

Juridical Review The Implementation of Oral Agreement is associated with the Law of Treaties and Law Number 8 Year 1999 of Consumer Protection

Dian Eka Pusvita Azis, Nurhaedah
Faculty of Law, Universitas Muslim Indonesia
dianekapusvita.azis@umi.ac.id

ABSTRACT

The Covenant under Article 1313 of the Civil Code is an act by which one or more persons bind themselves to one or more persons. Unconsciously, verbal agreements are often made in social life and often the parties who make oral agreements reject the existence of the agreement. This research is a normative descriptive juridical research. Based on this study it can be concluded that the oral agreement is legal and has the legal power to declare a person to default, but if the oral agreement is rejected/not recognized by the accused, the oral agreement has no legal power to declare the person to default, there, depending on the evidence from the parties. but verbal agreements that have been rejected / unrecognized may regain their legal power if it can be proven that an oral agreement exists or has been made. Based on Law no 8 of Consumer Protection Consumer law is defined as all legal principles and rules governing relationships and problems between various parties or each other in relation to goods and / or services in the aspects of life. Based on Article 163 of HIR and Article 1865 of the Civil Code, any party that argues for right, then the business actor must prove it. So if the consumer demands his right to the business that endangers it, then the consumer must prove it.

Keywords: *juridical review, oral agreement, legal agreement, consumer protection act*

INTRODUCTION

All aspects of our lives are closely related to the covenant. Similarly, in everyday activities are always associated with agreements, contracts, agreements both oral and written. In making an agreement it is necessary to be prudent, moreover the agreement is made unilaterally orally without any written contract. According to Article 1233 of the Civil Code which reads "Each and every engagement is born either because of the consent, both because of the law" means the source of the engagement is the agreement and the later Article 1313 Civil Code of contents "A covenant is an action by which one person or more binding himself to one or more people" of the two articles are open systems. This is closely related to the formulation of Article 1338 of the Civil Code which contains "All legally-made agreements act as laws for those who make them." With this principle of freedom of contract provides an opportunity for a person to enter into any agreement so long as it is not contrary to the law, laws, public order and morals. However, in the execution of the agreement must comply with the provisions which become the condition of the occurrence of a treaty contained in article 1320 namely, agreement, skills, a certain matter and the lawful cause.

Against the form of the exercise of the agreement in the oral form declared unilaterally by the party that offers the agreement inevitably the interested party in this case the second party is pressed with the interest of agreeing the contents of the agreement. Not to mention the possibilities that occur in the future that is wanprestasi with large losses so that the court to face, and what if the party who did the default is negligent, broken promise, do not acknowledge or deny having oral agreement Based on the background and problems that have been described above so that it is necessary to examine the extent to which the legal protection of the oral agreement if the party who did wanprestasi deny the oral agreement is linked the Law of Contract and Law No. 8 of 1999 on Consumer Protection.

METHOD

This research is descriptive normative juridical research. This study uses primary legal material sources consisting of laws and regulations bound by research. Sources of secondary legal materials in the form of materials or related materials and explain the problem, and the source of tertiary legal materials are materials that provide information about primary legal materials and secondary legal materials related to the research.

ANALYSIS AND DISCUSSION

The implementation of the Oral Agreement is related to the Law of Treaties and Law Number 8 Year 1999 on Consumer Protection

The Agreement issues a commitment between the two persons who make it, in the form of an agreement may be a series of words containing promises or abilities spoken or written¹

The agreement may be made by anyone, between one person and another, or between an individual and a legal entity, this is because the agreement embraces the principle of freedom of contract. The agreement is a promise of two or more parties who make an agreement, so as not to close the possibility of those promises are not met. The accomplishment of a treaty is the exercise of the things that have been agreed upon or that have been written in an agreement by both parties who have committed themselves to it. The counterpart of the achievement is a default, that is, the non-performance of an achievement or a pledge or obligation as may be imposed by the agreement on certain parties mentioned in the agreement, which constitutes a deflection of the exercise of the agreement, resulting in a loss caused by a mistake by one or the parties²

¹ Subekti, R. 1996: hal 1. Law of Agreement. Jakarta: Interimas.

² Munir Fuady. 2001 hal 87. Contract Law (From a Business Law Perspective), Second Book. Bandung: PT. Citra Aditya Bakti.

The agreement can be done either in written form or in an oral way, and not infrequently encountered in silent agreement. Oral agreements occur a lot in social life, and are often unconscious but there has been agreement, for example in shopping activities in stores, in the markets for daily needs, accounts payable with friends, and others. It can be said that oral agreements are often found in simple agreements, in the sense that they are not complicated in legal relationships and also do not cause great harm to the parties in case of default. But what matters is what if oral agreements are used on agreements that can cause major losses to the parties in the event of default. Moreover, when prosecuted in the Court, the alleged defendant undertakes the defense by not admitting or denying the oral agreement.

Making an agreement is basically not tied to a particular form. The Civil Code does not mention systematically the nature of the agreement. Each Contracting Party shall have the freedom to make the Agreement, in the sense that it is free to make the agreement orally or in writing. The principle of freedom of contract is a principle which gives freedom to the parties to.³

- a. Making or not making agreements;
- b. Make an agreement with anyone;
- c. Determine the contents of the agreement, its implementation, and its terms; and
- d. Determining the form of the agreement, ie written or oral.

At present, for certain treaties, there are laws that determine the covenant making in written form in the authentic deed, as follows.⁴:

- a. The grant agreement must be written in a notarial deed, except the land rights grant agreement (vide Article 1682 Civil Code);
- b. The power granting agreement for installing a mortgage on a vessel shall be in writing in a notarial deed (vide Article 1171);
- c. Agreement of transfer of receivables secured by mortgages shall be written in notarial deed (vide Article 1172 Civil Code);
- d. Subrogation agreement must be written in notarial deed (vide 1401 sub 2 Civil Code);
- e. Transitional agreements (especially sale and purchase) of land rights, except through auctions, for registered lands must be in writing in the deed of the land deed (vide Article 37 of Government Regulation No. 24/1997);

³ Salim H.S. 2003: hal 9. Introduction to Written Civil Law (BW), SinarGrafika.

⁴ Muhammad Syaifuddin. 2012. Contract Law: Understanding Contracts in Perspective Philosophy, Theory, Dogmatics and Legal Practice. Bandung: C V. MandarMaju.

- f. Transitional agreements (especially sale and purchase agreements and grants) of ownership rights over the land of apartment units, except through auctions, shall be in writing in the deed of the land deed (vide Article 37 of Government Regulation Number 24 Year 1997);
- g. The agreement on the transfer of title to land or property rights of the apartment units with the auction must be written in the deed of the land deed (vide Article 41 of Government Regulation Number 24 Year 1997);
- h. The power granting agreement imposing the mortgage must be written in the deed of the land deed (vide Article 15 paragraph (1) of Law No. 4 of 1996);
- i. The mortgage guarantee agreement must be in writing in the deed of the land deed (vide Article 10 paragraph (2) of Law Number 4 Year 1996);
- j. The fiduciary guarantee agreement must be in writing or notarial deed (vide Article 5 paragraph (1) of Law Number 42 Year 1999);
- k. The Firm Establishment Agreement shall be in writing in a notarial deed (vide Article 22 of the Commercial Code);
- l. The establishment agreement of the cooperative shall be written in the deed of the official deed of the cooperative certificate (vide Article 7 of Law Number 25 Year 1992);
- m. The founding foundation agreement must be in written form in notarial deed (vide Article 9 paragraph (2) of Law Number 16 Year 2001); and
- n. The agreement of the incorporation of a limited liability company shall be written in a notarial deed (vide Article 7 of Law Number 40 Year 2007).

The treaty prescribed by the law shall be applied as it shall, because if it is not applied, the legal consequences shall be unlawful treaties, thus null and void, and not giving rise to the treaty (the agreement is considered never existed) (Muhammad Syaifuddin, 2012: 147). Oral agreements are not applicable in the treaties established by the law, in other words, as long as no law governing a treaty must be in writing, the oral agreement is still valid as a treaty binding on the parties that make it.

Unlawful agreements are lawful to the extent that they comply with the provisions of the Criminal Code Article 1320 on the terms of the validity of an agreement. However, this unwritten agreement will face difficulties in terms of proof of the lawsuit filed by the court when the defendant does not recognize the existence of the agreement before the judge (Article 1927 Civil Code "An oral verdict given outside the court can not be used for verification, except in the case of verification with witnesses allowed. "). The matter of recognition which can be made as a proof of this can be seen in the Civil Code of Article 1923 s / d Article 1928. Besides the absence of recognition from the party being sued, the obstacles that may be faced are the witnesses (more than one person) who hear and see

immediately when the agreement is made (Article 1905 of the Civil Code "The description of a witness only without other means of verification, in the Court should not be trusted"). The matter of proof with this witness is contained in Article 1906 s / d Article 1912 Civil Code. On the whole of this proof we can see in the fourth (fourth) Book of the Civil Code of Evidence and Expiration, namely 1) Proof with Tuliasan, 2) Proof with witnesses, 3) Proof with Comprehension, 4) Proof with Recognition and 5) Oath before the Judge.

In the settlement of a breach of acquisition, please note first whether the agreement made by the parties is legitimate or unlawful because it binds or does not bind it an agreement to the parties making it dependent on the legitimate or unlawful agreement made by the parties. Article 1338 Paragraph (1) of the Civil Code, reads "All legally-made agreements act as laws for those who make them". The validity or non-validity of an agreement can be ensured by testing it using a legal instrument. The terms of the validity of an agreement are set forth in Book III of the Civil Code. Article 1320 of the Civil Code is the principal legal instrument to examine the validity of a treaty made by the parties, since that article determines the existence of 4 (four) conditions which must be fulfilled for the validity of an agreement, namely:

- a. Agree to those who commit themselves;
- b. Ability to make a commitment;
- c. A certain thing;
- d. A lawful cause.

Article 1320 of the Civil Code concerning the terms of the validity of the treaty, does not govern the form of a treaty, so in making the treaty, the public is freed to determine its form. Making a verbal agreement remains valid, as long as it meets the requirements of the validity of the agreement set forth in Article 1320. Oral agreements are also valid as long as there is no law that determines that the agreement to be made must be in writing. Based on such description, the oral agreement also has the legal power to bind the parties making it, so that in case of default in the oral agreement, the oral agreement can be used as a basis to declare a person to default.

Unconsciously in social life, oral agreements are often done. Oral agreements are agreements made by parties solely by oral or mutual agreement of the parties. Oral agreements are often found in simple agreements, in the sense that they are not complicated in legal relationships and also do not cause great harm to the parties in the event of default. Unlike written agreements, oral agreements do not use the deed. Written agreements may be made in a deed under the hand and may be made also in an authentic deed. Sufficiently risky if verbal agreements are used in treaties which can cause substantial harm to the parties in the event of default, since the oral agreement

does not use a written deed that can guarantee an agreement if either party denies or has not concluded the agreement.

The oral agreement in it contains a promise that expresses the declared will and is considered a constitutive element of the binding power of the covenant. A new agreement is formed when there is an encounter or a match between the promises of one party to the other.⁵ In an agreement it should be seen first whether there is an encounter or agreement between the promises of one party to another, which in this case is included in the terms of the validity of the agreement in Article 1320 of the Civil Code concerning their binding agreements. The agreement in the oral form, means the submission of what is desired and requested by the party who offers to the receiving party. The promise, though expressed verbally and expressed in words and deeds, is a potential factor, the point of what is actually desired in order to affirm certain legal relations of the covenant.⁶

Article 1320 of the Civil Code concerning the terms of the validity of the agreement is very important to be taken into consideration, because in deciding upon a breach of wanprestasi which is first seen is a valid or invalid agreement. If the agreement is invalid then a person alleged to have committed a non-breach can not be declared to have defaulted.

This is reinforced by the Judge considering Article 1234 Civil Code which states "each engagement is to give something, to do something, or to do nothing". Persons who do not engage in an engagement agreed upon in an agreement may be deemed to have committed a default. The relationship between the agreement and the engagement is that the agreement has a legal effect that causes the engagement. The Agreement is the source of the law of engagement other than any other legal source. Engagement is a legal relationship in the abstract sense, whereas the covenant is a legal act that creates concrete rights and obligations in the legal relationship.⁷ Under the terms of the terms of the validity of the agreement, there is no requirement in Article 1320 of the Civil Code which requires that an agreement be made in writing. In other words, an Orally Created Agreement is also legally binding for the parties making it, Pacta Sun Servanda (vide: Article 1338 Civil Code. However, in the process of establishing a civil case, the usual evidence used by the argumentating party (Vide Article 163 HIR) is a letter proof. This is because in a civic relationship, a letter / deed is intentionally made with the intention to

⁵ Muhammad Syaifuddin. 2012 hal 137. Contract Law: Understanding Contracts in Perspective Philosophy, Theory, Dogmatics and Legal Practice. Bandung: C V. MandarMaju.

⁶ *Ibid*, hlm.138.

⁷ *Ibid*, hlm.25.

facilitate the process of proof, if in the future there is a civil dispute between the parties concerned. In this case, I will take the example of the debt agreement orally.

In the case of an agreement of oral debt, then other evidence instruments other than letter proof (vide: Article 1866 Civil Code and Article 164 HIR) can be applied. Therefore, if a party (Plaintiff) wishes to postulate the existence of an agreement of oral debts to the Court, the Plaintiff may file a witness evidence which may explain the agreement of the oral debts.

In the event that a Plaintiff filed a witness to corroborate the argument on the existence of an agreement of oral debt, it is known the principle of *Unus Testis Nullus Testis*, affirmed in Article 1905 of the Civil Code as follows:

"The description of a witness only, without any other evidence, before the Court should not be trusted"

This means that a witness is not sufficient to prove an event or a covenant, since there is a minimum amount of proof in filing witness evidence, at least two witnesses, or one witnesses accompanied by other evidence, for example the recognition of the opposing party make the agreement (Vide: Article 176 HIR) or in the case of any suspicion (Article 173 HIR), for example, there is already some debt paid to the Plaintiff.

An agreement of any kind must be an engagement therein, since the covenant is the source of the engagement. Giving something is an act of surrendering ownership or by certain measures, surrendering from the enjoyment of the property.⁸ Article 1238 of the Civil Code states "the debtor is negligent, if he by warrant or by a similar deed has been declared negligent, or for his own engagement, is if it establishes that the debtor shall be deemed negligent by the passage of the prescribed time". A negligent statement is a legal remedy in which the creditor notifies, reprimands, and warns the debtor when at the latest it is obligated to fulfill the performance and when that time is exceeded, the debtor is negligent.⁹ Certain circumstances to prove a default debtor are not required negligent statements. Certain circumstances, for example, namely.¹⁰

- a. To ensure achievement is a fatal grace period;
- b. The debtor rejects fulfillment;
- c. The debtor admits his negligence;
- d. Fulfillment of achievements is not possible;
- e. Fulfillment is no longer licensed; and

⁸ (Mariam DarusBadruzaman. 2015. The Law of Alliance in the Third Book Civil Code. Bandung: PT. Citra Aditya Bakti.

⁹ *Ibid.*

¹⁰ J.H. Niewenhuis, translation by DjasadiSaragih.1985. Principles of Legal Engagement, Translation by DjasadinSaragih, UNAIR-FH, Surabaya.

f. Debtors do not perform well.

This is contrary to Law No. 8 of 1999 on consumer protection. As in Chapter III Rights and obligations, Part One Consumer Rights and duties Article 4 point h which contains "the right to receive compensation, compensation and / or reimbursement, if the goods and / or services received are not in accordance with the agreement as appropriate." Part Two Rights and Obligations of Business Actors Article 7 Consumer Protection Laws on the Rights and Duties of Business Actors C points "treat or serve consumers properly and honestly and non-discriminatory.

Legal protection can be defined as a protection afforded to legal subjects in the form of either repressive or repressive means, whether oral or written. In other words it can be said that the protection of the law as a separate feature of the function of the law itself, which has the concept that the law gives a justice, order, certainty, benefit and peace. Consumer law is defined as the whole legal principles and rules governing relationships and problems between various parties or each other related to goods and / or services within the social life. Based on Article 163 HIR and Article 1865 of the Civil Code, any party that argues for a right, then the party must prove it. So if the consumer demands his right to the business actor that harms him, then the consumer must prove. However, in Law Number 8 Year 1999 concerning Consumer Protection Article 22 and Article 28, the evidentiary obligation is "reversed" (reversed proof) to be the full responsibility and responsibility of the business actor. So the provisions on responsibility and redress in the Consumer Protection Act are *lex specialis* against the general provisions contained in the Civil Code.

CONCLUSION

The oral agreement is still valid and has the legal power to declare a person to default, but if the oral agreement is denied / not recognized by the alleged infringer, the oral agreement has no legal power to declare a person to default, because the agreement is true and can also not exist, depending on the proof of the parties. This is because the presence or absence of the agreement is crucial in declaring a person to make a default, because a person can not be declared wanprestasi if there is no agreement made. Oral agreements denied / not acknowledged by any of the parties making them, do not have the force of law to declare a person to default, but a verbal agreement that has been denied / unrecognized may regain its legal power if it can be proven that the oral agreement actually exists or ever made. Law No. 8 of 1999 on consumer protection, Consumer law is defined as the whole principles and legal rules governing relationships and problems between various parties or each other related to goods and / or services within the association of life. Based on Article 163 HIR and Article

1865 of the Civil Code, any party that argues for a right, then the party must prove it. So if the consumer demands his right to the business actor that harms him, then the consumer must prove. However, in Law Number 8 Year 1999 concerning Consumer Protection Article 22 and Article 28, the evidentiary obligation is "reversed" (reversed proof) to be the full responsibility and responsibility of the business actor. So the provisions on responsibility and redress in the Consumer Protection Act are lex specialists against the general provisions contained in the Civil Code.

REFERENCE

Aswari, Aan, Andika Prawira Buana, and Farah Syah Rezah. "Harmonisasi Hukum Hak untuk Dilupakan bagi Koran Digital terhadap Calon Mahasiswa di Makassar." *Kanun: Jurnal Ilmu Hukum*, Volume. 20. Nomor.1, (April 2018).

Mariam DarusBadruzaman. 2015. The Law of Alliance in the Third Book Civil Code. Bandung: PT. Citra Aditya Bakti.

Muhammad Syaifuddin. 2012. Contract Law: Understanding Contracts in Perspective Philosophy, Theory, Dogmatics and Legal Practice. Bandung: C V. MandarMaju.

Munir Fuady. 2001. Contract Law (From a Business Law Perspective), Second Book. Bandung: PT. Citra Aditya Bakti.

Niewenhuis.J.H, 1985. Principles of Legal Engagement, Translation by DjasadinSaragih, UNAIR-FH, Surabaya.

Salim HS, 2003. Introduction to Written Civil Law (BW), SinarGrafika.

Subekti. R 1996. Law of Agreement. Jakarta: Interimas.

Code of Civil law.

Law Number 8 Year 1999 on Consumer Protection.

Billy Dicko StepanusHarefa, Tuhana, Legal Power of Oral Agreement if wanprestasi, private law vol IV No 2 July-December 2016.

<http://www.online.law.com/clinic/detail/lt51938378b81a3/about-proof-agreement-not-written>.

<http://www.lawhomepage.com/2016/04/agreement-not-written.html>.