

COURT DECISIONS AS A LIVING MIRROR OF LAW RELATED TO THE FORMATION OF CONTRACT

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ABSTRACT

Contracts have been provided for under Indonesian law, namely in Book III of the Indonesia Civil Code (ICC) under the heading "Concerning Obligations". The issue that arises is that such norm is yet to become a living norm. In order for it to become a living norm, it needs to be assessed in the resolution of actual cases. The purpose of this research is to provide an insight into the application of the provisions of Article 1320 of the ICC concerning the validity of agreement, namely consensus as a basis for the formation of contract, the capacity of the parties, particular subject matter and lawful cause in concrete cases. The expected benefit of this research is to provide an opportunity to law students to study judicial decisions as a reflection of the living law; at the same time, it is also significant for law practitioners to clarify legal issues in view of existing relevant legislation which contains ambiguity or lacks comprehensive provisions regarding the subject matter. This research is normative legal research, the norm under study is the norm concerning the validity of contract provided for under Article 1320 of the ICC. For an understanding of said norm, literature research has been undertaken with the objective of obtaining primary and secondary legal materials. The resources to be discussed accessible both in print (books) and electronically using internet search engines. Research has been conducted through qualitative data processing and inductive reasoning method. As a result of the research three landmark decisions have been identified which reflect the respective judges' endeavour to understand, interpret, and engage in dialogue with legal facts. All the foregoing ultimately leads to the understanding of Article 1320 of the ICC as living law.

Keywords: Court decisions, formation of contract

1. PREFACE

The sources of Indonesian law consist of laws and regulations, treaties, customs, compilation of landmark decisions with final and binding legal force (*yurisprudensi*), as well as doctrines. Law and regulations are the primary legal source, only if legislation is silent on a particular matter other sources of law are resorted to in consecutive order, namely treaties, customs, court decisions with final and binding force, and finally doctrines. For instance, in view of the question as to whether or not a contract has come into existence in Indonesia, the first step is to look for the relevant provisions under existing laws. If the law is silent on the matter, the subsequent step is to search treaties and subsequently custom, court decisions with final and legally binding force (*yurisprudensi*), and doctrines. Court decisions with final and legally binding force (*yurisprudensi*) are only to be used as a legal source in the absence of relevant laws and regulations, treaties and custom [1]. As Indonesia adopts the civil law system, law is the primary legal source, hence legal education is mainly focused on teaching law students about norms which can be found in laws and regulations [2]. At the same time, study of court decisions is not generally conducted. Jimly Asshiddiqie, as quoted by Enrico Simanjuntak, states that judicial decisions or court decisions with final and legally binding force (*yurisprudensi*) are rarely discussed as teaching materials for law students. Despite the highly significant role of court decisions with final and legally binding force (*yurisprudensi*), they are yet to be afforded adequate attention in legal education as well as in legal practice [3]. It is mainly due to the fact, among other things, that legal education tends to put more emphasis on the mastery of general, abstract knowledge of the law in the form of theoretical generalizations; under the applicable legal system legal norms and principles originating from laws and regulations are treated as the main components of applicable law, with less emphasis on new

definitions or interpretations of the provisions of laws and regulations through court decisions with final and legally binding force (*yurisprudensi*) [3]. However, the time has come to leave old habits and practices behind. It is important to study judicial decisions, as Sulistyowati Irianto puts it, the law (laws and regulations) cannot be analyzed merely as plain text (black letter), rather, it must be studied in conjunction with current legal issues. Written law is yet to become living law. In order for it to become living law, written law (laws and regulations) must be assessed in the context of dispute cases and relevant judicial decisions. It is what we refer to as the living law [4].

Related Work

Article 1320 of the Indonesia Civil Code (hereinafter referred to as ICC) sets forth four requirements for the validity of agreement, namely consent of the parties, capacity of the parties, a particular subject matter, and a lawful cause. Accordingly, this part consists of four discussions on each of such requirements based on laws and regulations as well as on the opinion of legal experts (legal doctrine).

The Consent

By virtue of Article 1320 of the ICC, the first prerequisite that needs to be fulfilled to ensure that the contract is valid and binding on the parties concerned is the contracting parties' consent concerning the main objects of the contract concerned. According to Subekti, consent is the meeting of intent, and such intent must be expressly stated. Therefore, the criteria for determining whether there has been a meeting of the parties' intent shall be the statement of the parties concerned[5]. On a similar note, J Satrio, as quoted by Ridwan Khairandi, states that the formation of the contract refers to the meeting of minds. The essential condition for the formation of contract is the mutual consent of both parties[6]. Quoting Subekti, Ulya Yasmine Prisandani asserts that if this element of consent is not fulfilled, the contract is voidable [7].

The Capacity

Another aspect of the validity of a contract is qualification/capacity. Based on the Article 1320 of the ICC, capacity is the second requirement that needs to be fulfilled to ensure that the contract is valid and binding on the parties concerned. Article 1239 of the ICC provides that any person shall be qualified to enter into an agreement, except for persons who under this law are stated as being not qualified. Article 1330 of the ICC provides for several categories of people who are deemed not qualified to enter into an agreement, namely people underage, those who have been put under custody. At the same time, according to Article 330 of the ICC, the time for coming of age is when a person becomes 21 years old. In contract formation, the legal subjects entering into a contract are generally natural persons, however, these can also be non-persons, namely legal entities.

Capacity becomes an issue requiring particular attention when the contract is entered into between business organizations or companies incorporated as legal entities, such as a limited liability company. As an artificial person, a Limited Liability Company cannot act on its own. In order for it to be able to undertake legal acts, there is a need for an organ representing such company. By virtue of Article 1 sub-article 2 of Law No. 40 Year 2007 concerning Limited Liability Company (hereinafter referred to as the Company Law), the company's organs are the General Meeting of Shareholders (GMS), the Directors, and the Board of Commissioners. In conjunction with Article 92 paragraph (1) of the Company Law, the company's organ which has the function to run the company's affairs are the directors. However, in Rudhi Prasetya's view, as quoted by Desak Made Setyarini, the articles of association can always specify certain acts for which prior approval of the GMS or the Board of Commissioners must be obtained. It means that a limited liability company is bound by all acts of its organs acting beyond their authorities [8]. The same view is expressed

by Munir Fuadi, as quoted by Abdul Rookhim, namely that the Company Law adopts the doctrine of limitative power whereby the authorities of directors and the board of commissioners is limited to the authority granted under the law and or the articles of association concerned [9].

The Particular Matter

The third prerequisite for the validity of contract is the content of the performance of the agreement must be specific or at least its type should be known. Furthermore, as provided for in Article 1333 of the ICC the content of the performance of the agreement must be specific or at least its type should be known. Subekti states that a person is considered to have granted its consent if the person concerned is agreeable to the matters agreed upon[5]. Expanding on this matter, J Satrio, as quoted by Niru Anita Sinaga and Nunuk Sulisrudatin, states that "particular object" in the agreement is the content of the performance which is the subject of the agreement concerned. Such performance can be a certain conduct; it can be in the form of giving something, doing, or not doing something. The rights and obligations of the parties must be reciprocally determinable [10].

A Lawful Cause

Basically the principle of the freedom of contract is applied both in the national as well as the international business. In Subekti's opinion, as quoted by Nanang Hermansyah, according to the principle of the freedom of contract every person is essentially free to enter into a contract (agreement) about any subject matter to the extent that it is not contradictory to the law, decency, and public order [11], [12]. In Indonesia's positive law, this principle is reflected in Article 1338 paragraph (1) of the ICC "All agreements that are made legally shall apply as the law between the parties thereto and it is performed in good faith". However, the freedom of contract is not unlimited. Drafters of national as well as international business contracts must understand matters allowed and matters that are prohibited, or matters that are required in certain transactions. Ignorance of these matters can cause a contract to become void by law. Based on Article 1320 paragraph (4) of the ICC, agreements must have a lawful cause. However, the ICC is silent on the definition of lawful cause. Quoting the explanation offered by R.M. Panggabean, Tri Wahyu Surya Lestari and Lukman Santoso state that the term *causa* (Latin) in the context of agreement does not refer to a matter which causes a person to enter into an agreement; rather, it is intended to mean a cause in the context of the "contents of the agreement itself", referring to the purpose that is to be achieved by the parties [13]. In Article 1337 of the ICC, it is set out that an agreement is considered to have an unlawful cause if the matters contained in it are prohibited by law or are contradictory to morality or public order. Article 1337 is closely related to Article 1335 of the ICC which states that: "An agreement without cause or which has been made due to a false or prohibited cause shall not have effect". Accordingly, the legal consequence of an agreement which contains an unlawful cause is that the agreement concerned becomes automatically null and void, hence there is no basis to demand performance based on contract before the court because it is deemed that such contract has never existed in the first place [11].

Our Contribution

This research aims to analyze three landmark decisions and describe the manner in which the respective judges exercised legal reasoning to understand, interpret, and engage in dialogue with legal facts. The ultimate aim of the foregoing is to reach an understanding of Article 1320 of the ICC as living law. The benefit of this research is not limited to legal education by providing teaching materials for students about judicial decisions as a reflection of the living law; rather, it also provides significant reference to the practice of law, namely by providing additional clarification on matters which, albeit provided for in laws and regulations, lack unambiguous and comprehensive provisions [14].

Paper Structure

The second part of this paper is Background which describes the reasons why it is significant to conduct this research. Furthermore, the third part is concerning Methodology which sets out the research method applied, including type of research, data used, data collection and processing method as well as the process of reaching a conclusion. The fourth part consists of Findings and Discussions. This part is an elaboration on the results of research, namely three landmark decisions which reflect the living law behind the normative provisions of Article 1320 of the ICC. As discussion, this part also constitutes the researcher's analysis. The final part is in Conclusions in which the researcher reports the research results.

The law of contract in Indonesia is laid down in Book III of the ICC under the heading "Concerning Obligations". Under the ICC, all agreements that are made legally shall apply as the law between the parties thereto, as stated in Article 1338 paragraph (1) of the ICC. The literal meaning of the word "legally" means to fulfill the requirement of the validity of the regulation as prescribed by law [15]. Accordingly, the legality of a contract is determined based on such validity requirements of contract [16]. The validity requirements for a contract are provided for in Article 1320 of the ICC, namely consent of the parties; capacity of the contracting parties; particular subject matter and the contents not being contradictory to the law. The first two requirements, namely consent and capacity, are referred to in doctrine as subjective requirements as the contracting parties must fulfill them. The consequence of such requirements not being fulfilled is that invalidation of the contract can be requested. The other two requirements, namely a particular subject matter and the contents of the contract not being contradictory to the law, are considered by doctrine as objective requirements, as they must be fulfilled by the object of agreement. The consequence of non-fulfillment of such requirements is that the contract concerned automatically becomes null and void [17]. Even though contracts are provided for under the law, namely the ICC, it is important to study judicial decision in contract related disputes. First, in order for contract law norms to become living law, they need to be assessed in the context of concrete cases. Accordingly, there is a need to analyze how judges apply such norms in concrete cases before them. Second, as living law, judicial decisions are bound to have a broad effect not only on the cases concerned and as instruction materials for law students, but also for other cases in the area of contracts [1]. Thus, in the context of this research, the ICC does not set out explicit provisions on the principles of creating a contract, the principle of capacity, particular subject matter and not being contradictory to the law; their interpretation therefore requires assistance from legal doctrines and study of judicial decisions.

2. RESEARCH METHOD

This is a normative legal research using normative doctrinal method [18]. The subject under study is the internal aspects of positive law for resolving actual disputes under positive law [19] or in the context of law as *das sollen* as articulated in the law [18]. The norm under study is the norm concerning the validity of contract provided for under Article 1320 of ICC. For an understanding of said norm, literature research has been undertaken with the objective of obtaining primary and secondary legal materials through legal doctrines and document study of court decisions [19]. The resources to be discussed accessible both in print (books) and electronically using internet search engines [20] such as Google Scholar, Google Books; free internet sites particularly those provided by Supreme Court of the Republic of Indonesia. Research has been conducted through qualitative data processing and inductive reasoning method [21]. The inductive reasoning process involves understanding the contents of Supreme Court decisions under study, namely the legal facts and the judges' legal considerations leading to their respective decisions. The conclusion of such reasoning

identifies the criteria used by the respective judges for deciding whether or not the agreement had been formed, whether or not the requirements of consent, capacity, particular subject matter and non-contradictory to the law in the agreement have fulfilled, as well as the legal consequences of the same for the agreement concerned. Such inductive reasoning is described along with the researcher's analysis of legal doctrines on contract in a qualitative manner, resulting in a reflection on the application of *das sollen* legal norms in concrete cases.

3. RESULT AND DISCUSSION

Research results include analysis of Supreme Court decisions under study, consisting of a brief overview of legal facts, the judges' consideration as to whether a contract had been formed, whether or not the legal requirements for the validity of contract had been fulfilled, and the legal consequences to the contracts concerned. The selected judicial decisions are landmark court decisions, namely decisions for resolving new matters previously not subject to a judicial decision and forming the primary source for the development of *yurisprudensi* [22]. Such landmark decisions originate from landmark cases, namely court cases studied because they have historical and legal significance. The most significant cases are those that have had a lasting effect on the application of a certain law [23]. Accordingly, the judicial decisions selected for the purpose of this research are court decisions which have obtained binding force at the cassation level [3].

Landmark Decision Related to the Requirement of Consent and Particular Matter

A landmark case which reflects the application of the legal norms of Article 1320 paragraph (1) of the ICC concerning the validity requirements of an agreement between the parties and paragraph (3) of the same article concerning the requirement for a particular subject matter of the agreement is the case of *Freddy Sihombing v. PT Bank Duta and Ny. Lusiana T.S.*, landmark decision No. 3909 K/Pdt/1994 (dated May 7, 1997). In this case, the Indonesian Supreme Court reaffirmed the decision of the lower court's decision stating that due to the absence of consent based on Article 1320 paragraph (1) of the ICC and the absence of particular matter of the agreement based on Article 1320 paragraph (3) of the ICC, the credit agreement was not valid. Following is a brief description of the case [24]:

Freddy Sihombing (defendant) had submitted a loan application to PT Bank Duta (plaintiff) using the consumer loan application form for obtaining a facility. He was going to use this facility to purchase an automobile. As a follow up, Freddy Sihombing had agreed to visit the office of PT. Bank Duta in order to sign the credit agreement, claiming he was able to repay the credit of Rp. 72.450.000 plus interest by April 11, 1994. In his counterclaim, the defendant stated that the agreement had been made at the office of PT Varia Abadi as guarantor, whereby Freddy Sihombing had signed a blank form without actually meeting the plaintiff or its employee, while the credit agreement should have been made at the office of PT Bank Duta, in the presence of the defendant and the plaintiff, and the substance of the agreement should have been specified clearly. The agreement indicated a debt of the defendant, which was greater than his actual debt, a fact that he was not aware of at the time the loan agreement was made, and the amount of the loan should have been agreed upon by the parties concerned specifically. It also became evident that the credit agreement indicated that the collateral given to Bank Duta was a different automobile from that purchased by the defendant.

Based on the above-mentioned facts, the District Court in Malang rejected the plaintiff's claim based on the following legal considerations: (a) In the absence of consent as provided for in Article 1320 of the ICC, the credit agreement was not valid; and (b) As the object of the agreement was not valid, the entire agreement as well as the matters based on the same agreement were not valid either.

The Court of Appeal of Surabaya, too, held that the plaintiff's claim was unacceptable. This decision was reaffirmed by the Supreme Court in its decision quoting the legal norm according to which "the absence of a consent between the plaintiff and the defendant, both concerning the amount of the loan as well as the guarantee in the loan agreement which were legally deficient, among other things, causes such agreement to be invalid pursuant to Article 1320."

In the researcher's view, this case can also be examined based on the legal doctrine of Subekti and J. Satrio. Subekti stating that a consent is the meeting of intent, and such intent must be expressly stated[5]. On a similar note, J Satrio also states that the formation of the contract refers to the meeting of minds [6]. With reference to such views, considering that only the defendant (Freddy Sihombing) had signed the agreement, in fact in the total absence of the plaintiff (PT Bank Duta) or the representative thereof, there was no meeting of intent between the parties; therefore, it cannot be said that a consent had occurred between the parties. Subekti explains further that if this element of consent is not fulfilled, the contract is voidable [7]. In line with this legal doctrine of Subekti, *Judex Factie* as well as the Supreme Court in its decision states that "...in the absence of consent as provided for in Article 1320 of the ICC, the credit agreement was not valid".

The cases of Freddy Sihombing v. PT. Bank Duta and Ny. Lusiana T.S is also landmark cases concerning the third requirement for the validity of agreement, namely the requirement for there to be a particular matter which is subject to the agreement. The author has examined this case based in Subekti's and J. Satrio's doctrine. Subekti states that a person is considered to have granted its consent if the person concerned is agreeable to the matters agreed upon [5]. Expanding on this matter, J Satrio states that "particular object" in the agreement is the content of the performance which is the subject of the agreement concerned. The rights and obligations of the parties must be reciprocally determinable [10]. Based on such view by Subekti and J. Satrio, Freddy Sihombing cannot be considered as having granted his consent because he had only signed a blank document, which means that there was no particular matter in the agreement, and neither was there a particular performance to be performed. Therefore, in its decision the Supreme Court affirmed the decision of the Malang District Court and the Surabaya District Court stating that "As the object of the agreement was not valid, the entire agreement as well as the matters based on the same agreement were not valid either". The Supreme Court's decision in this case reflects the application of the norms regarding the requirement of consent as a basis for the formation of a contract as well as the requirement of a particular subject matter of the agreement as provided for in Article 1320 paragraphs (1) and (3) of the ICC.

Landmark Decision Related to the Requirement of the Capacity of the Contracting Parties

A landmark case which reflects the application of the legal norm of Article 1320 paragraph (2) of the ICC, namely providing that the parties to the agreement must possess capacity, is the case of *Overseas Union Bank Limited v. PT. Abdi Rakyat Bakti & Tansri Chandra*, landmark decision No. 3445 K/Pdt/1998 (dated September 2, 1999). In this case the Supreme Court decided that the credit extended was not the responsibility of the company, but the personal responsibility of the defendant as the defendant did not have the capacity to represent the company in signing the credit agreement. Following is a brief description of the case [25]:

The claim was filed in connection with the reminders issued for the credit extended by Overseas Union Bank Limited Singapore to PT Abdi Rakyat Bakti. Claiming it had never borrowed money, PT Abdi Rakyat Bakti sued Overseas Union Bank Limited Singapura & Tansri Chandra at the District Court in Medan requiring Overseas Union Bank to apologize to the plaintiff by three consecutive announcements in the Straits Times daily in Singapore and the *Kabar Analisa Medan* and *Bisnis Indonesia* Jakarta newspapers. The plaintiff's claim was based on Article 11 paragraph (1) sub-paragraph a of the Articles of Association of PT Abdi Rakyat Bakti stating that: "The Board of Directors of PT Abdi Rakyat Bakti shall not borrow money or obtain a credit from a third party without the prior written approval of members of the Board of Commissioners." If this article is not fulfilled, any loan obtained on behalf of the plaintiff is considered legally invalid and it cannot be considered as the company's responsibility. In this case, the Plaintiff and members of the Board of Commissioners had not been aware of, and had never approved the borrowing of such money by Tansri Chandra (defendant II) and, in fact, no loan agreement was ever found between the plaintiff and Overseas Union Bank Limited Singapore (defendant I) signed by the Board of Directors of PT Abdi Rakyat Bakti with the approval of the members of the Board of Commissioners. In its decision, the District Court of Medan stated that based on law, the plaintiff had never borrowed money from defendant I and punished defendant I to apologize publicly. At the appeals level, the decision was reaffirmed by the Court of Appeals of North Sumatra. At the cassation level, the Supreme Court held that the consideration of the Court of Appeals was correct, namely in that the power of attorney by the President Director to Director Tanstri Chandra defendant II had not been issued for the purpose of borrowing money, but only for managing and running the company. Therefore, the Supreme Court rejected the application for cassation by defendant I.

In this case, Tansri Chandra as the director of PT Abdi Rakyat Bakti by virtue of Article 1 sub-article 2 *Jis*. Article 92 paragraph (1) and Article 1 sub-article 5 of the Company Law is the company's organ which has full authority and responsibility for the company's management for the company's interest, in accordance with the company's objectives and purposes and representing the company, in as well as outside the courts of justice in compliance with the provisions of the articles of association. In said dispute, the Articles of Association of PT Abdi Rakyat Bakti limit the authorities of the board of directors, whereby in Article 11 paragraph (1) sub-paragraph of the Article of Association of PT Abdi Rakyat Bakti it is stated that: "The Board of Directors of PT Abdi Rakyat Bakti shall not borrow money or obtain a credit from a third party without the prior written approval of members of the Board of Commissioners." In the *a quo* case Tansri Chandra as director of PT Abdi Rakyat Bakti borrowed money from Overseas Union Bank Limited Singapore without written approval by members of the Board of Directors. Such act undertaken by Tansri Chandra is contradictory to Article 11 paragraph (1) sub-paragraph of the Article of Association of PT Abdi Rakyat Bakti. The researcher has examined said case based on the view of Rudhi Prasetya and Munir Fuadi. According to Rudhi Prasetya the articles of association can always specify certain acts for which prior approval of the GMS or the Board of Commissioners must be obtained[8]. Munir Fuadi asserts that the Company Law adopts the doctrine of limitative power whereby the authorities of directors and the board of commissioners is limited to the authority granted under the law and or the articles of association concerned [9]. Hence Tansri Chandra did not possess the capacity to for and behalf of PT Abdi Rakyat Bakti borrow money from Overseas Union Bank Limited Singapore. That why in its decision the Supreme Court affirmed the *Judex Factie* decision (Medan District Court and North Sumatra District Court) and declared that the "the credit extended was not the responsibility of the company, but the personal responsibility of the defendant as the defendant did not have the

capacity to represent the company in signing the credit agreement”. Such decision was based on the legal consideration that “the power of attorney by the President Director to Director Tanstri Chandra defendant II had not been issued for the purpose of borrowing money, but only for managing and running the Company”. Such consideration and decision of the Supreme Court in the *a quo* case reflects the application of the provisions concerning the capacity requirement of the contracting parties as provided for in Article 1320 paragraph (2) of the ICC.

Landmark Decision Related to the Requirement of the Lawful Cause

A landmark case which reflects the application of the legal norm of Article 1320 paragraph (4) of the ICC, namely the substance of the agreement must have a cause which is not contradictory to the law (lawful cause) is the case of *E.D. & F. Man (Sugar) Ltd. v. Yani Haryanto*, landmark decision No. 1205 K/Pdt/1990 (dated December 4, 1991). In this case, the Supreme Court was of the same opinion as the lower court in refusing to enforce the London arbitral award ordering defendant Yani Haryanto to pay damages for breach of contract, under the consideration that the agreement had contained an arbitration clause which was contradictory to the prevailing laws and regulations. Following is a brief description of the case [26]:

The defendant and the plaintiff had been engaged in an agreement for the sale and purchase of sugar which was going to be imported to Indonesia. E.D. & F. Man (Sugar) Ltd. subsequently refused to perform the contract stating that it was void by law as it was contradictory to the Decree of the President of the Republic of Indonesia 43/1971 Decree of the President of the Republic of Indonesia No. 38/ 1978. Regardless of that, however, the defendant, Yani Haryanto, undertook certain actions for the contract to be performed. Yani Haryanto subsequently sued E.D. & F. Man (Sugar) Ltd. and the London Arbitration Board ordered that the defendant pay damages due to breach of contract. However, the Central Jakarta District Court in its decision refused to enforce the London Arbitration award holding that the agreements for the sale and purchase of sugar were contradictory to the existing laws and regulations, declaring that the agreements had been formed for a cause prohibited by law, and voided both of the aforementioned agreements.

The decision was based on the following considerations:

- a) Article 1320 paragraph (4) of the Indonesian Civil Code states that for a contract to be valid, it must contain, among other things, a lawful cause. A contract without a cause, or made based on a false or prohibited statement, does not have legal force;
- b) Article 1337 of the Indonesian Civil Code which states that a cause is prohibited if it is prohibited by law, or if it is contradictory to morality or public order;
- c) The Decree of the President of the Republic Of Indonesia No. 43/1971 concerning the “Organization of Coordination and Oversight of Policy Implementation in the Field of Sugar Distribution”;
- d) The Decree of the President of the Republic of Indonesia No. 38/1978 concerning the “Logistics Affairs Agency - BULOG”, Article 2 stipulates that “Bulog has the task of implementing price control for rice, unhulled paddy, wheat, sugar, etc. with the aim of maintain price stability, both for producers and consumers, in line with the government’s general policy.”

At the cassation level, the Supreme Court agreed with the lower court's opinion, refusing to enforce the above mentioned London arbitral award, as the contract contained an arbitration clause which was contradictory to the prevailing laws and regulations, namely the above quoted Presidential Decrees.

Presidential Decree No. 43/1971 and Presidential Decree No. 38/1978 determined BULOG as the sole agency entitled to conduct sale and purchase of sugar. Thus, with reference to Article 1337 of the ICC, the Sale and Purchase Agreement between E.D. & F. Man (Sugar) Ltd. and Yani Haryanto does not fulfill the lawful cause requirement, namely it is contradictory to both of the above-mentioned Presidential Decrees. Read in conjunction with Article 1335 of the ICC, such agreement is null and void, namely it is deemed to have never come into existence, and to have never occurred. Therefore, the arbitral award issued in London ordering the respondent (E.D. & F. Man (Sugar)) to honor its promise and pay compensation for damages for not performing its promise is also null and void. The Supreme Court's consideration and decision in this case reflects the application of legal norm providing for lawful cause in an agreement as set forth in Article 1320 paragraph (4) of the ICC.

4. CONCLUSIONS AND RECOMMENDATIONS

The legal norms concerning consent (formation of the agreement), capacity, particular subject matter and lawful cause as provided for in Article 1320 of the ICC are *das sollen*, such norms being merely black letter rather than living law. In order to become living law, the norms set out in Article 1320 of the ICC need to be assessed in concrete cases. The results of this research describe three landmark decisions, namely landmark decision No. 3909 K/Pdt/1994 (dated May 7, 1997) concerning landmark case *Freddy Sihombing v. PT Bank Duta and Ny. Lusiana T.S.*; landmark decision No. 3445 K/Pdt/1998 (dated September 2, 1999) concerning landmark case *Overseas Union Bank Limited v. PT. Abdi Rakyat Bakti & Tansri Chandra*; landmark decision No. 1205 K/Pdt/1990 (dated December 4, 1991) concerning landmark case *E.D. & F. Man (Sugar) Ltd. v. Yani Haryanto*. The aforementioned three landmark decisions demonstrate how judges endeavor to understand, interpret, and engage in dialogue with legal facts. As a result of such endeavor, Article 1320 of the ICC can be ultimately understood as living law. In other words, the three landmark decisions of the Supreme Court (the subject of this research) are the reflections of the legal norm of consent as a basis for the formation of contract, the requirements of authority/capacity, a particular subject matter and lawful cause as set forth in 1320 of the ICC. The results of this research open up an idea for subsequent researches, namely looking at the manner in which such landmark decisions are subsequently followed by other judges or courts in adjudicating cases of the same or similar nature.

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