



Law Protection for Parties Due to Contract's Breach in Trade Made Verbally

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Abstract

The purpose of this study is to elucidate the criteria for determining when an oral sale and purchase agreement is in default, the factors that motivate parties to carry out an oral sale and purchase agreement, and the legal protections afforded to parties who are harmed by an oral sale and purchase agreement default. This study was prepared using the Juridical Empirical research method, which entails conducting an exhaustive investigation while conducting interviews and direct observations at the study site. This investigation is being conducted in the Labuhanhaji Barat, Meukek, and Sawang Subdistricts of the South Aceh District. To supplement this study's research, a literature review was conducted, which included a review of pertinent statutes, books, and articles that served as secondary sources. The findings revealed that defaults in the Labuhanhaji Barat, Meukek, and Sawang subdistricts of the South Aceh District occurred in one of two ways: either the pledged accomplishments were incomplete or completed late. South Aceh District's West Labuhanhaji, Meukek, and Sawang Districts continue to encounter conditions that facilitate the implementation of verbal agreements. These factors include customs, a belief in the achievement of mutual objectives, and the ease of verbal agreements. There are two (2) methods for parties affected by a breach of an oral purchase agreement to obtain legal protection: preventive legal protection and repressive legal protection.

Keywords: *Law Protection; Contract Breach; Trade; Verbal Trade*

Introduction

Humans are basically social beings, namely creatures who are predestined to live in society and need other humans to fulfill their material and immaterial needs. Of every activity carried out by the community with the aim of fulfilling the necessities of life, one of them is a legal relationship, namely a relationship between one community and another community that is regulated and has legal consequences such as agreements that give birth to agreements, which create obligations on one or more parties to the agreement.¹

Contracts are specifically governed by Book III of the Civil Code (henceforth referred to as the Civil Code) and adhere to an open system, which gives the public as much freedom as possible to enter

¹ Kartini Muljadi Gunawan Widjaja, *Perikatan Yang Lahir Dari Perikatan*, Jakarta: PT Raja Grafindo Persada, 2003, p. 36.

into agreements containing anything, so long as it does not conflict with public order and decency.² Usually, agreements are reached because business activities are highly complex and frequently wind up in court, such as a sale and purchase agreement based on the parties freedom of contract.³

The sale and purchase agreement is governed by Book III, Article 1457 to Article 1540 of the Civil Code. Regarding the sale-and-purchase agreement, the law gives the parties discretion in determining the rights and obligations that must be met. This conforms to the contract freedom principle outlined in Article 1338, Paragraph 1 of the Civil Code. Article 1338 of the Civil Code states that "every agreement between two parties becomes their law." A verbal agreement is deemed valid if it satisfies the terms of the agreement.⁴ The parameters of the agreement are governed by Article 1320 of the Civil Code, which states that a contract is valid and enforceable if it satisfies four conditions: agreement, competence, a specific subject, and lawful reasons.⁵

Both the seller and the buyer must fulfill all rights and responsibilities deriving from the agreement. In practice, however, one of the parties to a sale-and-purchase agreement does not always achieve the results he has promised; therefore, the law considers him to have breached the contract, causing the other party to suffer a loss. Therefore, the law specifies a variety of sanctions that can be imposed on parties in default. Due to the fact that the agreement between the parties in the sale and purchase is verbal or, in other words, unwritten, problems or difficulties may arise when determining when one of the parties can be deemed to have defaulted.

Research Methods

This research was conducted using a Juridical Empirical research method, which entails undertaking a comprehensive study by conducting direct observations and interviews at the research location.⁶ This investigation was conducted in three subdistricts of South Aceh Districts that are Labuhanhaji Barat, Meukek, and Sawang. To supplement this research, a literature review was conducted, including a review of relevant statutory regulations, books, and articles, which became secondary material for this study.

Result and Discussion

1. Determination of Contract Breach (Default) in the Execution of a Trade Agreement Made Verbally

The validity of an agreement can be determined by whether or not its form is predetermined. Regardless of its form, the agreement functions as a reference for the parties. It is also determined as a legally binding rule between the parties. Typically because it contains mutual agreements. It is identical to the sale and purchase agreement applicable in South Aceh Regency's Labuhanhaji Barat, Meukek, and Sawang Subdistricts, where the agreement is carried out verbally. The verbal agreement executed in the three (three) subdistricts is founded on an understanding between the buyer and seller. According to shop owner UD. Anggrek Biru, a sale and purchase agreement is executed based on an agreement with the

² I Ketut Oka Setiawan, *Hukum Perikatan*, Jakarta: Sinar Grafika, 2015, p.3.

³ Regina Veronika Wauran, "Kepastian Hukum Perjanjian Secara Lisan Menurut KUHPPerdata Pasal 1338", *Lex Privatum*, Vol. VIII/No. 4, p.87, 2020.

⁴ Yeni Afrila, Yanis Rinaldi, Suhaimi, "Tanggung Jawab Pengembang Dalam Perjanjian Bangun Bagi Dengan Akta Notaris", *Jurnal IUS Kajian Hukum dan Keadilan*, Vol. 7(3), Desember 2019, p. 455.

⁵ Billy Dicko, "Kekuatan Hukum Perjanjian Lisan Apabila Terjadi Wanprestasi", *Jurnal Privat Law*, Vol. IV, No.2, Fakultas Hukum Universitas Sebelas Maret, p.14, 2006.

⁶ Magister Ilmu Hukum Universitas Syiah Kuala, *Pedoman Penulisan Tesis Program Studi Magister Ilmu Hukum*, Darussalam, 2017, p. 9.

seller; if both parties agree on the terms of the products and the price of the goods, then both parties agree to execute the sale and purchase agreement.⁷

A verbal agreement is deemed valid if it complies with Article 1320 of the Civil Code. The results of the author's research indicate that business actors who execute verbal agreements are at least 30 years old; if referring to multiple laws and regulations, every business actor in 3 (three) research subdistricts is deemed capable of executing an agreement. Then, each agreement is carried out based on consensus. The goods that are exchanged have value and can be priced, and they do not violate statutory regulations or public order. Thus, the subjective and objective requirements of Article 1320 of the Civil Code have been met by the implementation of verbal agreements in three subdistricts of this study.

As previously stated, the validity of a pledge is determined by the Civil Code.⁸ A valid promise is contingent on an agreement, and the promise itself is stated in the agreement. Even though the Civil Code does not specify whether promises must be made orally or in writing, these requirements must still be met. In the event of a future breach, the terms of the parties verbal agreement are negligible or do not entail significant repercussions. The verbal agreement between the parties to the sale and purchase agreement makes it difficult to determine whether or not one party has defaulted on the other. According to the law of the contract, a person is in default if they do not carry out the performance as agreed,⁹ And if there is a default, there must be a violation of legally protected interests.¹⁰

The determination of default in the implementation of an oral sale-and-purchase agreement can be made by first ascertaining that the agreement was executed in accordance with Civil Code Article 1320. Referring to Article 1865 of the Civil Code states that anyone asserting a right or pointing to an event in order to confirm his own right or contest another's right is required to substantiate the existence of said right or event. When the other party demands that their rights under the sale and purchase agreement have been implemented, it can be said that the parties have verbally defaulted on the sale and purchase agreement's implementation.

As the proprietor of the Arjuna Shop, Arjuna (the buyer) was deemed to have defaulted on Khalidi (the seller), the owner of the Khalidi Shop. Orally executing the sale and purchase agreement for 7.6 tons of garlic at a price of IDR 182.400.000.00- has been agreed upon by both parties. Both parties agreed to make payments in installments, but Arjuna made an initial payment of IDR 100,000,000.00. The remaining payments are made in installments, but the due date and quantity of each installment are not specified.¹¹

Arjuna, the buyer, never paid Khalidi despite Khalidi's repeated reminders, despite the fact that it had been two (two) months since the agreement between the two parties was executed. Khalidi felt obligated to pay for his merchandise, so he requested that Arjuna pay the remaining balance for the garlic purchase. In this instance, it can be determined that Arjuna was in default because Khalidi attempted to enforce his rights under the verbal sale and purchase agreement that both parties had reached.

Article 1238 of the Civil Code states that a default occurs when there has been a prior agreement, and the parties have verbally or in writing agreed to the agreement in question; in other words, the parties agree to be bound by an agreement or agreement followed by the fulfillment of rights and obligations. On the basis of this concept, it can be stated that if there is no accord, there will be no default.

⁷ Zailiadi, Pemilik Toko UD. Angrek Biru, *Interview on Monday* 1 May 2023, at 07.23 am.

⁸ Aristyo, dkk. "Tanggungjawab Notaris Terhadap Akta PPJB dan Akta Kuasa Untuk Menjual Sebagai Jaminan Terjadinya Utang Piutang." *Kertha Semaya: Journal Ilmu Hukum* Vol. 9, No. 12, p. 2418, 2021.

⁹ P.N.H. Simanjuntak, *PokokPokok Hukum Perdata Indonesia*, Jakarta: Djambatan, 2009, p. 339-340.

¹⁰ J. Satrio, *Wanprestasi Menurut KUHPerdata, Doktrin, dan Yurisprudensi*, Bandung: Citra Aditya Bakti, 2012, p.8.

¹¹ Khalidi, Owner of Khalidi Store, *Interview on Monday* 1 May 2023, at 14.20 pm.

If the agreement is implemented in writing, determining the default will be straightforward. When the agreement is carried out verbally, however, the determination of default becomes more difficult to determine. In the Meukek District, it is customary for the vendor to charge the buyer for any unpaid balances before issuing a warning for such situations. This invoice is a form of notification that the customer has missed the payment deadline. If the buyer disregards the seller's first bill as a warning, the seller considers the buyer to have defaulted on the contract.¹²

In the field, specifically in the Districts of Labuhanhaji Barat, Meukek, and Sawang, defaults frequently take the form of only partially completing the promised achievements and performing the promised achievements too late. The two types of default are prevalent in three subdistrict locations.

For instance, as was the case with the owner of the Adek Shop, who was tardy in fulfilling his obligations, namely making the final payments after being repeatedly invoiced by the Khalidi Shop owner.¹³ This is considered a default because payments continue to be made, but they are late.

Taufik, the owner of Pak Haji's business, and Khalidi, the owner of the Khalidi shop, defaulted on the next form. It is assumed that Taufik, as the purchaser, will not pay the remaining fifty percent of the purchase price for the products acquired from Khalidi. After repeatedly invoicing Taufik, Khalidi issued a warning, but Taufik always disregarded it, so Khalidi believed that Taufik would no longer fulfill his obligation to pay off the remaining balance. On the premise of this incident, Taufik was deemed to have breached his contract with Khalidi because he only partially met his obligations.¹⁴

2. Motives for Parties to Execute Oral Sales and Purchase Agreements

Based on the results of the author's investigation in three (three) subdistricts of South Aceh Regency, namely Labuhanhaji Barat, Meukek, and Sawang, it has been determined that the following factors cause the parties to execute the sale and purchase agreement verbally:

a. Habit

The purpose of the agreement is to regulate the exchange of rights and obligations that are expected to occur in a proper, equitable, and proportional manner, per the parties' agreement. The regulatory system for contract law is an open system. This implies that everyone is free to enter into agreements, including those that have been regulated by law and those that have not. Inferred from the provisions of Article 1338, paragraph 1 of the Civil Code, which states, "All legal agreements apply as laws to those who enter into them." On the basis of an open agreement arrangement system, parties have the option of entering into agreements when purchasing and selling; this has been a common practice for a long time.

The customary principle states that an agreement is binding not only for what is expressly regulated but also for what is customarily observed. Thus, it can be said that things that have been going on for a long time in the implementation of the sale and purchase agreement have become a matter of common courtesy, regardless of the future ramifications of carrying out the sale and purchase agreement verbally.

b. Trust between Parties

In order to achieve the objectives of the agreement, the agreement must be carried out in good faith, and the parties must carry out the terms of the contract or performance based on firm trust or belief and goodwill. The parties must carry out the terms of the contract based on their firm trust or belief, or

¹² Ruslan, Owner of Ruslan Store, *Interview on Tuesday*, 2 May 2023, at 11.20 am.

¹³ Kasmita, Owner of Adek Store, *Interview on Wednesday*, 3 May 2023, at 14.50 pm.

¹⁴ Taufik, Owner of Pak haji Store, *Interview on Thursday*, 4 May 2023, at 10.10 am.

their mutual goodwill. The article's requirements stipulate that the parties must act in good faith in accordance with the agreement.

Good faith can be interpreted as a person's sincerity in carrying out a legal action, i.e. their interior attitude when carrying out a legal action. The implementation of an agreement must adhere to societal standards of decency or what is deemed acceptable. As with verbal agreements executed by the parties in the three subdistricts of this study, the parties regard the verbal agreement to be based on mutual trust that neither party will commit acts of default.

c. Easy

In the Districts of Labuhanhaji Barat, Meukek, and Sawang, oral agreements are regarded as the simplest method to reach a sale-and-purchase agreement. This is due to the fact that there is no need to sign an agreement and concur on its contents, namely determining the performance of each party. Long-standing oral agreements have also become the norm so that every accomplishment of the parties is presumed to be known by each executor of the agreement that has transpired.

3. Law Protection of Default in the Trade Agreement Made Verbally

Legal protection is the protection afforded to legal subjects, such as persons or legal entities, in the form of verbal and written preventive and coercive devices. Repressive legal protection endeavors to resolve problems or disputes by imposing sanctions on offenders or individuals who violate the law in order to restore it to its original state. Typically, repressive legal protection is administered in court. The purpose of preventive legal protection is to avert the occurrence of a legal dispute. Legal protection also refers to the protection provided to legal subjects through preventive or coercive legal instruments. Legal protection can be viewed as an example of the function of law, which is to provide certainty, benefit, and justice.

In the event of a breach of contract, the aggrieved party, in this case, the seller, may pursue preventive and coercive legal protection, including:

- a. The seller requires the consumer to pay the agreed-upon price for the agreed-upon item within a specified time frame. Article 1513 of the Civil Code stipulates that the buyer's primary obligation is to pay the agreed-upon price of the products by the due date. Nevertheless, if it is not specified at the time of contract formation based on Article 1514 of the Civil Code, the customer must pay at the location and time of delivery.
- b. The seller may attempt to negotiate (engage in deliberation) in order to recover his rights, namely payment for the price of products that have been transferred to the purchaser. In other words, sellers can obtain legal protection via alternative dispute resolution (outside of court).
- c. Taking legal action (in court) is the seller's last legal recourse as a party harmed by default. Disputes involving sellers can be resolved through legal channels. Attempts through the courts are the final option for resolving disputes in a sale-and-purchase agreement if efforts through non-litigious channels fail. This indicates that a judge will investigate the dispute in a series of trials. The administration of justice is carried out by the Supreme Court and subordinate judicial bodies. The benefits of resolving disputes through the courts are that court decisions have certain legal force, are final, create legal certainty with the win-or-lose position of the parties, and the losing party can be compelled to implement the decision if they do not wish to do so.

Conclusion

1. Determination of default in the implementation of verbal agreements in the West Labuhanhaji, Meukek, and Sawang Districts of South Aceh Regency is possible by first confirming the verbal

agreement in accordance with Article 1320 of the Civil Code, followed by a statement of rights from the seller that the buyer must fulfill in accordance with Article 1865 of the Civil Code. In the Labuhanhaji Barat, Meukek, and Sawang Districts of the South Aceh District, there were two default types: partially completing and performing the promised accomplishments late. The buyer is in default under both conditions if the vendor has issued a notice or subpoena demanding payment for the subject of the agreement.

2. In the West Labuhanhaji, Meukek, and Sawang Districts of the South Aceh District, the implementation of verbal agreements is still influenced by the following: First, the factor of habit. Considering things that have been going on for a long time in the implementation of the sale and purchase agreement to be common decency, regardless of the consequences that will arise in the future if the sale and purchase agreement is carried out verbally. Second, mutual trust will facilitate the accomplishment. The parties regard the verbal agreement to be founded on mutual confidence that neither party will commit acts of default. Thirdly, verbal contracts are simple to implement. A verbal agreement is considered the simplest form of a sale and purchase agreement, as there is no need to sign a document and concur on the agreement's contents, i.e., each party's accomplishments.
3. Legal protection for parties harmed by default in an oral purchase agreement consists of two (two) endeavors to obtain protection: preventive protection and repressive protection. Efforts are made to avoid litigation (outside of court) by determining the payment schedule in advance of implementing the agreement. Next, conduct negotiations (discussion) when the customer is deemed to have defaulted so that he fulfills his obligations immediately. Through litigation (court), repressive measures are implemented by filing a lawsuit with all supporting evidence..

Suggestion

1. It is suggested that parties who verbally execute a sale-and-purchase agreement complete their obligations within the typical timeframe. The participants to a verbal sale-and-purchase agreement must be aware of their respective rights and responsibilities in order to carry out the terms of the agreement. In conducting a sale and purchase, it is preferable for the parties to reach an agreement in writing.
2. It is suggested that the parties understand the legal ramifications of executing the sale and purchase agreement verbally, as well as their respective rights and obligations when executing the sale and purchase agreement verbally. The parties involved in the implementation of the sale and purchase agreement can determine the agreement in writing by specifying simple but firm contents by default so that the agreement remains simple to implement.
3. It is suggested to the parties that, when executing the sale and purchase agreement verbally, they can determine in advance the payment system and payment time in the presence of multiple witnesses. This is to prevent either party from defaulting on their obligations.

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