Jurnal Ilmu Hukum Prima
Vol. 9 No. 1 April 2026

E-ISSN : 2614-2244
ISSN: 2088-5288

Analysis Of The Application Of The Principle Of Pacta Sunt Servanda In Judges' Decisions On Debt Disputes Based On Unwritten Agreements

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ABSTRACT

Unwritten debt agreements can cause various problems in the future. One of them is uncertainty regarding the contents of the agreement. One of the most fundamental principles in contract law is the principle of pacta sunt servanda or the principle of legal certainty. This principle relates to the consequences of the agreement. The purpose of this study is to determine the legal provisions related to debts made unwritten based on contract law and to determine the judge's considerations in applying the principle of pacta sunt servanda to debt disputes based on unwritten agreements. This study uses a normative juridical research type. The conclusion in this study is that a valid agreement is an agreement that has fulfilled the requirements for a valid agreement in accordance with Article 1320 of the Civil Code and will have legal consequences for the parties who made it. One of the legal consequences that binds the parties is Article 1338 paragraph (1) of the Civil Code which relates to the principle of Pacta sunt servanda.

Keywords: Unwritten Agreement, Debts and Receivables, Pacta Sunt Servanda Principle

INTRODUCTION

Humans use various methods to meet their various needs, one of which is through agreements. The practice of borrowing and lending money, better known as debt, has long been practiced in societies where money is the primary means of payment. It's clear that almost all societies have considered borrowing and lending money essential to support economic development and improve their standard of living.[1]

The definition of debt is the same as a loan agreement found in the Civil Code, Article 1721, which states: "a loan is an agreement in which one party gives

[1]M Bahsan, Indonesian Banking Credit Guarantee and Collateral Law, PT Raja Grafindo, Jakarta, 2007, p. 1

E-ISSN : 2614-2244
ISSN: 2088-5288

another party a certain amount of goods and is used up on the condition that the latter will return the same amount under the same conditions."

People generally enter into sales, leases, debt agreements, and so on using only receipts, stamps, and the signatures of the parties, without the intermediary of a public official. People generally enter into agreements solely on the basis of trust.

Unwritten debt agreements can create various problems later on. One of these is uncertainty regarding the agreement's contents. It can be difficult to determine exactly what both parties have agreed to in the agreement. Furthermore, if a dispute arises later, it's difficult to prove the terms of the agreement without written evidence.[2]

In the agreement there are several general principles of agreement which are used as a basis for implementing the agreement. One of the most basic principles is the principle of pacta sunt servanda. The principle of pacta sunt servanda is also called the principle of legal certainty. This principle relates to the consequences of the agreement. The principle of pacta sunt servanda stipulates that a judge or third party must respect the substance of the contract made by the parties, as befits a law. They may not intervene in the substance of the contract made by the parties. The principle of pacta sunt servanda can be concluded in Article 1338 paragraph (1) of the Civil Code, which reads: "Agreements made legally are valid as law".[3]

Implementationprinciple of pacta sunt servandaAs a principle of legal agreement, it is often an interesting topic to examine, especially when related to unwritten agreements. In the legal world, this principle emphasizes the importance of upholding promises made by both parties. However, complexities arise when these promises are not formalized in a written agreement, creating challenges in the process of proof and implementation.[4]

Judges are often faced with the important role of assessing the validity ofunwritten agreementwhich is guided by the principle of pacta sunt servanda. This topic is relevant because this type of agreement is quite common in social interactions.

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[2]Wijaya, A., Suardi, S., & Ambarwati, A. (2023). Legal Study of Deeds of Agreements Binding the Sale and Purchase of Land Rights. Amsir Litigation Journal, 10(4), 563-575

[3]H. Salim HS., Contract Design & Memorandum of Understanding (MoU), Sinar Grafika, Jakarta, 2007, p. 2

[4] Hukumonline. (2023). Understanding the Principle of Pacta Sunt Servanda. Retrieved from https://www.hukumonline.com/berita/a/mengenal-asas-pacta-sunt-servanda-lt63f4b06969233

E-ISSN : 2614-2244
ISSN: 2088-5288

Based on the background that has been described previously, an in-depth analysis is required, thus the identification of the problems in this research is:

1. What are the legal provisions regarding unwritten debts and receivables based on contract law?
2. How do judges consider the application of the principle of pacta sunt servanda to debt disputes based on unwritten agreements?

METHOD

This research is normative in nature with several approaches, namely the statute approach, conceptual approach, case approach, with the sources of legal materials used being primary and secondary legal materials (literature studies), with prescriptive analysis.

RESULTS AND DISCUSSION

What are the legal provisions regarding unwritten debts and receivables based on contract law?

Conceptually, the definition of an agreement is stated in Article 1313 of the Civil Code which states "an agreement is an act by which one or more parties bind themselves to one or more parties."[5]

The definition of debt is the same as a loan agreement, regulated and determined in Article 1754 of the Civil Code which states that, "A loan agreement is an agreement whereby one party gives another party a certain amount of goods that are used up due to use, with the condition that the latter party will return the same amount of the same type and condition."[6]

Making an agreement is basically not related to a particular form. The Civil Code does not systematically mention the form of an agreement. Each party entering into an agreement has the freedom to make a written or unwritten agreement. This is in accordance with the principle of freedom of contract. The principle of freedom of contract can be analyzed from the provisions of Article 1338 paragraph (1) of the

[5]Article 1313 of the Civil Code
[6]Gatot Supramono, Debt Agreement, Jakarta: Kencana Prenada Media Group, 2013, p. 9

E-ISSN : 2614-2244
ISSN: 2088-5288

Civil Code, which reads: "All agreements made legally are valid as law for those who make them." This principle is a principle that gives the parties the freedom to:[7]

a. Make or not make an agreement;
b. Make an agreement with anyone;
c. Determine the contents of the agreement, its implementation and requirements; and
d. Determine the form of the agreement, namely written or oral.

The principle of freedom of contract is one of the bases for the existence of unwritten agreements. Freedom of contract is an essential principle, both for individuals in developing themselves and in their personal and social lives, so that several experts emphasize that freedom of contract is part of human rights that must be respected. The principle of freedom of contract in this case provides freedom to the parties in forming agreements, whether written or unwritten agreements. This shows that there is no requirement or obligation for the parties to express their agreement in a written agreement. Freedom of contract is a principle that provides freedom for the parties so that there is no interference from either party in making an agreement.[8]

A valid agreement is an agreement that fulfills the requirements for a valid agreement according to Article 1320 of the Civil Code, namely:[9]

a. Agree those who bind themselves

   The first requirement for a valid agreement is agreement or consensus between the parties. Agreement refers to the agreement of wills between one or more parties. This agreement is the statement itself, as wills cannot be seen or known by others. There are five ways in which agreement of wills can occur:

   a) Perfect and written language;
   b) Perfect language orally;
   c) Imperfect language as long as it can be accepted by the opposing party;
   d) Sign language as long as it is acceptable to the other party;

[7]Salim HS, Contract Law: Theory & Contract Drafting Techniques, Sinar Grafika, Jakarta, 2017, p. 9
[8]Karman, Civil Law Study on the Use of Unwritten Agreements in Home Leases, Cross-border Vol. 2 No. 2 July-December 2019, p. 250
[9]Lia Amaliya, Legal Power of Debt Agreements Made in the Form of Private Deeds, Jurnal Justisi Hukum ISSN 2528-2638 Vol 7, No. 1, March 2022, p. 5

E-ISSN : 2614-2244
ISSN: 2088-5288

e) Silent or mute, but as long as it is understood or accepted by the other party.

b. Ability to make a contract

Capacity to act is the ability or capacity to perform legal acts. A legal act is an act that will give rise to legal consequences. Persons entering into an agreement must be competent and authorized to perform legal acts, as determined by law. A person competent and authorized to perform legal acts is an adult. The standard for maturity is 21 years of age and/or marriage. Persons who are not authorized to perform legal acts:

a) Minors (minderjarigheid)
b) Person placed under guardianship
c) Wife (Article 330 of the Civil Code). However, in its development, the wife can carry out legal acts, as regulated in Article 31 of Law Number 1 of 1974 in conjunction with SEMA No. 3 of 1963.

c. A certain thing

In the literature, it is stated that the object of the agreement is the performance (the main point of the agreement). Performance is what is the debtor's obligation and what is the creditor's right. Performance consists of: (1) giving something, (2) doing something, and (3) not doing something.

d. Halal cause

Article 1320 of the Civil Code does not define a permissible cause (orzaak). Article 1337 of the Civil Code only mentions prohibited causes. A cause is prohibited if it violates the law, morality, or public order.

Based on Article 1320 of the Civil Code, there is no requirement that an agreement must be made in writing. Thus, if the four conditions for a valid agreement are met, an agreement becomes valid and legally binding for the parties who make it. However, what strengthens the legal force of unwritten agreements is contained in Article 1338 paragraph (1) of the Civil Code, which states "All agreements made legally apply as law for those who make them."

Article 1338 of the Civil Code relates to the principle of Pacta sunt servanda, which requires parties to fulfill their obligations to each other in an agreement. Article 1338 of the Civil Code directs the understanding that every legal subject and other legal subjects can perform legal acts as if they were legislators by using an

E-ISSN : 2614-2244
ISSN: 2088-5288

agreement. This means that every subject can create law (in this case, contract law) just as legislators can.[10]

An unwritten or oral agreement is valid as long as there is no law that stipulates that the agreement must be in writing. Based on this description, an unwritten (oral) agreement also has legal force and is binding on the parties who made it. Therefore, if a breach occurs in an oral agreement, the oral agreement can be used as a basis for declaring someone in default.

Thus, basically, agreements that are carried out unwritten (orally) without being stated in a written agreement, either through a private agreement or an agreement with an authentic deed, are still recognized and valid based on the agreement of the parties, but have the disadvantage of being weak in terms of proof.

Analysis of Judges' Considerations in Applying the Pacta Sunt Servanda Principle to Debt Disputes Based on Unwritten Agreements

In an agreement, once an agreement has been reached, Article 1338 of the Civil Code automatically applies. Therefore, there is no justification for disobeying a mutually agreed-upon agreement, known as the principle of pacta sunt servanda.

Another term for Pacta Sunt Servanda is the principle of legal certainty. The Latin phrase “pacta sunt servanda” means a promise must be kept. This principle is one of obedience, meaning it must be adhered to in order to carry out the terms of the contract agreed upon by the parties. Pacta sunt servanda originates from the Roman praetorical doctrine known as pacta conventa sevabo, which roughly translates to “I honor or respect the agreement.” The idea of obedience is supported by the ancient Roman legal maxim pacta sunt servanda and the sacred commandment motzeh Sfassecha tismar, which means “You must keep your promise.” According to traditional contract law doctrine, agreements must be strictly adhered to and pacta sunt servanda respected. If one party defaults, they are considered to have committed a grave sin.[11]

[10]Muhammad Syaifuddin, Contract Law, Understanding Contracts from the Perspective of Philosophy, Theory, Dogmatics, and Legal Practice (Contract Law Enrichment Series), Mandar Maju, Bandung, 2012, p. 91

[11]Ridwan Khairani, Philosophical Basis of the Binding Power of Contracts. UII Law Journal, Special Edition Vol 18, 2011, p.

E-ISSN : 2614-2244
ISSN: 2088-5288

The principle of pacta sunt servanda states that parties are bound by the agreement they make, meaning they are obligated to honor the agreement they have made. Because an agreement is law for those who make it, its cancellation must obtain the consent of the other party with whom it was made. The law requires parties to carry out the agreement they have agreed to. Therefore, breaking or violating a promise is a form of violation of the law or a breach of the agreement, which is law for them.[12]

The legal validity of unwritten agreements is practically dependent on the evidentiary aspect. The parties must present sufficient evidence to convince a judge that the agreement actually occurred. Therefore, despite having a clear legal basis, the risk of dispute is higher for these types of agreements than for written agreements. Judges play a crucial role in assessing unwritten agreements, particularly in determining their validity and legal enforceability.

Regarding how the judge as a law enforcer decides on an unwritten debt agreement case, this can be seen in the Bondowoso District Court Decision Number 9/Pdt.G/2024/PN Bdw. The debt case between Prima Agus Darmanto as Plaintiff and Wiwin Sumanti as Defendant. Where the Defendant and the defendant's husband entered into an oral agreement regarding the debt to the Plaintiff with a total loan of Rp. 130,000,000 (one hundred and thirty million rupiah). Initially, the defendant and the defendant's husband (deceased) had made installment payments. However, after the last payment dated November 2, 2022, the defendant no longer made payments. In one of the rulings of Decision Number 9/Pdt.G/2024/PN Bdw. the judge gave a decision that declared the verbal agreement between the plaintiff and the defendant valid and legally binding and declared the defendant to have breached his promise/default.

In his considerations, the judge stated that based on the evidence submitted by the Plaintiff and the plaintiff had been able to prove the arguments of his lawsuit, the judge declared the oral agreement between the Plaintiff and Defendant valid and legally binding, so the Judge was of the opinion that the oral agreement was declared valid if it fulfilled the provisions of Article 1320 of the Civil Code. In order

[12]Henry Salim, The Principle of Pacta Sunt Servanda in the Implementation of Guarantees in the Procurement of Goods and Services, JIAGANIS (Journal of Public Administration and Business Administration) Vol. 4, No. 1, 2019, p. 7

E-ISSN : 2614-2244
ISSN: 2088-5288

for a valid agreement to occur, 4 (four) conditions must be met, namely: (1) Agreement of those who bind themselves; (2) Capacity to make an agreement; (3) A specific subject matter; (4) A cause that is not prohibited.[13]

Then the judge stated that regarding the debt case carried out by the Plaintiff and the Defendant, if this matter is relevant to the provisions of Article 1338 of the Civil Code regarding the principle of pacta sunt servanda which emphasizes that the parties must respect the substance of the contract made as if it were a law or in other words that an agreement made legally applies as a law for the makers, then the agreement is considered valid according to law and does not conflict with statutory regulations, therefore the petition has legal grounds to be granted.

In Decision Number 21/Pdt.GS/2024/PN Amb. There was an oral debt agreement between Jacobus Thirion as Plaintiff and Pahrul Idam Kaliky as Defendant in the amount of Rp. 484,187,600,- (four hundred eighty-four million one hundred eighty-seven thousand six hundred rupiah)

Based on the author's analysis in resolving cases of default in unwritten debt agreements contained in Decision Number 9/Pdt.G/2024/PN Bdw, the Judge was correct in issuing the decision.In this case, the judge assesses whether the agreementexisting ones have fulfilled the legal requirements of the agreement accordinglyArticle 1320 of the Civil Code. Because a valid and binding agreement is an agreement that meets the requirements stipulated by law. An agreement that does not meet the requirements will not be recognized by law even if it is acknowledged by the parties who made it, but it is not binding, meaning it is not obligatory to be implemented. Therefore, an agreement made unwritten or verbally is a valid agreement because it fulfills the elements of an agreement contained in the formulation of Article 1320 of the Civil Code, so that the parties who entered into an oral agreement are required to carry out the achievements of what has been agreed upon.

Once the agreement becomes a valid agreement, it will have legal consequences for the parties who made it. One of the legal consequences that binds the parties is Article 1338 paragraph (1) of the Civil Code which relates to the principle of Pacta sunt servanda. This article states that: "All agreements made legally apply as law for those who make them.

[13]Decision Number 9/Pdt.G/2024/PN Bdw

E-ISSN : 2614-2244
ISSN: 2088-5288

This provision contains several terms. First, the term "all agreements" indicates that the legislators indicate that the agreements in question are not only named agreements, but also unnamed agreements. Furthermore, it also contains the principle of partij autonomie. Second, the term "legally" means that the legislators indicate that the creation of an agreement must meet predetermined requirements and be legally binding on the parties, thus realizing the principle of legal certainty.[14]

The principle of pacta sunt servanda makes an agreement a legal basis for the parties, because a legally agreed-upon and executed agreement is binding on the parties like law. The parties who make the agreement must comply with the agreement as they would the law. The agreement serves as a guideline for the parties to act according to the provisions stipulated in the agreement. Furthermore, the agreement also serves as a guideline for resolving problems when disputes arise during the implementation of the agreement, and gives rise to legal consequences in the form of legal sanctions for parties who violate the provisions of the agreement. In other words, the parties have agreed to submit to and bind themselves to the provisions contained in the agreement they have agreed to.[15]

According to Herlien Budiono, the adage Pacta Sunt Servanda is recognized as a rule that stipulates that all agreements made by humans with each other, given the legal force contained therein, are intended to be implemented and ultimately enforceable. This legal principle also states that an agreement results in a legal obligation and the parties are bound to implement the contractual agreement, considered already given and never questioned again.[16]

The principle of pacta sunt servanda also states that judges or third parties must respect the substance of the contract entered into by the parties, as is the law. They may not interfere with the substance of the contract entered into by the parties.

Based on the purpose and function of the application of the principle of pacta sunt servanda, which provides automatic legal protection when an agreement is agreed upon by the parties. This can lead to a sense of security in the agreement made by

[14]Titik Triwulan Tutik, Civil Law in the National Legal System, Kencana, Jakarta, 2011, p. 228
[15]Anggitariani Rayi Larasati Siswanta, Application of the Pacta Sunt Servanda Principle in Standard Agreements Containing Exoneration Clauses Without Applying the Principle of Good Faith, Jurnal de Jure Volume 15 Number 1, April 2023, p. 48
[16]Muhammad Syaifuddi, Contract Law, Understanding Contracts from the Perspective of Philosophy, Theory, Dogmatics, and Legal Practice, Op Cit, p. 91

E-ISSN : 2614-2244
ISSN: 2088-5288

the parties. The protection of rights and obligations obtained from the principle of pacta sunt servanda is an absolute right for the parties to the agreement. The parties are obliged to obtain their rights when what is agreed upon has reached the agreed terms. A contract between the parties is binding on both parties as certain conditions must be met for the contract to be valid.[17]

The validity of an agreement as a law results in the agreement being the legal basis for the parties. The binding nature of an agreement also applies to unwritten agreements. Unwritten agreements are also legally binding for the parties who make them, as long as the unwritten agreement is a valid agreement as stipulated in Article 1320 of the Civil Code. The binding nature of an agreement, as stipulated in the principle of pacta sunt servanda, is focused on the implementation of the agreement, where the implementation of the agreement must not deviate from the agreed-upon clauses of the agreement, whether written or unwritten.

CONCLUSION

Making an agreement is basically not related to a particular form, this is in accordance with the principle of freedom of contract. The principle of freedom of contract can be analyzed from the provisions of Article 1338 paragraph (1) of the Civil Code. A valid agreement is an agreement that has fulfilled the requirements for a valid agreement in accordance with Article 1320 of the Civil Code. Based on Article 1320 of the Civil Code, there is no requirement that an agreement must be made in writing. Thus, by fulfilling the four requirements for a valid agreement, an agreement becomes valid and legally binding for the parties who make it.

Based on the author's analysis in resolving the case of default in an unwritten debt agreement contained in Decision Number 9/Pdt.G/2024/PN Bdw, the Judge was correct in giving the decision. Because a valid and binding agreement is an agreement that meets the requirements stipulated by law, namely based on Article 1320 of the Civil Code. After the agreement becomes a valid agreement, it will have legal consequences for the parties who made it. One of the legal consequences that

[17]Jabalnur, Ruliah, Oheo Kaimuddin Haris, Underhand Agreements Reviewed from the Principle of Pacta Sunt Servanda, Halu Oleo Legal Research | Volume 6, Issue 2, August 2024, p. 108

E-ISSN : 2614-2244
ISSN: 2088-5288

binds the parties is Article 1338 paragraph (1) of the Civil Code which relates to the principle of Pacta sunt servanda.

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