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Juridical Analysis of Breach Of Faith On Credit Verbal Agreement (Case Studi District Court Number : 10/PDT/G/2014/PN.DPK)

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Abstract
Breach of Faith or term applies to the violation of moral duty if an agreement is violated. However, in the case of accounts payable, an oral agreement will make it easier to violate the agreement that has been made. So in this case how to prove in court and legal protection against default in an oral debt and credit agreement. The research method used is normative juridical with data support based on legal material laws and court decisions. Proof of a written agreement before the court does not have to be proven by a letter, but can present witnesses with other evidence such as recognition or proof of transfer or documents related to the implementation of the agreement. The form of legal protection in the event of default on a credit agreement made orally is in the form of preventive and repressive. Preventive protection has been given before there is an event or dispute. While repressive problems or disputes have arisen in advance.

Keywords: Legal Protection, Breach of Faith, Proofing

INTRODUCTION

According to Article 1313 of the Civil Code, an agreement is an act in which one or more people bind themselves to one or more people. So that in this event a relationship arises between two people who promise each other, this relationship is called an engagement.

Oral agreement is an agreement made orally between the parties, this agreement comes into force after the implementation of the rights and obligations of both parties. Oral agreements occur a lot in people's lives, and are often not realized but an agreement has occurred. (ivana 2023) In other words, an oral agreement will become valid if the rights and obligations of the parties are fulfilled. Oral agreements are also often found based on trust between the two parties.

Default itself is not fulfilling or neglecting to carry out obligations as specified in the agreement made between the creditor and the debtor.

Many credit agreements are made in oral form on the basis of trust, so that many debtors cannot fulfill the achievements as promised in the agreement. As in the case of decision number: 10/Pdt.G/2014/PN.DPK, which states that Mr. Lian and Mr. George are in default, starting from Mrs. Melanie's trust in Mr. Lian and Mr. George, Mrs. Melanie provided a loan of funds to Mr. Lian and Mr. George, but in the process of returning funds along with interest it did not run smoothly, Mrs. Melanie continued to make efforts to get back the loan by meeting with the debtor but was always unsuccessful. As well as Mr. Lian repeatedly always gave a personal guarantee that Mr. George would return all loan funds along with interest, but until the time Mrs. Melanie could communicate with Mr. George, Mr. George only returned to convey verbally and firmly will immediately return everything will be completed entirely by Mr. Lian. Based on Tuang George's statement, Mr. Lian signed a statement stating that the repayment of the loan by Mr. George to Mrs. Melanie would be fully repaid by the Defendant, shortly after that Mr. George passed away, because Mr. George passed away, then based on the statement signed by Mr. Lian, Mrs. Melanie continued to make deliberative efforts to settle the loan to Mr. Lian, However, Mr. Lian did not respond satisfactorily and did not even mess up and did not want to discuss and repeatedly stated that he did not know anything, because the deliberation process could not get a settlement, Mrs. Melanie sent a written letter of reprimand (subpoena) to Mr. Lian, until the second subpoena, Mr. Lian did not make any settlement efforts to fulfill his real and full repayment obligations to Mrs. Melanie, so that it was legally proven that he had deliberately breached his promise (default) against Mrs. Melanie.

Basically, in the case of default, it can be said that it is a default or a breach of promise if there is an agreement that has been violated. However, in the case of debt and credit, an oral agreement will make it easier for the debtor to renege on the agreement that has been made. Oral agreements are indeed allowed as long as they meet the validity requirements of the agreement in Article 1320 of the Civil Code.

Based on the explanation above, the author is interested in how the legal protection of creditors, if the debtor defaults and how to prove in court in decision Number: 10/Pdt.G/2014/PN.DPK.

RESEARCH METHOD

This research uses normative juridical research methods. Normative juridical research is a library legal research conducted by examining library materials or secondary data (Soekanto 1986).

This research uses the statutory approach, case approach, and conceptual approach. The statutory approach is an approach by examining all laws and regulations that are related to the problem (legal issue) at hand. The case approach is by examining cases related to the issue at hand which have become court decisions that have legal force. While the conceptual approach is an approach that departs from the views and doctrines that develop in legal science, in order to find ideas that give birth to legal concepts and principles that are relevant to the issue at hand (Soemitro 1985).

The research specification used is Prescriptive research. Prescriptive research is research that studies legal objectives, values of justice, legal rules, legal concepts, and legal norms (Marzuki 2011). he data source used is secondary data legal sources. The data analysis used in this research is normative qualitative. The normative qualitative data analysis method is a logically arranged discussion and description of the results of research on norms, rules and legal theories that are relevant to the subject matter.

DISCUSSION

PROVING BREACH OF FAITH ON CREDIT AGREEMENTS MADE ORALLY

The term agreement is often referred to as an agreement, which comes from the Dutch Overeenkomst. According to R. Wirjoo Prodjodikoro, an agreement is defined as a legal act concerning property between two parties in which one party agrees or is deemed to agree to do a thing or not to do a thing, while the other party has the right to demand the implementation of the promise (Meliala 1985).

Verbal agreements contain a promise that expresses the expressed will and is considered a consititive element of the binding force of the agreement. A new agreement is formed if there is an encounter or conformity between the promises shown by one party to another (Stepanus 2016), which in this case is included in the validity of the agreement in article 1320 of the Civil Code regarding the agreement of those who bind themselves.

An agreement in oral form means the delivery of what is desired and requested by the party offering to the party receiving the salary even though it is expressed orally and expressed in words and deeds is a pontesial factor, the point of knowing what is actually desired in confirming the legal relationship of a particular agreement.

An agreement which is a legal relationship between 2 (two) parties, one of which is entitled to a performance and the other party is obliged to fulfill the performance, it can be concluded that a performance is an event where the performance is not fulfilled. The reasons underlying the non-fulfillment of performance or default are various, including (Kelanit 2022) .

1. Willingness
2. Negligence
3. Force Majeure

Breach of Faithful can occur due to the element of one of the parties who is aware of the obligation to carry out the promised performance but deliberately does not fulfill the performance. Default can also occur due to force majeure where one of the parties is forced not to perform its obligations either due to disaster, accident or death. Default is also known as a breach of promise, which is a situation where one of the parties fails to fulfill its obligations. The word default itself according to the legal dictionary means negligence, breach of promise or failure to fulfill its obligations in the agreement.

In practice, defaults in oral agreements often occur considering that there is no written evidence that reinforces the existence of the agreement, making it easier for one party to commit fraud. This is why written evidence in an agreement is very important in proving if later the agreement raises a dispute.

In terms of proof in civil cases, as stated in Article 163 HIR, proof is imposed on the party who postulates a right. Parties who claim to have rights must prove the existence of that right. According to Sudikno Mertokusumo, proving in procedural law has a juridical meaning, namely providing sufficient grounds for the judge examining the case concerned to provide certainty about the truth of the events submitted.

According to Soedikno Mertokusumo, the word prove is known in the logical sense of proof here means providing absolute certainty, because it applies to everyone and does not allow opposing evidence (Ali&Heryani 2012).

In civil cases, often written evidence such as agreements in written form are submitted by the parties to the court to enforce their rights. However, it should be noted that in proving civil cases, there are types of evidence in the form of (Kurniawan 2024).

1. Written Evidence
2. Witness Testimony
3. Presumption
4. Confession

Based on the types of evidence above, there are other options besides written evidence such as witness testimony, confessions or oaths to prove the existence of an agreement between the parties. In addition, basically the court must decide a case without ruling out unus testis nullus testis, namely that a statement that is not supported by other evidence must not be believed by the Panel of Judges as the truth.

Thus, in proving an unwritten agreement before the court, it does not absolutely have to be proven based on letter evidence. However, it can be proven by presenting witness testimony with other evidence such as recognition from the parties to the agreement or other presumptive evidence such as proof of transfer or documents related to the implementation of the agreement.

Base on District Court Decision Number: 10/Pdt.G/2014/PN.DPK then the plaintiffs must be able to prove that:

"Whether it is true that the Defendants have defaulted to the Plaintiffs "

Therefore, to prove this, the plaintiff in the trial submitted letters of evidence, one witness and one expert. In the evidence submitted, one of them was in the form of a photocopy of a certificate of debt and credit, where the defendant admitted that the defendant had obtained a loan from the party

Plaintiff and there were additional funds in the form of money transfers to the defendant's account this is in accordance with the evidence that has been submitted in the trial. Based on the evidence of letters and statements of witnesses and experts and having been billed until the verdict was decided the defendant had not returned the loan to the plaintiff, so the defendant can be said to have made a default even though the agreement was not set out in writing but was based on a sense of trust. It can be concluded that as long as an oral agreement can be legally proven, the oral agreement is considered valid, so that if the performance of the agreement is not fulfilled, the injured party can sue him for default.

LEGAL PROTECTION BREACH OF FAITH ON VERBAL CREDIT AGREEMENT

Legal protection is providing assistance to human rights that are harmed by others and providing protection is given to the community so that they can enjoy all the rights granted by law or in other words legal protection is a variety of legal efforts both in mind and physically from interference and various threats from any party (Soeroso 1992).

Legal protection is the protection of dignity and recognition of human rights owned by legal subjects based on legal provisions from arbitrariness or as a collection of rules and regulations that will be able to protect one thing from another (Hadjon 2007).

Meanwhile, in law, the definition of legal protection is all efforts made consciously by every person and government institution, private sector, which aims to strive for the deprivation, control and fulfillment of the welfare of life in accordance with existing human rights as stipulated in Law Number 39 of 1999 concerning Human Rights. Legal protection requires a place in its implementation which is often referred to as a means of legal protection. Means in legal protection itself is divided into 2 (two) kinds, are: (Hadjon 2007)

Preventive Legal Protection, in this preventive legal protection, legal subjects are given the opportunity to submit objections or opinions before a government decision takes definitive form. The aim is to prevent disputes. Preventive legal protection is very meaningful for acts of government is based on freedom of action because of the preventive legal protection, the government is encouraged to be careful in making decisions based on discretion. The preventive form is protection that has been given before an event, in this case in accordance with Article 1236 of the Civil Code where if there is a default, the debtor is obliged to provide compensation to the creditor.

Repressive Legal Protection is repressive legal protection for dispute resolution. This means that repressive legal protection is aimed at how to resolve disputes, where preventive legal protection contains the word "Prevent", meaning before the problem exists, while repressive legal protection problems or disputes have arisen first. Repressive protection in accordance with Article 1244 where the way to resolve the creditor is given the right to request compensation or claim its rights to the debtor in the event of default.

Based on the explanation above, it can be concluded that the form of legal protection in the event of a default on a credit agreement made orally is in the form of prevention and repression, prevention is protection that has been given before an event or dispute, in this case there are already clear rules if there is a default, the debtor is obliged to provide compensation costs to the creditor, In accordance with Article 1236 of the Civil Code, indirectly legal protection in a preventive form is a form of prevention, preventing defaults from occurring, while repressive protection in accordance with Article 1244 of the Civil Code is a way of solving problems in this case the creditor is given the right to request compensation or claim his rights and the debtor must be punished for it.

KESIMPULAN

The proof of an oral / unwritten agreement before the court does not have to be proven by letter evidence but can be by presenting witness testimony with other evidence. As long as the oral agreement can be legally proven, the oral agreement is valid and, if the achievement is not fulfilled, then the party who feels aggrieved can sue him for default.

The form of protection in the event of default on an oral credit agreement is in the form of preventive and repressive. Preventive protection is protection that has been given before an event or dispute, and this has been clearly regulated in article 1236 of the Civil Code which states that if there is a default, the debtor is obliged to provide compensation costs to the debtor, which indirectly legal protection in a preventive form is a form of prevention, preventing defaults from occurring. Meanwhile, repressive protection is clearly regulated in Article 1244 of the Civil Code, namely how to solve problems in this case the creditor is given the right to request compensation or claim his rights and the debtor must be punished for it. This means that preventive legal protection contains the word "prevent" where problems exist, while repressive legal protection problems or disputes have arisen first.

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