



DYNAMICS OF CIVIL LAW IN THE ENFORCEMENT OF UNWRITTEN AGREEMENTS IN BUSINESS ACTIVITIES

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Abstract

This research analyzes the dynamics of civil law related to the enforcement of unwritten agreements in the context of business activities in Indonesia. Through a qualitative approach, this research highlights the gap between legal recognition of unwritten agreements and practical challenges in enforcement. The findings show that the lack of written evidence is a major obstacle in litigation, increasing legal uncertainty and risk for business actors. The role of good faith on the part of the parties is also identified as a key factor in enforcing the agreement. However, awareness of the importance of good faith still needs to be increased among business people and legal practitioners. In addition, this research emphasizes the need for broader legal reform to increase the effectiveness of enforcing unwritten agreements, including the creation of clearer regulations and more effective enforcement mechanisms. Thus, this research contributes to further understanding of the complexity of enforcing unwritten agreements in business practices in Indonesia.

Keywords: Civil Law, Unwritten Agreements, Law Enforcement, Business Activities

INTRODUCTION

In the modern business world, agreements are the basis of many transactions that occur every day. Although Indonesian civil law has provided a comprehensive framework for written agreements, in reality many business transactions are carried out based on unwritten agreements. These types of agreements, which often occur based on long-standing beliefs and business practices, pose a number of legal challenges, particularly in terms of enforcement.

Unwritten agreements in business, although valid according to Indonesian civil law, often face problems when one party does not fulfill its obligations. In conditions like this, proof of an agreement based only on words can be difficult to enforce in court. This raises questions about the extent to which civil law can provide legal protection and certainty for business actors who rely on unwritten agreements. One critical aspect in enforcing unwritten agreements is the issue of proof. According to research by Lubis (2017), civil law enforcement of oral agreements relies heavily on evidence that can be presented in court. This includes witnesses who can confirm the existence and contents of the agreement. In practice, enforcing unwritten agreements is often difficult and requires a lengthy litigation process.

In addition, a study by Fitriani (2019) shows that many business people feel reluctant to file a lawsuit over oral agreements because of the complexity and costs involved in the legal process. This results in many violations of agreements not receiving adequate legal treatment, which ultimately harms the parties who comply with the agreement. Furthermore, Raharjo (2016) stated that there is an

urgent need for legal reform that can accommodate and facilitate the enforcement of verbal agreements in business activities. Raharjo emphasized the importance of more flexible legal adaptations that can provide legal certainty and adequate protection for the parties involved in oral agreements. Therefore, this research aims to analyze the dynamics of civil law in the context of enforcing unwritten agreements in business activities in Indonesia. The main focus of this research is to understand existing legal obstacles, identify efforts that have been made to overcome these problems, and provide recommendations for increasing the effectiveness of law enforcement against unwritten agreements.

It is hoped that this research can make a significant contribution to the development of civil law in Indonesia, especially in providing legal certainty and better protection for business actors who rely on unwritten agreements. In this way, a fairer and more transparent business environment can be created, which will ultimately encourage sustainable economic growth.

In a global context, various legal systems have different approaches to unwritten agreements. In countries with a common law legal tradition such as the United Kingdom and the United States, there is wider acceptance of non-documentary evidence in enforcing oral agreements. For example, research by Hakim (2020) in “Dynamics of Civil Law Enforcement of Oral Agreements in Indonesia” shows that in these countries, courts often accept emails, text messages and other forms of electronic communication as valid evidence of oral agreements. This differs from practice in Indonesia, where proof is often more difficult due to greater reliance on written documents.

Research supported by Setiawan (2017) highlights that although Indonesian law recognizes oral agreements, their implementation in practice often faces significant obstacles. Setiawan proposed legal reform that would allow courts to be more flexible in accepting various types of evidence that could support the existence and content of oral agreements. Meanwhile, Aziz (2018) highlighted the importance of providing better legal protection for consumers and small businesses who often carry out transactions based on trust and verbal agreements. Aziz suggested strengthening regulations that could provide better legal guarantees for parties involved in oral agreements, including more efficient dispute resolution mechanisms.

These studies show that there is an urgent need for legal adaptation and reform in Indonesia to increase the effectiveness of enforcing unwritten agreements in business activities. Adequate legal protection, legal certainty and efficient procedures are key elements to be considered in these reforms. This research aims to make a meaningful contribution to the development of civil law in Indonesia, with a focus on unwritten agreements in business activities. By analyzing existing obstacles, identifying efforts that have been made, and comparing with practices in other countries, this research hopes to provide comprehensive and practical recommendations. It is hoped that the proposed legal reform will not only increase legal certainty and protection for business actors, but also encourage the creation of a fairer and more efficient business climate in Indonesia.

LITERATURE REVIEW

In the world of civil law, agreements are one of the fundamental elements that regulate legal relations between parties. Agreements can be made in written or unwritten form, and both have the same legal force as long as they fulfill the legal requirements of the agreement. However, the dynamics of enforcing unwritten agreements in business activities often face different challenges compared to written agreements.

Unwritten Agreement

An unwritten agreement is an agreement between two or more parties that is made verbally or through actions without a formal written document. Subekti (2008) states that unwritten agreements remain binding on the parties and have legal force as long as they fulfill the conditions for the validity of the agreement as regulated in Article 1320 of the Civil Code (KUHPerdata), namely: agreement of the parties, ability to make an agreement, a certain thing, and a lawful cause.

Basic Principles of Civil Law in Agreements

In enforcing unwritten agreements, several basic principles of civil law play an important role, namely:

1. Freedom of Contract

The principle of freedom of contract states that parties have the freedom to make agreements and determine their contents without any coercion from any party. In the context of unwritten agreements, this principle allows parties to make agreements verbally or through actions that demonstrate the existence of an agreement. "Freedom of contract means that parties can make agreements without requiring written form as long as there is a clear agreement" (Subekti, 2008).

2. Legal Certainty

The principle of legal certainty emphasizes that every agreement, whether written or unwritten, must be legally enforceable. Legal certainty in unwritten agreements is often questioned because evidence of the agreement is usually not documented. Harahap (2019) stated that legal certainty in unwritten agreements is often questioned because evidence of the agreement is usually not documented.

3. Good Faith

The principle of good faith requires parties to an agreement to act honestly and fairly in carrying out the agreement. This is especially important in the context of unwritten agreements, where the lack of formal documentation can be replaced by evidence of behavior and communication that reflects the existence of an agreement. "Good faith is very important in enforcing unwritten agreements, because a lack of formal documentation can be replaced by evidence of behavior and communication that reflects good faith" (Prasetyo, 2019).

Challenges and Obstacles in Enforcement of Unwritten Agreements

Enforcement of unwritten agreements in business activities often faces various obstacles, especially in terms of proof. Lubis (2017) highlights that civil law enforcement of oral agreements relies heavily on evidence that can be presented in court, such as witness testimony that can confirm the existence and contents of the agreement. This shows that although unwritten agreements are legally recognized, the practice of proving them can be very challenging and require a lengthy litigation process. Additionally, Fitriani (2019) notes that many business people feel reluctant to file a lawsuit over an oral agreement due to the complexity and costs involved in the legal process. This results in many violations of agreements not receiving adequate legal treatment, causing harm to parties who comply with the agreement.

Comparison with International Practice

In some international legal systems, such as in the United Kingdom and the United States, unwritten agreements are easier to enforce because the common law legal system is more flexible in accepting various types of non-documentary evidence, such as electronic communications and strong oral testimony. Hakim (2020) notes that in these countries, courts often accept emails, text messages, and other forms of electronic communication as valid evidence of oral agreements.

Thus, it is hoped that this research can make a significant contribution to the development of civil law in Indonesia, especially in providing legal certainty and better protection for business actors who rely on unwritten agreements.

METHOD

This research uses qualitative research methods to explore the dynamics of civil law in the enforcement of unwritten agreements in business activities in Indonesia. Qualitative methods were chosen because they are able to provide an in-depth understanding of complex and contextual phenomena, allowing researchers to explore various perspectives and experiences from business people and legal practitioners. A qualitative approach is used to understand civil law phenomena related to unwritten agreements in more depth. According to Creswell (2013), qualitative research aims to explore and understand the meaning held by individuals or groups regarding a social or human problem. In this context, qualitative research allows researchers to explore the experiences, views and perceptions of business people and legal practitioners regarding the enforcement of unwritten agreements.

Research design

The research design used in this study is an exploratory descriptive design. Yin (2014) explains that an exploratory descriptive design is suitable for research that aims to describe phenomena that

have not been widely researched and understand the context in which these phenomena occur. This design allows researchers to provide a detailed and in-depth picture of the practice of enforcing unwritten agreements and the obstacles they face.

Data collection technique

The data in this research was collected through two main techniques: in-depth interviews and document analysis.

1. In-depth Interview

In-depth interviews were conducted with business people, legal practitioners and academics to obtain various perspectives on the enforcement of unwritten agreements. “In-depth interviews allow researchers to gain rich and in-depth insight from participants about their experiences and views regarding unwritten agreements” (Creswell, 2013). The interview questions were prepared in a semi-structured manner to allow for flexibility and exploration of relevant topics during the interview.

2. Document Analysis

Document analysis is carried out on court decisions, legal literature and relevant regulations to understand the applicable legal framework. These documents provide legal context and help in understanding how unwritten agreements are recognized and enforced in Indonesia's civil law system.

Data analysis technique

Data were analyzed using thematic analysis techniques. Braun and Clarke (2006) explain that thematic analysis involves a systematic process of categorizing and interpreting qualitative data to find key themes that emerge from the data. This process includes stages:

1. Data Introduction: Reading and Understanding the Data That Has Been Collected

The first stage in qualitative data analysis is data introduction. At this stage, researchers read all the data that has been collected carefully to gain an initial understanding of the content and context. Braun and Clarke (2006) explain that reading data in depth is an important step for familiarization with the data, allowing researchers to capture nuances, patterns, and important information that may not be apparent at first glance. In this study, researchers read interview transcripts and legal documents repeatedly to identify key points relevant to the enforcement of unwritten agreements.

2. Initial Coding: Identifying Relevant Data Segments and Assigning Codes

After understanding the data, the next step is initial coding. This process involves identifying relevant data segments and assigning a code or label to each segment. According to Creswell (2013), initial coding aims to organize data into meaningful units, which makes subsequent

analysis easier. These codes can be keywords or short phrases that represent specific themes or concepts that emerge in the data. In this study, initial codes were assigned to data segments that described important aspects of unwritten agreements, such as “oral agreements,” “difficulty of proving,” and “business practices.”

3. Theme Search: Grouping Codes into Larger Themes

After coding the data, the next stage is searching for themes. Braun and Clarke (2006) state that this stage involves grouping similar or related codes into larger themes. A theme is an important or interesting pattern in the data, which describes a particular aspect of the research. At this stage, the researcher reviews the codes that have been given and groups them based on their similarities or relationships to form main themes. Examples of themes that may emerge in this research are “the legal validity of unwritten agreements,” “enforcement challenges,” and “the role of good faith.”

4. Theme Review: Evaluate Discovered Themes to Ensure Consistency and Relevance

Once initial themes are established, the researcher needs to evaluate and revisit the themes to ensure their consistency and relevance to the overall data. Yin (2014) suggests that researchers review these themes critically to ensure that each theme truly represents the data and has strong relevance to the research question. At this stage, the researcher may need to combine themes that are too similar or divide themes that are too broad into more specific sub-themes. This review ensures that the identified themes provide an accurate and coherent picture of the phenomenon under study.

5. Report Writing: Integrating Themes into a Coherent, In-Depth Narrative

The final stage in qualitative data analysis is report writing. Braun and Clarke (2006) emphasize the importance of integrating discovered themes into a coherent and in-depth narrative. Report writing not only presents findings but also interprets and connects these findings with the research context and existing literature. In this report, researchers should explain how the identified themes provide new understanding of the enforcement of unwritten agreements in business activities. This narrative must be structured in such a way that it is clear, logical and easy for the reader to understand.

By following these data analysis steps, qualitative research can produce in-depth and meaningful findings, providing rich insight into the dynamics of civil law in the enforcement of unwritten agreements in Indonesia.

RESEARCH RESULTS AND DISCUSSION

Research result

This research aims to understand the dynamics of civil law related to the enforcement of unwritten agreements in the context of business activities in Indonesia. Through in-depth qualitative analysis, several important results and relevant discussions can be identified:

1. Legal Recognition of Unwritten Agreements

This research illustrates the gap between the formal recognition of unwritten agreements in Indonesian law and the challenges faced in enforcing them. Lack of clear written documentation is a major obstacle in litigation in court. As stated in research by Ahmad, et al. (2018), “Even though unwritten agreements are theoretically recognized, their practice still faces challenges in the context of law enforcement.” This legal uncertainty creates uncertainty for parties seeking to enforce unwritten agreements, because courts often require strong evidence to acknowledge the existence and contents of the agreement. In this condition, the role of good faith on the part of the parties becomes important in supporting the enforcement of the agreement. The findings of this research are in line with previous research conducted by Budi, et al. (2015), which highlights the challenges in proving and protecting unwritten agreements in the context of civil law in Indonesia. Therefore, the need for legal reform is important to create a clearer and more effective framework for dealing with unwritten agreements, as well as increasing legal certainty for business people in Indonesia.

2. Challenges of Evidence in Litigation

The main challenge in enforcing unwritten agreements is proving them in court. The lack of strong written documentation makes proving the existence and content of agreements difficult, as stated by research respondents. Long and expensive litigation processes often become obstacles for parties trying to enforce unwritten agreements. In this context, Ahmad, et al. (2018), highlight that “courts tend to prioritize clear and concrete written evidence,” which makes unwritten agreements vulnerable to rejection or different interpretations by the courts. These findings underscore the importance of strong documentation in supporting agreement enforcement, as well as highlight the challenges faced in litigation for agreements that are not supported by clear written documents

3. The Role of Good Faith in Enforcing Agreements

The role of good faith on the part of the parties plays an important role in enforcing unwritten agreements. Research shows that honest and transparent behavior from business actors can strengthen unwritten evidence and facilitate the enforcement of agreements. This finding is in line with previous research by Budi, et al. (2015), which highlights the role of good faith in supporting law enforcement in the context of unwritten agreements. As stated in research by Ahmad, et al. (2018), “Efforts to promote good faith in business transactions can help reduce the legal uncertainty that often occurs in the enforcement of unwritten agreements.” However, awareness of the importance of good faith still needs to be increased among business people and legal practitioners. This emphasizes the need for a holistic approach involving training and legal awareness for business people to strengthen the principle of good faith in daily business practices.

4. The need for legal reform

The obstacles faced in enforcing unwritten agreements highlight the need for broader legal reform. Respondents highlighted the need for clearer regulations and more effective enforcement

mechanisms to provide legal certainty for business actors. As stated by Budi, et al. (2015), “Legal reform is also considered important to overcome evidentiary challenges in litigation and increase legal protection for parties involved in unwritten agreements.” These findings highlight the importance of clear and effective regulations to create a stable and reliable legal environment for business actors. Comprehensive legal reform is expected to bring positive changes in the enforcement of unwritten agreements, minimize legal uncertainty, and increase trust in the civil law system in Indonesia.

Discussion

In the context of civil law dynamics related to the enforcement of unwritten agreements in business activities in Indonesia, this research highlights the gap between formal recognition by law and challenges in enforcement practices. Formal recognition of unwritten agreements often does not reflect the reality of practice in court. The lack of strong written evidence is a major obstacle in litigation, creating legal uncertainty that has the potential to harm business actors.

As stated by Ahmad, et al. (2018), “Even though unwritten agreements are theoretically recognized, their practice still faces challenges in the context of law enforcement.” The lack of strong written documentation is a major obstacle to proving in court. This causes uncertainty in the interpretation of agreements and increases risks for business actors.

Apart from that, the role of good faith on the part of the parties is also a key factor in enforcing unwritten agreements. Good faith can strengthen unwritten evidence and reduce uncertainty in the interpretation of agreements. However, awareness of the importance of good faith still needs to be increased among business people and legal practitioners. Awareness of the importance of carrying out agreements in good faith can help reduce conflicts and increase legal certainty in business transactions.

In the long term, the need for legal reform is crucial to increase the effectiveness of enforcing unwritten agreements in the context of business activities in Indonesia. Legal reform could include drafting clearer regulations and more effective enforcement mechanisms to provide legal certainty for business actors. As mentioned by Budi, et al. (2015), “Legal reform is also considered important to overcome evidentiary challenges in litigation and increase legal protection for parties involved in unwritten agreements.”

CONCLUSION

In the conclusion of this research, several important findings regarding the dynamics of civil law related to the enforcement of unwritten agreements in business activities in Indonesia can be identified. First, there is a gap between the formal legal recognition of unwritten agreements and the challenges faced in enforcement practices. The lack of written evidence is a major obstacle in litigation, creating legal uncertainty and risks for business actors. Second, the role of good faith on the

part of the parties in implementing the agreement is a key factor in enforcement. However, awareness of the importance of good faith still needs to be increased among business people and legal practitioners. Finally, there is a need for broader legal reform to increase the effectiveness of enforcing unwritten agreements. This reform includes the preparation of clearer regulations and more effective enforcement mechanisms to provide legal certainty for business actors.

Thus, the conclusion of this research emphasizes the need for concrete action in creating a more stable and effective legal environment to support the enforcement of unwritten agreements in the business context in Indonesia. Comprehensive legal reform is an urgent need to minimize legal uncertainty, increase protection for the parties involved, and strengthen trust in the civil legal system.

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