Oral Agreements In The Perspective Of Pacta Sunt Servanda In Legal Certainty

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Abstract

The purpose of this study is to analyze the problem of breaking a promise in an oral agreement, one of the parties, does not carry out what has been agreed upon, and causes losses, resulting in a conflict, and is sued by the district court. The problem in this study is how the court judge's consideration of the oral agreement, and the legal consequences. This research method uses a normative juridical approach, examines jurisprudence, the existence of cases that have been decided by the court. The legal theory in this study is the agreement theory, guided by the principles in the agreement, then the legal terms of a contract, and the types of agreements based on the Civil Code. The results of this study are as learning and utilization as student lecture material, and useful for the parties in an oral agreement. This output achievement is an article that will be published in a journal, so that it can be used by the public.

I. Introduction

The word agreement, in real terms, gives birth to an agreement (Suharnoko, 2015), the agreement of those who bind themselves is the essence of contract law, as a principle of consensualism (R. Subekti, 2010), which determines the existence of an agreement. The principle of consensualism contained in Article 1320 of the Civil Code, implies the will of the parties to participate in each other, there is a willingness to bind themselves to each other. This willingness generates a belief (vertrouwen) that the ethical value that is rooted in morals (J.Satrio, 2014). A man of honor will keep his word, said Eggens (Mariam Darus Badrul Zaman, 2015). Thus from the problems mentioned above, the writer will continue this research, with the title "Judge Considerations on Oral Agreements in the Perspective of Legal Certainty".

With the consensus of the parties, the agreement can become a force that provides binding in the agreement as appropriate as a law as the principle of pacta sunt servanda (Ridwan Khairandy, 2010), what is stated by the parties in a legal relationship, then it becomes law for both parties, this principle is what has the power that can bind it in an agreement, meaning not only as a necessity to carry out moral actions, but it is supposed to be the implementation of a legal action that is carried out, as it should be, complying with what has been agreed upon by the two parties, this of course brings consequences that must be lived, if there is a violation of what he wants(Agus Yudha Hernoko, 2014), which is the consequence of the legal action. The principle contained in the provisions of Article 1338 Paragraph (1) of the Civil Code, there is freedom to contract, to make agreements with the parties, to be free to determine the contents of the agreement, as well as the choice of law, to determine the form of the agreement, meaning that the principle contained in this principle of freedom of contract(Ridwan Khairandy, 2010), shows how the contents of the agreement are, while the principle of the binding force of an agreement is closely related to the consequences of legal actions, meaning that there are consequences that will become the obligations of the parties, because they are reciprocal(Sudikno Mertokusumo, 2010).

2. Research Method

This type of research is normative legal research, which is a study that discusses legal principles, legal systematics, the level of legal synchronization, legal history, and comparative law, namely by focusing more on the problems that arise and for this the researcher focuses on the discussion on statutory provisions and see how law is practiced in society. The nature of this research is to analyze the study of norms that are not complied with, the decisions of court judges, which are normative research. Furthermore, the approach used to examine cases from court decisions related to the subject matter. Then carried out with an analytical approach, namely to describe the meaning contained in the terms used.

3. Results and Discussion

Oral agreements in the perspective of Pacta Sunt Servanda in legal certainty.

In the case in Indonesia, the attitude of the judiciary is very important, meaning that the principle of freedom of contract must be accompanied by fairness and decency in the agreement (Ridwan Khairandy, 2010), which is a guideline for the parties making it, as the court decision will reveal, what is the attitude and consideration of the judge in declaring the decision, of course, is proper, fair and rational, what the parties want, which contains the principle of good faith, which is embodied in the said decision, so that a balance is realized as expected by both parties. Likewise, court judges should interpret the will of legislators in certain cases. this, has the meaning, that a law enforcement is needed and becomes a guideline (M. Yahya Harahap, 2007).

In a certain case, which contains a certain situation, which has not been regulated in the provisions of the law, it is necessary to have a special method of solving the case as well, for example if the substance is too general, and contrary to law, public interest, decency, propriety. then the role of judges, as meant that judges as laws maker (Purwarit Patrik, 1986) . In dealing with inappropriateness and rationality in agreements, the principle of good faith is very important, to overcome agreements that contain elements of imbalance, which in the end results in disputes between the parties, therefore decency becomes a guideline that the agreement must be carried out as agreed by the parties. -the party (Ridwan Khairandy, 2010).

In several court cases, the court stated that the agreement must be carried out in good faith, meaning that it has an obligation to carry out in accordance with a sense of decency and justice, therefore the court considers whether the matter stated to the court judge, whether it contains decency and justice, or not, then the court if the agreement does not contain propriety and justice, the judge can change the agreement, meaning, bring an agreement not only as a series of words made by the parties, but nevertheless the contents of the agreement must contain propriety and justice for both parties, the existence of the desired conformity, the parties(Suharnoko, 2015).

The principle of good faith is a contractual obligation for the parties who make the agreement, meaning that the principle of good faith explicitly gives authority to the court on the basis of decency to revise or even abolish the contents of the agreement. The Hoge Raad stated that the agreement must be carried out according to rationality and propriety (Patrik Purwahit, 1986), the Hoge Raad (Ridwan Khairandy, 2010), strictly paid attention to good faith in the implementation of the agreement, none other than interpreting the agreement according to rational and appropriate measures, so this matter is closely related to the provisions of Article

1338 Paragraph (3); that the agreement must be based on good faith, then also as stated in Article 1339 of the Civil Code, that the agreement is not only binding for things that are expressly stated in it, but also for everything that, according to the nature of the agreement, is required by decency, custom, or law -law.

Even though the principle of good faith has been stated unequivocally that propriety and rationality are used as benchmarks, sometimes the parties who make an agreement deny this, which is not uncommon for disputes which lead to legal issues, reaching the courts, as in this case, an agreement made orally between two fairly large companies in the Sidoarjo area, the two companies being PT. Puspa Agro and CV. Miscellaneous Hosse. This research was motivated by the occurrence of a fish buying and selling cooperation agreement that occurred in the two companies, the fish buying and selling cooperation agreement initially ran smoothly and in accordance with what had been agreed by both parties both from PT. Puspa Agro and from CV. Aneka Hosse to the next transaction CV. Various Hosse defaults, but the problem in this case is because the agreement that occurred between the two companies was made verbally, which should be if the company wants to enter into an agreement, it should be written down on paper in the form of an authentic deed or private deed so that later it will make it easier in the process of proof and has stronger evidentiary power (https://www.google.com/search?q=perjanjian+yang+dilakukan+secara+lisan+antara +dua+pe rusahaan, yang diakses Pada Pada Hari Selasa 04 Juli 2023, Pukul 09.58 wib.).

This case was authorized by PT. Puspa Agro to Abdul Salam & Associates Advocate Office while CV. Aneka Hosse did not appoint a lawyer, this case has been going on since 2015 and PT. Puspa Agro has taken appropriate legal remedies even though the legal remedies taken are still not perfect and there are obstacles in their settlement. Even though PT. Puspa Agro, CV. Aneka Hosse still has no good faith in making payments to PT. Puspa Agro

(https://www.google.com/search?q=perjanjian+yang+dilakukan+secara+lisan+ant ara+dua+pe rusahaan, yang diakses Pada Pada Hari Selasa 04 Juli 2023, Pukul 09.58 wib.).

That the freedom to contract is based on the parties having a balanced bargaining position. But in reality, this is not the case, sometimes one party has a weak, unbalanced bargaining position, in the end, a stronger bargaining position (Sutan Remi Sjahdeini, 1993), sometimes holding a dominant role, can only dominate the party that has a weak bargaining position, by that's why the importance of the principle of good faith (Henry Panggabean, 1992), becomes a basic guideline for the partieISs SwNh(oPrminatk)e08it5.4I-n65g0e9n-eIrSalS,Nth(eOanglirneee)m25e4n9t-s4t6a0r0ts from the existence of a difference or

dissimilarity in the will of the parties, through the process of agreement the parties try to realize the existence of a conformity of the will, by way of bargaining, to accommodate the interests of the parties, so that the conformity of the will is realized (Ridwan Khairandy, 2010). Freedom of contract which is "spirit and "breath", in the agreement, implicitly provides guidelines that the agreement made by the parties has a balanced position, thus what the parties want, creates a sense of justice and balance, for both parties, (Agus Yudha Hernoko, 2010), but in practice, this is denied, it tends to be one-sided, unbalanced, even unfair, giving rise to conflict, because there is a fight, the strong forces have a bigger role, so that the party in a weak position, becomes just accepting all content agreement by force, because if the party tries to bid with other alternatives, it is likely to receive consequences (Salim, H.S, 2010), lose what it needs, while the party needs this, so accepts what is offered from the party who has a strong position earlier (Ridwan Khairandy, 2010). In a legal action relationship, the parties that are intertwined basically have the desire for the purpose of exchanging interests, as revealed by Roscoe Pound (Agus Yudha Hernoko, 2014), interests as a demand or desire that humans want to satisfy, both individually and in groups that must be protected by law, the exchange of interests of the parties always stated in the agreement.

So thus it is appropriate, if both parties have agreed on the matters conveyed, such as in a work agreement, even though it is carried out verbally in the form of an agreement, as applicable norms, it must be obeyed by both parties, so that no causing harm to one of the parties, for example, in an employment agreement, generally the worker, as a weak party, sometimes does not benefit, from a party who has financial strength, say the entrepreneur, because economically, of course, has an influence on his workers. However, when examining the case above, as referred to in the facta sunt servanda principle, that the promise is binding, what was agreed upon initially by both parties. With the statement of a legal provision, which is expressly stated, it is binding for everyone (R. Setiawan, 2000).

4. Conclusion

In general, there is an imbalance in an agreement, because the bargaining position is unequal, so that the strong will defeat the weak position, however, the judge has the authority, if the contents of the agreement are deemed not to fulfill a sense of justice, propriety, then of course the judge's consequences are based ex aqo exbono, will consider the sense of justice, because if the weak position is correct, of course the judge will consider the sense of justice in the weak position.

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