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Dispute Resolution in Unwritten Agreements in Connection of Cooperation Reviewed from a Civil Law Perspective

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Abstract. *This study aims to describe the regulation of agreements according to Indonesian contract law (KUHPerdata), which then analyzes the legal force of agreements made orally and their proof in court. This research is a normative juridical research conducted with a statutory and conceptual approach. The results of the study indicate that agreements are specifically regulated in the Civil Code, Book III, Chapter II concerning "Agreements Born from Contracts or Agreements" and Chapters V to XVIII which regulate the legal principles and norms of contract law in general, as well as contract law norms that have special characteristics better known as named agreements. The Civil Code itself does not explicitly mention "written agreements". If an oral agreement has fulfilled the requirements for a valid agreement according to the formulation of Article 1320 of the Civil Code, then it remains valid and has legal force to declare someone in default. However, if the verbal agreement is denied/not acknowledged by the party suspected of being in breach of contract, the verbal agreement does not have legal force to declare someone to be in breach of contract, because the agreement may or may not be true, depending on the evidence provided by the parties.*

Keywords: *Contract Law; Oral Agreement; Unwritten Agreement.*

1. Introduction

Law provides rules for social life. One of its functions is to guarantee a clear and definite legal framework for society, ensuring that every person has the right to defend themselves and receive legal representation. Law is defined as a set of rules established through written and unwritten statutes. The purpose of law is to regulate social life to ensure stability and provide security for the community, thus ensuring that law has cause and effect and sanctions for those who violate the law.

One of the functions of law is to regulate human life in society in various aspects. Humans engage in economic activities to meet their needs. Humans cannot meet their own needs alone, therefore, they interact with other humans. These interactions often suffer due to conflicting interests among the interacting individuals. To avoid conflict, mutual agreement is essential. Economic activity, as a social activity, also needs to be regulated by law to ensure that economic resources, their utilization, and activities can operate effectively, while ensuring fairness for all stakeholders.

The economic regulations that apply to each social group or nation vary depending on the agreements in force within that group or nation. One of the goals of a nation is to improve the welfare of its people. Indonesia is part of the global community, so it is not exempt from international law, including those concerning the economy. The legal aspects that regulate the Indonesian economy have been mandated in the 1945 Constitution which has been amended four times, but it was only in 1982 that research was conducted on Indonesian economic law. The development economics is the regulation and legal thinking regarding ways to improve and develop economic life (increase production) nationally and in a planned manner. Development economic law covers the fields of land, business forms, foreign investment, foreign credit and aid, domestic banking credit, patents, insurance, imports, exports, mining, labor, housing, transportation and international agreements.

Article 33 means that Indonesia's goal in developing an economic ecosystem is not a capitalist economy. The economic system adopted and its foundation is one based on the principle of kinship. Therefore, this aligns with the ideal foundations of Indonesian economics, including Pancasila. The ideals of the Indonesian nation, as expressed in Pancasila, encompass general welfare and contribute to the realization of social justice for all Indonesians. Therefore, implementing economic democracy in Indonesia seeks to avoid the practice of economic monopolies. To meet the needs of society, various forms of cooperation have been created in the economic sector, including credit-credit transactions, buying and selling, lending and borrowing, renting and leasing, and so on. The development of this cooperation has resulted in the formation of bonds between the community as a legal subject and other communities. This can take the form of an individual against an individual, an individual against a company (limited liability company, limited liability company), or a company against a company.(Sidabalok, 2014)

Economic activity is inseparable from business relationships between parties who share common goals and interests. An agreement serves as a vehicle for establishing agreements within a business relationship. The purpose of an agreement is to avoid problems arising during the course of the business relationship. An agreement is created to provide legal certainty for each party regarding their authority, rights, and obligations arising from the agreement.

The most commonly recognized agreement is a written agreement, typically a visible document with a stamp. The agreement outlines the rights and obligations of the parties in writing. If the agreement is made verbally and not in writing, it is referred to as an oral agreement. Oral agreements are a common practice in society. Among the most common verbal agreements are those made during shopping at a market to meet daily needs. Therefore, an oral agreement can be considered valid if the rights and obligations of each party concerned have been fulfilled.

A striking difference from written agreements is that written agreements are typically made by modern societies and involve businesses that have more complex legal relationships and have legal consequences. An authentic deed or a private deed, using a title agreement, is an example of a written agreement. Society evolves over time, adapting to changing times. These changes result in a more critical mindset regarding relationships that have legal consequences. Article 1320 of the Civil Code states that all legally binding acts are valid as law for each party involved. Therefore, since the enactment of Article 1320 until now, there has been no concrete and standard formulation regarding binding or agreements, but there are elements of the conditions for a valid agreement. Agreements or agreements in the law use the term agreement in several different terms, including contract, obligation, relationship, and agreement as synonyms for agreement.

Disputes often occur in human life, especially in business activities, these conflicts can arise suddenly, conflict management means finding the best solution to existing problems, the best way to solve problems is by means of a middle way or win-win solution that can benefit both parties, but against unwritten agreements make the evidence that serves as reinforcement for the agreement weak.

2. Research Methods

This study employs a descriptive-analytical approach to examine the mechanisms of dispute resolution concerning unwritten agreements within cooperative relationships, evaluated through the lens of Indonesian Civil Law. While Article 1320 of the Civil Code acknowledges the validity of oral contracts based on consensualism, the absence of physical documentation often creates significant evidentiary hurdles when a breach of contract occurs. This research analyzes how legal certainty is sought through the interpretation of Article 1866 regarding types of evidence—such as witness testimony and circumstantial indications—to reconstruct the rights and obligations of the parties involved. Ultimately, the analysis demonstrates that while out-of-court settlements like negotiation and mediation are prioritized to maintain the cooperative bond, the judicial perspective requires a rigorous evidentiary transformation to grant an unwritten pact the same binding legal force as a formal written deed.

3. Results and Discussion

3.1. The Regulation of Agreements in the Civil Code (KUHPerdata)

The Civil Code is a law that serves as both a formal and a material source of law for contract law in Indonesia. Agreements are specifically regulated in the Civil Code, Book III, Chapter II on "Agreements arising from contracts or agreements" and Chapters V through XVII which regulate the legal principles and norms of contract law in general, as well as contract law norms that have special characteristics, better known as named agreements.(Syaifuddin, 2012)

Article 1313 of the Civil Code does not explicitly mention "written agreements." The Civil Code only defines an agreement as an act by one or more persons binding themselves to another. However, agreements can be broadly divided based on their form: verbal and written. An oral agreement is an agreement made by the parties with a verbal agreement alone, while a written agreement is made in written form (a contract), either in the form of an authentic deed or a private deed. The legal force of these two types of agreements does not actually lie in their form, whether written or oral.(Partners, 2020)

Based on Article 1233 of the Civil Code regarding contracts, it explains that: "A contract arises because of an agreement or because of a law." Furthermore, Article 1333 of the Civil Code states that: "A contract arises because of an agreement or because of a law." Furthermore, Article 1333 of the Civil Code states that: "An agreement is an act in which one or more people bind themselves to another or more people." Based on the provisions in Article 1320 of the Civil Code, there are 4 (four) conditions for the validity of an agreement, namely.(Sopiani, S., Senda, VN, Muzzamil, MF, & Anugrah, D., 2024):

1. There is an agreement for those who bind themselves;
2. The capacity of the parties to make a contract;
3. A certain thing;
4. A reason (causa) that is lawful.

The first and second conditions are called subjective conditions because they relate to the subject of the agreement. Meanwhile, the third and fourth conditions, which relate to the object of the agreement, are called objective conditions.(Gumanti, 2012)

The difference between these two requirements is also related to the issue of whether an agreement is legally void and whether it can be revoked. If the objective requirements of an agreement are not met, the agreement is legally void, or if an agreement that was already void is considered null and void by law, the law considers it never existed.(Astuti, 2016)If the subjective conditions are not

met, the agreement can be cancelled or as long as the agreement has not been cancelled by the court, the agreement in question will continue to be valid.(Ishak, 2016)The four conditions for the validity of an agreement are the basis for the birth of an agreement.

In contract law, there are five important principles that constitute the essence of contract law. These five principles are:

1. The principle of freedom to enter into agreements

Freedom to enter into agreements is one of the principles of general law that applies throughout the world.(Ali, A., Fitrian, A., & Hutomo, P., 2022)This principle gives every citizen the freedom to enter into agreements about anything, as long as it does not conflict with statutory regulations, propriety and public order.(Rusli, 2015)Article 1338 paragraph (1) of the Civil Code states, "All agreements made legally apply as law for those who make them." The principle of freedom to enter into an agreement is a principle that gives freedom to the parties who enter into an agreement to: Make or not make an agreement; Make an agreement with anyone; Determine the contents of the agreement, its implementation and requirements; Determine the form of the agreement, namely written or unwritten; Accept or deviate from rational statutory provisions.(HS, 2021)

All agreements, or their entire contents, provided they meet the requirements, are valid for those who make them, with the same force as law. The parties to an agreement are free to enter into any agreement with any content, subject to applicable legal limitations, including those of prevailing social moral norms.

2. The Principle of Consensualism

PrincipleConsensualism can be traced in the formulation of Article 1320 paragraph (1) of the Civil Code. This article stipulates that one of the conditions for a valid agreement is the existence of an agreement between both parties.(Sinaga, 2015)The agreement is valid if an agreement has been reached on the main points and no further formalities are required.(Sinaga NA)However, various statutory provisions stipulate that for an agreement to be valid it must be made in writing or must be made in a deed made by an authorized official (for example, a deed of establishment of a Limited Liability Company).

3. The principle of pacta sunt servanda

This principle is translated as the principle of legal certainty summarized in the formulation of Article 1338 paragraph (1) of the Civil Code, "All agreements made legally apply as laws." The principle of pacta sunt servanda states that judges or third parties must respect the substance of the agreement made by the parties, as is appropriate for a law.(Jabalnur, 2024).They may not intervene or interfere with the substance of the agreement made by the parties.

4. Principle of Good Faith

Article 1338 paragraph (3) of the Civil Code states that, "All agreements must be carried out in good faith." This principle states that the parties, namely the creditor and debtor, must carry out the substance of the contract based on trust or firm belief or the good will of the parties.(Sinaga NA, 2018b)The principle of good faith is one of the principles in contract law that is universal. The application of the principle of good faith contained in Article 1338 paragraph (1) of the Civil Code must be carried out by the parties at the pre-contractual stage, the contractual stage and the post-contractual stage.(Arifin, 2020)Thus, at every stage in the agreement the parties making the agreement must always implement the principles of good faith.

Purwahid Patrik stated that the principle of good faith can be divided into two types, namely subjective good faith and objective good faith.(Saputra, F., & Gultom, 2025)Subjective good faith can be defined as a person's honesty in carrying out a legal act, which is related to a person's inner attitude. Objective good faith, on the other hand, can be defined as the implementation of an agreement based on propriety, appropriateness, fairness, or in accordance with the prevailing norms of the society in which the agreement is made.

The modern theory of contract law which prioritizes the principle of good faith states that the implementation of the principle of good faith does not only begin after the agreement is signed and implemented, but must be implemented (exist) from the negotiation stage (pre-agreement/contract).(Mahliyanti, 2017)This modern theory of contract law has been implemented in countries that adopt civil law systems such as France, the Netherlands, and Germany. We all know that the French Civil Code influenced the Dutch Burgelijk Wetboek, and subsequently, based on the principle of concordance, the Dutch Burgelijk Wetboek was adopted in the Indonesian Civil Code (KUHPerdata).

5. Principles of Personality

PrincipleThis determines that a person will carry out and/or make an agreement only for personal interests.(Hidayah, 2019). This can be seen in Article 1315 and Article 1340 of the Civil Code. Article 1315 states, “In general, no one can bind themselves in their own name or ask for a promise to be made, except for themselves.” Article 1315 is related to the formulation of Article 1340 of the Civil Code, “Agreements are only valid between the parties who make them.”

In addition to the principles above, there are several other fundamental principles that can be used as guidelines in making agreements. These provisions are universally applicable and morally justifiable. Some of these basic principles are:(Sinaga NA, 2019):

a. principle of trust;
b. the principle of equality before the law;
c. principle of balance;
d. the principle of legal certainty;
e. moral principles;
f. principle of propriety;
g. the principle of custom;
h. principle of protection.

3.2. The Proving Unwritten/Oral Agreements in Court

In civil procedural law, regarding proof in court, there are 5 (five) pieces of evidence regulated in Article 1866 of the Civil Code which states that "These pieces of evidence consist of: 1. Written evidence; 2. Evidence with witnesses; 3. Allegations; 4. Confessions; 5. Oaths." As explained above regarding the requirements for a valid agreement in Article 1320 of the Civil Code, an agreement does not require it to be in writing. Therefore, even unwritten or verbal agreements are legally binding between the parties involved.

However, in the process of proving a civil case, the evidence typically used by the party making the allegation (see Article 163 HIR) is documentary evidence. This is because in a civil relationship, a letter/deed is deliberately created with the intention of facilitating the proving process, should a civil dispute arise in the future between the parties.

A civil relationship exists between the parties in the form of an agreement, but it is not supported by evidence. In such cases, even litigation is very difficult, let alone non-litigation, to resolve the matter, as every argument presented must be proven. This problem often occurs in oral agreements where one party breaches their contract, claiming there was no agreement. In such cases, evidence must be established so that the legal action can be resolved with a clear basis for the claim. An example is an oral debt agreement.

In the case of an oral debt agreement, other evidence besides written evidence (vide Article 1866 of the Civil Code and Article 164 of the HIR) can be applied. If a party (Plaintiff) wants to argue regarding the existence of an oral debt agreement to the Court, then the Plaintiff can submit witness evidence that can explain the existence of the oral debt agreement. In the case of a Plaintiff submitting a witness to strengthen the argument regarding the existence of an oral debt agreement, then the principle of Unus Testis Ullus Testis is known which is emphasized in Article 1905 of the Civil Code, as follows: "The statement of a witness alone, without any other evidence, may not be believed in the Court." This means that a witness alone is not enough to prove an event or agreement, because there is a minimum limit of proof in submitting witness evidence, namely at least two witnesses, or one witness accompanied by other evidence, for example, there is an admission from the opposing party who made the agreement (vide Article 176

HIR) or in suspicion (Article 173 HIR), for example, there is already a portion of the debt that has been paid in installments to the Plaintiff. This legal construction with witnesses can be done verbally, but with the provision that the witness does not have a family relationship with the parties (formulation of Article 1910 of the Civil Code) and the witness is competent to act according to law (formulation of Article 1330 of the Civil Code).

3.3. Settlement of Unwritten Agreement Disputes in Cooperation Relations from a Civil Law Perspective

A dispute is a disagreement in which a party who feels aggrieved indirectly expresses their dissatisfaction or concerns to the party who allegedly caused the loss or to another party who should have expressed it, thus giving rise to a dispute or conflict. Disputes that arise between parties are not necessarily negative, so agreements must be properly regulated.

Oral agreements are considered easier to enforce than written ones, and many people in Indonesia still enter into unwritten agreements, even though unwritten agreements create problems and are detrimental to both parties. Unwritten agreements create legal relationships for both parties, and this is an obligation for both parties involved. However, these legal relationships do not always run smoothly as intended.

The failure to fulfill a cooperation agreement by one of the parties to the contract is due to the failure to fulfill the rights and obligations stipulated in the contract. According to Salim HS, default is the failure to fulfill an obligation under a contract between a creditor and a debtor. Failure to fulfill a promise can occur either intentionally or unintentionally.

Breach of contract is defined as the failure of one party to fulfill its obligations under a contract, such as a defect in the performance of the contract or a delay in the performance of the contract. According to Setiawan, the elements of non-performance are the failure to perform a service, a delay in the performance of a service, or the improper performance of a service.(R. Setiawan, 1999). Subekti further stated that there are four non-performance components.(Subekti).

a. They don't keep their promises.

b. He kept his word, but did not keep his word.

c. I kept my promise, but it was too late.

d. Doing something that cannot be done according to agreement(Subekti, Principles of Civil Law PT. Intermasa, 2010)

In unwritten agreements, dispute resolution allows parties involved in a legal dispute to choose one of several types of dispute resolution according to their

wishes. This wish aims to provide the best possible resolution for the benefit of all parties.(Vijayantera, 2020). The principle of freedom of the parties (partij virjheid) is in accordance with the applicable legal system, this can be found in Article 1338 paragraph (1) of the Civil Code "all agreements made legally apply as laws for those who make them"

Written agreements generally contain clauses regarding dispute resolution, but unwritten agreements do not provide specific provisions regarding dispute resolution. In legal theory, dispute resolution can be achieved in two ways: through litigation and non-litigation.(Nevey Varida Ariani, 2012)

a. Judicial resolution is carried out through existing judicial institutions. Dispute resolution through courts, lawsuits, and proceedings is based on the provisions of applicable Indonesian procedural law, particularly Civil Procedure Law. Civil procedure law aims to protect individual rights and comply with substantive law. Protection of individual rights is guaranteed by civil jurisdiction.(Harahap, 2015). The option of resolving business disputes through the courts is less attractive to entrepreneurs because it takes a very long time. In other words, dispute resolution takes a long time, especially when it involves a judicial review (PK). Gautama Merchant explained that the world of international trade always pays attention to matters that end up in court. This applies to all national systems, both developed and developing countries.(Gautama, 1996).

b. Out-of-court settlement is a legal approach outside the court that emphasizes the peaceful resolution of disputes and reaching a win-win solution. Based on Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, Article 1 Paragraph 10 regulates: "Alternative dispute resolution is a way to resolve disputes or differences of opinion through a procedure agreed upon by the parties, namely non-judicial settlement. "Consultation, negotiation, mediation, arbitration or expert opinion

Oral agreements may be legally binding, but they are considered weak in terms of evidence in dispute resolution. In civil procedure, evidence is the truth sought and established by the judge, and formal truth (formeel waarheid) is sufficient. The evidence, according to Article 284 RBG/1866 of the Civil Code, is as follows:

a. Writing/letter
b. Witness testimony
c. Suspicion
d. Confession
e. Oath(Hanifah, 2015)

Procedural lawIn civil cases, in a panel of judges' decisions, two valid pieces of evidence are required, but generally, unwritten agreements have legal consequences. Proving an unwritten agreement does not have legal consequences unless supported by other evidence. Identifying valid evidence in the judicial

review process is very important because valid evidence is the main foundation for realizing legal certainty in the process of proof and decision-making.

Business dispute resolution is crucial in the business world. Business disputes can arise for various reasons, such as differing interpretations of contracts, breaches of contract, or disagreements between the parties involved. One way to resolve business disputes is through arbitration.(Fuady, 2003). Arbitration comes from the Latin word "arbitrium", which means the authority to resolve something according to considerations.

The association of arbitration with these considerations may give the impression that an arbitrator or arbitration panel, in the process of resolving a conflict, no longer pays attention to legal norms and relies solely on consideration. However, this impression is incorrect, because the arbitrator or panel still respects the law, just as a judge would in a court of law. Arbitration is a process of resolving disputes outside of court carried out by the parties with the assistance of an independent and neutral arbitrator or panel of arbitrators.(et al., 2022)

Arbitration is a simple and informal dispute resolution method, which is essentially private. The simplicity of arbitration is reflected in the process: the disputing parties agree to submit their dispute to a person recognized by both parties as possessing expertise and wisdom, called an arbitrator. The arbitrator listens to arguments from both parties, considers the facts and arguments presented, and ultimately renders a decision.(Desi Syamsiah, RMB Bao, & NF Yuliana, 2023)

Dispute resolution through arbitration is often carried out in trade, commercial and economic disputes. Arbitration law has an important role in resolving national business disputes.(Roselyn Brenda Mangei, Tommy F. Sumakul, and Raflie Pinasang, 2020)Arbitration can provide legal certainty and justice for all parties involved in a business dispute. Furthermore, arbitration can offer the advantage of shortening the time and costs required to resolve business disputes. In arbitration, the parties can select an arbitrator or panel of arbitrators with expertise and experience in the area relevant to the business dispute at hand.

For example, in an oral debt agreement. In the case of an oral debt agreement, other evidence besides written evidence (vide: Article 1866 of the Civil Code and Article 164 HIR) can be applied. If a party (Plaintiff) wants to argue regarding the existence of an oral debt agreement to the Court, then the Plaintiff can submit witness evidence that can explain the existence of the oral debt agreement. In the case of a Plaintiff submitting a witness to strengthen the argument regarding the existence of an oral debt agreement, then the principle of Unus Testis Ullus Testis is known which is emphasized in Article 1905 of the Civil Code, as follows: "The statement of a witness alone, without any other evidence, may not be believed in the Court." This means that one witness alone is not enough to prove an event or agreement, because there is a minimum limit of proof in submitting witness evidence, namely at least two witnesses, or one witness accompanied by other

evidence, for example there is an admission from the opposing party who made the agreement (vide: Article 176 HIR) or in suspicion (Article 173 HIR), for example there is already a portion of the debt that has been paid in installments to the Plaintiff.

This legal construction with witnesses can be done verbally, but with the provision that the witness does not have a family relationship with the parties (formulation of Article 1910 of the Civil Code) and the witness is competent to act according to law (formulation of Article 1330 of the Civil Code).(I Wayan Wiryawan and I Ketut Artadi, 2010).

4. Conclusion

Based on the above description, it can be concluded that agreements are specifically regulated in the Civil Code, Book III, Chapter II concerning "Agreements Arising from Contracts or Agreements" and Chapters V to XVIII which regulate the legal principles and legal norms of agreements in general, as well as legal norms of agreements that have special characteristics which are better known as named agreements. Based on Article 1320 of the Civil Code, there are 4 conditions for the validity of an agreement. The Civil Code itself does not explicitly mention "written agreements". The Civil Code only defines an agreement as an act of one or more people who bind themselves to another person. However, in general, agreements can be divided based on their form, namely oral and written. If an oral agreement has met the requirements for a valid agreement according to the formulation of Article 1320 of the Civil Code, then it remains valid and has legal force to declare someone in default. However, if the oral agreement is denied/not recognized by the party suspected of breaching the contract, the oral agreement does not have legal force to declare someone in breach of contract, because the agreement may or may not be true, depending on the evidence of the parties. Based on Article 1338 of the Civil Code, an oral agreement must be implemented by the parties who made it because the parties must comply with what has been agreed in the agreement. The obligations arising from the agreement are the law for the parties who made it. Collaborative relationships between parties will certainly have legal consequences if they are not implemented according to the agreement. Dispute resolution can be achieved in two ways: through litigation and non-litigation. In the business realm, dispute resolution can be achieved through arbitration. Arbitration can provide legal certainty and justice for all parties involved in a business dispute. The regulation of oral agreements in Indonesian law still faces challenges in terms of legal certainty, evidentiary validity, and protection for the parties involved. Although the Dutch Civil Code remains the applicable legal basis, further evaluation is needed to ensure its relevance to modern legal needs. If the regulation of oral agreements is codified in the Indonesian Civil Code, legal certainty, evidentiary mechanisms, and adaptation to technological developments must be prioritized. More comprehensive legal reform will provide greater legal

certainty, reduce the potential for disputes, and strengthen public trust in the Indonesian civil law system.

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