

ORAL AGREEMENT: LEGAL FORCE AND VALIDITY UNDER THE CIVIL CODE

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Abstract

The objective of this research is to examine legal validity of oral agreements based on the Civil Code and to recognize as well as understand the validity of oral agreements according to the Civil Code. The legal research method employed is normative research, with an approach to legislation and conceptual approach. Additionally, the legal materials are sourced from secondary legal materials and primary legal materials. The primary source is the Civil Code, while the secondary source includes books and scientific journals. The findings of this study indicate that, in accordance with the Civil Code, oral agreements possess legal validity. This legal validity is applicable to the parties involved in their creation. The legal validity involves a mutual obligation. The obligation is to willingly bind oneself and together in the oral agreement. The legal validity of oral agreements is closely linked to the validity of an agreement being deemed to have legal validity or meeting the requirements for its validity. An oral agreement is considered a valid agreement if it encompasses both of these elements.

Keywords: Oral Agreement, Legal Force, Validity, Civil Code

1. INTRODUCTION

Oral agreements are often found in everyday life in the community. Oral agreements usually begin with an agreement between one party and the other. When viewed from a juridical point of view, an agreement on an oral agreement has the lowest level of legal force. The level is determined by the existence of an agreement and the granting of authority to a public office. The assumption of the community that considers oral agreements do not have the same strength as written agreements. So far, agreements made generally contain the signatures of the parties, while agreements made orally do not contain the signatures of the parties (Libera, n.d.). This assumption becomes a separate problem in the practice of buying and selling transactions commonly carried out in the community.

The oral agreement has become a polemic and even a dilemma in the minds of the community. Especially for people who are afraid of problems in the future with the agreement they have made. The feared problem is that someone will suffer losses from an agreement that does not have legal force (oral). In contrast to the view of someone who assesses a written agreement. Written agreements are seen as having very strong legal force and cannot even be contested by any party. Written agreements can even be used as perfect evidence because written agreements are signed by authorized officials.

This assumption carries implications for the community when entering into agreements. The initial assumption may instill fear in individuals regarding the agreements they enter into, potentially leading to issues and harm. Conversely, the second assumption may provide a sense of security due to its perceived strong and indisputable legal validity. Both assumptions have repercussions that affect the parties involved in the agreement.

While opting for a written agreement may provide a sense of safety and comfort, it is crucial to acknowledge the potential consequences that come with it. These consequences primarily revolve around the costs that each party involved must bear. The process of preparing the necessary documentation is time-consuming, and the expenses associated with drafting a written agreement can be significant. Ensuring that all required documents are in order beforehand is essential to avoid delays in the agreement process. Additionally, parties must allocate sufficient time for document completion and the signing process with an authorized official.

Moving on from this community phenomenon, it is very dilemmatic if oral agreements are seen as agreements that lack legal force and even their validity is doubtful. Oral agreements become something that is very worrying because what is thought of is the consequences in the future.

The state of the art of this research is research conducted by Raisila & Utari (2018), highlighting the problem includes how the legal position of the MoU is viewed in terms of contract law. Second, the research by Kusuma & Purwanto (2020) questioning how the legal consequences of buying and selling used cars that are not in accordance with advertisements on Facebook media. Furthermore, the third research was conducted by Putra & Priyanto (2020), emphasizing why a Memorandum of Understanding is needed before making a contract, and how to strengthen the binding force of a Memorandum of Understanding (Utama & Purwanto, 2019). The three studies became comparative research with this study. Among the three studies, there are differences and similarities with this research. The difference lies in the strength and validity of the oral agreement used as the object of this research while the similarity lies in the concept of the agreement studied.

Based on the discussion above, the problem formulation in this research includes two main aspects, namely the legal force and validity of oral agreements based on the Civil Code. The purpose of writing this journal is to understand these two aspects in the context of civil law, with a focus on resolving the issues that arise. Thus, this research is expected to provide a deeper understanding and concrete answers to the issues raised.

2. RESEARCH METHOD

This type of normative legal research is the choice of this research because this research examines the implementation of a legal norm in positive law (Ibrahim, 2005). The problem lies in positive legal norms, in this case the Civil Code. Towards the selection of approaches, namely the legislative approach and the legal concept approach. Research legal materials are taken from secondary sources and primary sources. The primary source is the Civil Code, while the secondary sources are books, journals, and internet media. The legal materials were collected in a note containing the sources of the books and journals used. Furthermore, the material is processed qualitatively in a deceptive manner.

3. RESULT AND DISCUSSION

3.1. The Power of Oral Agreement based on the Civil Code

The legal force of an agreement indicates that all agreements made legally apply as laws to those who make them. According to Utama & Purwanto (2019), The provisions of this article do not specify the form of agreement made. The clause stating all agreements indicates that there is enforcement of all forms of agreements. All forms of agreements are intended, both written agreements and oral agreements. For all forms of agreements made both written and oral agreements, as long as they are valid, they cannot be closed to oral. Thus, the oral agreement can be applied to the form of agreement made orally.

The form of the agreement consists of two forms, namely written agreements and oral agreements. An agreement is an act of doing something, not doing something and giving something in an obligation to the party who makes it through a series of words and writing. In writing or what is meant by oral, namely in the form of words spoken regularly which contains approval in pronunciation. Spoken words contain promises based on a person's ability to perform an act in an oral agreement.

In legal concept, the agreement is an engagement (Saraswati, IG AA Tamara Sheila, 2018). In the agreement, there is a binding made by each party. Where the binding is done intentionally by the parties who make the oral agreement. Based on the legal concept of the agreement above, it has legal force. Regarding a valid agreement, it must fulfill the conditions for the validity of the agreement. The validity of the agreement is based on an agreement between the parties who promise, the capacity of the parties who make the agreement, the existence of a permissible thing, and the existence of a permissible causa (Sukadana & Resen, 2021).

The requirements for the validity of the agreement do not only apply to a person but also apply to the Company (Patria & Ariana, 2020). Companies are also allowed to make legal agreements because companies are also legal subjects. Likewise for cooperation agreements made by one or more than one company (Sukadana & Resen, 2021). The purpose of making a valid agreement is to strengthen the position of the company in the agreement made and the agreement made also has binding force. If the agreement has binding force and is made legally, then the agreement can be used as perfect evidence in court. If one of the parties makes a default, it can be resolved in the local court, while the agreement made becomes valid evidence (Ananta & Nurdin, 2021).

The legal force of an oral agreement can be found when the oral agreement is confronted with a case. When faced with a case, the oral agreement can show the validity specified in the Civil Code. The validity of an oral agreement includes agreement, ability, something that is allowed and the existence of a permissible cause. if the oral agreement meets all these requirements, then the oral agreement has legal force, and vice versa, if the oral agreement does not meet the requirements for the validity of the agreement, then the oral agreement will not mean anything. Not only oral agreements have no force, but written agreements also have no force if they do not meet these requirements. The validity of the requirements of the agreement becomes a fixed price when each party wants the agreement made to have legal force. Legal force is very much needed in making agreements both orally and in writing.

3.2. Oral Agreement Validity based on Civil Code

The validity of an agreement can be known from whether or not it has a predetermined form. Whatever the form, the agreement is a reference for the parties themselves. Its validity is also determined as a binding rule for the parties. As a rule as it contains an agreement made jointly.

The validity of a promise made, determined in the Civil Code as mentioned earlier (Aristyo & Cahyono, 2021). A valid promise comes from the existence of an agreement first, then the promise is outlined in the agreement. Although the Civil Code does not determine that the promise made must be in oral or written form, the promise made must fulfill these requirements. Oral agreements made by the parties contain matters that are very light or do not cause significant consequences if there is a default in the future. The substance of an oral agreement does not contain anything that is heavy or has an impact that results in the loss of one of the parties. In contrast to a written agreement which must be legalized by an authorized official, namely a Notary. Notaries are authorized to ratify the agreements they make. This authority of the Notary is given by law. Article 1 of the Notary Position Law stipulates that a Notary is a public official authorized to make authentic deeds and has other authorities as referred to in this law or based on other laws.

Especially written agreements made at a Notary, of course, the cost of making the deed is charged to each party. If the transaction requires the cost of making a deed, then the party charged with the cost of making a deed at the Notary or the fee is only charged to the seller. The cost is agreed upon by the parties to the agreement. If the buyer is willing to spend additional money to pay for the Notary's deed, then we are ready to make a written deed of sale and purchase.

The Civil Code does not specify that the agreement made must be in the form of a written agreement. The Civil Code only determines the validity requirements. However, the agreement made can be made freely. The freedom intended is the freedom of each. The freedom of the parties who make, enter into agreements with other parties, make the contents of the agreement, carry out the contents of the agreement, and determine its form (Salim, 2021).

Based on the legal concept, the freedom to make agreements, in relation to this freedom, is related to freedom in the principle of freedom of contract. In the freedom of contract, it is defined as the freedom to choose and make contracts (Adnyani, Putu Sri Bintang Sidhi, 2022). There is freedom obtained by the parties. That freedom is free to choose the subject of the agreement. The subject is done freely, with anyone can make a contract or agreement. Any party can be chosen and can choose to be invited to make a contract. Furthermore, there is freedom to take action, whether it is making a contract or not making a contract. In addition, there is also freedom in making the contents which contain the will or desire of the parties.

The freedom obtained by the parties, of course, has consequences that can lead to default (Sulthanah, 2021). All possibilities that can occur in the future or in the future will be made clauses that aim to prevent defaults. At least reduce the possibility of default. If the parties have included this possibility, then undoubtedly the agreement made will not cause harm to the parties.

Based on the concept of agreement law by the Indonesian Nation, where the concept of openness in making agreements is chosen (Jamil & Nury & Rumawi, 2020). With the adoption of the principle of freedom of contract, the agreement made is open. The system gives freedom to the parties who make an agreement to determine what agreement they

will make. The freedom determined is the freedom of the parties who make the agreement only, while the party not involved in the agreement, does not have freedom in the agreement (Kuswandi & Putri, 2021).

The Civil Code also does not provide certainty for the making of written agreements. Article 1320 of the Civil Code does not provide assertiveness regarding the validity of the agreement that must be made in writing or under the hand or orally. The Civil Code only provides the obligation to fulfill the conditions for the validity of the agreement. The agreement is said to be valid because it meets the requirements, and vice versa if the agreement is invalid. Regarding oral agreements made by the parties, such oral agreements have fulfilled the subjective and objective requirements. Thus, the oral agreement is a valid agreement (Nabilasari Lesmana & Yustiawan, 2023). Even though the oral agreement is made with words from the mouth of the parties only, it is still a valid agreement because it has fulfilled the subjective and objective conditions of an agreement. Therefore, the oral agreement remains valid because it fulfills all the elements in the requirements for the validity of an agreement.

4. CONCLUSION

Based on the previous discussion, it can be concluded that the effectiveness of an oral agreement depends on the commitment shown by all parties involved. The legal validity of oral agreements is supported by contract law and Article 1338 paragraph (1) of the Civil Code. Additionally, the legal effectiveness of an oral agreement relies on meeting the stipulations of the agreement and having a mutual intention to adhere to the terms. If an agreement meets the legal requirements of a valid contract, both oral and written agreements are equally enforceable by law. Therefore, for an oral agreement to be legally binding, it must meet the necessary legal criteria. Conversely, if an agreement does not meet these requirements, it has no legal effectiveness. Ultimately, the legal validity of an agreement is determined by its own compliance with legal standards.

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