

Analysis of the Legal Strength of Oral Agreements in the Civil Code

Dewa Ayu Putri Sukadana
Universitas Pendidikan Nasional

Article history:

Accepted: 15 November 2024

Publish: 1 December 2024

Keywords:

Legal force;

Oral Agreement;

Witness of the Agreement.

Abstract

An agreement is a legal relationship that is often carried out in social life in society. An agreement according to Article 1313 of the Civil Code is an act by which one or more people bind themselves to one or more other people. Without realizing it, verbal agreements are often made in social life. The goal to be achieved is to understand the provisions governing oral agreements as well as knowing and understanding the legal force of oral agreements based on the Civil Code. The legal research method used is a normative research type, the approach is legislation and a conceptual approach. Furthermore, the legal materials are sourced from secondary legal materials and primary legal materials. Primary sources are in the form of the Civil Code, while secondary sources are books and scientific journals. The results of this research are that based on the Civil Code, verbal agreements have legal force. Its legal force applies between the parties who make it. Legal force has a reciprocal element, namely the existence of an agreement. An agreement that intends to bind oneself and together in an oral agreement. The legal strength of an oral agreement is closely related to the validity of an agreement which is said to have legal force or fulfill the requirements for the validity of the agreement. An oral agreement becomes a valid agreement if it contains these two elements.

This is an open access article under the [Lisensi Creative Commons Atribusi-BerbagiSerupa 4.0 Internasional](#)



Corresponding Author:

Dewa Ayu Putri Sukadana

Universitas Pendidikan Nasional

Email: ayuputrisukadana@undiknas.ac.id

1. INTRODUCTION

Apart from being individual creatures, humans are also called social creatures. Humans are social creatures, namely creatures who are destined to live in society and need other humans to fulfill their life needs, both material and immaterial. Of the many activities carried out to meet the needs of life, one of them is an activity in the form of legal relations, namely a relationship between one individual and another individual in society which is regulated and given consequences by law. An agreement is a legal relationship that is often carried out in social life in society. If there are goals and interests to fulfill these life needs, they must first meet their desires. This is the main basis for an agreement to occur. The Civil Code is in Book III and adheres to an open system, which means giving the widest possible freedom to the public to enter into agreements or agreements containing anything, as long as it does not conflict with public order and morality. Agreements are usually made because of business activities, have a high level of complexity, which often end up in court, such as business agreements made by the parties on the basis of freedom of contract.

Many people misuse the meaning of freedom of contract, many forget and underestimate this, only when problems occur do people realize the complexity of resolving the problem. There are two forms of agreement, namely written agreements and unwritten agreements. What often occurs in the community is an unwritten agreement because it is considered quicker to carry out as long as there is a bond between the two parties that already has mutual trust, but usually the problem is that This agreement arises because it is based on mutual trust.

Agreement is one of the many activities carried out by society with the aim of fulfilling life. The agreement itself is the beginning of binding public relations that are created and can have legal consequences for the creators of these rights and obligations. [1] An agreement is made by two or more people, who bind themselves to each other for certain reasons. Agreements are made by people in everyday life, especially in business and work relationships. Agreements are used in buying and selling, loans, work agreements, service usage agreements, and various other activities. Agreements can be made in two ways, namely by making a written agreement and an oral (unwritten) agreement. An oral agreement is an agreement made without explaining it in a signed contract document. The absence of a contract document does not mean that the agreement is considered invalid, because verbal agreements are legally recognized and have legal force.

An agreement being an oral agreement, has the lowest level of legal force. In this sense, the level is determined by the existence of an agreement and the granting of attribution authority to public positions. The public's assumption is that oral agreements do not have the same force as written agreements. So far, agreements made generally contain the signatures of the parties, whereas agreements made verbally do not contain the signatures of the parties. This assumption becomes a problem in the practice of buying and selling transactions that are usually carried out in society. The issue of the verbal agreement has become a polemic and even a dilemma in the minds of the public. Especially for people who are afraid of problems in the future with the agreements they make. The feared problem is that someone will experience loss from an agreement that does not have legal force (oral). This is different from the view of someone who assesses a written agreement. Written agreements are considered to have very strong legal force and cannot even be contested by any party. A written agreement can even be used as perfect evidence because the written agreement is signed by an authorized official. Verbal agreements occur in people's lives every day without people realizing it. A simple example, when shopping at the market and negotiating to reach a price that is suitable for both parties. Of course, the seller will hand over the goods and the buyer will hand over a certain amount of money, then the buyer will receive the goods at the mutually agreed price. An agreement is said to be "valid" if the parties agree and have fulfilled their respective rights and obligations. [2] Meanwhile, a written agreement is a more "formal" agreement, made in writing with the provisions described in detail in the agreement, and the signing of the deed agreement privately. Written agreements are easier to prove and also accountable for than verbal agreements if problems arise in implementing the agreement. Oral agreements are more difficult to carry out accountability and proof because oral agreements do not involve signing a deed agreement under the hand containing the rights and obligations of the parties.

Such assumptions have consequences for society in making agreements. Regarding the first assumption, people will feel afraid of the agreement they make which at some time will bring problems and bring losses to themselves. Meanwhile, the second assumption is that someone will feel safe because they are considered to have very strong and undeniable legal force. [3] Each of these assumptions has consequences that impact the parties making the agreement. On the one hand, people will be safer or more comfortable if they make a written agreement rather than making an agreement verbally.

However, on the other hand, choosing a written agreement will have consequences that must be considered by each party making the agreement. The consequence is that there are costs that must be borne by each party in accordance with the written agreement they have made. [4] Document requirements must be completed, and the preparation time is relatively long. The costs charged for making a written agreement are not cheap, so the burden is on each party. Documents owned by the parties must be complete. The problem is that when you want to make it, you don't have complete or incomplete documents.

Therefore, each party must take care of the complete documents first so that they can make a written agreement, so it takes a long time to wait for the documents to be processed. Moreover, the parties must be able to take the time to complete the documents and sign the written agreement before an authorized official. Moving on from this societal phenomenon, it is very dilemmatic if an oral agreement is seen as an agreement that lacks legal force and even its validity is doubted. Oral agreements are something that is very worrying because what we think about is the consequences in the future. Therefore, it is important to conduct research related to oral agreements with the title "Analysis of the Legal Strength of Oral Agreements in the Civil Code".

2. METHODS

This type of normative legal research was chosen for this research because the object of this research is legal norms. [5] In other words, this legal research examines written law based on several aspects such as theoretical, philosophical, comparative, scope and material, general explanation and article by article, formality and binding force of a law, to the legal language used. [6] The problem lies in positive legal norms, in this case the Civil Code. Regarding the choice of approach, namely approach legislation and approaches to legal concepts. 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. Regarding the sources of legal materials, this is done by collecting them in a note containing the sources from the books and journals used. Next, the material is processed qualitatively in a descriptive manner.

3. RESULTS AND DISCUSSION

3.1. Strength of Oral Agreements Based on the Civil Code

The legal force of an agreement is reflected in the provisions of "Article 1338 paragraph (1) of the Civil Code that all agreements made legally apply as law for those who make them". The provisions of this article do not state the form of agreement made. The clause stating all agreements shows that there is enforcement of all forms of agreement. All forms of agreement are intended, both written agreements and verbal agreements. For all forms of agreements made, whether written or oral, as long as they are valid, they are not closed to oral. So, the oral agreement can be enforced against the form of agreement made orally. [6]

The form of agreement consists of two forms, namely a written agreement and an oral agreement. An agreement is an act of doing something, not doing something and handing over something in an agreement to the party who made it through a series of words or writing. [7] In writing or what is meant verbally, namely in the form of words spoken regularly that contain agreement in pronunciation. Spoken words contain promises that are based on a person's ability to carry out an action in an oral agreement. From a legal concept, the agreement is an obligation. In the agreement, there is a binding agreement made by each party.

Where the binding is carried out intentionally by the parties who make an oral agreement. Based on the legal concept of the agreement above, it has legal force. Regarding a valid agreement, it is mandatory to fulfill the conditions for the validity of the agreement. [8] The conditions for the validity of an agreement are based on an agreement between the promising parties, the skills of the parties making the agreement, the existence of something that is permitted, and the existence of a permitted cause. [9]

The requirements for the validity of the agreement do not only apply to individuals but also apply to companies. Companies are also allowed to make valid agreements because companies are also legal subjects. Likewise with cooperation agreements made between companies that are one or more than one company. This legal agreement is made with the aim of strengthening the company's position 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 defaults, it can be resolved in the local court, while the agreement made becomes valid evidence. [10]

When faced with a case like the example above, an oral agreement can show the validity specified in the Civil Code. The validity of an oral agreement includes agreement, agreement, something that is permitted and the existence of a permitted cause. If the oral agreement fulfills all these requirements, then the oral agreement is valid according to law, and vice versa, if the oral agreement does not fulfill the requirements for the validity of the agreement, then the oral agreement will have no meaning. [11] Not only do verbal agreements have no validity, but written agreements also have no validity if they do not fulfill these requirements. The validity of the requirements for the validity of the agreement becomes a fixed price when each party wants the agreement made to have legal force. Legal power is very necessary in making agreements both verbally and in writing. [12]

3.2. Validity of Oral Agreements Based on the Civil Code

The validity of an agreement can be determined 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. [13] As a rule because it contains an agreement made jointly. Regarding the legal force of an oral agreement, there is a significant difference between validity and legal force.

The difference is that an oral agreement is said to have validity if it meets the conditions for the validity of the agreement as stated in Article 1320 of the Civil Code, both subjective and objective conditions are absolute conditions that must be fulfilled by the parties so that the oral agreement made has validity. Meanwhile, the strength of the law will be visible when faced with a breach of contract case in court. The lawsuit submitted to the Court was solely carried out to obtain the plaintiff's rights. The legal basis is stated in Article 1865 of the Civil Code. [14] Each party is required to provide evidence to strengthen its argument. If the evidence submitted can strengthen the argument and the evidence submitted is accepted by the Court, then that is when the oral agreement has legal force. Thus, the difference between the validity and legal force of an oral agreement is very clear. An oral agreement is declared valid if it meets the provisions of Article 1320 of the Civil Code and an oral agreement is said to have legal force if it meets Article 1865 of the Civil Code. [15]

The validity of a promise made is determined in the Civil Code as previously mentioned. A valid promise comes from an agreement first, then the promise is stated in the agreement.

The Civil Code does not specify that promises made must be in oral or written form, however, promises made must fulfill these requirements. [16] The verbal agreement made by the parties contains 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 serious or have an impact that results in loss to either party.

This is different from a written agreement which must be ratified by an authorized official, namely a Notary. A notary has the authority to ratify the agreement he or she

makes. This Notary's authority is granted by law. Article 1 of the Law on Notary Positions determines that a Notary is a public official who has the authority to make authentic deeds and has other authorities as intended in this law or based on other laws. Especially for written agreements made at a notary, the costs of making the deed are of course charged to each party. If the transaction requires costs for making a deed, then the party who is charged the cost of making the deed at the Notary or the costs are only borne by the seller. [17]

Regarding the charging of these costs "it is agreed upon by the parties making the agreement. If the buyer is willing to spend additional money to pay for the Notarial deed, then we are ready to make a written sale and purchase deed." The Civil Code does not determine with certainty that the agreement made must be in the form of a written agreement. The Civil Code only determines the requirements for validity. [18] However, the agreement made can be made freely. The freedom referred to is the freedom of each individual. Freedom of the parties who make, enter into agreements with other parties, create the contents of the agreement, implement the contents of the agreement, and determine its form. The freedom obtained by these parties, of course, has consequences that can lead to default. All possibilities that may occur in the future or in the future will be made into clauses aimed at preventing default. At least it reduces the possibility of default. If the parties have stated this possibility, then the agreement made will certainly not cause losses to the parties.

Based on the concept of contract law adopted by the Indonesian nation, [19] the concept of openness is chosen in making agreements. By adhering to the principle of freedom of contract, the agreements made are open. This system gives freedom to the parties making an agreement to determine what agreement they will make. The specified freedom is the freedom of only the parties who make the agreement, while parties who are not involved in the agreement do not have freedom in the agreement. The Civil Code also does not provide certainty for making written agreements. Article 1320 of the Civil Code does not provide clarity regarding the validity of an agreement, whether it must be made in writing or privately or verbally. The Civil Code only provides an obligation to fulfill the conditions for the validity of an agreement. The agreement is said to be valid because it meets the requirements, and vice versa if the agreement is invalid. Regarding verbal agreements made by the parties, such oral agreements have fulfilled subjective and objective requirements. Thus, the verbal agreement is a valid agreement. Even though an oral agreement is made using only the words of the parties' mouths, it is still a valid agreement because it fulfills the subjective and objective requirements of an agreement. Therefore, the oral agreement remains valid because it fulfills all the elements in the requirements for a valid agreement.

4. KESIMPULAN

Based on the discussion above, it can be concluded that the strength of an oral agreement is reflected in the concept of engagement made by each party. The legal force of an oral agreement is stated in the legal concept of agreement and Article 1338 paragraph (1) of the Civil Code. The legal force of an oral agreement is also based on the validity of the agreement made. The existence of a desire to mutually bind themselves to an agreement is an agreement desired by each party making the agreement. In other words, if the agreement meets the requirements for the validity of an agreement, then both oral agreements and written agreements have the legal force of law for those who make them. This means that in order to have legal force, the oral agreement must meet the requirements for the validity of the agreement. If the agreement does not meet the requirements for a valid agreement,

then the agreement has no legal force at all. Thus, legal force is determined by the validity of the agreement itself.

5. REFERENCES

- Diantha, I Made Pasek, (2023), *Metode Penelitian Hukum Normatif Dalam Justifikasi Teori Hukum*. Jakarta: Prenada Media Grup.
- Khairandy, Ridwan, (2014), *Hukum Kontrak Indonesia Dalam Perspektif Perbandingan (Bagian Pertama)*, Yogyakarta: FH UII Press.
- Purwati, Ari, (2020), *Metode Penelitian Hukum Teori dan Praktek*, Surabaya: CV. Jakad Media Publishing.
- Adnyani, Putu Sri Bintang Sidhi, and I. Made Sarjana. (2021) "Akibat Hukum Wanprestasi dalam Transaksi Online dengan Metode Cash on Delivery pada Aplikasi Shopee." *Kertha Semaya: Journal Ilmu Hukum* 9, no. 9. <https://doi.org/10.24843/KS.2021.v09.i09.p04>.
- Ananta, Laura Rizky, and Aad Rusyad Nurdin. "Analisis Akta Perdamaian Dalam Putusan Pengadilan Negeri Padang Nomor 14/Pdt. GS/2020/PN. Pdg." *Kertha Semaya: Journal Ilmu Hukum* 9, no. 11 (2021). <https://doi.org/10.24843/KS.2021.v09.i11.p19>.
- Aristyo, Raymond, and Akhmad Budi Cahyono. "Tanggungjawab Notaris Terhadap Akta PPJB Dan Akta Kuasa Untuk Menjual Sebagai Jaminan Terjadinya Utang Piutang." *Kertha Semaya: Journal Ilmu Hukum* 9, no. 12 (2021). <https://doi.org/10.24843/KS.2021.v09.i12.p13>.
- Harefa, Billy Dicko Stepanus, and Tuhana Tuhana. "Kekuatan Hukum Perjanjian Lisan Apabila Terjadi Wanprestasi (Studi Putusan Pengadilan Negeri Yogyakarta Nomor: 44/Pdt. G/2015/PN. Yyk)." *Privat Law* 4, no. 2 (2016). <https://media.neliti.com/media/publications/164680-ID-kekuatan-hukum-perjanjian-lisan-apabila.pdf>
- Jamil, Nury Khoiril, and Rumawi Rumawi. "Implikasi Asas Pacta Sunt Servanda Pada Keadaan Memaksa (*force majeure*) Dalam Hukum Perjanjian Indonesia." *Kertha Semaya: Journal Ilmu Hukum* 8, no. 7 (2020). <https://ojs.unud.ac.id/index.php/kerthasemaya/article/view/59799>.
- Kusuma, Komang Pande Dananjaya Tirta, and I Wayan Novy Purwanto. "Keabsahan Pembelian Mobil Bekas Melalui Media Facebook." *Kertha Semaya: Journal Ilmu Hukum* 8, no. 6 (2020). <https://ojs.unud.ac.id/index.php/kerthasemaya/article/view/61345>.
- Nugraha, Ida Bagus Prasadha Sidhi, and I. Gede Yusa. "Legalitas Kontrak Perdagangan Secara Elektronik Ditinjau Dalam Kitab Undang-Undang Hukum Perdata." *Kertha Semaya: Journal Ilmu Hukum* 8, no. 5 (2020). <https://ojs.unud.ac.id/index.php/kerthasemaya/article/view/59289>.
- Patria, Dewa Kadek Kevin, and I. Gde Putra Ariana. "Tanggung Jawab Perusahaan Jasa Ekspedisi terhadap Kerusakan Barang Kiriman Milik Konsumen (Studi Pada Ninja Xpress)." *Kertha Semaya: Journal Ilmu Hukum* 8, no. 9 (2020). <https://doi.org/10.24843/KS.2020.v08.i09.p07>
- Putra, Gede Nopta Ari, and I. Made Dedy Priyanto. "Asas Itikad Baik Dalam Memperkuat Kekuatan Mengikat Memorandum Of Understanding." *Kertha Semaya: Journal Ilmu Hukum* 8, no. 3 (2020). <https://ojs.unud.ac.id/index.php/kerthasemaya/article/view/57273>.
- Raisila, Ni Putu Diana Pradnyani, and Ni Ketut Sri Utari. "Kedudukan dan Kekuatan Mengikat Memorandum of Understanding (MoU) Ditinjau Dari Segi Hukum Kontrak". *Kertha Semaya: Journal Ilmu Hukum* 6, no. 4 (2018).

- <https://ojs.unud.ac.id/index.php/kerthasemaya/article/view/29479>>.
- Saraswati, IG AA Tamara Sheila, and Anak Agung Sri Utari. "Kekuatan Hukum Perjanjian Utang Piutang Dibawah Tangan". *Kertha Semaya: Journal Ilmu Hukum* 6, no. 3 (2018). <<https://ojs.unud.ac.id/index.php/kerthasemaya/article/view/27300>>.
- Sukadana, Dewa Gede Tedy, and Made Gde Subha Karma Resen. "Kekuatan Hukum Perjanjian Kerjasama Keamanan Antara Perusahaan Dan Badan Usaha Jasa Pengamanan Dari Ormas Dalam Proses Peradilan". *Kertha Semaya: Journal Ilmu Hukum* 9, no. 3 (2021). <https://doi.org/10.24843/KS.2021.v09.i03.p12>.
- Sulthanah, Lubna Tabriz, and Surahmad Surahmad. "Analisis Penyelesaian Wanprestasi Kontrak Kerja Konstruksi Ditinjau Dari Asas Keseimbangan." *Kertha Semaya: Journal Ilmu Hukum* 9, no. 3 (2021). <https://doi.org/10.24843/KS.2021.v09.i03.p09>.
- Utama, I. Wayan Wahyu Putra, and I. Wayan Novy Purwanto. "Kekuatan Hukum Perjanjian Peminjaman Uang Oleh Bukan Anggota Koperasi Paneca Rahayu". *Kertha Semaya: Journal Ilmu Hukum* 6, no. 9 (2019). <https://ojs.unud.ac.id/index.php/kerthasemaya/article/view/53733>>.
- Widiarta, Putu Nugraha, and I. Wayan Novy Purwanto. "Keabsahan Perjanjian Lisan Dalam Jual Beli Mobil Di Wahana Adikarya Motor Kabupaten Badung." *Kertha Semaya: Journal Ilmu Hukum* 6, no. 1 (2019). <https://ojs.unud.ac.id/index.php/kerthasemaya/article/view/54465>>.
- Libera, Kontrak Lisan dan Tidak Dibuat Secara Tertulis Apakah Tetap Legal?, <https://libera.id/blogs/kontrak-lisan-tetap-legal/>, diakses pada tanggal 9 Nopember 2024.