

Legal Analysis of Default in Oral Lease Agreement (Case Study of Supreme Court Decision No. 2368 K/Pdt/2019)

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Abstract. *Agreements are one of the main sources of civil legal relations in Indonesia. In practice, agreements are not always stated in written form, but are often made orally. This raises legal issues when a breach of contract occurs and the injured party files a lawsuit in court. This journal discusses the Supreme Court Decision No. 2368 K/Pdt/2019 between Flavianus Fexa versus Cau Phen as a concrete example of the validity of oral agreements and their proof in civil procedural law. The analysis focuses on the application of Articles 1320, 1234, and 1238 of the Civil Code and the Supreme Court's considerations in declaring the defendant in breach of contract. Although the plaintiff's lawsuit was rejected at the District Court and High Court levels due to the absence of written evidence, the Supreme Court granted the cassation by emphasizing the importance of substantial justice and the validity of proof through other evidence such as witnesses and summons letters. This decision confirms that oral agreements remain valid as long as they meet the elements of an agreement, have a clear object, and can be proven. In addition, this decision can also be an important precedent in the practice of Indonesian civil law, considering that many people still make agreements verbally. The conclusion of this Journal emphasizes the importance of legal protection for oral agreements and the flexibility of judges in upholding substantive justice compared to mere procedural formalities.*

Keywords: Agreement; Contract; Lease; Oral; Supreme.

1. Introduction

The Law of Contracts in the Indonesian civil law system is regulated in Book III of the Civil Code (KUHPperdata) which discusses obligations (*verbinten*). Book III of the KUHPperdata adopts an open system, which means that every individual has the freedom to make any agreement as long as it does not conflict with laws and regulations, public order, and morality. This freedom provides flexibility to society to create forms of agreements according to their needs, even though they are not explicitly regulated in law (Sopamena, M., 2022).

The term “agreement” is often used interchangeably with “consensus” because both indicate a consensus between two or more parties regarding something. In Dutch civil law terminology, an agreement is called *overeenkomst*, which means an agreement between two or more parties to give rise to legal consequences in the field of property. Therefore, an agreement is the main basis of the legal relationship between mutually binding legal subjects (Sundawa, HD, 2018).

One of the real forms of agreements in everyday life is a lease agreement (*huurovereenkomst*). This agreement involves two parties, namely the lessor and the lessee, where the lessor grants the lessee the right to use or enjoy an object for a certain period of time with a certain payment in return. The leased goods do not transfer ownership rights, but only the right to use them.

In this case, a lease agreement is different from a sale and purchase agreement. If in a sale and purchase the ownership rights are transferred from the seller to the buyer, then in a lease only the right of use is given to the lessee, and ownership remains in the hands of the lessor. This is also emphasized in Article 1548 of the Civil Code, which explains that a lease is an agreement in which one party binds himself to give another party the enjoyment of an item for a certain period of time by paying a price that the party agrees to.

An agreement creates an obligation that must be fulfilled by the parties. In civil law, an obligation is an obligation that must be fulfilled by the party who is in debt (debtor) to the party who is credited (creditor). Article 1234 of the Civil Code states that an obligation can be in the form of: (1) giving something, (2) doing something, or (3) not doing something. If one party fails to fulfill its obligations according to the agreement, then it can be categorized as committing a breach of contract (Soleman, C., 2018).

Default is the inability or negligence in carrying out the performance as agreed in the agreement. Article 1238 of the Civil Code states that a debtor is declared negligent after being given a warning or summons in a proper manner. According to Subekti, default is a situation in which the debtor does not fulfill the obligations as agreed, either because it does not carry out at all, is late, or is not as it should be. This can cause losses to the creditor and lead to a civil lawsuit in court.

In society, agreements are not always made in writing. In everyday practice, many agreements are made verbally, often without the parties realizing it. For example, in small transactions such as purchases at traditional markets, borrowing goods, to forms of debt-credit relationships between acquaintances. Although verbal agreements do not have physical evidence like written agreements, the principle of freedom of contract still provides binding legal force to the agreement, as long as it meets the elements of a valid agreement as regulated in Article 1320 of the Civil Code.

The four conditions for a valid agreement according to Article 1320 of the Civil Code are (Arsawan, IGY, & Yusa, IM, 2022):

- a. The agreement of those who bind themselves – there is an agreement between the parties

that is not obtained through error, coercion, or fraud.

- b. Capacity to enter into an agreement – the parties are legally competent to enter into an agreement.
- c. A certain thing – the object of the agreement must be clear.
- d. A lawful cause – the agreement must not conflict with law, public order or morality.

If the first and second conditions are not met, then the agreement is null and void. However, if the third and fourth conditions are not met, then the void agreement can be canceled.

The problem becomes complicated when there is a breach of contract in an oral agreement, because the burden of proof becomes heavier. The absence of a written document makes it difficult to prove the contents, terms, and time of the agreement. However, Indonesian civil procedure law allows the use of witnesses, confessions of the parties, and other evidence to prove the existence and implementation of the agreement (Sudharma, K.J.A., 2020).

This can be seen in the Supreme Court Decision No. 2368 K/Pdt/2019 between Flavianus Fexa vs. Cau Phen, which is a concrete example of how an oral agreement can be used as the basis for a breach of contract lawsuit. In this case, the plaintiff was the heir from a plot of land used as a warehouse. Based on the mandate of the other heirs, the plaintiff has the right to manage the asset. In October 2006, the plaintiff and defendant made an oral agreement regarding the rental of the warehouse with a rental value of IDR 75,000,000 per year.

The defendant only paid IDR 15,000,000 at the beginning of the agreement, but after that never paid the rest of the payment. The defendant's heavy equipment remained in the warehouse for years, causing damage and loss to the plaintiff because he could not rent or use the warehouse for other purposes. Interestingly, during the trial, a notary testified that both parties had visited his office to make a written agreement, and the notary had drafted the agreement. However, both parties did not return to complete the process. This strengthens the evidence that there was an intention and legal act to enter into a lease agreement (Fitriani, E., 2021).

The Mempawah District Court in its decision stated that the defendant had committed a breach of contract and granted the plaintiff's lawsuit. The decision was then upheld by the Supreme Court, which considered that although there was no written evidence, there was sufficient evidence of witnesses, statements, and real actions from the parties indicating that a legal lease relationship had occurred. From this analysis, it appears that oral agreements have valid legal force, as long as they meet the requirements for a valid agreement, and can be proven in a legal process. However, the risks inherent in oral agreements are quite large, especially in terms of proof if a dispute occurs. Therefore, although permitted, making a written agreement is still recommended to provide legal certainty and protection for the parties (Sundawa, HD, 2020).

The case study of Supreme Court Decision No. 2368 K/Pdt/2019 shows the importance of understanding the legal consequences of oral agreements and how the application of norms in

the Civil Code, such as Article 1320 concerning the conditions for the validity of an agreement, Article 1234 concerning the form of performance, and Article 1238 concerning negligence and breach of contract, become the basis for legal considerations in resolving civil cases. Thus, this paper not only aims to explain the legal basis for breach of contract in oral lease agreements, but also to provide an illustration that oral agreements can still be used as a basis for seeking justice, as long as they can be proven legally and in accordance with the general principles of civil law (Sopamena, M., 2022).

In Supreme Court Decision Number 2368 K/Pdt/2019, the Panel of Judges granted the lawsuit filed by the plaintiff and ratified the warehouse lease agreement made orally. The problem in this case arose because the agreement was made orally, making the proof process difficult. Based on the background that has been described, this study aims to further discuss this problem related to the application of law and the legal consequences of default in a lease agreement made orally with the title "Legal Analysis of Default in an Oral Lease Agreement (Case Study of Supreme Court Decision No. 2368 K/Pdt/2019)".

2. Research Methods

This legal research uses a normative legal approach, namely an approach that examines the principles of law, legal norms, and applicable laws and regulations as the main source for analyzing a legal problem. This approach was chosen because the research focuses on the analysis of court decisions, especially the Supreme Court Decision No. 2368 K/Pdt/2019, in the context of civil contract law, with an emphasis on the validity and proof of oral agreements in legal practice (Juventia, D., & Lie, G., 2024).

The normative legal method examines law as a system of norms, namely norms that apply in writing issued by authorized institutions, or also known as legal research. In this study, the primary legal sources used include the Civil Code (KUHPperdata), especially Article 1320 concerning the valid conditions of an agreement, Article 1234 concerning the form of achievement, and Article 1238 concerning default. In addition, the Supreme Court Decision No. 2368 K/Pdt/2019 is also used as the main object of analysis, because this decision contains legal considerations regarding the validity of oral agreements and proof of default (Arsawan, IGY, 2020).

In addition to primary sources, this study also uses secondary legal sources in the form of legal literature such as textbooks, legal journals, scientific articles, opinions of civil law experts, and other relevant jurisprudence to support the analysis and strengthen legal arguments. These secondary legal sources are used to understand the application of legal norms in practice, as well as examining theoretical views on the validity of oral agreements and breach of contract (Habiburrahman, B., 2023).

In the legal material collection technique, the author uses document study (library research), namely by reviewing and collecting data from legal documents, laws and regulations, and court decisions related to the research theme. The data that has been collected is then analyzed

qualitatively, namely by interpreting and comparing legal norms that are relevant to the legal facts contained in the case being studied.

This normative legal approach allows the author to construct a logical and systematic legal construction on the issues discussed, as well as evaluate the suitability of the judge's considerations with the applicable civil law principles. The author also uses a case approach to examine how the law is applied by judges in deciding lease disputes based on oral agreements, which in this case is reflected in the Supreme Court's consideration of the evidence and arguments of the parties.

With this approach, it is hoped that the research can provide a comprehensive picture of the position of oral agreements in Indonesian civil law, as well as being a reference for legal practitioners and the public regarding the importance of proof in oral agreements, especially when there is a breach of contract. This research also intends to emphasize that even though an agreement is not written, as long as it meets the elements in Article 1320 of the Civil Code and can be proven, it still has binding legal force (Siregar, A., 2023).

3. Results and Discussion

3.1. The Oral Agreements as a Valid Source of Law

In the Indonesian civil law system, agreements are the main source of the emergence of legal relations between the parties. The agreement does not always have to be stated in written form. This is emphasized by the Civil Code (KUHPerdota), especially in Article 1320 which only requires the main elements in the agreement without determine its form. Therefore, an agreement made orally, as long as it meets the four requirements for a valid agreement, can still be legally binding.

In the case of Flavianus Fexa vs. Cau Phen, the validity of the oral agreement was tested when a dispute arose over the payment of rent and reimbursement of renovation costs for the rented warehouse. The agreement that occurred on October 30, 2006 was made orally between the two parties, without being stated in written form. However, the legal relationship between them was proven to have lasted and been carried out for several years, which indicates an agreement and the implementation of rights and obligations as parties to the agreement.

The validity of the oral contract was also strengthened by witness statements and other evidence presented in court, including a warning letter to the defendant and evidence of renovation expenses. This shows that the provisions of Article 1320 of the Civil Code can be fulfilled without a written form. Therefore, the Supreme Court views that the substance and evidentiary approach must be a priority in assessing the existence of an agreement, especially when the legal relationship has been partially implemented and there is good faith from the party suing (Ginting, T., 2021).

3.2. Application of Articles 1234 and 1238 of the Civil Code in Assessing Default

In this decision, the Supreme Court also reviewed and applied the provisions of Articles 1234 and 1238 of the Civil Code in assessing the defendant's obligations and negligence. Article 1234 states that every obligation aims to provide something, do something, or not do something. In this context, the defendant has an obligation to make regular rental payments and reimburse the renovation costs incurred by the plaintiff. These actions constitute "performance" that must be fulfilled by the defendant as the lessee (Nurfauzi, WA, Putri, NKM, Pangesti, I., & Maharani, P, 2023).

However, based on the facts of the trial, the defendant did not fulfill his obligations. In civil cases, the debtor's negligence (default) occurs when he does not fulfill his obligations after receiving a warning (summary), as stated in Article 1238 of the Civil Code. The plaintiff has sent a letter of warning to the defendant, but has not received a response or good faith to fulfill the obligation. Thus, the element of default has been fulfilled legally.

The Supreme Court ruling stated that the defendant's failure to pay rent and not reimburse the cost of building a warehouse that had been used for his business was a form of real breach of contract. The judge considered that there was no legitimate reason or legal justification from the defendant for not fulfilling his obligations. Therefore, legal considerations in the application of Articles 1234 and 1238 are key in declaring the defendant guilty and obliged to pay compensation.

3.3. The Supreme Court's Substantive Consideration of Justice

The Supreme Court not only assessed this case from the formal side, but also from the substantial aspect of justice. When the two previous courts, namely the Mempawah District Court and the Pontianak High Court, rejected the lawsuit because there was no written evidence, the Supreme Court took a different approach. In the perspective of the Supreme Court, rejecting the existence of an agreement only because there is no written form without assessing other evidence, such as witnesses and a summons, is a form of legalism that is too rigid and can harm the public's sense of justice (Purba, ND, Safitri Ananda, J., & Khalis I, G., 2023).

The Supreme Court is of the opinion that the legal system should not turn a blind eye to common practices in society, especially in areas where written legal culture is not yet strong. Many Indonesians make agreements orally based on trust and custom. In this case, the law must be able to answer the real needs of society and protect those who have good intentions but are harmed because formal procedures are not followed (Pohan, A. (2020).

This consideration is in line with the principle of substantial justice, namely that true justice must stand on true and provable material facts, not merely based on procedural formalism. This principle is very important to maintain the legitimacy of the law in the eyes of the public and ensure that court decisions reflect justice that lives in reality.

3.4. Principles of Freedom of Contract and Social Practices

One of the fundamental principles in civil law is freedom of contract. This principle gives everyone the freedom to enter into an agreement with any content and form, as long as it does not conflict with the law, public order, and morality. In this context, the form of the agreement, whether written or oral, is not an obstacle as long as the elements of the validity of the agreement are met.

This case shows how the principle of freedom of contract is applied in social life. The oral agreement between Flavianus and Cau Phen is a form of legal relationship that is commonly found in the world of small and medium businesses in Indonesia. Business actors often do not have the habit or ability to make written contracts, but they establish business relationships with mutual trust and carry out obligations based on oral agreements. By recognizing and affirming the validity of oral agreements, the Supreme Court shows that the law must be responsive to social realities. This is a form of progressive legal approach that understands the socio-economic and cultural context of society, without neglecting the principles of civil law (Gunawan, W., 2021).

3.5. Significance of the Decision as Precedent and Legal Education

The Supreme Court Decision No. 2368 K/Pdt/2019 is important not only for the parties in the case, but also as a precedent (jurisprudence) for similar cases in the future. By affirming that oral agreements can be recognized and used as a valid legal basis as long as they can be proven, this decision provides legal certainty to the community who often make agreements without written form (Putri, E. (2019).

In addition, this decision serves as legal education for the public and legal practitioners to better understand the importance of documentation in agreements, without ignoring the existence and validity of oral agreements. The Supreme Court wisely reminds that the law should not side with formalities alone, but must also side with justice and material truth.

Institutionally, this decision also signals that the Supreme Court is willing to review and overturn lower court decisions if they are deemed too formalistic and do not reflect the substance of justice. This provides room for correction of decisions that are not sensitive to the social complexity that accompanies legal practice in the field.

3.6. Critique of the Formal Approach in First Instance and Appellate Courts

The attitude of the District Court and High Court in rejecting the lawsuit because there was no written agreement is an example of how law can be trapped in a formalistic approach. In the civil law evidentiary system, evidence is not only limited to documents, but also includes witnesses, confessions and allegations. By ignoring tools other evidence such as witness statements and summonses, these two levels of court indirectly ignore the principle of free and comprehensive evidence.

Criticism of this approach is not merely to blame, but to remind us of the importance of a holistic perspective in assessing a case. Judges at the first and appellate levels need to be more observant in identifying material truth and not solely focus on the administrative shortcomings of the parties. Especially in civil cases, substantive justice should be the primary consideration because it concerns the protection of fundamental civil rights (Mulia, F. Y., 2019).

4. Conclusion

Supreme Court Decision No. 2368 K/Pdt/2019 confirms that oral agreements can be a valid source of law as long as they meet the requirements for a valid agreement as stipulated in Article 1320 of the Civil Code and can be proven through other evidence such as witnesses and summons letters. The Supreme Court prioritizes a substantial approach to material justice compared to legal formalism, especially in the social context of Indonesian society which still relies heavily on oral agreements. The application of Articles 1234 and 1238 of the Civil Code also shows that breach of contract can be proven without a written agreement, as long as there is a violation of a valid obligation. This decision is important as a precedent, legal education, and correction of the formalistic approach applied by the first and appellate courts. Thus, civil law must be adaptive to social realities and guarantee fair legal protection for all levels of society.

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