

Legal Position for Implementing Credit Provisions without Written Agreement at the Transmission Employees

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Abstract. *This study aims to determine and analyze the legal position of implementing credit without a written agreement at the Transmission and Substation Employee Cooperatives in Kudus City, as well as to know and analyze about legal protection for creditors who provide credit without an agreement to debtors at the Transmission and Substation employee Cooperatives in Kudus City who are in default. This research method uses an empirical juridical approach, namely legal research that uses secondary data as initial data, which is then followed by primary data in the field or on the community. Based on the results of the study concluded: 1) The legal position of the implementation of granting credit without a written agreement at the Transmission and Substation Employee Cooperatives in Kudus City is legal according to the perspective of civil law because it has been carried out in accordance with the terms of the validity of the agreement as referred to in Article 1320 of the Civil Code, namely agree to bind himself, the ability to make an agreement, a certain thing and a lawful cause. Credit agreement without a written agreement made by the Cooperative Employee Substation Transmission of Kudus City has met all of these conditions. Manager Kudus City Transmission and Substation Employees Cooperative in carrying out its activities, it is also in accordance with the provisions of Act No. 25 of 1992 concerning Cooperatives, and legal certainty has been fulfilled as the theory of legal certainty presented Gustav Radbruch who stated that legal certainty is certainty about the law itself; 2) Legal protection for creditors against debtor defaults on the implementation of unwritten agreements at the Kudus City Transmission and Substation Employee Cooperatives has been carried out properly, namely by conducting deliberation and/or mediation (non-litigation) efforts aimed at creating an agreement to disburse members' money. The exist in cooperatives that are sourced from principal savings, mandatory savings, and voluntary savings belonging to the member who is in default. Another form of*

legal protection that has also been carried out by the Management of the Transmission and Substation Employees Cooperatives in Kudus City is in terms of paying monthly installments from members, it is carried out by auto-debit to the bank account belonging to the member concerned.

Keywords: Credit; Cooperative; Provision; Unwritten.

1. Introduction

Credit can be given by banking financial institutions and non-banking financial institutions, including cooperatives, however, for banking institutions, lending is carried out under conditions that are quite difficult. This is different from loans provided by non-banking institutions, especially cooperatives, which are not required to have collateral, especially material guarantees, which have been an obstacle for people from economically weak groups.

The definition of cooperatives based on Article 1 point 1 of Act No. 25 of 1992 concerning Cooperatives, cooperatives are business entities consisting of one person or cooperative legal entity by basing their activities on the cooperative principle as well as a people's economic movement based on the principle of kinship.

Generally, the provision of credit by cooperatives to its members is carried out through a written agreement that regulates the rights and obligations of the parties, including the obligation to repay the amount of payment and the agreed time.

General provisions on contract law problems are contained in Book III of the Civil Code (hereinafter referred to as the Civil Code) which adheres to an open system, meaning that the law of agreement provides the widest possible freedom to the public to make agreements as long as they do not conflict with public order and morality.

The granting of credit that occurs in Substation Transmission Employee Cooperative in Kudus City is quite unique because the granting of credit to its members is not carried out by means of a written agreement. Member Substation Transmission Employee Cooperative in Kudus City who want to borrow money in this cooperative, it is enough to just fill out the "Loan Application" form, then the officers or administrators Substation Transmission Employee Cooperative in Kudus City will immediately process it to the disbursement stage. Provisions regarding the amount of credit that can be given are based on the employment status of the members. If the borrowing member is a permanent employee at PT. PLN Kudus Branch, the credit limit that can be given is a maximum of IDR 30,000,000 (thirty million rupiah). Meanwhile, for its

members who are still temporary employees at PT. PLN Kudus Branch, the credit limit that can be given is a maximum of IDR 10,000,000 (ten million rupiah).

Loans with a model such as that carried out by the Tragiku Employee Cooperative have the potential to pose a fairly large risk of problems, because there is no clear agreement on the rights and obligations between the management as borrowers and members as borrowers.

Referring to the background mentioned above, the study of the implementation of lending without a written agreement is carried out by the Cooperative Employee Substation Transmission in of Kudus city. This becomes very important to do in order to find out in more depth about the implementation of lending carried out by the cooperative.

2. Research Methods

The approach used in this study was an empirical juridical approach. While the research specification in writing this thesis was in the form of descriptive analytical research, which described the problems that become the object of research based on the data obtained at the time this research was carried out. The data collection method used in this research was to find the required data from the actual research object through interview and documentation steps. Meanwhile, the data analysis method used was data obtained from field studies and document studies, which are basically level data that were analyzed descriptively and qualitatively.

3. Results and Discussion

3.1. Legal Position for the Implementation of Credit Provision without a Written Agreement at the Cooperative of Transmission Employees and the Kudus City Substation

- Implementation of Credit Provision in the Cooperative of Transmission Employees and the Kudus City Substation

Generally, the implementation of credit cannot be separated from the existence of an agreement or agreement. In Indonesia, every loan submitted must have collateral provided to creditors in the form of assets which are usually in the form of land rights as main collateral, or other assets as additional and set forth in the form of a written agreement.

The written agreement and the provision of guarantees or collateral are intended to minimize the risk that will occur in the future on the debtor's credit. However, this is not the case with Cooperatives Employees of Transmission and Substation located on st. AKBP. R. Agil Kusumadya No. 152 This Kudus city.

Implementation of lending in Cooperative The employees of the Kudus City Transmission and Substation only require that prospective debtors who apply for credit must be registered as members of the cooperative and are employees of PT. State Electricity Company (Persero) Kudus.

The granting of credit by the Transmission Substation Employee Cooperative in Kudus City is quite unique because the granting of credit to its members is not carried out with a written agreement. Members of the Transmission Substation Employee Cooperative who wish to borrow money from this Cooperative simply fill out the "Loan Application" form, then the officers or management of the Substation Transmission Employee Cooperative will immediately process it until the disbursement stage. Provisions regarding the amount of credit that can be given are based on the employment status of the members. If the borrowing member is a permanent employee at PT. PLN (Persero) Kudus, then the credit limit that can be given is a maximum of IDR 30,000,000, - (thirty million rupiah). Meanwhile, for its members who are still temporary employees at PT. PLN (Persero) Kudus, then the credit limit that can be given is a maximum of IDR 10,000,000, - (ten million rupiah).¹

According to Sugiyanto, as the secretary of the Kudus City Substation Transmission Employee Cooperative, the credit is given without a written agreement because it is based on mutual trust and because they already know each other. However, every member who wants to apply for credit is required to be registered as a member of the Kudus City Substation Transmission Employee Cooperative and must fill out and sign the loan application form provided by the cooperative management. In the form, in addition to the identity of the applicant, it has also been clearly stated the amount of money to be borrowed, the amount of the monthly installments, the length of the loan period, and a statement of willingness to be deducted from salary every month to the treasurer of PT. PLN (Persero) Kudus. The following is Mr. Sugiyanto's explanation to the researchers, namely:²

"The Kudus City Substation Transmission Employee Cooperative was specifically established with the aim of helping PT PLN (Persero) Kudus employees who are experiencing financial difficulties, therefore we do not put it in the form of a written agreement because we trust and know each other. Each member who wants to borrow from this cooperative only needs to fill out a loan application form because the form includes the loan limit, installment amount, time period, and willingness to take a pay cut at the treasurer. Regarding the amount of the loan depends on the status of the borrower. If the borrower is a permanent

¹Results of the First Interview with Mr. Sugiyanto, as Secretary of Substation Transmission Employee Cooperative in Kudus City, February 17, 2022, 09.25 WIB.

²Ibid.

employee at PT PLN (Persero) Kudus, then the maximum loan is IDR 30,000,000. Meanwhile, if the borrower is only honorary, then the maximum loan is IDR 10,000,000.

The presence of the Substation Transmission Employee Cooperative in Kudus City with this practical pattern of credit distribution was actually welcomed by its members, as stated by Mr. So, a member of the Cooperative Substation Transmission Employees of Kudus city, which explains that:³

"The existence of a cooperative" This employee is very helpful because members do not have to bother applying for credit to banks which are known to have quite difficult requirements. In this cooperative, there is no material guarantee that we must submit to the management because the payment system is carried out with a salary deduction system. Meanwhile, the amount of loan that can be applied for is also quite large, reaching IDR 30,000,000 (thirty million rupiah)".

The loan application process that applies at the Employee Cooperative Substation Transmission in Kudus City is also not difficult and only takes 1 to 7 days according to the approval of the management, the money can be disbursed. Regarding installment payments, the cooperative management simply submits the account number at Bank Mandiri or BRI for Autodebit by the Cooperative Employee Staff attached with a loan application form that has been signed by the member concerned. Thus, the Cooperative Employee Staff will deduct the salary of the employee concerned to be paid to the cooperative. So, in this case members do not have to bother paying the installments every month, and the money distributed by the cooperative also gets a security guarantee that it will be returned in a timely manner.

Other obligations that must be paid by members to cooperatives are based on the Articles of Association and Bylaws Employees of Transmission Substation in Kudus City, each member has an obligation to pay savings consisting of principal savings, mandatory savings, and voluntary savings. Payment of this obligation is made by members directly at the Cooperative Office Employee Substation Transmission Kudus city.

The requirements to become a member of this cooperative are quite easy. According to Mrs. Ratna, one of the members of the Cooperative Employee Substation Transmission of Kudus City states that the requirements to become a member of the Cooperative Employee Substation Transmission that is only by submitting a photocopy of the ID Card as an employee of PT. PLN (Persero) Kudus, photocopy of KTP, photocopy of Savings Book Account and have paid off

³Results of the Interview with Mr. Jadi, as a Cooperative Member of Substation Transmission Employees in the Kudus city, February 22, 2022, at 15:52 WIB.

the principal savings in the amount of IDR 2,000,000, -/member. With the photocopy of the ID Card, it proves that the prospective member of the cooperative is really an employee of PT. PLN (Persero) Kudus. A person is considered a member of this cooperative if he has paid the principal deposit and has signed the member register book. Each member who has fulfilled his obligations and fulfilled the requirements, can be given a loan or credit by the management.⁴

Mrs. Ratna also explained that the management of the Kudus City Transmission Employees Cooperative and the Substation in principle had carried out their duties and obligations well as mandated by the members at the annual meeting. In the annual meeting which is held regularly every year, the members mandate the management that the implementation of granting credit to members does not need to make a written agreement, but each member who submits an application for a loan of money is required to fill out a Loan Application Form which in the form is one of the following: the clause states that members are willing to be deducted from their salary regularly every month until the installments are paid off.⁵

The legal position of the management of the Transmission Employee Cooperative and the Kudus City Substation in carrying out lending without a written agreement is a mandate from the cooperative members given at the Annual Member Meeting (RAT), which is then stated in the Articles of Association and Bylaws of the Employee Cooperative. Transmission and Substation Kudus City.

The Transmission and Substation Employees Cooperative in Kudus City was established from and by employees of PT. PLN (Persero) Kudus in a meeting specifically aimed at forming an employee cooperative in 1999 with the Deed of Establishment Number: 034/BH/KWK.II/10/II/1999 dated February 15, 1999 which has received approval from the Minister of Small and Medium Enterprises Cooperatives of the Republic of Indonesia, then lastly amended by being included in the Notary Deed Number: 03 dated October 20, 2021 (20-10-2021) drawn up before Notary Baskoro Poerbo Soesetyo, Bachelor of Law, Master of Notary, which has received approval from the Minister of Law and Human Rights of the Republic of Indonesia with its Decree dated November 9, 2021 (09-11-2021) Number AHU-0005013.AH.01.28.TAHUN 2021.

The legal position of cooperatives is obtained by following the cooperative legal procedures, including based on Act No. 25 of 1992 concerning Cooperatives and other supporting regulations, namely regarding the requirements and

⁴Results of Interview with Mrs. Ratna, as a Cooperative Member Substation Transmission Employees in the Kudus city, February 22, 2022, at 15:52 WIB.

⁵Ibid.

procedures for ratification of the deed of establishment and amendments to the articles of association of cooperatives based on Government Regulation Number 4 of 1994 as well as on instructions for implementing the establishment ratification of the deed of establishment and amendments to the articles of association contained in the Regulation of the State Minister of Cooperatives and SMEs Number 01/Per/M.KUKM/I/2006, Government Regulation Number 17 of 1994 concerning the Dissolution of Cooperatives by the Government, and Guidelines for the Implementation of Merger and Consolidation of Cooperatives based on Decree of the Minister of Cooperatives and Small and Medium Entrepreneurs Development Number 36/Kep/M/II/1998.⁶

The importance of the legal position of the cooperative for the cooperative concerned is the clarity and legality of a cooperative legal entity so that it is indirectly considered capable of carrying out all legal actions as long as it does not conflict with the norms and rules of positive law. Thus, based on the results of the research above, it can be concluded that the legal position of granting credit without a written agreement at the Transmission and Substation Employee Cooperatives in Kudus City is in accordance with Act No. 25 of 1992 concerning Cooperatives and the Civil Code (KUHPerdata).

- Legal Certainty of Unwritten Agreements Based on Civil Law

The implementation of the provision of unwritten credit as carried out by the CooperativeThe transmission employee of the Kudus City Substation above, can be interpreted as an agreement as outlined in the loan application form and carried out by the requesting party to the party receiving the application. Giving consent by the applicant is an act to bind himself to another person. Thus the approval of the cooperative members as outlined in the loan application can be interpreted as an act to bind themselves to the cooperative management. The act of this cooperative member is a manifestation of the definition of an agreement as referred to in Article 1313 of the Civil Code which states that "an agreement is an act by which one or more people bind themselves to one or more other people".

The agreement in Article 1313 of the Civil Code contains an element of engagement as in the word "bind himself to one or more other people". The agreement is basically the basis for creating an engagement as has been clearly stated in Article 1233 of the Civil Code, namely "Every engagement is born good because of agreement, whether because of the law".

⁶Meidya Anugrah, 2013, Tinjauan Hukum Pendirian Badan Hukum Koperasi, *Jurnal Hukum*, Volume 1, 2013, p. 1.

An agreement that is born due to an agreement/agreement, then the emergence of an engagement is preceded by an agreement made by the parties which then creates an engagement relationship with legal consequences that arise in the implementation of the agreement. The definition of engagement refers in Subekti's view that an engagement is "a legal relationship between two people or two parties, based on which one party has the right to demand something from the other party, and the other party is obliged to fulfill the claim".

The rights and obligations of the parties in the legal relationship of the engagement are as described in the forms of engagement in Article 1234 of the Civil Code which states "every engagement is to give something, to do something, or not to do something". The actions in the engagement are linked to the agreement, which is an obligation for one of the parties and as a right for the other party who receives something as based on the agreement of the parties.

Regarding the definition of an agreement as mentioned in Article 1313 of the Civil Code, in the view of several legal experts regarding the definition of an agreement, it starts from Subekti's view that an agreement is "an event where one person promises to another person or where two people promise each other to carry out something. Thing". According to Setiawan, it is necessary to make improvements regarding the definition of the agreement, namely:⁷

- The act must be interpreted as a legal act, namely an act that aims to cause legal consequences;
- Add the words "or bind themselves together" in Article 1313 BW;
- So that the formulation becomes, "agreement is a legal act, where one or more people bind themselves or bind themselves to one or more people".

Furthermore, when viewed in terms of form, the agreement is divided into 2 (two) types, namely written and oral. A written agreement is an agreement made by the parties in written form with the aim of create a written evidence that is authentic so that it can be used as evidence in the legal process.⁸ While an oral agreement is an agreement made by the parties in an oral form (enough agreement of the parties).⁹ In its development, the agreement which was originally made orally is then made in writing, this arises because it is felt important by all parties who entered into the agreement and can be used as evidence that an agreement has been entered into by the parties and becomes

⁷Ibid.

⁸Tri Ulfi Handayani, Agustina Suryaningtyas, and Anis Mashdurohatun, 2018, Urgensi Dewan Kehormatan Notaris Dalam Penegakan Kode Etik Notaris Di Kabupaten Pati, <http://lppm-unissula.com/jurnal.unissula.ac.id/index.php/akta/article/viewFile/2531/1893>, *Jurnal Akta*, (Vol 5 No 1 January 2018), p. 52.

⁹Salim HS., (2016), *Pengantar Hukum Perdata Tertulis (BW)*, Sinar Grafika, Jakarta, p. 166.

evidence if there is a dispute over what was agreed upon by the parties who made it.¹⁰

More specifically to oral agreements, usually oral agreements are widely used in business activities. Oral agreements are generally applied only by using an utterance by the parties. The use of oral agreements is also usually carried out unnoticed by business actors and by the public, as in credit applications submitted by members to the management of Cooperative Employee Substation Transmission Kudus City, where in its implementation there has been an unwritten agreement because members are only required to fill out and sign the loan application form only. Thus, between the members and the management of the cooperative there has been an agreement regarding the amount of the loan, the amount of installments that are the obligations of the member, the length of the loan period, and the willingness of the member to be deducted from salary via auto-debit at the Bank, so that with this provision the management submits a certain amount of money. to members. Looking at the credit implementation process mentioned above, the payment of principal and interest debt that must be returned by members is agreed upon in the loan application form but is not stated in a written agreement as the legal basis.

Agreement in the form of an unwritten or verbal agreement as is done by its. In general, it tends to be considered a weak agreement considering that oral agreements are more difficult to prove because they are easy to be denied by the promised party when compared to written agreements whose clauses are clearly written and accompanied by the signatures of the parties as a sign of an agreement, even though in fact a written agreement is also can be denied by the parties, such as for example one of the parties does not acknowledge or denies having signed an agreement or one of the parties feels that he is forced or made a mistake in signing the agreement.

Even though an unwritten agreement or an oral agreement is considered to be weaker in position than a written agreement, it does not mean that an oral agreement is not recognized as a valid agreement. The agreement, whether it is a written or unwritten agreement, when referring to Article 1320 of the Civil Code, must meet 4 (four) conditions in determining whether the agreement is valid or invalid, namely:

- Agree on those who bind themselves;
- The ability to make an engagement;
- A certain thing;
- A lawful reason.

¹⁰Umar Ma'ruf dan Dony Wijaya, 2015, Tinjauan Hukum Kedudukan Dan Fungsi Notaris Sebagai Pejabat Umum Dalam Membuat Akta Otentik (Studi Kasus di Kecamatan Bergas Kabupaten Semarang), <http://jurnal.unissula.ac.id/index.php/PH/article/view/1507/1174>, *Jurnal Pembaharuan Hukum*, (Volume II No. 3 September - Desember 2015), p. 300.

Theoretically the first and second conditions regarding agreement and skills are classified as subjective conditions, while the third and fourth conditions regarding a matter and a lawful cause are classified as objective conditions. The legal consequences if the subjective conditions are not met will result in the agreement being cancelled, whereas if the objective conditions are not met then the agreement will be null and void. This also applies to the form of an unwritten agreement, considering that the four legal terms of the agreement are not required in writing. As long as the form of an unwritten agreement has fulfilled and does not violate the four conditions, then the agreement is legally valid.

The existence of an unwritten agreement is also inseparable from the principles of civil law. Looking at some civil law principles, unwritten agreements can be based on or analyzed on civil law principles as follows:

- The principle of freedom of contract

The principle of freedom of contract is one of the foundations for the existence of an unwritten agreement. One of the pillars of contract law is the principle of freedom of contract which is universally recognized by the legal system of any country, as the mainstay principle that is able to guarantee the flexibility and high intensity of market activities. The freedom of contract which has the core of flexibility in determining the form, type, and content of the agreement seems to be timeless by the challenges of the times. This principle is indeed one of the Human Rights that always upholds the dignity of the individual will as a social being.

Freedom of contract is an essential principle, both for individuals in developing themselves in personal life and social life, so that some experts assert that freedom of contract is part of human rights that must be respected.

Freedom of contract in relation to forming an agreement, people cannot be forced to give their consent. An agreement given by force is a *contradictio interminis*. The existence of coercion indicates that there is no agreement that may be carried out by the other party. The agreement gives the parties a choice, to agree or disagree to bind themselves to the agreement with legal consequences.

- The principle of *pacta sunt servanda*

This principle relates to the binding power of an agreement that has been formed and agreed upon by the parties. The regulation of the principle of *pacta sunt servanda* in the legislation lies in Article 1338 paragraph (1) of the Civil Code which states "all agreements made legally are valid as law for those who make them".

In the provisions of Article 1338 paragraph (1) of the Civil Code, the existence of the *pacta sunt servanda* principle is proven in the validity of an agreement made by the parties, which is valid as law. The validity of the agreement as a law results in the agreement being the legal basis for the parties. The binding of an agreement also applies to an unwritten agreement. An unwritten agreement is also binding as law for the parties who make it, as long as the unwritten

agreement is a valid agreement as stipulated in Article 1320 of the Civil Code. The binding of an agreement as in the *pacta sunt servanda* principle is emphasized on the implementation of the agreement, where the implementation of the agreement so as not to deviate from the agreed clauses of the agreement, either written or unwritten.

- Good faith principle

The principle of good faith is one of the principles that plays an important role, especially in the implementation of unwritten agreements. This principle is contained in Article 1338 paragraph (3) of the Civil Code which states that "an agreement must be carried out in good faith".

Based on this provision, it is also related to the view of Wirjono Prodjodikoro who divides good faith into two types, namely:¹¹

- Good faith at the time a legal relationship comes into force.
- Good faith at the time of the implementation of the rights and obligations contained in the legal relationship.

Referring to the provisions of Article 1338 paragraph (3) of the Civil Code, and related to the distribution of good faith as stated by Wirjono Prodjodikoro, good faith in the law only emphasizes the implementation of an agreement. If you look at the stages of the agreement starting from the process of making an agreement to the termination of an agreement, it requires good faith so that the agreement can be implemented properly, and can create good relations even though the agreement has ended. Therefore, the principle of good faith should not only be emphasized on the implementation of the agreement, but should also be emphasized in supporting the principle of consensualism related to the formation of an agreement, as well as in terminating an agreement.

Refers to the existence of an unwritten agreement which, if associated with this good faith principle, basically an unwritten agreement, all clauses that are agreed upon are only verbal. This verbal agreement is certainly easy for one party to deny, thus triggering problems that result in the inability to carry out the rights and obligations as they should. Therefore, the principle of good faith is very much needed in the implementation of the agreement, especially in the unwritten agreement so that the implementation of the agreement as agreed, even though the agreement is only verbal, can be carried out properly.

- The principle of consensualism

The principle of consensualism stipulates that an agreement made between two or more people is binding so that it has given birth to obligations for one or more parties to the agreement, as soon as these people reach an agreement or consensus.

The emphasis on the principle of consensualism lies in the agreement as stated in Article 1321 of the Civil Code. Agreement on the principle of consensualism

¹¹Osgar S. Matompo and Moh. Nafri Harun, (2017), *Pengantar Hukum Perdata*, Setara Press, Malang, p. 119.

determines the validity of the agreement in subjective terms. Referring to the Civil Code in Article 1321, the agreement is not allowed to contain elements:

- Error;
- Coercion;
- Fraud.

This principle of consensualism, when associated with an unwritten agreement, is basically an unwritten agreement that all agreed clauses are only verbal or verbal, so that mistakes, coercion, or fraud can occur. Therefore, the existence of the principle of consensualism is to prevent the parties from forming an agreement from being mistaken, coerced, or fraudulent.

The law in implementing credit agreements at the Transmission and Substation Employee Cooperatives in Kudus City refers to the provisions of Article 1233 of the Civil Code which states that each engagement is born either by approval or by law. This is closely related to the formulation of Article 1338 of the Civil Code which states "All agreements made legally apply as law for those who make them". So far, we do not have a standard formulation of the agreement. Various books or statutory provisions use the term agreement in different forms such as contract, engagement, affiliation, or agreement.¹²It is undeniable that all aspects of our lives are closely related to the covenant. Likewise, in daily activities, it is always related to agreements, contracts, agreements and understandings, both oral and written.

The public must know, especially in making agreements, agreements, so that the agreements made can be safe and in accordance with applicable law so that they do not fall into legal traps that can harm themselves, the parties involved in the agreement and third parties. In Indonesian legal literature, the formulation of the subject matter of the agreement depends on the will associated with the source of the law that is followed. However, everything returns to the original source of the law of engagement contained in book III of the Civil Code. Authentic deeds as the strongest evidence have an important role in every legal relationship in people's lives.¹³

According to Pitlo, an agreement will never arise only from the law, because the law cannot create an engagement from something that does not exist. Certainty of the agreement made orally according to Article 1338 of the Civil Code on the implementation of lending carried out by the Management of the Transmission and Substation Employee Cooperatives in Kudus City, that the approval that has been given by the members is based on the decision of the Annual Member Meeting (RAT) of the Transmission and Substation Employee Cooperatives Kudus City which is held annually is an agreement of will and/or agreement made by

¹²Kartini BM. Marbun, (2009), *Membuat Perjanjian Yang Aman & Sesuai Hukum*, Puspa Swara, Jakarta, p. 17.

¹³Ratih Mega Puspa Sari dan Gunarto, 2018, Peranan PPAT Dalam Pensertifikatan Tanah Akibat Jual Beli, <https://media.neliti.com/media/publications/324960-peranan-ppat-dalam-pensertifikatan-tanah-e029b56a.pdf>, *Akta Jurnal*, (Vol 5 No 1 March 2018). p. 244.

the parties, which is then carried out by the management and members of the Transmission and Substation Employee Cooperatives in Kudus City in good faith. The legal certainty of oral agreements leads to the *pacta sunt servanda* principle which means the legal principle which states that "every agreement becomes binding law for the parties to the agreement", this principle is also summarized in the formulation of Article 1338 paragraph (1) of the Civil Code, namely "applies as law-invoke those who make it". The word applies as a law means that it becomes a benchmark for a legal regulation among those who make it. As long as no one is harmed, the agreement will continue to run and act as law for those who make it.

Based on the results of the research above, it can be concluded that the implementation of granting credit without a written agreement in the Cooperative of Transmission Employees and Substations of Kudus City is legal according to the perspective of civil law because it has been carried out in accordance with the terms of the validity of the agreement as stated in Article 1320 of the Civil Code, namely agreeing to bind himself, skills to make an agreement, a certain thing and a lawful cause. Credit agreement without a written agreement made by the Cooperative Employee Substation Transmission of Kudus City has met all of these conditions. Likewise, the implementation of the principle of good faith in credit agreements without a written agreement, is related to honesty which lies in the inner attitude of both parties which has been conveyed orally based on trust or confidence, honesty and good will from all parties. Both Management and Cooperative Members Employee Substation Transmission in Kudus City and from the Treasurer of PT. PLN (Persero) Kudus, everyone has properly implemented the principles contained in the provisions of Article 1338 of the Civil Code without any violations or obstacles. Furthermore, regarding the legal position of the Management of the Cooperative Employees of Transmission and Substation of Kudus City in carrying out their activities, they are also in accordance with the provisions of Act No. 25 of 1992 concerning Cooperatives, and legal certainty has been fulfilled as the theory of legal certainty presented by Gustav Radbruch which states that legal certainty is certainty about the law itself. Legal certainty is a product of law or more specifically from legislation.

3.2. Legal Protection for Creditors Who Provide Credit Without Agreements to Debtors at the Kudus City Transmission and Substation Employee Cooperatives who are in Default

Unwritten agreement or also known by other terms, namely oral agreement, in business activities and habits, unwritten agreements are often used. An unwritten agreement is compared to a written agreement, in terms of providing a sense of security and proving the agreement, of course, a written agreement is superior to an unwritten agreement. When comparing the use of written agreements and unwritten agreements, unwritten agreements are more often

used both consciously and unconsciously, especially for traditional communities in conducting business activities.

An unwritten agreement is an agreement that is chosen in carrying out a business activity considering that an unwritten agreement is easier or does not take a long time to create an agreement. When compared with a written agreement, the process of reaching an agreement on a written agreement takes a very long time, starting from the parties carrying out a negotiation, then the concepts of agreement from the negotiation are stated in a written agreement. Writing an agreement also takes time. The draft agreement that has been made in writing is then re-examined by the parties before being signed. If there are things that are still not in accordance with the concept of the written agreement, then the agreement is amended again until the agreement is in accordance with the intentions of the parties. Repairing the agreement also requires sufficient time, until after the agreement has been repaired, then the agreement is signed by the parties. This is different when compared to an unwritten agreement. In an unwritten agreement, it is only enough to negotiate verbally on the basis of trust in reaching an agreement. If an agreement has been reached, the parties can directly implement all the things that have been agreed upon.

Based on the comparison of written agreements and unwritten agreements in the process of reaching an agreement, an unwritten agreement is more time efficient in reaching an agreement when compared to a written agreement. The unwritten agreement prioritizes trust in the formation and implementation of the agreement, while the written agreement prioritizes prudence in the formation and implementation of the agreement.

A sense of trust is needed in business activities in creating good relationships. A high sense of trust, of course, must also be accompanied by good faith. Good faith is very influential on trust considering that good faith is related to intentions and actions in doing something well, so that when someone in a relationship is not accompanied by good faith, it can also result in a loss of trust, especially in carrying out an agreement.

The use of an unwritten agreement when compared to a written agreement, the chance of a dispute in an unwritten agreement is higher than a written agreement. This is of course because all the clauses agreed in the unwritten agreement are only things that are spoken orally by the parties. Agreement clauses that are only spoken orally or without a written form are easier to be denied or not recognized by one of the parties. Even if the dispute continues to the litigation process, the proof of the clauses of the unwritten agreement is more difficult to prove when compared to the written agreement.

Proof of the existence of an unwritten agreement and all agreed clauses only depends on the acknowledgment of the parties who made and implemented the agreement. This is different from a written agreement which uses an agreement that has been made in written form to strengthen the acknowledgment of the disputing parties. Therefore, in every agreement, both written and unwritten, it is very necessary to have a legal protection to ensure legal certainty for the parties.

Legal protection is an attempt to guarantee the fulfillment of the rights of citizens as legal subjects. As for the credit agreement, legal protection is needed to protect the interests of creditors and debtors. The interest in question is regarding the rights and obligations of both parties where in the credit agreement, the creditor is obliged to give money (credit) and has the right to collect the money back. Meanwhile, the debtor has the right to receive money (credit) and obliged to return the money to the creditor according to the time specified in the agreement.¹⁴

The element of trust in a credit agreement is absolutely necessary so that in disbursing credit, creditors are required to have confidence in the return of credit that has been given to the debtor at the agreed time, so that with this belief the creditor in this case will feel that his rights are protected. to recover money or goods given to the creditor on credit.

An unwritten agreement is a valid agreement in the perspective of civil law as long as it does not conflict with Article 1320 of the Civil Code. Therefore, in the implementation of credit granting, Cooperative Employee Substation Transmission of Kudus city is a legal agreement according to law. Regarding the legal relationship between the cooperative management as creditors and cooperative members as debtors, it can be proven by the existence of a loan application form and evidence of monthly salary deductions made by auto-debiting the bank account.

Based on the research results, in providing loans, the Cooperative Employee Substation Transmission of Kudus City carried out in a simple manner unlike a bank, but still fulfills the principle requirements of providing credit with a pattern of agreement with the treasurer of PT. PLN (Persero) Kudus in order to guarantee (legal) certainty. If in the future there is a dispute between the parties, then loan application form and proof of salary deduction via autodebit at the bank every month by the Cooperative Employee Staff This will be used as written evidence to control the truth of the relationship that has been established and the rights and

¹⁴Enju Juanda, 2021, Hubungan Hukum Antara Para Pihak Dalam Perjanjian Pembiayaan Konsumen, *Jurnal Ilmiah Galuh Justisi, Fakultas Hukum Universitas Galuh*, (Vol. 9 No. 2, September 2021). p. 281.

obligations of each party. This is as conveyed by Mr. Sunarno to the author, namely:¹⁵

"The credit given to members does not exist using an agreement, but between members, management, and PT. PLN (Persero) Kudus already has an agreement which states that every member who makes a loan in a cooperative must be auto-debited or deducted from salary based on the loan application form. In the future, if necessary, the form and salary deduction slip from the cooperative's staff can be used as evidence of the credit of the member concerned".

Credit implies the provision of money based on a loan agreement by the debtor and the debtor will repay the debt within a certain period of time. According to Thomas Suyatno that credit is "Credit is the right to receive payment or the obligation to make payments when requested, in the future, due to the delivery of goods now".¹⁶

The elements in credit are trust, namely the belief of the lender that the achievements given in the form of money, goods or services will be received back within a certain period of time in the future. The grace period is a period that separates the award of achievement from the counter-achievement that will be received in the future. This time element contains the notion of agio (difference in value) of money, i.e. money currently has a higher value than the money it will receive in the future. Degree of risk is the risk that will be faced as a result of the existence of counter achievements that will be accepted in the future.

Based on Article 1234 of the Civil Code, the achievement of an agreement is to give something, to do something, or not to do something. Meanwhile, default is not carrying out or not carrying out the things that have been agreed upon by the parties.¹⁷ Default occurs when one of the parties fails to fulfill obligations in accordance with what has been agreed. According to Black's Law, a default is a failure of one of the parties without a legal reason to carry out the agreed terms in whole or in part from the contract.¹⁸

Based on the type of default, it can be in the form of being late in fulfilling the achievement, the implementation of the achievement is not perfect or not in accordance with the agreement, or not doing the achievement at all.¹⁹ Default is also contained in Article 1234 of the Civil Code, which states that reimbursement of costs, losses, and interest due to non-fulfillment of an engagement, is required

¹⁵Results of the Interview with Mr. Sunarno, as the Chairman of the Cooperative Employee Substation Transmission in the Kudus city, April 20, 2022, at 08.55 WIB.

¹⁶ Thomas Suyatno, 2009, *Fundamentals of Engagement Law*, (Gramedia Pustaka Utama, Jakarta), p.12.

¹⁷Munir Fuady, 2014, *Civil Law Concepts*, (Rajawali Pers, Jakarta), p. 207.

¹⁸Henry Campbell Black, 1968, *Black's Law Dictionary 4th Edition*, (West Publishing Co.), p. 235.

¹⁹Munir Fuady, *Op. Cit.*

if the debtor who has been declared negligent in fulfilling his engagement continues to neglect it or if the achievement is fulfilled beyond the agreed grace period.

The longer the credit provided by the cooperative, the higher the level of risk, because as far as the human ability to break through the future, there is always an element of uncertainty that cannot be taken into account. This is what causes the element of risk. With this element of risk, there is a guarantee in the provision of credit.²⁰

The assessment of the provision of credit facilities by the cooperative to its members is almost the same as the bank, namely using the 5C and 7P assessment standards, this is of course done to prevent cooperatives from bad credit.²¹ Assessment using the 5C and 7P standards is very important in order to generate confidence from the cooperative that the credit that is disbursed is really safe. The purpose of the assessment of the provision of credit facilities as described above is to provide legal protection to the cooperative as the creditor, because in this case it is not only debtors who need legal protection, but also creditors from debtors who do not have good intentions in carrying out the agreement. .

Based on the research results, Cooperative Employee Substation Transmission Kudus City in giving credit to its members is done without making a written agreement and without any material guarantees. However, every member of the cooperative at the time of registering as a member is required to submit personal documents such as a photocopy of the decree as an employee of PT. PLN (Persero) Kudus, photocopy of ID card, photocopy of ID Card and Bank Account Book concerned. In addition, when going to borrow money each member of the cooperative is required to fill out a loan application form containing the identity of the applicant, the amount of money you want to borrow, the amount of each month's installments, the length of the loan period, and a statement of willingness to cut salary every month by the Cooperative Employee Staff via autodebit at the Bank. This is an effort to prevent the occurrence of default in obtaining certainty of legal protection so that members do not experience default.

The provisions carried out by the Management were very well received by the members, and members considered this provision very appropriate considering the very high work intensity of the members, who incidentally are employees of PT. PLN (Persero) Kudus so they don't have much time to take care of credit

²⁰Ibid., p. 20.

²¹Results of the Interview with Mr. Sunarno, as the Chairman of the Cooperative Employee Substation Transmission in the Kudus city, April 20, 2022, at 08.55 WIB.

requirements as usually applies in banking. Mr. Nurul Huda, an employee of PT. PLN (Persero) Kudus and at the same time as a member of the Employee Cooperative Substation Transmission Kudus city, explained to the author as follows:²²

“The credit services run by the management of this cooperative have been extraordinary and in accordance with all of our wishes, namely a fast and uncomplicated process, because we are not only members of the cooperative but also employees of PT. PLN (Persero) Kudus, which is very busy with work, so we don't have enough time to take care of credit terms as applicable in banks in general”.

Legal protection is a certainty that provides a sense of security for those who carry out a legal act. Legal protection itself prioritizes the protection of human rights and the legal protection is owned by all Indonesian people in order to obtain their rights that have been regulated in law.²³ In legal protection, the community must get protection by law enforcement in order to have a sense of security, both physically and spiritually and protection from others.²⁴

Implementing and providing legal protection requires a medium in its implementation which is called a means of legal protection. The means of legal protection are divided into 2 (two), namely:²⁵

- Means of preventive legal protection

Preventive legal protection provides legal subjects with the opportunity to submit objections or opinions before a government decision takes a definitive form. Preventive legal protection aims to prevent problems or disputes from occurring.

- Repressive legal means of protection

Repressive legal protection that aims to resolve problems or disputes that arise. Legal protection against government actions based on and originating from the concept of recognition and protection of human rights. The concept of the recognition and protection of human rights is directed at the limitations and laying down of the obligations of the community and the government.

²²Results of Interview with Mr. Nurul Huda, a member of the Cooperative Employee Substation Transmission in the Kudus city, April 21, 2022, at 11.20 WIB.

²³Gunarto, 2014, Agenda Penegakan Hukum dan Relevansinya Bagi Pembangunan Bangsa, <http://lppm-unissula.com/jurnal.unissula.ac.id/index.php/PH/article/view/1455/1126>, *Jurnal Pembaharuan Hukum*, (Volume I No.1 January –April 2014).

²⁴Satjipto Raharjo, (2000), *Ilmu Hukum*, PT. Citra Aditya Bakti, Bandung, p. 118.

²⁵Philipus M. Hadjon, (1987), *Perlindungan Hukum Bagi Rakyat di Indonesia, Sebuah Studi Tentang Prinsip-prinsipnya, Penanganannya oleh Pengadilan Dalam Lingkungan Peradilan Umum dan Pembentukan Peradilan Administrasi Negara*, PT Bina Ilmu, Surabaya, p. 205.

Against legal efforts that have been made Cooperative Employee Substation Transmission Kudus City in the implementation of providing credit to its members, according to the author, is a preventive legal protection that is preventing problems from occurring in the future.

According to Sunarno, as Chairman of Cooperative Employee Substation Transmission Kudus City, another legal protection effort that is also carried out by the cooperative management is carrying out the precautionary principle by analyzing the eligibility of members as applicants by paying attention to the comparison of the member's salary with the amount of the loan because it involves the issue of the amount of installments that must be paid later by members. via Autdebit at the Bank. In addition, the management will also consider the amount of member deposits that have been deposited in the cooperative. Therefore, to avoid the obligation to pay heavy installments, the Cooperative Management limits the amount of member loans to be adjusted to the members' ability to pay, which is 40% of the total salary (income) received each month.²⁶

Mr. Sunarno added that with the enactment of the salary deduction system and the enactment of the credit limit that may be given, it will be able to avoid the risk of default. This provision is a manifestation of the precautionary principle carried out by the cooperative management. However, although the precautionary principle as described above has been carried out well, in its implementation there are still other problems that cause members to default. This happened in 2019, where one member of the Cooperative was forced to be dismissed because it was proven that he did not pay in installments or did not pay every month.

When the person concerned is dismissed from the Cooperative Membership, then the obligation concerned as a member of the Employee Cooperative Substation Transmission Kudus City still has 24 months remaining with the amount of installments amounting to IDR 567,000, - (five hundred and sixty seven thousand rupiah) per month.²⁷

For 24 (twenty four) months the member concerned has never made a payment for his obligations to the cooperative. This situation has made the member concerned become in default of his loan to the Employee Cooperative Substation

²⁶Results of Interview with Mr. Sunarno, as the Chairman of the Cooperative Employee Substation Transmission in the Kudus city, April 20, 2022, at 08.55 WIB.

²⁷Ibid.

Transmission Kudus city. Mr. Sunarno, a member and management of the Employee Cooperative Substation Transmission Kudus city, explains:²⁸

"The Transmission and Substation Employee Cooperative has terminated its members because at that time the person concerned still had outstanding loans remaining to be paid to the cooperative".

The act of being negligent or not fulfilling the obligations according to the agreement by the member because it was dismissed by the Cooperative as mentioned above is an act of default. Therefore, in accordance with the provisions Article 1234 of the Civil Code, the Cooperative Management is required to make a warning letter (subpoena) to the person concerned so that he can immediately carry out his obligations, namely paying installments with a certain time limit. If an agreement or agreement does not specify a time limit for the fulfillment or implementation of its achievements, then to state whether a debtor is in default, a written warning letter from the creditor is required to be given to the debtor. The warning letter is called a negligence statement.

A summons is a warning to the debtor to carry out his obligations in accordance with a warning for negligence that has been conveyed to him by the creditor. In the subpoena, the creditor states his will that the agreement or agreement must be executed within a certain time limit.

This subpoena is an effort from the creditor by notifying, reprimanding and warning regarding the maximum time for the debtor to carry out his achievements. If the warning time has passed and the debtor still does not or has not carried out his achievements, then the debtor has been negligent or has defaulted.

Article 1238 of the Civil Code states that the debtor is negligent, if he with a warrant or with a similar deed has been declared negligent or for the sake of his own engagement, if this stipulates that the debtor must be considered negligent with the passage of the specified time. From the provisions of the article, it can be said that the debtor is declared in default if there is a subpoena. Thus the notification letter or subpoena can be used as the basis for determining when a debtor is declared in default.

Regarding the obligation to pay compensation, it does not arise immediately when negligence occurs, but only becomes effective after the debtor is declared negligent and still does not carry out his achievements. This is regulated in Article 1243 of the Civil Code, that compensation can be claimed according to law in the form of costs (*kosten*), losses (*schaden*) and interest (*interessen*). What is meant

²⁸Ibid.

by losses that can be requested for compensation are not only costs that have actually been incurred (kosten) or losses that have actually befallen the object of the debtor (schaden), but also in the form of loss of profit (interest), which is the profit obtained if the debtor is not negligent (winstderving).²⁹

According to Article 1250 of the Civil Code, if the object of the agreement is in the form of payment of a sum of money, the loss that can be claimed due to default is interest according to law (moratorium interest). The amount of interest according to the law is 6 percent per year. For the interest claim, the creditor does not need or is not burdened with the obligation of proof, but it is sufficient if the debtor is clearly late in paying, the creditor can claim compensation in the form of interest.

Losses that must be compensated include losses that are predictable in form and amount and are a direct result of default. This means that there is a causal relationship between the default and the losses suffered.³⁰

Based on the results of the study, the efforts made by the Employee Cooperative Management Substation Transmission Kudus City against the default of one of its members who was dismissed from the cooperative membership, the Cooperative Management immediately sent a warning letter I. However, until the specified time limit, the cooperative members still did not make payments. Therefore, the Cooperative Management again sent a Warning Letter II to the members of the cooperative concerned, and it turned out to be a positive response, namely the cooperative member came to the office Cooperative Employee Substation Transmission of Kudus city for deliberation. From the results of the deliberation, the parties agreed to make a letter of dismissal for the person concerned as a member cooperative. Furthermore, the Cooperative Management will issue all principal savings, mandatory savings, and voluntary savings on behalf of the members of the cooperative. From these savings, the members of the cooperative concerned are required to pay off all their debts to the cooperative.³¹

Law aims to create justice, protection of human dignity, order, peace, and legal certainty in accordance with applicable regulations.³² Legal protection according

²⁹Ibid.

³⁰Martalena Pohan, (2005), *Tanggung Gugat Advokat, Dokter dan Notaris*, Alumni, Bandung, p. 63.

³¹Results of Interview with Mr. Sunarno, Op.cit

³²Meta Suryani and Anis Mashdurohatun, 2016, Penegakan Hukum Terhadap Eksistensi Becak Bermotor Umum (Bentor) Berdasarkan Undang-Undang Nomor 22 Tahun 2009 Tentang Lalu Lintas dan Angkutan Jalan, <http://lppm-unissula.com/jurnal.unissula.ac.id/index.php/>

to Satjipto Raharjo's view is to provide protection for human rights that have been harmed by others and this protection is given to the community so that they can enjoy all the rights granted by law.³³ In the field of civil law, against an unwritten agreement that is carried out legally and without material guarantees, other forms of legal protection that can be taken by creditors when the debtor defaults are as regulated in the provisions of Article 1131 and 1132 of the Civil Code. These two articles discuss privileged receivables. Article 1131 of the Civil Code states that all objects of the debtor, both movable and immovable, both existing and new in the future, are borne by all individual engagements. And Article 1132 of the Civil Code says that the object is a mutual guarantee for all those who owe it, the income from the sale of the objects is distributed according to the balance, that is, according to the size of the receivables of each, unless there is a reason between the receivables-legitimate reasons for precedence.

With regard to unsecured credit, because the cooperative did not determine from the beginning what the collateral was and in this case did not use collateral, then based on Articles 1131 and 1132 of the Civil Code, the assets belonging to the debtor entirely become collateral for the amount of debt that must be paid by the debtor. As a result, if there is a default on the part of the debtor, the cooperative can carry out executions based on Articles 1131 and 1132 of the Civil Code. By using these two articles, the creditor evaluates the economic value of all assets and valuables belonging to the debtor who is in default as repayment of the remaining outstanding achievements.

The fulfillment of the rights carried out into the fulfillment of obligations according to the agreement of the parties to the agreement is a legal act that can be accounted for because the act of an oral agreement is carried out by the party according to the agreement and the parties who form the agreement are parties who are capable of carrying out legal actions, including agreements made limited to certain things and the purpose of making a legal agreement based on good faith, namely for lawful causes. If the parties do not carry out their obligations according to the oral agreement made, book III of the Civil Code regulates the compensation caused by breaking promises as regulated in Article 1243 of the Civil Code to use Article 1252 of the Civil Code.

The compensation referred to in the article is the loss of costs that have been incurred by the cooperative in administrative management, while the interest is the profit that should be obtained by the cooperative if the debtor defaults. The

[PH/article/view/1341/1035](https://doi.org/10.24090/sanlar.v4i2.13411035), *Jurnal Pembaharuan Hukum*, (Volume III No. 1 January - April 2016), p. 26.

³³Satjipto Raharjo, Op.cit, p. 69.

amount of compensation to be paid by the debtor has been regulated in Article 1248 of the Civil Code which states:

"If the non-fulfillment of the engagement is due to the deception of the creditor, the reimbursement of costs, losses and interest is merely regarding the losses suffered by the creditor and the profits that are hindered for him, only consist of what is a direct result of the non-fulfillment of the engagement."

Based on the description above, it can be concluded that the legal protection for creditors for debtor defaults on the implementation of unwritten agreements at the Kudus City Transmission and Substation Employee Cooperatives has been carried out properly, namely by conducting deliberation and/or mediation (non-litigation) efforts aimed at creating an agreement to disburse members' money. The exist in cooperatives that are sourced from principal savings, mandatory savings, and voluntary savings belonging to the member who is in default. Another form of legal protection that has also been carried out by the Management of the Transmission and Substation Employees Cooperatives in Kudus City is in terms of paying monthly installments from members, it is carried out by auto-debit to the bank account belonging to the member concerned. Meanwhile, according to civil law, in the case of granting credit without a written agreement, it is still declared valid as long as it does not conflict with Article 1320 of the Civil Code. Therefore, if a member commits an act of default, the cooperative as a creditor can file a lawsuit to the District Court (litigation) to ask for compensation.as regulated in Article 1243 of the Civil Code to use Article 1252 of the Civil Code.

4. Conclusion

The legal position of the implementation of granting credit without a written agreement at the Transmission and Substation Employee Cooperatives in Kudus City is legal according to the perspective of civil law because it has been carried out in accordance with the terms of the validity of the agreement as referred to in Article 1320 of the Civil Code, namely agree to bind himself, the ability to make an agreement, a certain thing and a lawful cause. Credit agreement without a written agreement made by the Cooperative Employee Substation Transmission of Kudus City has met all of these conditions.

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