

Protection of Models Due to Defaults in Agreements in the Modeling Industry

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ABSTRACT

A work agreement between a modeling agency and a talent model is a contract that regulates the rights and obligations of both parties. However, agencies often make mistakes, including paying the talent model late. This study aims to examine the types of defaults that often occur in modeling agreements and the legal protection that can be provided to the model as an aggrieved party. Using a normative juridical approach and looking at the practice of agreements and court rulings in this industry, it was found that legal protection of the model is still lacking. This is due to poor contract clauses, poor understanding of the model, and lack of oversight from the relevant agencies. Therefore, regulations must be improved to protect the model from infringement, and fairer agreements are needed. Article 1243 of the Civil Code (Civil Code) states that the guilty party must pay the aggrieved party. Suppose the modeling agency is late in paying the talent model's salary. In that case, they are responsible for promptly paying according to the contract, paying the model's losses, paying a fine if there is a penalty clause, and facing legal consequences if the delay causes negative impacts.

INTRODUCTION

Agreements, which in general practice are also known as Contracts, are the English term 'contract', as well as the Dutch 'agreement' and 'overeenkomst'. In Indonesia's law realm, the term 'agreement' is also referred to as 'consent', as described in the Civil Code (Civil Code). Article 1313 of the Civil Code states that an agreement is a legal action where one or more parties commit to the other party. Meanwhile, in Black's Law Dictionary, an agreement between two or more parties that creates rules for doing and not doing a specific action (Bryan, 2019).

According to Munir Fuady, an agreement can be interpreted as an agreement or a series of agreements that, in the event of a violation (default), will cause legal consequences in the form of an obligation to provide compensation. In addition, the law also considers that the agreement's implementation is an obligation that must be fulfilled (Munir, 2003).

The scope of the Agreement covers the various aspects outlined in the agreement between the parties involved. One of the industries that we will discuss is the modeling industry. The modeling industry in Indonesia is now experiencing relatively rapid development. The indicator is the increasing frequency of fashion shows by domestic designers. In addition, the modeling sector also contributes to encouraging national economic growth. Fashion has also evolved into an aspect of people's lifestyles, especially the younger generation or millennials, who channel their creativity through fashion. Therefore, the modeling industry began to attract attention from various levels of society, including the government.

The modeling world is often associated with attractive visuals, such as beautiful and handsome faces. In Western countries, however, a 'new look' now emphasizes the individual's personality or character, rather than just a handsome face or an ideal body. Although there is an assumption that being a model only requires an attractive physical appearance, this profession also requires memorizing various choreographies or movements. In addition, the world of modeling can also be a source of income and offer financially promising career prospects.

Ten benefits can be obtained from the profession as a model, including having an independent and productive career, gaining popularity, expanding social networks, and getting a quite promising income. In addition, this profession also allows a person to be known by a broad audience, often participate in various social activities, experience rapid generational change, have broad prospects, be financially independent, and receive preferential treatment from society.

However, as previously explained, several specific requirements must be met to pursue a profession as a model. Among them are the minimum height requirements of 165 cm for women and 175 cm for men. Furthermore, model candidates should ideally have distinctive facial features, a balanced body shape,

and well-maintained skin, hair, and facial condition, specifically for women, while men are required to have an athletic body shape.

In the legal context, the model profession can be seen as a party in the law who has certain rights and responsibilities. As a legal subject, models can be involved in various aspects of law, whether in employment relations, copyright protection, or personal rights. Examples are:

- a. Employment Contract
- b. Copyright and Image Rights
- c. Legal Protection Against Discrimination and Harassment
- d. Taxes and Financial Obligations
- e. Privacy and Image Rights

In the modeling industry, a cooperative agreement is a contract that governs the relationship between a model and people such as photographers, modeling agencies, clients (such as advertising companies or designers), or other parties involved in a modeling project. The agreement protects each party's rights and obligations.

The employment contract outlines the agreement between the agency and the model. It contains provisions related to model wages, income sharing between agencies and models, rules that apply during the contract period, and model rights while under agency management. This type of agreement creates rights and responsibilities for each party involved. In the future, contracts drafted unclearly or incompletely regarding the terms of service may trigger various problems.

In the practice of implementing employment contracts between modeling agencies and models, it is not uncommon for various problems to arise related to the content of the employment contract that is not fulfilled or the rights of the models that are not fulfilled during the contract, which causes defaults. The parties involved in the contract, i.e., modeling and modeling agencies, have the right to file a lawsuit if their rights are not met. In addition, they also have the right to obtain legal protection in case of a violation or negligence. To date, no specific regulation oversees this industry in Indonesia, so it is important to see if the model can be legally protected. In addition, the main factor that causes the default to the detriment of the model party is the inability to apply the principles of contractual fairness (Badrulzaman, 1991). Thus, this study aims to recognize various forms of default in the modeling industry, analyze the causative factors, and formulate forms of legal protection that can be provided to models to guarantee their rights fairly and proportionately. With reference to the previous background, the formulation of the problem in this study is as follows: what is the legal protection for models due to defaults in the modeling industry?

METHOD

This study adopts a normative juridical method, which is a method of legal analysis that relies on secondary information. This research was carried out through a literature review that includes primary legal sources, such as laws and regulations; secondary legal sources, including literature, scientific articles, papers, and relevant legal texts; and tertiary legal sources, namely the data collection method consists of interviews with parties who understand the legal issues being researched and the reading and analysis of various relevant legal sources. In order to gain a deeper understanding of the issues that are the focus of this research study, the data collected is then tested using normative-qualitative methods. This is done by systematically interpreting and explaining the content of legal documents.

DISCUSSION

Legal protection of models due to defaults in the modeling industry

An agreement facilitates the formation of a legal relationship between the parties, either to perform an action or not to do so. An agreement is an event that occurs when one party promises something to the other party, or when both parties promise each other to perform a particular action (Subekti, 2005). An agreement can be realized through a series of words or statements that contain promises or commitments, and it can be conveyed verbally or in writing.

Article 1313 of the Civil Code defines an agreement as a legal act that binds one or more parties to the other. The agreement is translated from the Dutch term "overeenkomst," which is often used to translate the word "agreement". Therefore, Article 1313 of the Civil Code states that consent is the same as an agreement. Subekti explained that an agreement is also called an agreement, because the essence of the agreement is the agreement of the parties to realize something. Thus, 'agreement' and 'consent' have identical connotations (Subekti, 1987).

According to the subject in the theory of interim agreements, the agreement's implementation can have certain deadlines that both parties must meet. If the contract contains provisions regarding the salary payment date, the agency must fulfill its responsibilities on time. In Article 1313 of the Civil Code, an agreement is a legal action in which one or more parties express their willingness to bind themselves to the other party. However, Subekti criticized this definition for being too narrow because it only mentions "one party binds itself", even though agreements usually involve two parties.

The subject also discusses theories about how covenants are formed. One of these theories is the theory of consensualism, which says that an agreement is considered valid only after the parties have reached an agreement and does not require a written or notary form. For example, as long as both parties agree, verbal buying and selling transactions are still legal. Subekti, referring to Article 1320 of the Civil Code, states that there are several conditions that must be met for an agreement to be declared valid:

1. Agree with those who bind themselves
2. Ability to make an alliance
3. A sure thing
4. A halal cause

The Agreement may be legally voided if any of these conditions are unmet. The agreement between the model and the Agency governs both parties' rights and obligations throughout the contract term. The agency is responsible for finding models for jobs such as photo shoots, fashion shows, advertising, and digital promotion. On the other hand, the model is responsible for completing the work that has been agreed upon with professionalism and commitment (Subekti, 2008). In most cases, this agreement includes information about the identity of the parties, the term of the contract, the type of work that the model can accept, the terms of exclusivity (whether the model can only work through the agency), profit sharing, work schedules, and the consequences of breaches of contract. In addition, contracts also usually contain clauses about the obligation to maintain a professional image, the use of photos and videos, data confidentiality, and rights and obligations during the cooperation.

The payment system used in this agreement is usually percentage-based. In most cases, the client's revenue is split between the model and the agency, for example, 70% for the model and 30% for the agency. This amount can vary depending on the deal and the model's experience level. However, the agency will receive the client's payment before distributing it to the model after deducting the commission. Additionally, some agencies charge administrative fees or additional deductions for training, portfolio shoots, or model promotions. The contract should be transparent about this. As a result, to avoid misunderstandings or losses, the model must understand the entire content of the agreement, especially as it relates to the payment system (Kurniawan, 2020).

Paton argues that interests are objects of rights because the law protects them and is legally recognized. As Philip M. Hadjon stated, the legal protection of the public against government intervention stems from an understanding of the importance of recognizing and protecting human rights. In Western history, the birth of these ideas was intended to restrict, set limits, and define obligations related to human rights. Rights not only involve protection and interests, but also include aspirations (Hadjon, 1997).

There are two types of protection: preventive and repressive. Preventive measures are social efforts intended to avoid or minimize the risk of unexpected events occurring at this time or in the future. Both individuals and groups can do this for the same purpose. Preventive action can be considered as an action that does not incur expensive costs when viewed from the goal of preventing and reducing. Various industries, such as health and social services, typically use preventive. Repressive laws serve as a last resort by imposing sanctions, such as

finances, detention, or additional punishments, which can be imposed in case of violations or disputes (Fibriati, 2019).

Preventive legal protection allows individuals or legal entities to express their rebuttals or views before making a final government decision. The purpose of providing preventive legal protection is to prevent disputes and encourage the government to be more careful when making decisions. On the other hand, legal protection of a retaliatory nature is applied to resolve disputes after rights are violated through judicial mechanisms in the General Court and the Court.

Both types of protection are based on the principle of respect and protection of basic human rights, which are characteristic of a state of law in which all government actions must be subject to the law and respect the rights of every citizen.

In civil law, the term "default" refers to a circumstance when one party to an agreement fails to perform its responsibilities as agreed. Some examples of forms of default are not fulfilling obligations at all, exceeding the specified time limit, deviating from the content of the agreement, or carrying out actions that should not be carried out under the applicable contract. The Civil Code (KUHPerdata), especially Articles 1239 to 1252, regulates the legal consequences of the debtor's failure to fulfill its obligations.

The four primary forms of default include: (1) failure to perform; (2) perform but be late; (3) perform but is imperfect or wrong; and (4) do something contrary to the agreement. In the event of default, the aggrieved party, or the creditor, has the right to demand performance of achievements, cancellation of the agreement, and/or compensation under the provisions of Article 126 if it occurs. Compensation can be actual losses (material losses), anticipated but unearned benefits (immaterial losses), or a combination of both (Setiawan, 1991). In the event of default, the aggrieved party (creditor) has the right to demand the fulfillment of achievements, cancellation of the agreement, and/or compensation under the provisions stated in Article 1267 of the Civil Code. The form of compensation in question can be in the form of real losses (material losses), profits that are expected but not obtained (immaterial losses), or a combination of the advance to the negligent party, except in some instances where the default has occurred without the need for further notice (Salim, 2016). Therefore, understanding the elements of default and its legal basis is important so that the parties involved in an agreement can understand the legal consequences if there is a violation of the content of the predetermined contract.

In the modeling industry, default occurs when each party, the model and the agency, does not fulfill the terms agreed upon in the cooperation agreement. For example, models can be considered in default if they are not present at a photo shoot or fashion show schedule for no valid reason, arrive late, or do not perform by established professional standards (Wulandari, 2021). Defaults in this industry can lead to financial and reputational losses, so each party needs to abide by the contract terms. Otherwise, the party that suffers losses has the right to file a compensation claim or even terminate the contract unilaterally, by the

provisions stipulated in the Civil Law and the clauses mentioned in the Agreement. Therefore, being clear and transparent about the contract's content is essential to avoid and resolve disputes in the modeling industry (Salim, 2016). In this case, the agency committed a default to the model in the form of not paying the salary to the model by the agreement that had been made.

Agencies that do not pay model salaries violate employee rights guaranteed by labor law. In the employment relationship between the model and the agency, the agency regulates, distributes, and guarantees the model's rights, including salary as compensation for professional services. When the agency does not meet these responsibilities, it indicates the existence of inequality in the employment relationship and allows the use of the worker model.

Based on Philip M. Hadjon's principle of preventive and repressive legal protection, the state should provide a preventive mechanism through strict regulation of agencies and the settlement of violations through courts or mediation institutions. In this situation, a model, as an individual recognized as having rights and responsibilities under the provisions of the law, is entitled to legal defense if her employment contract is terminated. In addition, there is a basis to demand his rights civilly or criminally (Hadjon, 1987). This problem also reflects the government's weak supervision of the creative industries and entertainment services, which should be a concern to prevent unfair labor practices in the future.

In line with the requirements written in agreements, legal laws, and regulations, modeling agencies have legal and contractual obligations that must be fulfilled when they do not do what they promise (Harahap, 2018). One of the leading solutions is that the agency must pay a down payment to the model before the work begins as a commitment and guarantee for the work agreement agreed upon by each party. If it is not paid, the agency must also pay a fine or a fine as part of the contractual commitment. In addition, Article 1243 of the Civil Code states that a party negligent in fulfilling their obligations must compensate for losses suffered by other parties due to such negligence. The talent model is entitled to financial and reputational losses due to delayed payments (Sembiring, 2019). If the contract includes a clause regarding fines or penalties for delay, then the agency must also fulfill these obligations as a form of liability.

In a more serious situation, if the delay occurs repeatedly and harms the talent model, the model has the right to apply for unilateral termination of the contract based on default²¹. Termination of this contract can be done through legal procedures or mutual agreement. Suppose there is a default in the working relationship between the modeling agency and the talent model. In that case, the talent model can use several dispute resolution efforts to claim their rights (Setiawan, 1987).

One of the steps that can be taken is negotiation, which can be defined as a family settlement or deliberation with the agency to reach a mutual agreement without involving external parties. When negotiations reach an impasse, the

model in question can go through mediation, involving an impartial third party to achieve a mutually beneficial solution.

CONCLUSION

This study found that modeling agencies' late salary payments are a form of default that violates employment contracts. These payments are not on schedule or are delayed without valid reasons. The results show that modeling agencies are in legal and economic jeopardy in situations like this.

The Civil Code and the principles of contract law generally regulate legal protection for models in the case of default. However, this practice is still underutilized in the modeling industry. Therefore, legal methods that are repressive and preventive are needed. Mediation maintains a professional relationship and is effective and inexpensive, making it one of the most effective forms of dispute resolution. However, to prevent unilateral denial, it is recommended that the company or client be required to pay a down payment (DP) before work begins. In this case, the modeling agency must immediately pay the deferred salary and, if stipulated in the contract, pay a fine or late fine.

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