

## **Investor's Obligations in Default Dispute of Build Operate Transfer Agreement for Market Revitalisation**

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### **Abstract**

This research aims to find out the position of investor in the build operate transfer (BOT) agreement and the responsibility of investor due to default in the BOT agreement for market revitalisation. The government cooperates with investor to overcome capital difficulties. But there are still many default disputes in the implementation of the market revitalisation BOT agreement. Example, in Cikampek I Market, Metro City Market and Cibitung Main Market. This research is urgent to conduct because default disputes can result in financial and reputational losses for the government, and have negative impact on society. This research method is normative legal research. The novelty of this research is to explore the position of investors in BOT agreements in the face of possible negative impacts on economic, social, environmental and the application responsibilities for defaults by providing examples of real cases. The result of this study is that in the BOT agreement, the investor's position includes financing in development, management with risk management, transfer to ownership. The investor's responsibility due to the default of the market revitalisation BOT agreement includes compensation with dispute resolution for postponement of obligations in the addendum, fines, termination of the agreement.

**Keywords:** Agreement; Default; Build Operate Transfer; Market Revitalization

## **1. INTRODUCTION**

Traditional markets play a crucial role as they contribute positively to regional economic growth.<sup>1</sup> The local government has difficulty overcoming the capital problem of this revitalisation, so it entered into a BOT agreement. According to Anita Kamilah, this agreement the government enters into an agreement with a company that is willing to fund, plan, and establish facilities or construction with its own funds, then the company is given concession rights for a certain period.<sup>2</sup> As the owner of the asset or goods, the government will also receive a share of the profit over the period during which the building or facility is operated.<sup>3</sup>

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<sup>1</sup> Puguh Saputra, Muhammad Eko Atmojo, and Vindhi Putri Pratiwi, "Kebijakan Pemerintah Daerah dalam Pemberdayaan Pasar Tradisional di Kabupaten Sleman Tahun 2018," *Jurnal Pemerintahan Dan Politik* 6, no. 3 (2021): 101–106, <https://doi.org/10.36982/jpg.v6i3.1775>.

<sup>2</sup> Destri Putriarni Nurhamim, An An Chandrawulan, and Purnama Trisnamansyah, "Perlindungan Hukum bagi Investor akibat Pemutusan Sepihak Perjanjian Bangun Guna Serah/Build Operate and Transfer," *Acta Diurnal Jurnal Ilmu Hukum Kenotariatan Dan Ke-PPAT-An* 4, no. 2 (2021): 315–331, <https://doi.org/10.23920/acta.v4i2.609>.

<sup>3</sup> Angelina Bernadina Linojawa Keban, "Sengketa akibat Pemutusan Kerja Sama antara PT. Sarana Investama Manggabar dengan Provinsi Nusa Tenggara Timur," *Bureaucracy Journal : Indonesia Journal of Law and Social-Political Governance* 2, no. 2 (2022): 649–666, <https://doi.org/10.53363/bureau.v2i2.94>.

The BOT agreement is an innominaat or anonymous agreement.<sup>4</sup> Based on Article 1319 of the Civil Code, this provision shows that agreements that do not have a name in the Civil Code are still subject to the Civil Code, which regulates agreements. In essence, the agreement is binding under Article 1338, paragraph 1, of the Civil Code. Then investor in carrying out market operations have an obligation to comply with the agreement for the sake of legal certainty and justice.

Many indications of default in the market revitalisation process. PT ALS continues to manage the Cikampek I Market because it considers that the Karawang Regent made a unilateral termination.<sup>5</sup> Then, PT Nolimax Jaya could not fulfil its obligation to build Metro City Market because the government considered it not to have fulfilled its obligation to vacate the land for market development.<sup>6</sup> In another case, PT Cipako has been slow in carrying out the Cibitung Main Market Development as promised because of internal project struggles in the company.<sup>7</sup> This research is urgent to conduct because default disputes can cause negative impacts on market revitalisation projects which can result in financial and reputational losses for the government, as well as have a negative impact on the people who use the market in economic, social and environmental aspects.

This research is related to the research of Imelda, (2021). The findings of the study show that the legal impact arising from the government's action of unilateral termination without an agreement with the investor in the BOT contract can be considered an unlawful act. Investor have the right to claim compensation.<sup>8</sup> The strength of this research is that it mentions several regulations that discuss the provisions for the termination of an agreement. The weakness of the research is that it does not describe real cases, so it does not provide advice that must be applied when the situation occurs.

Also related to Angelina's research (2022). The findings of this study emphasise that the optimal solution for default disputes carried out between the Province of NTT, which terminated the BOT agreement unilaterally due to preventing the

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<sup>4</sup> Dessy Sagita Caesaria Ginting, "Kedudukan Hukum Pemerintah dan Mitra BGS dalam Aktivitas Pemanfaatan Barang Milik Negara / Daerah melalui Sistem Build , Operate and Transfer (BOT)," *Jurnal Notarius* 2, no. 2 (2023): 288–298.

<sup>5</sup> Direktori Putusan Mahkamah Agung Republik Indonesia, Nomor 557/PDT/2020/PT BDG (2020).

<sup>6</sup> Direktori Putusan Mahkamah Agung Republik Indonesia, Nomor 29/PDT/2021/PT TJK (2021).

<sup>7</sup> Pradita Kurniawan Syah, "Konflik Pembangunan Pasar Cibitung Berimbas ke Pedagang," *Megapolitan*.Antaraneews.com, 2023 ,<https://megapolitan.antaraneews.com/amp/berita/248187/konflik-pembangunan-pasar-cibitung-berimbas-ke-pedagang>.

<sup>8</sup> Imelda Fertikel Putri Handayani, "Analisis Yuridis akibat Hukum Timbulnya Pemutusan Kontrak secara Sepihak terhadap Investor pada Perjanjian BOT (Build Operate Transfer)," *Jurnal Sains Student Research* 1, no. 1 (2023): 903–915, <https://doi.org/10.61722/jssr.v1i1.416>.

transmission of the Corona virus to PT SIM, is a non litigation settlement.<sup>9</sup> The strength of this research lies in the analysis of the legal basis, real examples described in the case in detail. The weakness of this study is the lack of in depth exploration of the theoretical review, especially the synchronisation with the Civil Code and does not explain the responsibilities that must be carried out by the defaulting party.

Likewise, Fajar and Budi's research (2022). The results of this study reveal that in BOT agreements, the principle of responsibility that is more appropriate to apply is the principle of responsibility based on the element of fault.<sup>10</sup> The strength of this research is that it is quite clear in describing the legal arrangements for BOT of road infrastructure in Indonesia. The shortcomings of this research are that it does not clearly describe the real case it examines and does not clarify the default in the BOT agreement and the efforts to resolve it.

This research is different from previous studies that focus on the liability of parties who make defaults by referring to general arrangements without analysing real cases in depth. Meanwhile, this research makes a new contribution to research development because it explores the position of investor in BOT agreements in dealing with the possible negative impacts on economic, social, and environmental aspects and the application of responsibility for default in BOT agreements by analysing real life examples. This research aims to solve two problems, the position of investor in the BOT agreement and the responsibility of investor due to default in the BOT agreement for market revitalisation.

## **2. METHOD**

This research applies normative legal research that uses legal sources such as laws, regulations, court decision, contracts, legal theories and scientific opinions.<sup>11</sup> Furthermore, this research involves a case approach, a statute approach with a thorough review of all relevant laws and regulations on the legal issue under study. In addition, this research adopts a conceptual approach by referring to the perspectives and teachings that have developed in legal science.

In this research, the data used is sourced from secondary data, involving primary, secondary, and tertiary legal materials. Primary legal materials include regulations such as Government Regulation (PP) Number 28 of 2020 amending Government Regulation (PP) Number 27 of 2014, Government Regulation (PP) Number 29 of

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<sup>9</sup> Angelina Bernadina Linojawa Keban, "Sengketa akibat Pemutusan Kerja Sama antara PT. Sarana Investama Manggabar dengan Provinsi Nusa Tenggara Timur," *Bureaucracy Journal : Indonesia Journal of Law and Social-Political Governance* 2, no. 2 (2022): 649–666, <https://doi.org/10.53363/bureau.v2i2.94>.

<sup>10</sup> Fajar Kusuma Pratama and Budi Santoso, "Kajian Yuridis Kerjasama antara Pemerintah dan Swasta Model BOT (Build Operate Transfer) Sektor Infrastruktur Jalan di Indonesia," *Notarius* 15, no. 2 (2022): 686–705, <https://doi.org/10.14710/nts.v15i2.36033>.

<sup>11</sup> Muhaimin, *Metode Penelitian Hukum* (Mataram: Mataram University Press, 2020).

2021, Minister of Home Affairs Regulation (Permendagri) Number 19 of 2016. The data used also includes references to the Civil Code. Secondary legal materials consist of scientific books and scientific journals in the field of law. Meanwhile, tertiary legal materials include the Legal Dictionary and KBBI.

Collecting data for this research through library research, including sources both in physical and digital form.<sup>12</sup> Furthermore, information was sought from trusted and reputable websites. Thus, the research provides an in depth understanding of the legal issues related to the management of state or regional property based on the relevant legal framework. Data was collected through desk study and desk document techniques, combining data sources, and evaluated in depth using qualitative descriptive analysis.

### **3. RESULTS AND DISCUSSION**

#### **3.1 Position of Investor in the BOT Agreement**

Based on PP Number 28 of 2020 amending PP Number 27 of 2014, one of the alternatives to the utilisation of state or regional assets is through the BOT scheme. Investors participating in the BOT agreement must make capital investments to benefit from the management of the capital offered.<sup>13</sup> Entrepreneurs need to use various methods to promote and increase product sales. One way is to take advantage of the opportunities available to them.<sup>14</sup> As in the case study of Verdict Number 557/PDT/2020/PT BDG, PT Aditya Laksana Sejahtera (ALS) will build 1,750 kiosks and 100 shops in Cikampek I Market. They planned to use their investment funds to sell all the shops and kiosks to consumers for profit. In another case, PT Nolimax Jaya and the Metro City Government have signed a similar contract for the development of Metro City Market. Then, PT Citra Prasasti Konsorindo (Cipako) has a BOT contract with the Bekasi Regency Government to manage Cibitung Main Market.

BOT operations will continue for the time period specified in the BOT agreement.<sup>15</sup> In accordance with PP Number 28 of 2020 amending PP Number 27 of 2014, the grace period for the BOT scheme is a maximum of 30 years. PT ALS, PT Nolimax Jaya, and PT Cipako have entered into agreements with their respective parties that allow their investments to operate the buildings for no more than 30 years. PT ALS

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<sup>12</sup> Maiyestati, *Metode Penelitian Hukum* (Sumatera Barat: LPPM Universitas Bung Hatta, 2022).

<sup>13</sup> Muldri Pudamo James Pasaribu, "Tinjauan Yuridis terhadap Kedudukan Fintech yang Tidak Terdaftar di Otoritas Jasa Keuangan," *Jurnal Ilmiah Penegakan Hukum* 8, no. 1 (2021): 48–58, <https://doi.org/http://dx.doi.org/10.31289/jiph.v8i1.5125>.

<sup>14</sup> Rosalia Dika Agustanti, Rianda Dirkareshza, Taupiqqurrahman Taupiqqurrahman, Shafira Fatahaya, and Rissa Asmitha Wardoyo, "Peningkatan Pengetahuan Praktik Jual Beli Online berdasarkan Undang-Undang Informasi dan Transaksi Elektronik pada Masa Pandemi Covid-19," *JMM (Jurnal Masyarakat Mandiri)* 5, no. 5 (2021): 2824–2837, <https://doi.org/https://doi.org/10.31764/jmm.v5i5.5886>.

<sup>15</sup> Fajar Kusuma Pratama and Budi Santoso, "Kajian Yuridis Kerjasama antara Pemerintah dan Swasta Model BOT (Build Operate Transfer) Sektor Infrastruktur Jalan di Indonesia," *Notarius* 15, no. 2 (2022): 686–705, <https://doi.org/10.14710/nts.v15i2.36033>.

for 25 years (2009 - 2034), PT Nolimax Jaya 22 years (2009 - 2034) and PT Cipako 30 years after the completion of construction in 2023. Under the agreement, when the agreement period ends the market and all its facilities will be returned to the party that provided the investment opportunity.

It is the responsibility and function of the government to address funding through APBN or APBD for the provision of facilities and buildings provided for public services.<sup>16</sup> Permendagri Number 2 of 2019, in article 1 paragraph 10, explains that revitalisation of trade facilities is an effort to improve or empower trade facilities, both in terms of physical, management, socio cultural, and economic aspects. Therefore, this revitalisation aims to improve and strengthen the quality of people's markets so that they have the ability to face competition with modern markets, including in terms of consumer convenience facilities, management and other facilities.<sup>17</sup> In fact, according to some news that the author found, this BOT agreement has a negative impact on economic, social and environmental aspects.

PT ALS, continuing to maintain physical control and management of the Cikampek I Market, considers that the Karawang Regent made a unilateral termination when previously the Supreme Court stated that PT ALS's agreement with the Karawang Regent had been resolved and the Karawang Regent had legally handed it over to PT Celebes Natural Propertindo. This situation led to social conflict due to uncertainty about the legal ownership of stalls and a disorganised market. Piles of rubbish were left untreated, causing filth and unpleasant odours in the market. To the extent that traders have boycotted garbage and security levies. Of course, this will also have an economic impact in terms of retribution income to the local government, considering that the proceeds of market management provided by investors to the government come from traders who buy, rent, or pay fees.

In another case, the social impact was that the traders in Metro City Market rejected the market construction carried out by PT Nolimax Jaya. The traders asked the government to reprimand PT Nolimax Jaya for dismantling the boundary fence between the shopping market and M3 area. This fence disrupts the activities of traders. The traders experienced a decrease in income. This decrease in income is having a negative impact on the economic aspects of market revitalisation. Even with the traders' unwillingness to vacate this land, PT Nolimax also suffered losses of construction materials such as zinc and wood, including nails and other components, as well as the cost of artisan work amounting to Rp. 48.320.000,-

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<sup>16</sup> Muhammad Dzikirullah H Noho, Budi Santoso, Paramita Prananingtyas, and Trinh Asi Islami, "Analisis Perbandingan Pengaturan Hukum Build Operate Transfer (BOT) di Indonesia dengan Negara-Negara ASEAN," *Jurnal USM Law Review* 4, no. 2 (2021): 728-742, <https://doi.org/http://dx.doi.org/10.26623/julr.v4i2.4282>.

<sup>17</sup> Dini Ariani and Tunggul Sihombing, "Implementasi Kebijakan Revitalisasi Pasar Tradisional Sei Sikambang Kota Medan," *Jurnal Niara* 16, no. 2 (2023): 363-378, <https://doi.org/10.31849/niara.v16i2.16261>.

(forty eight million three hundred twenty thousand rupiah). This loss caused PT Nolimax to sue the government to pay the losses it felt because the vacating of the land that could not be carried out resulted the PT Nolimax Jaya not being able to continue what had been promised.

Then, the revitalisation of the Cibitung Main Market carried out by PT Cipako is believed to be a factor in causing flooding or inundation in Kampung Utan. This was caused by the blockage of water (drainage) during the market work, which caused residential areas to be submerged in water as high as 30 centimetres. Especially when rainfall is high, the inundation can reach more than 50 metres. Previously, efforts had been made to improve the water flow by creating a 25 metre long groove. However, the effort was unsuccessful. Apart from entering the house, the smelly water can also endanger the health of residents. It is thought that the channel was clogged with rubbish, preventing the water from flowing and inundating the neighbouring houses.<sup>18</sup>

Delays in the revitalisation process of Cibitung Main Market also resulted in a lack of parking space and narrow roads. The limited road access caused congestion, which directly impacted the merchants' turnover. The messy condition of the market caused many consumers to divert their purchases to other wholesale markets. Thus, this is not in line with Presidential Regulation Number 112/2007, which states that traditional markets need to consider several aspects or factors: accessibility, compatibility, flexibility, and ecological.<sup>19</sup> Although the Presidential Regulation is no longer in effect, these considerations are also similar to the considerations that need to be made in the development of market revitalisation as stated in the current Government Regulation Number 29 of 2021.

BOT agreements have various characteristics. Firstly, it is between a party that has funds but does not own the land and a party that owns the land but does not have the funds. Secondly, the investor can establish and operate his business on the land of the second party, and the structure has benefits that generate profits for the second party or landowner through profit sharing.<sup>20</sup> This means that investors are obliged to share their profits with the government.

Analysing the obligations of investors, PT ALS has invested in the implementation and construction of Cikampek I Market. Then they are required to pay contributions

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<sup>18</sup> Denis Arfian, "Dampak Pembangunan Pasar Induk Cibitung, Rumah Warga Kebanjiran," *Radarbekasi.id*, 2023, <https://radarbekasi.id/2023/02/06/dampak-pembangunan-pasar-induk-cibitung-rumah-warga-kebanjiran/>.

<sup>19</sup> Pugu Saputra, Muhammad Eko Atmojo and Vindhi Putri Pratiwi, "Kebijakan Pemerintah Daerah dalam Pemberdayaan Pasar Tradisional di Kabupaten Sleman Tahun 2018," *Jurnal Pemerintahan dan Politik* 6, no. 3 (2021): 101-106, <https://doi.org/10.36982/jpg.v6i3.1775>.

<sup>20</sup> Dessy Sagita Caesaria Ginting, "Kedudukan Hukum Pemerintah dan Mitra BGS dalam Aktivitas Pemanfaatan Barang Milik Negara / Daerah melalui Sistem Build , Operate and Transfer (BOT)," *Jurnal Notarius* 2, no. 2 (2023): 288-398.



to the government. PT ALS faced challenges with internal factors in the management structure of the Board of Directors of PT ALS as well as difficulties in payments to suppliers who were experiencing congestion. In addition, there are obstacles to fulfilling agreements with traders that are still not fulfilled. All of these factors can cause investors to struggle to achieve their expected milestones as they require internal and external stability to operate effectively. The solution could be to make changes in the management structure to resolve internal conflicts and improve decision making effectiveness. It could also involve developing a more efficient financial management strategy to prevent late payments to suppliers and other parties. Also, more thorough financial planning, negotiating for more favourable payment terms, and identifying additional sources of funding if needed. Engaging with traders and related parties can also be done to reconsider pending agreements or provide new guarantees to improve relationships and reduce uncertainty.

The BOT agreement regulates the manner of cooperation, various rules or guidelines, and the distribution of rights and responsibilities between the parties in a fair and balanced manner.<sup>21</sup> Among the investor's obligations are to provide funds, materials, equipment, and services for project development, be responsible for the construction of infrastructure, installations, and supporting facilities, and maintain and care for them properly. The investor must also pay fees to the landowner in accordance with the upon agreement.<sup>22</sup>

The implementation of investor obligations can also be seen in the case study of Verdict Number 29/Pdt/2021/PT TJK. That the Addendum III Agreement regulates the obligations of the parties in Article 6 paragraphs (1) and (2) pages 17-20, Obligations of PT Nolimax Jaya: *"Responsible for all development costs, including: administrative costs of planning, construction implementation, supervision, management, and maintenance and demolition of old buildings"; "Pay the annual contribution as mentioned in Article 4"*.

These obligations have not been fully implemented. The challenge of PT Nolimax Jaya not carrying out the order to pay the contribution is because the government has not carried out its obligation to vacate the land as stated in the agreement: *"Provide land in a state empty of occupants and free of claims from other parties for the arrangement of the Metro City Market development (Metro Mega Mall Commercial Area)"*. The government has not succeeded in vacating the land

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<sup>21</sup> Fajar Kusuma Pratama and Budi Santoso, "Kajian Yuridis Kerjasama antara Pemerintah dan Swasta Model BOT (Build Operate Transfer) Sektor Infrastruktur Jalan di Indonesia," *Notarius* 15, no. 2 (2022): 686–705, <https://doi.org/10.14710/nts.v15i2.36033>.

<sup>22</sup> Rini Sukmawati, "Tinjauan Hukum Islam terhadap Investasi dengan Sistem Build Operate and Transfer (BOT) (Studi di Rumah Makan Pindang Uwo Sumur Putri Bandar Lampung)" (Skripsi: Universitas Islam Negeri Raden Intan Lampung, 2022).

because the traders who trade at the location put up a strong resistance. An alternative solution to this problem could be to offer incentives such as sales prices, rent, or additional facilities to traders who agree to switch locations. It could also provide better facilities at the new location. The government can also listen to the aspirations of the traders so that it can provide the right solution for both parties.

Similarly, PT Cipako in the construction of Cibitung Main Market, which is in the implementation of its agreement with the Bekasi Regency Government. Cibitung Main Market is stalled due to the failure of market development based on the agreed time. The cause is due to the dualism of developers from PT Cipako. The conflict occurred between PT Cipako and PT Cipako Sampang Branch. Overcoming these problems can be done by negotiating between the two developer factions to reach an agreement or merger that leads to alignment of business vision and goals. This may require intensive negotiations and mediation by a third party if necessary to resolve differences. It may also require a review of the organisational structure to clarify management responsibilities and hierarchies.

It is expected that the revitalisation programme will provide a wide range of positive benefits, covering economic, social, cultural, and management dimensions, rather than concentrating solely on physical development.<sup>23</sup> Investors in market management are responsible for market operations and maintenance. In this case, it is necessary to pay attention to the Sustainable Development Goals (SDGs). This resolution contains 17 Sustainable Development Goals or Agenda as an action plan for people, planet, and prosperity targeted to be achieved by 2030. In the cases that have been described, the lack of efforts to achieve the SDGs, this research only finds clauses regarding environmental preservation in general against the obligations of PT Nolimax Jaya in the agreement: "*Perform maintenance, maintain cleanliness, beauty, integrity of the building and market environment and bear costs during the management / operation period*". Then mention "*Complete the implementation of the construction with the Amdalin (Traffic Impact Analysis) letter*".

Socially, investors should ensure that market renewal benefits the local community, including improving market accessibility by providing user friendly facilities, such as accessibility for people with disabilities, and improving hygiene and safety standards in the market. Investors can also consider training and skills development programmes for local traders, as well as creating fair and sustainable employment opportunities for local residents.

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<sup>23</sup> Abd Rohman and Dewi Citra Larasati, "Revitalisasi Pasar Rakyat Sebagai Upaya Menjaga Eksistensi Pasar Tradisional," *Anterior Jurnal* 22, no. 2 (2023): 69–75, <https://doi.org/10.33084/anterior.v22i2.4597>.



From an economic perspective, investors are responsible for ensuring that market renewal has a positive impact on the local and national economies. This can include building adequate infrastructure, increasing the attractiveness of the market for traders and consumers, and increasing revenue for traders and local governments. Investors should also ensure that market operations follow responsible and transparent business principles, and ensure the equitable distribution of benefits to all parties involved.

If physical development is not balanced with environmental conservation efforts, natural destruction will occur more quickly, which is largely due to human activities and behaviours that are less concerned about the environment.<sup>24</sup> From an environmental point of view, investors have a responsibility to reduce the negative impact of market renewal on the surrounding environment. This could include the use of eco friendly building materials, efficient waste management, protection of local ecosystems, and implementing sustainable practices in the day to day operations of the market, such as energy and water savings

### **3.2 Responsibility of Investor Due to Default in the BOT Agreement for Market Revitalisation**

According to Subekti, it is stated that an agreement is an event of a person committing a movement.<sup>25</sup> Article 1313 of the Civil Code also states that an agreement is an act of binding himself. If it is not perfect in fulfilling its obligations, it is a default.<sup>26</sup> PT ALS demanded that the Karawang Regent be declared in default and compensate PT ALS for the loss. However, the judge did not grant the claim. When PT ALS was managing the Cikampek I Market from 2012 to 2015, there were internal problems with the Board of Directors of PT ALS, namely problems with payment congestion to suppliers and problems with agreements with traders that had not been fulfilled, which resulted in a delay in the payment of contributions by PT ALS to the Karawang Regent in the amount of Rp 2,700,000,000, - (two billion seven hundred million rupiah). Thus, PT ALS has committed default due to the late payment of contributions to the Regent of Karawang.

Pointing to Article 18 paragraph (2) of the Cooperation Agreement made by PT ALS and the Regent of Karawang, which reads "*Submit absolutely all assets (building land and other facilities and infrastructure) built in the Cikampek I*

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<sup>24</sup> Tri Budiyantri, Basuki Basuki, and Abdul Mukti, "Evaluasi Pengelolaan dan Pemantauan Lingkungan Hidup Dampak Pembangunan Pasar Kahayan Kota Palangka Raya," *Journal of Environment and Management* 1, no. 2 (2020): 169 – 178, <https://doi.org/10.37304/jem.v1i2.1754>.

<sup>25</sup> Joko Sriwidodo and Kristiawanto, *Memahami Hukum Perikatan* (Yogyakarta: Kepel Press, 2021).

<sup>26</sup> Niru Anita Sinaga and Nurlely Darwis, "Wanprestasi dan Akibatnya dalam Pelaksanaan Perjanjian," *Jurnal Mitra Manajemen* 7, no. 2 (2020.): 43–56, <https://doi.org/https://doi.org/10.35968/jmm.v7i2.534>.

*Market location included in the Agreement at the end of the agreement period to the First Party (Karawang Regent) as referred to in Article 7 and Article 9 of this Agreement".* This article is a reference to the default committed by PT ALS, and if PT ALS defaults, PT ALS is responsible for handing over all assets (building land and other facilities and infrastructure) built in the Cikampek I Market location to the Karawang Regent.

PT ALS has made Minutes of Contract Termination to the Karawang Regent dated February 4, 2015, with terms and conditions *"Termination of the Cikampek I Market Management Contract is valid, if PT Aditya Laksana Sejahtera (President Director of PT .Aditya Laksana Sejahtera) has received the compensation agreed with the Regent of Karawang"*. Indeed, these terms and conditions are not appropriate because the one who made the default is PT ALS. The management that has been carried out by PT ALS is the responsibility of PT ALS in fulfilling the agreement and if it cannot complete it by its own negligence then it cannot claim compensation from the Regent of Karawang.

Based on the principle of consensualism, it is considered to be formed from the moment of agreement (consensus). It is even enough to do it orally.<sup>27</sup> The agreement is binding on the parties involved in its making and applies like a law to them.<sup>28</sup> PT ALS and the Karawang Regent have terminated the cooperation that was approved by PT ALS with the Cooperation Termination Agreement Number: 073/4129-Huk/2015 - Number: 033/A- ALS/III/15 on March 12, 2015. In response to the default committed by PT ALS, the Karawang Regent has also issued a Decree of the Karawang Regent Number: 030/Kep-268- Huk/2015 concerning the Termination of the Cooperation Agreement between the Karawang Regency Government and PT ALS concerning Investment Cooperation for the Development of Cikampek I Market in Karawang Regency with BOT Scheme Number: 01-PKS/ALS-PK/XII/09 March 26, 2015. The Karawang Regency Government has also made an agreement with the government. Karawang Regency with PT Celebes Natural Propertindo Number: 073/6152-Indagtamben/2015/Number: 01/PKS/Dir-CNP/XII/2015 concerning Investment Cooperation in the Management of Cikampek I Market in Karawang Regency with BOT scheme dated 10 December 2015, is legally valid and has binding legal force. Thus, the verdict not to grant PT ALS's claim to the Karawang Regent to be declared in default and to compensate PT ALS was correct.

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<sup>27</sup> Dora Kusumastuti and Ade Sathya Sanathana Ishwara, "Kedudukan Hukum Memorandum of Understanding (MOU) Digital: Implikasi dan Orientasi dalam Perspektif Hukum Inklusif," *Jurnal Ius Constituendum* 8, no. 3 (2023): 494–509, <https://doi.org/10.26623/jic.v8i3.7492>.

<sup>28</sup> Amri Panahatan Sihotang, Gita Novita Sari, Zaenal Arifin, and Muhammad Isro Wahyudin, "Pembatalan Perjanjian Jual Beli Tanah oleh Penjual karena Pembeli Wanprestasi," *Jurnal USM Law Review* 6, no. 3 (2023): 1210–1222, <https://doi.org/10.26623/julr.v6i3.7502>.

PP Number of 2014 and Article 219 paragraph (1) of Permendagri Number 19 of 2016 provide a legal basis related to the implementation of BOT, which basically means that investors can utilise land by constructing buildings and their facilities for a certain duration of time that has been mutually agreed upon and after the end of that period, the land and buildings and their facilities are handed back to the original owner. Previously, it has also been decided in Verdict Number 2976 K/Pdt/2018 that the demands of Number 2976 K/Pdt/2018 to issue Building Rights Title (HGB) Certificates on behalf of PT ALS for the Cikampek I Market kiosks in Karawang Regency have no relevance considering that the Cikampek I Market Project in Karawang Regency has been handed over Number 2976 K/Pdt/2018 to the Karawang Regent and has been managed operationally by the Regent of Karawang, the remaining obligations of the Karawang Regent to hand over market sales profits to PT ALS cannot be detailed and cannot be proven by PT ALS.

The Karawang district government had also appointed PT Celebes Natural Propertindo to manage the Cikampek I Market, but the effort was unsuccessful. PT ALS still controls the physical plant, buildings and the Cikampek I Market. As a result, PT Celebes Natural Propertindo has resigned and returned the management of Cikampek I Market to the Karawang District Government. One of the characteristics of BOT is that after the expiration of the period specified in the agreement, the land that is the focus of the agreement is returned to the owner, while the building constructed by the investor is handed over to the landowner as a grant.<sup>29</sup>

In the end, the Karawang Regency Government took over the management of Cikampek I Market and asked traders to withhold payment of retribution to any party for the next one month period. It is possible that the Karawang District Government is in the process of resolving the dispute. Steps that may be taken are deliberation or negotiation. Parties may choose non litigation options, such as consultation, negotiation, mediation, and conciliation. Agreements reached through these processes are legally recognised, with the disputing parties taking the final decision. A deed of *van dading*, issued by a notary public, validates out of court dispute resolution.<sup>30</sup> Repressive legal protection involves the application of sanctions such as the payment of damages, fines, imprisonment, or other additional penalties awarded following an offence.<sup>31</sup>

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<sup>29</sup> Dessy Sagita Caesaria Ginting, "Kedudukan Hukum Pemerintah dan Mitra BGS dalam Aktivitas Pemanfaatan Barang Milik Negara / Daerah melalui Sistem Build , Operate and Transfer (BOT)," *Jurnal Notarius* 2, no. 2 (2023): 288–398.

<sup>30</sup> Satiah Satiah and Riska Ari Amalia, "Kajian tentang Wanprestasi dalam Hubungan Perjanjian," *Jatiswara* 36, no. 2 (2021): 126 – 139, <https://doi.org/10.29303/jatiswara.v36i2.280>.

<sup>31</sup> Ghea Tyagita Cahyasabrina and Atik Winanti, "Perlindungan Hukum terhadap Perjanjian Pinjam Nama Penggunaan Paylater jika Terjadi Wanprestasi," *Jurnal USM Law Review* 6, no. 2 (2023): 673– 688, <https://doi.org/10.26623/julr.v6i2.7282>.

If one party to the agreement fails to fulfil its obligations (default), the other party to the agreement has the right to terminate the agreement. However, juridical restrictions apply to the right to terminate in that the default must be serious, especially if the breach results in harm to the affected party. The evaluation of how serious the default is is done by considering whether the agreement has set standards for the performance of obligations that constitute a default, or if there is no provision in the agreement, the judge can assess whether the breach is serious enough to be considered a default of the agreement.<sup>32</sup>

*Exeptio Non Adimpletincontractus* is a defence to refuse to perform its performance or refuse to perform further performance if the other party has defaulted.<sup>33</sup> In the case study of Verdict Number 29/Pdt/2021/PT TJK, the government demanded that PT Nolimax Jaya be declared in default. However, the judge did not grant the claim. The chronology is that PT Nolimax Jaya firmly refused to pay the contribution to the government which was due on June 10, 2020, even though it had received its HGB land rights from the government. However, this is because the government has also not vacated the land as its obligations stated in the agreement, "*Providing land in a state empty of occupants and free of claims from other parties for the arrangement of the Metro City Market development (Metro Mega Mall Commercial Area)*". It is a fact that in an agreement legal relationship if one party has not performed, it is not appropriate to demand the other party to perform. That the plaintiff cannot claim his rights if he does not fulfil his own obligations in the agreement.

The consequence of default is the obligation to pay compensation. However, there are exceptions to the cancellation of certain points if there are compelling circumstances.<sup>34</sup> The debtor must prove that the imperfection is caused by certain factors.<sup>35</sup> One of the elements of *force majeure* is unexpected events.<sup>36</sup> Examples include demonstrations, rebellions, and epidemics.<sup>37</sup> M. Yahya Harahap, states that

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<sup>32</sup> Muhammad Riandi, Nur Ridwan, and Yana Sukma Permana, "Wanprestasi dan Akibatnya dalam Pelaksanaan Perjanjian," *Jurnal Ilmu Hukum* 6, no. 2 (2022): 441–451, <https://doi.org/https://doi.org/10.56301/juris.v6i2.616>.

<sup>33</sup> Muhammad Riandi, Nur Ridwan, and Yana Sukma Permana, "Wanprestasi dan Akibatnya dalam Pelaksanaan Perjanjian," *Jurnal Ilmu Hukum* 6, no. 2 (2022): 441–451, <https://doi.org/https://doi.org/10.56301/juris.v6i2.616>.

<sup>34</sup> Harry Dewantoro, Agus Surono, and Maslihati Nurhidayati, "Tanggung Jawab Perdata akibat Wanprestasi dalam Kerjasama Pembangunan Gedung Bioskop," *Jurnal Magister Ilmu Hukum* 7, no. 1 (2022): 41–51, <https://doi.org/10.36722/jmih.v7i1.1187>.

<sup>35</sup> Niru Anita Sinaga and Nurlily Darwis, "Wanprestasi dan Akibatnya dalam Pelaksanaan Perjanjian," *Jurnal Mitra Manajemen* 7, no. 2 (2020): 43–56, <https://doi.org/https://doi.org/10.35968/jmm.v7i2.534>.

<sup>36</sup> Desi Syamsiah, "Penyelesaian Perjanjian Hutang Piutang sebagai akibat Forje Majeur karena Pandemic Covid 19," *Legal Standing: Jurnal Ilmu Hukum* 4, no. 1 (2020): 306–313, <https://doi.org/10.24269/ls.v4i1.2783>.

<sup>37</sup> Rizkyana Diah Pitaloka and Taupiqurrahman, "Penundaan Pemenuhan Prestasi pada Kontrak Bisnis di Masa Pandemi Covid-19" *Jurnal Kertha Semaya* 9, no. 3 (2021): 458–469, <https://doi.org/https://doi.org/10.24843/KS.2021.v09.i03.p08>.

*force majeure/overmacht/force majeure* focuses on situations or events beyond the debtor's ability and makes the debtor unable to fulfil its obligations, not intentionally or due to carelessness caused by the steps of the debtor or due to the existence of *vreemde oorzaak*.<sup>38</sup> One of the reasons for the government, during the process of vacating the land, was because there was a Covid-19 pandemic around the world, including in Indonesia. This needs to be considered. At that time the government issued Metro Mayor Decree Number 268/KPTS/LL- 01/2020 concerning the determination of emergency response status as a non natural disaster area on 19 March 2020. This is certainly a force majeure that requires restrictions in daily activities. Thus, the verdict to postpone the payment from PT Nolimax Jaya to the Karawang Regent was appropriate.

It is necessary to pay attention to the underlying legal principles to ensure the smooth implementation of the agreement, at the preparation stage.<sup>39</sup> Looking at the other side, good faith in an objective context refers to the execution of an agreement with due regard to the norms of decency and morality. This means that the agreement must be executed in such a way that it does not cause harm to either party.<sup>40</sup> An agreement or contract as a forum that combines the interests of one party with the interests of another party actually demands a fair and appropriate form of exchange of interests, which must be carried out on the basis of good faith as described in the Civil Code Article 1338 paragraph (3) and Article 1339.<sup>41</sup>

With the start of the *new normal* by the Central Government after the large scale restrictions of the Covid-19 pandemic in June 2020, the Government has again made efforts to vacate and fence off land for the arrangement of the Metro City Market development. Even though PT Nolimax Jaya has filed a lawsuit against the government, it is still making efforts to vacate the land by holding a meeting with the traders, PT Nolimax Jaya, Metro Land Agency, Metro Police, and Kodim 0411 LT on August 7, 2020, with an agreement that land measurements will be carried out by BPN Metro in the context of issuing HGB, but again failed due to obstruction from the traders.

The government through the Trade Office has issued 3 notification letters: "*The*

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<sup>38</sup> Tauratiya Tauratiya, "Overmacht: Analisis Yuridis Penundaan Pelaksanaan Prestasi akibat Pandemi Covid-19," *Jurnal Ilmiah Mizani: Wacana Hukum, Ekonomi Dan Keagamaan* 7, no. 1 (2020): 1–8, <https://doi.org/10.29300/mzn.v7i1.3094>.

<sup>39</sup> Naufal Afrian Noormansyah and Taupiqqurrahman, "Penerapan Asas Keseimbangan pada Perjanjian Pengikatan Jual Beli Rumah sebagai Perlindungan Hukum Pembeli atas Wanprestasi Developer," *Jurnal Hukum Kenotariatan* 8, no. 1 (2023): 44–61, <https://doi.org/https://doi.org/10.24843/AC.2023.v08.i01.p4>.

<sup>40</sup> Miftah Arifin, "Membangun Konsep Ideal Penerapan Asas Iktikad Baik dalam Hukum Perjanjian," *Jurnal Ius Constituendum* 5, no. 1 (2020): 66-82, <https://doi.org/10.26623/jic.v5i1.2218>.

<sup>41</sup> Rianda Dirkareshza, Taupiqqurrahman Taupiqqurrahman, and Davilla Prawidya Azaria, "Optimalisasi Hukum terhadap Lessee yang Melakukan Wanprestasi dalam Perjanjian Leasing," *Jurnal Ilmiah Penegakan Hukum* 8, no. 2 (2021): 160–173, <https://doi.org/10.31289/jiph.v8i2.5380>.



*location will be built for shophouses and to move immediately with a deadline of no later than November 20, 2019".* A preparation meeting was held for the implementation of fencing on 2 December 2019 and the implementation of fencing on December 4, 2019 by a Joint team from: Dandim 0411-LT, Metro Police, and Sat pol PP. The Mayor of Metro and the Trade Office have met several times with the traders to explain the purpose and objectives of the market arrangement and development and tried to offer alternative solutions for trading places, because of the land. Thus, the government has made a good faith effort to fulfil its obligations.

Soemardi states that individuals will bear the consequences of sanctions for actions that violate the rules.<sup>42</sup> When a person is involved in a legal relationship, his rights become obligations for individuals involved in the relationship.<sup>43</sup> PT Cipako has neglected to carry out its obligations. PT Cipako did not fulfil its overall performance. This is evident until August 19, 2023, PT Cipako has not completed the revitalisation of Cibitung Main Market as promised. In fact, based on the contract, the revitalisation of Cibitung Main Market should have started in September 2021 and been completed in August 2023, to be precise on the 19th. PT Cipako managed to carry out development in the revitalisation of the market no more than 80%.<sup>44</sup>

The Bekasi District Government signed an Addendum to the Cooperation Agreement with Joko Adi Wibowo, President Director of PT Cipako, extending the construction contract for 8 months, starting August 2023, and also imposed a fine. The reason is in the interest of conduciveness, and there is little left. The siteplan will be updated and synchronised with the *Detail Engineering Design* (DED) in this addendum. Liability due to default according to the Civil Code in Indonesia is by way of compensation. Referring to Civil Code Article 1243, it has been explained that reimbursement of costs, losses, and interest becomes an obligation when the agreement is not fulfilled. After the construction, PT Cipako has the right to manage the market for 30 years before it is returned to the local government.

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<sup>42</sup> Marsheila Audrey Nuralisha and Siti Mahmudah, "Tinjauan Yuridis Tanggung Jawab Hukum dalam Perjanjian Kredit Perbankan apabila Debitur Wanprestasi," *AL-MANHAJ: Jurnal Hukum Dan Pranata Sosial Islam* 5, no. 1 (2023): 277–290, <https://doi.org/10.37680/almanhaj.v5i1.2364>.

<sup>43</sup> Rini Sukmawati, "Tinjauan Hukum Islam terhadap Investasi dengan Sistem Build Operate and Transfer (Bot) (Studi di Rumah Makan Pindang Uwo Sumur Putri Bandar Lampung)" (Universitas Islam Negeri Raden Intan Lampung, 2022).

<sup>44</sup> Pradita Kurniawan Syah, "Pembek Bekasi Perpanjang Periode Perjanjian Pembangunan Pasar Induk Cibitung," *Megapolitan.Antaraneews.com*, 2023, <https://megapolitan.antaraneews.com/berita/264621/pembek-bekasi-perpanjang-periode-perjanjian-pembangun-an-pasar-induk-cibitung>.



#### 4. CONCLUSION

Investor have a crucial position in the BOT agreement. The investor's position in the BOT agreement includes project financing, then operation with the obligation to manage and maintain the project along with risk management as an effort to sustainable aspects by taking into account the SDGs so as not to have a negative impact on economic, social and environmental aspects. After the agreement ends, the investor is obliged to transfer the market and its facilities. Then the investor's responsibility due to default of the market revitalisation BOT agreement includes reimbursement of costs, losses, and interest to the government. The application of responsibilities and efforts made in BOT default disputes can be modelled as a solution step such as the postponement of obligations for those who defaults in the event of force majeure or other matters that can still be negotiated. Then it can also make an addendum if the obligation is almost complete with a fine. It is necessary to sharply analyse the situation of the defaulting party in applying these steps by taking into account the seriousness of the cause of default as well as the financial condition and good faith of the defaulting party.

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