

LEGAL PROTECTION OF ONLINE SOCIAL GATHERING MEMBERS EXPERIENCE LOSSES DUE TO DEFENSE

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Abstract

This research aims to determine legal protection for online social gathering participants and also to determine inhibiting factors in dealing with members who are in default. The type of research used is sociological legal research or empirical law. Empirical legal research is legal research that analyzes the actual application of law to individuals, groups, communities, legal institutions in society with an emphasis on the behavior of individuals or communities, organizations or legal institutions in relation to the application or enactment of the law. In this research, the author conducted research in Jayapura City as the author discovered problems in the field regarding the rights of owners who were disadvantaged in transactions via electronic media at online social gatherings. The research results show that the legal protection that is expected to be provided to members who experience losses is legal protection related to compensation. However, in order to get the entire compensation, the management found obstacles in it, namely the online social gathering manager could not provide proof because there was no guarantee or written agreement in it. Inhibiting factors in dealing with members who are in default are: Settlement of default cases committed by one party against another party can initially be pursued in a non-litigation manner before ultimately if a settlement is not reached then it will be continued in litigation or before trial.

I. Introduction

In the Big Indonesian Dictionary, social gathering is defined as an activity collecting money or goods of the same value by several people later drawn among them to determine who gets it, a lottery carried out in a meeting periodically to all members get it.¹

Online social gathering take place in cyberspace, such as through social media and intermediaries. Members of a social gathering may or may not know each other, using a flat or declining scale. Members can select the order and deposit amount that is acceptable. However, this form of social gathering is high-risk and might lead to embezzlement. This is demonstrated by several examples of fraud at social gatherings using this web technology.²

Online social gathering is very much in demand among people of all ages because of online social gathering is very flexible. However, even though the online social gathering system is very easy to use in other words, there is no need to meet in person, with an online system there is definitely one the advantages and disadvantages are that the existence of online social gathering causes problems There are more and more risks arising, the risks are getting more serious as they exist lots of opportunities for irresponsible parties take advantage of the situation.³ Like one of them with members social gatherings who are late in paying, social gathering members who suddenly disappear without news and payment of dues, namely members who have received their rights but does not continue to pay the dues.

The online social gathering transaction carried out is a contract containing investment, in an online social gathering transaction between the owner and members by using internet media. In article 1 of Law no. 19 of 2016 stated that "Electronic Transactions are legal acts carried out by using a computer, and/or other electronic media" (Law No. 19 of 2016 Article 1 paragraph 2). One factor that often occurs is lack of an agreement between the owner and members. Objectives and benefits attending an online social gathering in reality is different from expectations, because at this time There are many cases of default

¹ Kamus Besar Bahasa Indonesia. [Online]. Tersedia di kbbi.kemdikbud.go.id/entri/Arisan.

² Priskila Askahlia Sanggo, Diana Lukitasari, "Pertanggungjawaban Pidana Pelaku Penipuan Arisan Online Ditinjau Dari Undang-Undang Nomor 11 Tahun 2008 Tentang Informasi dan Transaksi Elektronik" Vol.3, Nomor 2, Mei-Agustus 2014, p. 227.

³ Budi Suhariyanto, Tindak Pidana Teknologi Informasi (Cyber Crime) Urgensi Pengaturan dan CelahHukumnya, Rajawali Pers, Jakarta, 2012, p. 20.

committed by members against the owner, especially for members who have not received their rights.

For some individuals, they commit criminal acts of embezzlement of money online social gathering is not difficult. By taking advantage of existing trust given by the owner of the online social gathering, for example embezzlement towards online social gathering members' money. What the member does have received their rights but do not continue to pay the social gathering money, As a result, the owner is responsible for handling the money losses reached Rp. 200,000,000.

Criminal acts as a social phenomenon that occurs on earth perhaps will never end in line with social developments and dynamics occurs in society. The problem of criminal acts will continue to grow, well seen from both quality and quantity. In fact, every society has potential committing a criminal act because a crime or criminal act is a form of "deviant behavior" that will always be attached to public. This means that criminal acts will always exist, such as disease and death that always repeats itself like a cycle that will never end.

According to Cleiren et.al., the offense of embezzlement is an abuse of trust. Always involves unlawfully possessing an item entrusted to it to the person who embezzled it. The crime of embezzlement occurs if the item is already in his possession and in his control, not because of it crime, sold or given away, but the goods are used for personal interests with the intention to own without the consent of owner.⁴

The crime of embezzlement as regulated in Article 372 of the Book The Criminal Law Law reads:⁵ Whoever intentionally and it is against the law to possess something which is wholly or partly a thing belongs to another person, but which is in his power not because of evil threatened with embezzlement, with a maximum imprisonment of four years or a maximum fine of nine hundred rupiah.

Even though the Criminal Code it self is Article 372 It has been confirmed that someone who has committed the crime of embezzlement is threatened with criminal sanctions, but in reality it is still felt to be less effective in enforcement against violators, because criminal law enforcement does not it is only enough to regulate an act in a law, however, legal officers are also needed as implementers of the provisions of the law as well as institutions with authority to deal with crimes such as the police, prosecutor's office, court.

This criminal act of embezzling online social gathering money has had an impact losses that are quite disturbing to society in general. As is this criminal act

⁴ Hamzah, A, 2019, *Delik Tertentu (Special Delicten) di dalam KUHP*, Sinar Grafik, Jakarta. p. 10.

⁵ Kitab Undang-Undang Hukum Pidana Pasal 372.

of embezzlement of online social gathering money is needed comprehensive law enforcement and anticipation. Law enforcement by the authorities are required to be able to resolve problems and apply sanctions law regarding the occurrence of criminal acts whose impacts are expected to be reduce to a minimum criminal acts and violations of the law. Law enforcement of the provisions of criminal law is aimed at to support the welfare of society by pressing as much as possible there are violations of the law and criminal acts that harm society, both morally as well as material and even a person's soul so that legal certainty is realized.

II. Research Method

The type of research used is sociological or legal research empirical law. Empirical legal research is legal research that analyzes about the actual application of the law to individuals, groups, society, legal institutions in society with an emphasis on the behavior of individuals or communities, organizations or legal institutions in relation with the application or enactment of the law.⁶ In this research, the author conducted research in Jayapura City as the author found problems in field regarding the rights of owners who are disadvantaged in transactions through the media electronic at online social gathering.

The nature of the research used in this research is descriptive analysis. The nature of descriptive analysis means providing an overview or explanation on research subjects and objects as the results of research carried out as is without justifying the research results. So, in this case The author tries to explain what is related to the subject and object of research online social gathering.

III. Results and Discussion

Legal Protection For Members Who Default

The rise in cases of loss or fraud in the world of online social gatherings, said online social gathering itself is no longer strange to hear, because besides It is easy to implement and can be followed from students to housewives many people have run the stairs. If there is a case of default in the implementation of the social gathering is a responsibility that must be obtained by parties who experience losses in online social gathering activities must be able to fulfilled by online social gathering managers who are trusted to be able to carry out their rights and duties properly. Responsibility received by members social gathering should be borne by the party who caused the loss as a result errors or omissions.

Protection must still be provided by the management or it could also be said

⁶ Muhaimin,2020, *Metode Penelitian Hukum*, Mataram University Press. p. 25.

consumer protection, just like the consumers here are members of the online social gathering member who is part of one of the social gathering groups, and there are parties in it who commits a default. For the smooth running of social gathering, the parties using the funds managed by social gathering must be able to pay accordingly specified time period because it also definitely includes some agreement regarding repayment procedures is therefore very necessary social gathering manager who can provide full responsibility if something happens loss in online social gathering.

Legal protection is expected to be provided to members who suffer losses, namely the protection provided by law regarding compensation. However, to get the entire compensation, the management found problems in it, namely that the online social gathering manager could not carry out proof because there is no guarantee or written agreement inside it. The organizer of the online social gathering is worried if there are many members of the online social gathering does not make payments on time or at a time that has been tolerated, party managers will certainly bear more losses, and in that case other members will also be disadvantaged because the funds used are para funds online social gathering. Losses caused by one of the online social gathering members this will be very detrimental to the smooth implementation of the online social gathering. The online social gathering manager must be accountable for this or the party who feels disadvantaged must still receive compensation.

Legal protection that can be given to the parties or subjects the relevant laws can be preventive and repressive in writing or verbally. According to Satijpto Raharjo, legal protection aims to provide protection on the human rights of disadvantaged communities so that they can enjoy the rights granted by law. An agreement will be said to obtain legal protection if the specified legal requirements have been fulfilled based on Civil Code. So that an agreement will be considered valid based on existing laws on electronic transactions that have been carried out.⁷

1. Preventive Legal Protection

Preventive Legal Protection is Protection to provide legal subjects opportunity to submit objections before a government decision takes a definite form. The goal is to prevent problems from occurring or dispute.

2. Repressive Legal Protection

Repressive Legal Protection is legal protection that aims to resolve problems that arise. Legal protection against actions government that relies on the concept of recognition and protection of rights Human Rights which are directed at limiting and placing obligations society and government.

⁷ Satijpto Rahardjo, 2000, *Ilmu Hukum*, PT. Citra Aditya Bakti, Bandung. p. 16.

Legal protection is appropriate provided to the injured party and in this case, a form of legal protection the right thing is related to compensation. As we know, there are legal consequences if the owner and members of the online social gathering were declared in default of compensation. Second This form of legal protection can be applied in providing legal protection for online social gathering members who have been harmed as a result Default by the owner and members of the online social gathering can be done by:

1. Preventive Legal Protection

Preventive legal protection aims to prevention of disputes according to the Code of Law Civil law in forming an agreement to implementing the agreement. This is to protect the rights of the owner and members of the relevant online social gathering in an agreed online social gathering activity. Being Preventive legal protection can be realized through regulations more detailed terms of the agreement by looking at the nature, character, and facilities for online social gathering activities. The governing rules relate to online social gathering activities can be found in Article 28 paragraph (1) of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions that contain prohibited acts as well in the provisions of Article 1320 of the Civil Code which contains regarding the terms of the agreement.

The agreement in online social gathering is an oral agreement only limited to chat evidence in Facebook or WhatsApp groups on the basis trust between the owner and the members of the online social gathering so that rights arise and obligations between them, so that the chat evidence can be used as evidence in accordance with Article 5 of Law Number 19 of 2016 concerning amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions which essentially contain electronic information and data is valid evidence. Other preventive legal protections can include: Making a written agreement is highly recommended in case there is a dispute the proof process is easy because it includes documentary evidence and of course very has an impact on the judge's decision, this has been regulated in Article 164 HIR/284 RBG.

In this case, the online social gathering member did not pay the social gathering money which is the right of other participants, so that online social gathering members experience losses due to acts of default committed by members of the online social gathering who break promises, they enter into an agreement in the form of chat via groups on Facebook and WhatsApp.

2. Repressive Legal Protection

Repressive legal protection aims to resolve disputes occurs due to differences in interests. A form of repressive legal protection is: through the sanctions contained in Articles 45 to Article 52 of Law Number 19 of 2016 concerning amendments to Law Number 11 of 2008 which regulate sanctions if you have committed a violation of existing provisions and are also contained in Article 1243 of the Code. The Civil Law regulates provisions for compensation. Forms of repressive legal protection that can be taken by online social gathering members through dispute resolution with effort non-litigation law and litigation legal efforts.

A form of legal protection for social gathering participants to avoid disputes that might arise in the future requires a letter of agreement between the parties in the online social gathering. It is necessary to make an agreement in writing so that it is easy to prove it before the court if there is a dispute later. Furthermore, if there is a default carried out by the administrator, the arisan participants have the right to demand that the Lottery Club administrator pay compensation as stated in Article 1243 of the Civil Code. Apart from compensation, the arisan participants can also sue the social gathering administrator who is in default with several other possible demands, namely in Article 1267 of the Civil Code.

Apart from that, compensation cases arising from breach of contract as follows: referred to in Article 1243-1247 of the Civil Code is also an object that can request for confiscation of collateral. The object of collateral confiscation in a compensation case can be placed on all of the defendant's assets. Then the ITE Law also provides this Legal protection is found in Article 5 paragraph (1), Article 28 paragraph (1), Article 38 paragraph (1), Article 38 paragraph (2), Article 39 paragraph (2).

Compensation Procedures For Online Social Gathering Participants

The procedures for resolving defaults are carried out by members of the social gathering as follows:

- a. Give a warning to social gathering members who are late in paying money social gatherings are usually up to 3 warnings, or until there is good will good from the members.
- b. When the replacement costs are not honored by the members of the social gathering, then we can file a lawsuit for breach of contract regarding the online social gathering agreement to the authorities for losses caused by one of them online social gathering members as

stated in article 1243 of the Civil Code.

- c. Settlement against members who terminate the agreement unilaterally as for members who terminate the agreement Unilaterally, there are several resolution efforts made by the management online social gathering is as follows:

- 1. Looking for a replacement

If the social gathering members terminate the agreement unilaterally before the social gathering starts, the social gathering manager does not make any demands because no losses have arisen as a result of this. But if unilateral termination of the agreement is carried out when the online social gathering is over when implemented, the social gathering manager will provide several options settlement of defaults committed, one form the solution is to find a replacement. Efforts to find a replacement this is done so that the social gathering can continue according to the rules and no losses occur due to member vacancies. Pay the fine in the amount specified in agreement.

- 2. Identity uploaded on social media Facebook as zonker

The last resort is for the social gathering manager to upload photos of members who unilaterally terminated the agreement on social media as a zonker, zonker is a person who does not pay social gathering money and does not take responsibility for his actions. This effort is usually taken if the members of the social gathering have absolutely no good intentions to take responsibility responsible after termination of the agreement.

Research results on online social gathering from 1 member who defaulted in the form of unilateral termination of the agreement, one member as has been previously described have fulfilled efforts to find a replacement. However one other member did not make the efforts mentioned previously. The solution for these members is to negotiate first.

However, after negotiating, the member did not keep his promise the owner of the social gathering uploaded the member's photo to social media Facebook as zonker. The three resolution efforts above have been previously conveyed by online social gathering manager before the social gathering is held, if someone has unilaterally terminate the agreement then the manager will contact you social gathering members to ask for responsibility by doing efforts described previously. This solution was carried out by communicating via WhatsApp social media.

The efforts made by the owner of the social gathering are as explained previously it was an adjustment to Article 1246 which allowed it someone demands compensation for the losses they have suffered. Efforts what has

been explained above can in practice solve the problem of default at online social gatherings in Jayapura City. So there is a case of breach of contract online social gathering in the city of Jayapura, that is, no one has made a claim yet at the reporting stage to the Jayapura Police Chief. If the above efforts are not possible only then can the aggrieved party submit a claim for breach of contract to litigation route. With the condition of submitting a summons first, namely a warning from the debtor (creditor) to the debtor (debtor) in order to fulfill achievements in accordance with the contents of the agreement that has been agreed between the two. This subpoena carried out at least three times by the creditor or bailiff. If you don't get a response good from the debtor, then in this case the creditor can bring this issue whether the debtor is in default or not.

In Article 1338 of the Civil Code, an agreement can be said to be valid if there has been an agreement from both parties, and will be binding as law for those who have made the agreement. So, for the parties holding agreements whether oral or written will automatically be bound by the promises they make agree.⁸ Agreements made orally or made by certain parties, with an agreement made in writing according to the law that is clearly visible the difference. The legal consequences of agreements made by several parties have mutually agreed, this is different from the legal consequences of an agreement made in law or not desired by the parties which results the law is also based on the provisions of the law. So, if it happens breach of the agreement, it can be said to be a breach of contract. In an agreement, including an online social gathering agreement, contains rights and obligations must be fulfilled for everyone who participates.

Default is the opposite of achievement. Achievements within Contract law is in the form of implementation of what has been agreed, the explanation is when making a contract, each party has agreed to whatever terms there are in the contract, the implementation of the provisions and this is referred to as performance. ⁹Meanwhile, default is the opposite of achievement, namely its absence implementation of what has been agreed or implementation carried out not according to what was agreed. The achievements referred to in the social gathering online in the form of the rights and obligations of each binding party himself at a social gathering. Rights and obligations arise due to agreements that have been made make, this is what is called achievement. This formulation has consequences the law that in an agreement there will always

⁸ Gelam Destra. 2021. Legalitas Perjanjian Arisan Online Ditinjau Dari Pasal 1320 Kitab Undang-undang Hukum Perdata. Skripsi. Fakultas Hukum, Universitas 17 Agustus 1945 Surabaya. p. 3-4

⁹ Billy Dicko Stepanus Harefa. Kekuatan Hukum Perjanjian Lisan Bila Terjadi Wanprestasi (Studi Putusan Pengadilan Negeri Yogyakarta Nomor 44/PDT.G/2015/PN.YYK). Jurnal Private Law, Volume 4 Nomor 2 Tahun 2016 p.115

be two parties, where one party is the party who is obliged to provide performance (debtor) and the other party is the party who is entitled to the achievement (creditor).

An act of default is an action that is detrimental to one of the parties, so compensation is necessary. In an action tort may occur due to intentionally, negligently or without fault (without intention or negligence). However, contract law does not require whether the negligence was done intentionally or not, the legal cause and effect remains the same, namely compensation. According to Mariam Darus Badruzaman there are three forms of default, namely "the debtor does not exist at all fulfill obligations, debtors are late in fulfilling obligations, and debtors are mistaken and unfit to fulfill the engagement."

In general, a breach of contract only occurs when there is a statement of negligence from a party creditor to debtor. The creditor in this problem is the person who should receive the money in the social gathering and the debtor in the online social gathering is the person who should give the money. Negligent statement disclosed before declare a default. So, this negligent statement comes as a warning to the debtor must immediately carry out his obligations within a grace period or be given time to carry out his obligations before being declared in default. This negligent statement is basically aimed at setting a grace period (which reasonable) to the debtor to fulfill his achievements with liability sanctions for losses suffered by creditors.

In online social gatherings, if the social gathering holder or social gathering member is declared Default means that one of the parties who is in default is given a grace period. For example, one of the members has not paid his obligations to the social gathering admin stated that he had been negligent, so that the negligent member was given grace time to pay the dues by extending the time and determine the fine that has been determined.

If there is a breach of contract, the aggrieved party may have the right to sue in efforts to enforce their contractual rights, as regulated in Article 1267 The Civil Code states that "the party who against which the obligation is not fulfilled can choose, forcing the other party to fulfill the contract, if this is still practicable, or demand cancellation agreement, with reimbursement of costs, losses and interest".¹⁰ Once stated Failure to do so will give rise to legal consequences. Legal consequences are everything the consequences that occur from all legal actions carried out by legal subjects towards legal objects or other consequences caused by certain events that have been determined or considered by the law in question as a legal consequence.

¹⁰ Ahmadi Miru, 2008, *Hukum Perjanjian dan Perancangan Perjanjian*, PT. Raja GrafindoPersada, Jakarta, p. 15.

The legal consequences that arise if they have been stated there are 4 (four) types of default, namely:

1. Compensate for losses
2. Cancellation of the agreement
3. Risk transfer since the default occurs
4. Payment of court costs if done before a judge in settlement case

In practice, in online social gatherings, it is usually before the injured party make a summons, usually the members of the social gathering carry out negotiations or mediate first. Because generally a group of people do it Online social gatherings are also usually groups of colleagues or friends association. So, the first step when a dispute occurs is usually done in a family way first.

Mediation is the process of resolving disputes through the mediation of parties third, namely the party who provides input to the parties for resolve disputes. Different from arbitration, the decision of the arbitrator or panel Arbitration must be obeyed by the parties, like a court decision. Whereas mediation, there is no obligation from each party to comply with what is agreed suggested by the mediator. Although mediation is usually carried out in court, this is not the case It is also rare for social gathering perpetrators to mediate outside of court first before court. Next is to negotiate.

IV. Conclusion

Legal protection is expected to be provided to members who suffer losses, namely the protection provided by law regarding compensation. However, to get the entire compensation, the management found obstacles in it, namely that the online social gathering manager did not can provide proof because there are no guarantees or written agreement therein. The social gathering manager is worried if there are too many arisan members who do not make payments on time or on time that has been tolerated, the management will certainly increase in number bear the loss, and in that case other members will also disadvantaged because the funds used were the funds of the arisan members. Losses caused by one of the members of the online social gathering will be this is very detrimental to the smooth implementation of the online social gathering. Matter this must be accounted for by the social gathering manager or party those who feel they have been harmed must still receive compensation. In this case the social gathering manager must have sent a summons to the parties involved make a default, with the aim of resolving this problem in a family manner, and compensation can be in the form of the amount of funds that have been provided darkened. It turns out that the member who committed the default did not have good faith in paying off all debts.

Inhibiting factors in dealing with members who are in default are: Settlement

of default cases committed by one of the parties against other parties can initially be pursued in a non-litigation manner before in the end if peace is not achieved then it will continue in litigation or before trial. Settlement of cases outside court can be mediation, negotiation, and arbitration, usually mediation This is done by asking someone else to act as a mediator between the litigants to resolve the problem by means of a win-win solution, but it can also be resolved by means of negotiation or in simple terms it could be called deliberation and more family to find common ground in resolving problems that occur, meanwhile if a settlement is stated in an oral or written contract cases using arbitration are resolved using this method this can be overcome by using an arbitrator to help litigants to resolve the parties' problems and the arbitrator's decision must be fulfilled and obeyed like a court decision. Furthermore, if the case resolution method is outside of court If it doesn't work, you can do this by filing a lawsuit against. The party who has caused the loss by filing in the first place warning letters (summons) at least two to three times before finally submitting a lawsuit to court to be resolved in court.

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