

# Determination of Non-Performance of Contract in an Orally Made Loan Agreement Without an Agreement on a Return Period in Terms of Contract Law

Lulus Purna Malintang

*Faculty of Law, Universitas Brawijaya*

*\*Corresponding author. Email: lintangluckyy@gmail.com*

## ABSTRACT

*The agreement is an activity that cannot be separated from life Public. Through community agreement very helpful in doing everything business-related activities. Whether buying and selling, borrowing, employment agreements, and other business ventures who need an agreement, people often make oral agreements because they are based on a belief system. The parties already trust each other even though the agreement is made unwritten and there are no other supporting letters. Nevertheless, a legal problem frequently occurs between the parties who make a Loan Agreement orally without an agreement on a return period, especially on the debtor in a state of Non-Performance of the Contract. The normative legal research method (normative juridical) collected the secondary data and a relevant statute to answer this legal problem. The result showed that the Oral agreement has legal force. The validity of the agreement is regulated in article 1320 of the Civil Code. One of the Non-Performance of Contracts elements is the non-fulfillment of Performance exceeding the specified return period. According to the principle of legal certainty, to determine the return period in an oral agreement, one must look at the available evidence, and special arrangements are needed to determine the return period of an oral agreement.*

**Keywords:** *Contract of Law, Non-Performance Contract, Oral Agreement.*

## 1. INTRODUCTION

The agreement is regulated in Article 1313 of the Indonesia Civil Code. The provisions of the article state that "An agreement is an act by which one or more persons bind themselves to one or more persons." According to Subekti that "An agreement is an event where one person promises to another person or where two people promise each other to do something".<sup>3</sup> While the loan agreement is regulated in the provisions of Article 1754 of the Civil Code, which states that "A loan agreement is an agreement where one party gives another party a certain amount of consumable goods due to use, provided that the last party will return the same amount with the same type and conditions."

In an agreement known as "Performance," the debtor must fulfill the definition of Performance in every contract. *Performance* is an obligation born of a contract either by law or by agreement. According to Article 1234 of the Civil Code, there are three forms of Performance. Namely, the contract is intended to give something, do something, or not do something. In order for the contract

to be reached and fulfilled by the debtor, it is necessary to know the nature of the Performance, namely:

1. Must be specific or determined, and If the Performance is not specified, the Performance will be canceled.
2. Must be possible, and this means that the Performance can be fulfilled by the debtor somewhat with all his efforts. If not, then the contract is canceled.
3. It must be allowed, meaning that it is not prohibited by law and does not conflict with decency and public order. If Performance is not prohibited, then the contract is canceled.
4. There must be benefits for creditors, meaning that creditors can use, enjoy, and take the results. Otherwise, the contract can be canceled.
5. Can consist of an action or a series of actions

Meanwhile, suppose one of the parties does not accomplish the Performance or the contents of the agreement/contract. In that case, it is called a non-

performance of the contract; what is meant by non-Performance of the contract is not fulfilling or failing to accomplish the obligations as specified in the agreement made between the creditor and the debtor. As Subekti's claims, a debtor is said to be negligent if he does not fulfill his obligations or is late in fulfilling them but not as agreed.<sup>4</sup> The Non-Performance of contract has been regulated in the provisions of article 1243 of the Civil Code, which states that

"Reimbursement of costs, losses, and interest due to non-fulfillment of an engagement, then begins to be required, if the debtor, after being declared negligent in fulfilling his engagement, continues to neglect it, or if something that must be given or made, can only be given or made, can only be given or made. In the elapsed time".

The form of the non-performance of the contract can be in the form of 1. not carrying out what has been agreed to be carried out. 2. Accomplished what has been agreed but is not the same as the contents of the agreement. 3. Late in performing the obligations of the agreement. 4. Doing something that was promised not to be done.

Agreements can be divided into two forms, namely agreements made orally and agreements made in writing. An oral agreement is an agreement made and agreed orally by the parties. At the same time, the written agreement is made in written form and can be in the form of an underhand deed or an authentic deed. There is no special arrangement that an agreement must be made in writing because both forms of the agreement have valid legal force. After all, Article 1320 of the Civil Code only stipulates that the validity of an agreement must meet four elements, namely agreement, skill, a sure thing, and a lawful cause.

In practice, people often make verbal agreements, especially lending and borrowing agreements, because they are so easy to do without making them in front of a notary. This verbal loan agreement is made based on the trust of the parties. A loan-borrowing agreement can be implemented and appropriately implemented if the parties can fulfill the loan-borrowing agreement regarding the terms and obligations of the parties, as agreed, without any of the parties being harmed in this loan-borrowing agreement. However, this can be a problem if the verbal agreement is not limited in time. If there is a default, this can harm the creditor and debtor because there is no legal certainty. The creditor can be harmed because there is no certainty in getting his achievements, while the debtor can also be harmed by the creditor who can benefit in collecting his achievements.

## 2. LEGAL PROBLEM AND METHOD

Soerjono Soekanto's benchmark in his discussion of normative legal research is from the nature and scope of the legal discipline, where *discipline* is defined as a teaching system about reality, which usually includes analytical discipline and prescriptive discipline, and legal

discipline is usually included in prescriptive discipline if the law is seen as only covers the normative aspect. Furthermore, it is also explained that the nature of legal dogmatics (the science of the rule of law and the science of basic understanding in law) is theoretical-rational, and the reasoning model used is logic-deductive. In contrast, the science of legal reality (legal sociology, legal anthropology, legal psychology, comparative law, and legal history) is theoretical-empirical, and the reasoning model used is inductive logic.

Normatively, default is regulated in article 1243, which in the provisions of the article it is explained that a party has defaulted if something that must be given or the gift is only given or given within a predetermined time, then one that has been determined, then the one that has been determined is in default. It is beyond the specified time; if there is a loan agreement verbally and the time limit is not agreed upon, while in Article 1243 apart can be said to be in default if it has exceeded the predetermined time limit, therefore the author is interested in researching with the aim of Non-Performance of Contract in an oral loan agreement without an agreed time limit in terms of the Agreement Law. Because of that, it is an interesting problem and needs to be researched about how to Determine Non-Performance of Contract in an Orally Made Loan Agreement without an Agreement on a Return Period in terms of Contract law. The normative legal research method (normative juridical) was used to collect the secondary data and a relevant statute to answer this legal problem.

## 3. RESULT AND DISCUSSION

The agreement is an activity that cannot be separated from people's lives. The community can be beneficial in carrying out all activities related to the economy, business, whether in borrowing, buying, selling, or any activity requiring an agreement. The provisions in article 1233 of the Civil Code states that "Every contract is either due to an agreement or due to law." Contracts born from an agreement can be made through an agreement by the parties to the agreement. The agreement will be born because of the agreement or approval of the parties involved. Agreement on the main things that are the object of the agreement is a form of freedom of contract as regulated in Article 1338 of the Civil Code.

According to article 1754 of the Civil Code concerning Borrowing and Borrowing, "Lending and Borrowing are" agreement with which one party give the other party a certain number of items that exhausted by use, with the condition that the latter party will return the amount the same from the types and circumstances the same."

The object of the loan agreement Borrowing in article 1754 of the Civil Code can be from goods exhausted due to use, as money. In the case of borrowing money, the party who binds himself to the agreement must comply with regulations in the debt agreement to which he

agreed. Elements contained aspects as bellow in a debt agreement or borrow and borrow money including:

- 1) The existence of the parties
- 2) There is the agreement
- 3) The existence of a certain number of goods
- 4) Loan repayments

After there was an agreement between the parties, an agreement arises, in which the parties must carry out their respective obligations to fulfill the rights between the parties. So that the result of the debt agreement is the emergence of Performance; namely, there are three kinds of Performance:

- 1) Doing something
- 2) Give something
- 3) And do nothing

In this case, creditors and debtors must understand each other's obligations. Namely, the debtor receives the money and is obliged to return the money by the agreed time. By the elaboration of Article 1243 of the Civil Code, an agreement or contract can be said to be in default if one of the two conditions stated, namely:

- 1) If the debtor, even though it has been declared negligent, still fails to fulfill the engagement; or
- 2) If something that must be given or done can only be given or done in a time that exceeds the specified time.

The statement of negligence regarding the implementation of a contract or agreement is regulated in Article 1238 of the Civil Code, which states that "the debtor is negligent if he has been declared negligent by a warrant or by a similar deed, or for the contract itself if this stipulates that the debts must be considered negligent by the lapse of the specified time. A Legal Notice or a letter of reprimand is a warning or reprimand so that the debtor excels at a time specified in the Legal Notice. The Legal Notice can be carried out three times. If the debtor does not undertake to carry out the Legal Notice 3 times, then the debtor can be said to be in a state of Non-Performance of Contract.

In addition to giving a Legal Notice, of course, there must be valid evidence that proves the Non-Performance of the Contract. So for the determination of the evidence that must be used, refer to Article 1866 of the Civil Code Jo. Article 164 HIR/284 Rbg. where the evidence consists of 1) Written evidence; 2) Witness; 3) Prejudice; 4) Confession; 5) Asseveration.

If there is a dispute between the debtor and the creditor in which the debtor is declared in Non-Performance of Contract, even though after being warned several times the debtor does not pay off the debt, then to prove that the debtor is in Non-Performance of Contract, it can be seen from the documentary evidence, because the value of the proof of the letter or written evidence,

especially the deed authentic is very high to perfect. This is regulated in Article 1870 of the Civil Code states, "An authentic deed provides between the parties and their heirs or those who have rights from them, a perfect proof of what is contained therein." The forms of documentary evidence include:

- 1) A letter of agreement signed by the parties
- 2) Letter of submission, proof of transfer, payment check, and others.
- 3) Warning letter or Legal Notice
- 4) Another letter as supporting evidence.

Legal certainty, according to Jan Michael Otto claim defines as the possibility that in certain situations:<sup>5</sup>

1. There are transparent (clear), consistent, and easy to obtain rules issued by and recognized because of the state (power).
2. Ruling agencies (government) apply these legal rules consistently and are also subject to and obedient to them.
3. Citizens, in principle, adjust their behavior to these rules.
4. Independent and thoughtless judges (judicial) apply law rules consistently when they resolve legal disputes.
5. Judicial decisions are concretely implemented.

Sudikno Mertokusumo, as mentioned by Asikin Zainal, claims<sup>6</sup>, legal certainty guarantees that the law must be implemented in a good way. Legal certainty requires efforts to regulate law in-laws made by parties who apply and are authoritative so that these rules have a juridical aspect that can guarantee the availability that the law works as a rule that must be obeyed.

The purpose of the current study is to determine Non-Performance of Contract in an Orally Made Loan Agreement without an Agreement on a Return Period in terms of Contract Law. From the data, it can be found a solution that in ensuring the implementation of the Oral agreement, among others, it is hoped that the parties can carry out good faith to avoid an act that deviates from the rules contained in the agreement. In making an oral agreement, it is necessary to specify explicitly when the deadline for the Return period is, if the provisions are not contained, The Return Period of an agreement can be seen from the substance of the agreement, the background of the agreement, then what is the object of the agreement used for. Then the determination of the return period can also be seen from the evidence owned by the parties in the agreement.

Several principles can be used to determine the usual maturity of an agreement based on the prospective debtor's character, personality, and behavior. The capacity or ability of the debtor to pay off, the capital or capital of a debtor that must be known, the condition of

the economy of the prospective debtor that must be analyzed. From the analysis of these principles, it can be determined that a contract must be returned. Thus it can also be determined when a person can be declared Non-Performance of a contract in an agreement. According to the principle of legal certainty, legal certainty is one of the legal principles that should be the basic principle of forming the legislation. Therefore, it is necessary to have an arrangement that regulates explicitly when an achievement must be returned, especially in an oral agreement that does not specify when the deadline for returning it is.

#### 4. CONCLUSION

An agreement is born when an agreement is reached between the two parties who are agreeing. Agreements made orally can be found in social life because of an agreement between the two parties, such as shopping activities in markets for daily needs. An oral agreement is still valid and has legal force, but if there is a dispute between the parties, the proof is difficult, especially in an oral agreement that does not have a deadline for the return period. Therefore, to avoid non-performance of the parties' contract, it is necessary to ensure certainty regarding the rights and obligations of each party.

So that, in a debt agreement, a written agreement is still needed, namely an underhand agreement, and it is still necessary to regulate the return period of an agreement from an addendum. The determination of the return period of an agreement can be seen from the background of the agreement and the background of the parties who are bound, which will be helpful for legal certainty and as valid and robust evidence if a problem occurs between the parties, according to the principle of Legal Certainty as well as the need for a unique arrangement that discusses or regulates oral agreements, especially arrangements regarding the usual return period for returns in order to guarantee legal certainty and provide a sense of security and comfort for the parties to carry out legal action.

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