms, this research uses various sources of legal material, namely primary, secondary, and tertiary. Primary legal materials used in this research, namely: 1945 Constitution of the Republic of Indonesia, Civil Code, Law No.30 of 1999 concerning Arbitration and Alternative Dispute Resolution, Law No.11 of 2019 concerning the National System of Science and Technology. 2019 concerning the National System of Science and Technology, Regulation of the Minister of Transportation of the Republic of Indonesia Number PM 34 of 2021 concerning Civil Aviation Safety Regulations Part 22 concerning Airworthiness Standards for *Remotely Piloted Aircraft* Systems, Regulation of the Minister of Transportation of the Republic of Indonesia Number PM 63 of 2021 concerning Civil Aviation Safety Regulations Part 107 concerning Small Unmanned Aircraft Systems, Regulation of the Minister of Transportation of the Republic of Indonesia Number PM 37 of 2020 concerning the Operation of Unmanned Aircraft in the Airspace Served by Indonesia, and Regulation of the Minister of Transportation of the Republic of Indonesia Number PM 27 of 2021 concerning Procedures for Supervision and Imposition of Administrative Sanctions for Violations of Legislation in the Aviation Sector. Secondary legal materials used in this research are books and legal journals or the views of legal experts related to this research. While tertiary legal materials used in this research are dictionaries, encyclopedias, and others. The legal material collection technique used in this research is the literature study technique. This technique is to conduct literature research on laws and regulations, legal theories and related legal issues, to obtain qualitative material which is then analyzed into conceptual, theoretical, normative and philosophical justifications. Although this type of research is normative law, this research also uses *purposive sampling* technique. The technique is one of the sampling methodologies used in research to achieve research objectives. The *purposive sampling* technique used in the research is obtained from *Mapping Services Drone Indonesia (MSDI)*. The data presentation technique used in this research is qualitative descriptive because it is to develop theories built through data obtained in the field. The form of legal material analysis technique is *content analysis*, which is an integrative analysis method and conceptually tends to be directed to find, identify, process, and analyze legal materials to understand the meaning contained clearly and relevantly.

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<sup>3</sup> Castro-Leon, E. and Harmon, R., 2016. *Cloud as a service: Understanding the service innovation ecosystem*. Apress.

<sup>4</sup> Salim H.S., 2003, *Contract Law: Theory and Practice of Contract Drafting*, Sinar Grafika Publisher, Jakarta, p. 98

<sup>5</sup> Mariam, Darus, 2001, *Compilation of Bond Law*, PT Citra Aditya Bakti, Bandung, p. 9.

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### RESEARCH RESULTS AND DISCUSSION

#### The Standard Concept of *Drone* Agreement in the Urgency of Providing Balance for Parties

Standard contracts or standard agreements are the use of exoneration clauses in consumer transactions. Standard contracts are basically born from the needs of society which aim to provide convenience or practicality for the parties in conducting transactions. In practice, it is often found that to bind a certain agreement, one of the parties has prepared a *draft* that will apply to the parties. The draft is prepared in such a way that at the time of signing the agreement the parties only need to fill in some subjective matters such as; identity and date of making the agreement which was deliberately left blank beforehand. Meanwhile, the provisions regarding the agreement (*terms of conditions*) are already written (printed) complete basically cannot be changed anymore. This agreement concept is called a standard contract (standard agreement / standard agreement).<sup>6</sup>

Agreements in Indonesia generally have a special name, as well as those that are not known by a certain name, or often referred to as named agreements (*benoemd/nominaat*) and unnamed agreements (*onbenoemde overeenkomst/innominaat*). The definition of a named agreement (*benoemd/nominaat*) is an agreement that has been regulated and named by the legislator. The arrangement is contained in Book III of the Civil Code, Chapter V through Chapter XVIII. Meanwhile, the definition of an unnamed agreement (*onbenoemde overeenkomst/innominaat*) is an agreement that has not been regulated in the Civil Code, but exists in the community.<sup>7</sup> The birth of anonymous agreements is possible because Book III of the Civil Code has an open system and the principle of freedom of contract, as stipulated in Article 1338 of the Civil Code. Some examples of unnamed agreements are lease purchase agreements, fiduciaries, *franchises*, *leasing*, consignment, and many more unnamed agreements known in economic and business practices in Indonesia.

The agreement on the use of mapping services with *drones* between the business actors, namely *Mapping Services Drone Indonesia* (MSDI) and the client can be categorized as an unnamed agreement or *innominaat*.<sup>8</sup> This is because this service usage agreement is not specifically regulated in laws or regulations, so it does not have a special name or term such as a sale and purchase agreement, lease agreement, or employment agreement.

An agreement or contract is basically an agreement that confirms a relationship or transaction made between two or more parties and forms an engagement between them. In the agreement/contract, in addition to containing the rights and obligations of the parties, the payment system, and risk-free, it must also be based on applicable legal principles. One of the important principles that must be contained in an agreement is the principle of balance. The principle of balance for the parties is a principle that states that the rights and obligations in an agreement must be equal and balanced for all parties involved.

From the research results, it can be seen that the cooperation agreement or contract owned by *Mapping Services Drone Indonesia* or MSDI has accommodated the principle of balance for the parties. For example, if the MSDI company as the business actor and the client cooperate to carry out mapping services with *drones* carried out by the business actor, then the principle of balance for the parties in this case will ensure that the rights and obligations of both parties must be equal and balanced. Not only that, the principle of balance for the parties also ensures that the contract must be accepted and understood by all parties. This is important because it ensures that each party understands their rights and obligations and ensures that each party cooperates well and respects their rights and obligations. It also helps to avoid conflicts that may arise in the future and ensures that the contract works well and is beneficial to all parties.

Hans Kelsen's theory of responsibility relates to sanctions or penalties given to someone who violates the rule of law. In the context of an agreement on the use of mapping services by *drones*, this theory of responsibility can be applied to the responsibilities of the parties in carrying out the agreement. In the agreement on the use of mapping services by *drones*, the parties usually have their respective responsibilities. The mapping service provider, in this case *Mapping Services Drone Indonesia* (MSDI), has the responsibility to provide *drones* in accordance with user requests, ensure that the *drones* operate properly, and guarantee the safety and quality of the services provided. Meanwhile, the service recipient, in this case the Client, has the responsibility to pay the agreed fee and comply with the applicable rules and regulations. Thus, Hans Kelsen's theory of responsibility can be applied in the practice of agreements on the use of mapping services by *drones* as a form of law enforcement against parties who violate the agreement. This can also increase the parties' awareness and compliance with the agreement or contract.

<sup>6</sup> Zulfirman, 2017, *Basic Human Rights in Indonesian Contract Law: A Crisis Analysis of Contract Terms*, Journal of Legal Research *De Jure* 17, no. 2, p. 155-176.

<sup>7</sup> Mariam Darus Badruzaman, *op.cit.* p. 67.

<sup>8</sup> Baloloy, A.B., Blanco, A.C., Ana, R.R.C.S. and Nadaoka, K., 2020. Development and application of a new mangrove vegetation index (MVI) for rapid and accurate mangrove mapping. *ISPRS Journal of Photogrammetry and Remote Sensing*, 166, pp.95-117.

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*Burgelijk Wetboek* or known as the Civil Code is a legislation originating from the Dutch colonial government which was applied in the archipelago (formerly known as the Dutch East Indies) through a Dutch East India Company called *Vereenigde Oostindische Compagnie* (VOC). The *Burgelijk Wetboek* was then enforced in the Dutch East Indies on May 1, 1848 through the principle of *concordance* (*concordantie beginsel*) which regulates issues that are in the realm of private law, which is different from public law that regulates the public interest (community, nation, or state).<sup>9</sup>

The *Burgelijk Wetboek* or Civil Code is a very important legislation in Indonesian law, especially in terms of regulating issues relating to private law. This regulation is a legacy of the Dutch colonial period in Indonesia, and has been the basis of civil law in Indonesia since its enactment in 1848. In its development, the *Burgelijk Wetboek* has undergone various changes and revisions in accordance with the times and the needs of society. Until now, this regulation is still valid in Indonesia and has become an important basis for civil law.

Law as a set of arrangements to regulate community relations authorizes legal subjects to act according to their rights and obligations, and is guaranteed by law.<sup>10</sup> An engagement is a rule that regulates legal relations in property between two or more parties, the law gives rights to one party (creditor) and obliges the other party (debtor) to achieve an achievement.<sup>11</sup>

Arrangements regarding ties regulated in the Civil Code are matters of ties that bind between individuals and individuals, individuals and business entities incorporated, as well as business entities incorporated with other legal entities. This is regulated in Article 1313 of the Civil Code which states:

"A contract is an act by which one or more persons bind themselves to one or more persons".

The obligation itself is regulated in Article 1233 of the Civil Code which states: "Every obligation is created either by consent or by law".

From this article, the Civil Code wants to emphasize that an obligation can arise from an agreement that the parties want, or arise because the law has regulated it. The obligation arising from an agreement that is desired by the parties is regulated in Article 1313 of the Civil Code above.<sup>12</sup>

In the engagement or what is often referred to as an agreement, there is the term "default". Default is the performance of an obligation that is not fulfilled or a breach of promise or negligence committed by the debtor either by not carrying out what has been promised or even doing something that according to the agreement should not be done.

The term default comes from the Dutch language, namely "*wanprestatie*"<sup>12</sup> which means the non-fulfillment of achievements or obligations that have been determined against certain parties in an engagement, either an engagement born from an agreement or an engagement arising from law.

In the author's research on *Mapping Services Drone Indonesia* (MSDI), there are various acts of default committed by the second party, namely the client in the process of the agreement to use mapping services with the drone. Among other things, the second party does not fulfill the performance at all, the second party fulfills the performance but not on time payment or the second party fulfills the performance not in accordance with the agreement, even though the results of the mapping data provided by the first party are in accordance with the agreement and have been used by the second party. In this case, the second party can be said to have committed an act of default.

If there is an act of default by the second party, namely the client, against the first party, namely *Mapping Services Drone Indonesia* (MSDI), then the first party has the right to take legal action according to statutory regulations.

For example, if the second party does not fulfill the performance at all, the first party can first make a letter of reprimand or subpoena to the second party to request the fulfillment of the performance in accordance with the agreement. If the second party still does not fulfill the performance, the first party can file a lawsuit to the court to demand the fulfillment of the agreement or compensation.

Meanwhile, if the second party fulfills the performance but is not on time in payment, the first party can first give a summons to the second party to pay immediately. If the second party still does not pay, the first party can take legal action in accordance with laws and regulations, namely conducting collateral seizure or filing a lawsuit in court.

<sup>9</sup> Johannes Ibrahim Kosasih, 2021, *Parate Execution of Fiduciary*, CV. Mandar Maju, Bandung, p. 107

<sup>10</sup> I Putu Esha Wiryana Putra, I Made Arjaya, 2021. *Legal Protection of Advocates and Clients in Civil Case Settlement*. (Journal of Legal Construction), Vol. 2, No. 3, pp. 4, (<https://doi.org/10.22225/jkh.2.3.3668.599-604>, accessed on November 22, 2022)

<sup>11</sup> Kadek Dwinta, Pradnyasar, Johannes Ibrahim Kosasih. 2021. *Default in Credit Agreements at Village Credit Institutions (LPD) in Bebetin Village, Sawan District, Buleleng Regency*. (Journal of Legal Construction), V ol. 2, No. 2, (<https://doi.org/10.22225/jkh.2.2.3210.223-227> , accessed March 5, 2023) <sup>12</sup> Johannes Ibrahim Kosasih, *op.cit.*, p. 107-108.

<sup>12</sup> Mak, V., 2009. *Performance-oriented remedies in European sale of goods law*. Bloomsbury Publishing.

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In this case, it is important for the first party, namely *Mapping Services Drone Indonesia* (MSDI) to pay attention to the provisions in the agreement and follow the predetermined procedures to resolve default problems.

Settlement of defaults in agreements can be done through various forms of dispute resolution mechanisms. There are several forms of dispute resolution, such as mediation, arbitration, court settlement, and so on. Each form of settlement has its own advantages and disadvantages, so it is important to consider certain factors in choosing the most appropriate form of settlement to resolve default disputes in the agreement.

If the debtor defaults, the creditor generally gives an order or warning letter explaining that the party/debtor has neglected its obligations. This letter is referred to as a summons. Regarding the summons, the provisions of Article 1238 of the Civil Code explain that the debtor is declared negligent by warrant, or by similar deed, or based on the strength of the obligation itself, namely if this obligation causes the debtor to be considered negligent with the passage of time specified. Somasi is an effective step to resolve disputes before a court case is filed. Somasi aims to give an opportunity to the potential defendant to do or stop an action that is demanded.

In the context of an agreement on the use of mapping services with *drones* at *Mapping Services Drone Indonesia* (MSDI), default settlement can be done either through non-litigation or litigation settlement. In general, non-litigation settlement is dispute resolution outside the Court. Meanwhile, litigation settlement is a dispute resolution through the Court.

In its implementation, the service provider / MSDI prioritizes non-litigation settlements such as negotiation, mediation, or arbitration. Because this settlement effort is faster and can be negotiated deliberately. This aims to maintain good relations and minimize losses due to disputes. However, if efforts to resolve disputes through non-litigation resolution methods are unsuccessful, then the service provider / MSDI can settle litigation by filing a lawsuit in court. However, until now the default settlement can still be resolved non-litigation or amicably.

### CONCLUSIONS AND SUGGESTIONS

Based on the above discussion, the following conclusions can be drawn:

1. The standard agreement in the agreement to use mapping services with *drones* is a concept to provide a balance between the parties involved in the use of mapping services with *drones* at *Mapping Services Drone Indonesia* (MSDI). This concept aims to fulfill the principle of balance and ensure that the parties involved have clear and equal rights and obligations in the agreement. In general, the principle of balance is the principle that the rights and obligations of the parties must be balanced and fair. The agreement/contract provided by the service provider/MSDI to the service recipient/client has fulfilled the principle of balance, such as the rights and obligations of each party, the payment system, and an explanation of risk sharing. This avoids conflicts of interest or possible risks in the future.
2. In the context of an agreement on the use of mapping services with *drones* at *Mapping Services Drone Indonesia* (MSDI), default settlement can be done either through nonlitigation or litigation settlement. In general, non-litigation settlement is dispute resolution outside the Court. Meanwhile, litigation settlement is a dispute resolution through the Court. In its implementation, the service provider / MSDI prioritizes non-litigation settlements such as negotiation, mediation, or arbitration. Because this settlement effort is faster and can be negotiated deliberately. This aims to maintain good relations and minimize losses due to disputes. However, if efforts to resolve disputes through nonlitigation resolution methods are unsuccessful, then the service provider / MSDI can settle litigation by filing a lawsuit in court. However, until now the default settlement can still be resolved non-litigation or amicably.

Based on the above discussion, the following suggestions can be made:

1. To the Government, it can make clear regulations regarding the requirements for the use of *drones* and their coverage areas, including dispute resolution procedures. With clear regulations, the parties involved in the agreement can refer to these regulations as guidelines in carrying out the agreement.
2. To Academics, it is hoped that it can contribute to research related to anonymous / innominaat agreements. This research is expected to help deepen the understanding of innominate agreements and improve the practice of making and implementing effective innominate agreements.
3. To the Community/Client, to always read and understand carefully the service use agreement that will be signed, including the consequences of default. In addition, it is advisable to conduct prior research on the company or service provider to be selected, including the quality of service, experience, and reputation of the company.
4. To the service provider or *Mapping Services Drone Indonesia* (MSDI), to always ensure the quality of services and clear contracts with customers, comply with regulations and safety standards in the use of *drones*, protect the privacy and security of

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customer data, resolve disputes amicably by non-litigation means first, conduct litigation settlements with professionalism and transparency if necessary, and strengthen relationships with customers through high-quality services and innovation.

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