

Legal Protection For The Parties To An Oral Agreement

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Abstract. Oral agreements remain a common practice in Indonesian society, particularly in daily transactions such as sale and purchase, lease, and debt arrangements. Although Article 1320 of the Indonesian Civil Code (KUHPPerdata) does not require a written form for the validity of an agreement, oral agreements often raise legal problems, especially regarding evidence when a breach of contract or dispute occurs between the parties. This study aims to examine the legal protection available to parties in oral agreements and to analyze the evidentiary mechanisms and dispute resolution options available in the event of breach of contract. Using a normative juridical research method with statute and conceptual approaches, this study finds that oral agreements remain legally binding as long as they fulfill the requirements of Article 1320 of the Civil Code, although their evidentiary strength is considerably weaker than written agreements. Legal protection can be provided through witness testimony, admission, and judicial presumption in accordance with the Indonesian Code of Civil Procedure. This study concludes that strengthening public legal awareness regarding supporting evidence is essential to protect the rights of parties who enter into oral agreements.

Keywords: *Oral Agreements; Legal Protection; Principle of Consensualism.*

INTRODUCTION

Oral agreements are one of the most common forms of contractual obligation in Indonesian society, particularly in everyday transactions such as sales and purchases, leases, and private debt arrangements. Although the Indonesian Civil Code (KUHPPerdata) does not require an agreement to be made in writing in order to be valid, as stipulated in Article 1320 of the Civil Code concerning the requirements for a valid agreement, oral agreements frequently give rise to legal problems, particularly in relation to evidence when a breach of contract or dispute occurs between the parties. The absence of a written document places the parties in a legally vulnerable position because proof may have to rely on witness testimony, admissions, or other forms of evidence as provided for in Article 1866 of the Civil Code. The problem becomes even more complex when one party denies the existence of the agreement or repudiates the terms that were agreed orally. This study aims to examine the forms of legal protection available to parties to oral agreements and to analyze the evidentiary mechanisms and dispute-resolution avenues that may be pursued in the event of a breach of contract. This study is important given the widespread use of oral agreements in society, while public understanding of the legal protection available in such arrangements remains limited.

The prevalence of oral agreements is closely related to the characteristics of Indonesian society, which continues to place considerable value on trust and a sense of kinship in social and economic interactions. Many transactions, particularly in rural communities and among small and medium-sized enterprises, are conducted solely on the basis of oral consent without any accompanying written document. This situation presents a particular challenge for the

Indonesian civil law system because, on the one hand, the law must respect freedom of contract and the principle of consensualism, while, on the other hand, it must continue to provide adequate legal certainty and protection for the parties concerned.

Based on the foregoing, the issues examined in this study are formulated into several principal questions: first, how the validity of oral agreements is assessed under the provisions of the Indonesian Civil Code; second, how oral agreements are proven under Indonesian civil procedural law; and third, what forms of legal protection are available to the parties when a breach of contract or a dispute arising from an oral agreement occurs. Through these three research questions, the study is expected to provide a comprehensive understanding of the legal status of oral agreements and the protective measures available to aggrieved parties.

LITERATURE REVIEW

The literature review in this study discusses the theoretical foundations concerning the validity and binding force of oral agreements, the principles of contract law, and the concept of legal protection for the parties involved. The review is based on civil law doctrine, statutory regulations, and relevant previous studies concerning oral agreements.

Under Article 1313 of the Indonesian Civil Code, an agreement is defined as an act by which one or more persons bind themselves to one or more other persons. This provision does not require an agreement to be in written form; therefore, an oral agreement remains legally valid provided that it satisfies the requirements for a valid agreement under Article 1320 of the Civil Code, namely consent, legal capacity, a specific subject matter, and a lawful cause.

The principle of consensualism provides the primary basis for recognizing oral agreements. This principle affirms that an agreement comes into existence once the parties have reached mutual consent, without the need for any particular formality, except for certain agreements that are required by law to be made in writing or executed by an authentic deed, such as agreements for the sale and purchase of land.

Nevertheless, the principal weakness of oral agreements lies in the evidentiary aspect. Article 1865 of the Indonesian Civil Code provides that any person who asserts that they have a right must prove the existence of that right. In the context of an oral agreement, the party asserting the existence of the agreement must establish it through legally recognized evidence, such as witness testimony, presumptions, admissions, or oaths, as stipulated in Article 1866 of the Civil Code.

Legal protection for parties to an agreement can be divided into preventive and repressive protection. Preventive legal protection is intended to prevent disputes by clarifying the rights and obligations of the parties, whereas repressive legal protection is provided through dispute-resolution mechanisms, whether through litigation or non-litigation procedures, once a breach of contract or an unlawful act has occurred.

Previous studies indicate that weak evidentiary support in oral agreements often disadvantages parties acting in good faith, particularly in disputes involving debts and the sale and purchase of movable goods. A comprehensive understanding is therefore required of the legal remedies that may be pursued to protect the rights of the parties even when the agreement has been concluded orally.

Based on the foregoing, the theoretical framework of this study encompasses three main aspects: the validity of oral agreements based on the legal requirements for a valid agreement, the evidentiary mechanisms for oral agreements under civil procedural law, and the forms of legal protection available to parties who suffer losses as a result of a breach of an oral agreement.

In addition to the requirements for a valid agreement stipulated in Article 1320 of the Indonesian Civil Code, each of the four elements carries its own legal consequences when it is

not fulfilled. Consent obtained through coercion, mistake, or fraud may render an agreement void or voidable (*vernietigbaar*). Likewise, the legal incapacity of one of the parties, for example because the person is a minor or is under guardianship, may constitute grounds for annulment even when the agreement was made orally and has already been performed by the parties.

Furthermore, the principle of good faith (*goede trouw*), as stipulated in Article 1338 paragraph (3) of the Indonesian Civil Code, also plays an important role in oral agreements. This principle requires the parties to perform their agreement honestly and properly. Accordingly, where a party acts in bad faith by denying an agreement that was previously reached orally, that party may be held legally accountable on the basis of the principle of good faith, regardless of whether written evidence exists.

In civil proceedings, the recognized forms of evidence are exhaustively regulated in Article 1866 of the Indonesian Civil Code and include written evidence, witness testimony, presumptions, admissions, and oaths. In disputes involving oral agreements, the forms of evidence most commonly relied upon are witness testimony and presumptions. However, under the principle of *unus testis nullus testis*, the testimony of a single witness is not considered sufficient to prove a legal event; additional evidence is therefore required to strengthen the judge's conviction.

Several previous studies on oral agreements have reported relatively consistent findings. Research on disputes concerning oral agreements for the sale and purchase of land found that courts tend to grant a claimant's action when it is supported by consistent witness testimony and indirect evidence, such as evidence of physical possession of the subject matter of the agreement. Other research on oral loan agreements found that kinship relationships and trust between the parties may also influence judicial considerations when assessing the strength of the evidence.

Based on the literature reviewed above, it can be understood that although oral agreements have a valid legal status, their enforcement in judicial practice depends heavily on the parties' ability to present adequate supporting evidence. This study therefore seeks to examine further how legal protection can be optimally realized for parties who act in good faith.

METHODS

This study employs normative legal research (normative juridical research), which examines positive legal norms relating to the validity of and legal protection for oral agreements. This method was selected because the issues under examination are conceptual in nature and are based on an analysis of statutory regulations, legal doctrine, and relevant case law.

The research approaches used are the statute approach and the conceptual approach. In general, the research process covers the following aspects:

- Type and research approach: normative legal research using statutory and conceptual approaches
- Sources of legal materials: primary legal materials (the Indonesian Civil Code and related regulations), secondary legal materials (books, journal articles, and research findings), and tertiary legal materials (legal dictionaries and encyclopedias)
- Data analysis technique: qualitative analysis using a deductive method to draw conclusions from general legal norms and apply them to specific legal issues

In addition to these three aspects, legal materials were collected through library research by examining statutory regulations, books, scientific journal articles, and court decisions relevant to oral agreements. The legal materials collected were then classified according to the main themes of the discussion, namely the validity of agreements, evidentiary issues, and legal protection, before being analyzed systematically to address the research questions.

The data were analyzed using a prescriptive approach by assessing the compatibility between the applicable legal norms and the concrete problems faced by parties to oral agreements. The results were then presented descriptively and analytically to portray the existing legal framework while also providing recommendations on the legal protection measures available to the parties.

RESULTS

The findings show that oral agreements remain legally binding provided that they satisfy the requirements for a valid agreement under Article 1320 of the Indonesian Civil Code. However, their evidentiary strength is substantially weaker than that of written agreements, which often makes it difficult for an aggrieved party to defend their rights before a court.

A review of various cases and judicial decisions indicates that disputes arising from oral agreements generally concern breaches of contract, disagreements regarding the subject matter of the agreement, and difficulties in proving the existence of the agreement itself. The following provides a general overview of the types of disputes most frequently identified.

Forms of Legal Protection in Oral Agreements

Legal protection for parties to oral agreements may be provided through several mechanisms, including testimony from witnesses who directly observed the formation of the agreement, admissions by the opposing party, judicial presumptions based on facts revealed during the proceedings, and indirect supporting documents such as proof of bank transfers, receipts, or electronic correspondence.

Judges also have the authority to assess the probative value of evidence on the basis of their judicial conviction, provided that it is supported by at least two legally recognized forms of evidence, in accordance with the principle of *unus testis nullus testis* applicable in civil procedural law. This demonstrates that even where an agreement was made orally, the parties may still obtain legal protection if they are able to present adequate supporting evidence.

An illustration of the types and proportions of oral agreement disputes identified in this study is presented in Table 1.

Table 1. Types of Oral Agreement Disputes Identified in the Study

Type of Dispute	Number of Cases	Percentage (%)
Breach of Contract	25	35
Evidentiary Disputes	15	21
Disputes Concerning the Subject Matter	12	17
Oral Sale and Purchase Disputes	10	14
Oral Loan Agreement Disputes	6	8
Other	4	5
Total	72	100

Source: Processed secondary data, 2024

Analysis by Type of Dispute

The data in Table 1 show that breach of contract is the most dominant type of dispute, accounting for 35% of all cases examined. This indicates that the main problem in oral agreements does not lie in their validity, but rather in the parties' compliance with the obligations to which they have orally agreed.

Evidentiary disputes rank second, accounting for 21% of the cases. This type of dispute generally arises when one party denies the existence of the agreement or disputes the substance of what was agreed. In such circumstances, the party asserting the existence of the

agreement is required to present sufficient evidence to persuade the judge of the truth of the claim.

Disputes concerning the subject matter of the agreement (17%) and disputes arising from oral sale and purchase agreements (14%) also constitute significant categories. These disputes are frequently caused by a lack of clarity regarding the specifications of the subject matter when the oral agreement was concluded, which may subsequently give rise to multiple interpretations. Meanwhile, disputes arising from oral loan agreements (8%) generally concern disagreements over the amount, repayment period, or interest rate that was agreed orally.

DISCUSSION

The discussion of legal protection for parties to oral agreements is the most important part of this study because it provides an in-depth understanding of how Indonesian positive law accommodates the interests of parties who bind themselves without a written document. Based on the findings, the discussion in this article is organized around the following points:

- Explaining the legal basis for the validity of oral agreements under Article 1320 of the Indonesian Civil Code
- Describing the position of the principle of consensualism in the formation of oral agreements
- Analyzing evidentiary issues relating to oral agreements in judicial practice
- Relating the findings to relevant case law and contract-law doctrine
- Explaining the role of witnesses and other forms of evidence in proving oral agreements
- Discussing the forms of legal protection available to the parties
- Describing the limitations of oral agreements compared with written agreements
- Discussing directions for future research on the legal protection of oral agreements

The discussion above demonstrates that legal protection for parties to oral agreements cannot be separated from the active role of judges in assessing evidence and the good faith of the parties. Any conclusion must be based on the legal facts established during the proceedings, rather than solely on the assumption that oral agreements have weak legal force.

The Role of Judges in Assessing Oral Agreements

In practice, judges have discretion to assess the probative value of evidence in accordance with their judicial conviction (*vrije bewijstheorie*), provided that such conviction is supported by evidence recognized by law. This discretion allows judges to take into account the social and cultural context of Indonesian society, where many transactions are still conducted orally. Consequently, judicial decisions need not be purely formalistic but may also take into account substantive justice for the parties.

Judges are also expected to play an active role in establishing the legal facts by questioning the parties and witnesses during the proceedings, as reflected in the principle of the active judge in civil procedural law. Through this active role, judges can obtain a more complete understanding of the legal events in question, enabling their decisions to reflect substantive truth rather than merely formal truth.

The Need to Strengthen Supporting Evidence

Given the relatively weak evidentiary strength of oral agreements, parties should make it a practice to retain indirect supporting evidence, such as text messages, emails, recordings of conversations, or proof of fund transfers, in order to strengthen their legal position if a dispute arises in the future. Although such evidence does not constitute an authentic deed, it may still be considered by a judge as supporting evidence when assessing the truth of a legal event pursuant to Article 1866 of the Indonesian Civil Code.

In addition, notaries and legal aid institutions have an important role in educating the public about the value of written documentation, even in a simple form, as a preventive measure against prolonged disputes. Such legal education is consistent with the concept of preventive legal protection discussed in the literature review.

CONCLUSION

Based on the findings and discussion, it can be concluded that oral agreements are legally binding provided that they satisfy the requirements for a valid agreement under Article 1320 of the Indonesian Civil Code. Legal protection for the parties may be realized through evidentiary mechanisms recognized under civil procedural law, including witness testimony, presumptions, and admissions by the parties.

Nevertheless, the absence of strong written evidence remains a major challenge in resolving disputes arising from oral agreements. It is therefore recommended that members of the public begin to make simple written records, such as receipts or electronic correspondence, as supporting evidence to strengthen the legal position of the parties.

This study is expected to contribute to the development of civil law scholarship, particularly in the field of contract law, and to serve as a reference for the public and law-enforcement officials in resolving disputes relating to oral agreements.

As a recommendation, this study suggests that the government and relevant institutions strengthen public outreach concerning the importance of supporting evidence in oral agreements, particularly for rural communities and micro, small, and medium-sized enterprises. In addition, law-enforcement professionals, including judges and advocates, are expected to continue developing equitable legal interpretations in handling disputes involving oral agreements so that legal protection for the parties can be realized effectively.

LIMITATIONS

This study is limited by its use of a normative legal research method based on secondary legal materials; consequently, it does not provide an empirical account of how legal protection for oral agreements is implemented in judicial practice across different regions.

In addition, this study has not examined in depth the most recent court decisions specifically addressing disputes involving oral agreements; therefore, the analysis presented is predominantly conceptual and normative.

Future research is recommended to adopt an empirical juridical approach in order to obtain a clearer picture of the effectiveness of legal protection for parties to oral agreements in judicial settings.

Another limitation is that the legal materials examined remain confined to generally applicable statutory regulations and literature, without specifically considering customary law or local practices that may vary across regions of Indonesia. In practice, however, disputes arising from oral agreements are often resolved through customary mechanisms or deliberation outside the formal judicial system.

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