



## DETERMINATION OF BREACH IN ORAL LENDING AGREEMENTS WITHOUT AGREEMENT OF RETURN TIME REVIEWED FROM THE AGREEMENT LAW

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### Abstract

*The agreement in its implementation constitutes a binding legally binding between one party to another party who enters into the agreement. Agreements can be made orally or in writing provided that they do not conflict with the provisions stipulated by laws and regulations. Sometimes in the implementation of the agreement, the parties sometimes do not carry out the contents of the agreement, so that in practice the legal system in Indonesia is known as a default or broken promise. In 2011, there was a dispute between Manginar Sagala and Absen Malau regarding the loan provided by Manginar Sagala to Absen Malau. In the loan agreement, it was agreed that Manginar Sagala would lend Rp. 137,000,000. - (one hundred thirty seven million rupiah) to Absen Malau where this agreement was made orally. However, until 2017, Absen Malau had no good faith intention to repay the loan and challenged him by saying that he would just put me in prison. On December 4, 2020 Manginar Sagala through his attorney sent a letter of warning/subpoena to Absen Malau but there was no response at all from Absen Malau. So that Manginar Sagala sued Absen Malau at the Medan District Court with a lawsuit that Absen Malau had defaulted (broken promise). What is the formulation of this research problem regarding the provisions regarding verbal loan agreements? As well as how is the determination of default in the loan agreement orally without an agreed return time in terms of the law of the agreement? The method used in this research is the normative legal method. The results of the analysis show that the provisions regarding verbal lending and borrowing agreements when viewed from the form of the agreement, whether written or oral or non-contractual, will not affect the binding strength of an agreement as long as the essence of the agreement made does not conflict with applicable legal principles.*

**Keywords:** *default, verbal agreement, return time.*

### 1. INTRODUCTION

The agreement in its implementation is a binding legally between one party to another party who makes an agreement, the agreement will then bind the parties to be able to carry out the achievements or agreements that have been agreed upon. Agreements can be made orally or in writing provided that they do not conflict with the provisions stipulated by laws and regulations. Article 1319 of the Criminal Code states that "All agreements, both those that have a special name, and those that are not known by a certain name, are subject to general regulations, which are contained in this chapter and the previous chapter", it can be seen that the agreements in the grouping divided into 2 (two) divisions, namely the named agreement, and the unnamed agreement. The agreement in its implementation perspective cannot be separated from the existence of clauses which form the implementation of the agreement in the form of achievements which can be grouped into 3 (three) types, namely the delivery of an item, doing something, and prohibitions or restrictions on doing something where the contents of this agreement can be determined by both parties. parties or can be determined by one of the parties to the agreement.

Sometimes in the implementation of the agreement, the parties sometimes do not carry out the contents of the agreement, so that in practice the legal system in Indonesia is known as a default or broken promise. In general, default or broken promises are divided into 4 (four) types of default, namely not doing what was promised or promised to do, carrying out what was promised but not as agreed, doing what was promised but being late in implementing it, or doing something which according to the agreement is not allowed. In a money lending agreement, sometimes in general the party who defaults is the recipient of the loan where the loan repayment is after the repayment period agreed by the parties. In 2011 there was a dispute between Manginar Sagala and Absen Malau related to the loan provided by Manginar Sagala to Absen Malau. In the money lending agreement it was agreed that Manginar Sagala would lend Rp. 137,000,000.- (one hundred thirty seven million rupiah) to Absen Malau in which this agreement was made verbally. However, until 2017, Absen Malau had no good faith intention to repay the loan and challenged him by saying that he would just put me in prison. On December 4, 2020 Manginar Sagala through his attorney sent a letter of warning/subpoena to Absen Malau but there was no response at all from Absen Malau.

In general, in a lending and borrowing agreement, a person has been declared in default if the maturity date stipulated in the agreement has passed. However, in the case contained in the Medan District Court Decision Number 424/Pdt/2021/PN.MDN, the parties entered into the agreement verbally and without agreeing on a due date for return at all. Based on the description above, the writer is interested in conducting research with the title "Determination of Breach in Oral Loan Agreements Without Agreement of Return Time in View from The Agreement Law".

## **2. RESEARCH METHODS**

This study uses a normative legal research method because the focus of the study departs from the blurring of norms in determining when a default is made by the parties to an oral lending and borrowing agreement without a time limit for returning. Normative legal research is legal research that examines written law from various aspects, namely aspects of theory, history, philosophy, comparison, structure and composition, scope and material, consistency, general explanation, and article by article. According to Soerjono Soekanto and Sri Mamudji, normative legal research methods or library law research methods are "methods or methods used in legal research conducted by examining existing library materials."

The primary legal material to be used in this research is the Civil Code. Secondary legal materials in this study consist of Medan District Court Decision Number 424/Pdt/2021/PN.MDN, books, law journals, online media, and scientific papers from legal circles. Tertiary legal materials have the meaning of "Materials that provide instructions and explanations of primary legal materials and secondary legal materials, which are better known as reference materials in the field of law, such as legal dictionaries and encyclopedias as guidelines in the preparation of scientific papers." The technique of collecting and processing legal material in this study is data collected using document studies. Document study is a record of past events. Documents can be in the form of writing, pictures, or monumental works of a person. Documentation study is "a data collection technique by studying documents to obtain data or information related to the problem under study". The data collected will then be arranged systematically in order to get a clear picture to answer the problem formulation.



### 3. RESULTS AND DISCUSSION

#### 3.1 Provisions Concerning Oral Borrowing and Borrowing Agreements

The agreement according to KBBI has the meaning "an agreement (written or verbal) made by two or more parties, each agreeing to comply with what is stated in the agreement", an agreement in English is known as an agreement, in the Black's Law Dictionary, an agreement means "A coming together in opinion or determination; the coming together in accord of two minds on a given proposition; in a law a concord of understanding and intention between two or more parties with respect to the effect upon their relative rights and duties, of certain past or future facts or performances" (A mutual agreement in an opinion or determination; something that comes together in two minds on a particular proposition; in law, an agreement between the understandings and intentions between two or more parties to respect the relative rights and obligations regarding a particular fact or performance at a given time). past or future). According to R. Subekti agreement is "an event where someone promises to another person, or where two people promise each other to do something".

In the perspective of civil law, the notion of agreement is contained in Book III of the Civil Code in Article 1313 which states that an agreement is an act by which one or more people bind themselves to one or more people. Sudikno Mertokusumo stated that an agreement is a legal relationship between two or more parties based on an agreement to give rise to legal consequences. Article 1338 paragraph (1) of the Civil Code states that all agreements made legally apply as laws for those who make them contain the principle of freedom of contract which emphasizes that all agreements are legally valid as long as they fulfill the conditions set out in Article 1320 of the Civil Code. The conditions listed in Article 1320 of the Civil Code consist of: (a) The agreement of those who bind themselves; (b) The ability to make an engagement; (c) A certain thing; (d) A lawful cause. The first condition is agreed and the second condition is competence is a subjective requirement related to the parties bound in the agreement, in the sense that if there is a breach then the contract remains effective until the contract is requested to be canceled by the district court judge. While the third condition is a certain thing and the fourth condition is a valid cause which is an objective requirement which if there is a violation will result in null and void. On the grounds that the third condition if violated will cause the agreement to be non-enforceable or impossible to execute, while the fourth condition if violated will violate the applicable laws and regulations. .

A loan or loan agreement is an agreement named as regulated in Article 1754 of the Civil Code "Lending and using out is an agreement, which determines the first party to hand over a number of items that can be used up to the second party on condition that the second party will return similar items to the third party. the first time in the same amount and condition". Article 1754 of the Civil Code in its elaboration explicitly regulates the rights and obligations of the parties in the lending and borrowing agreement. The first party to the agreement is the lender who has the obligation to deliver consumable goods to the borrower or second party, then the second party to the agreement or the loan recipient will return similar goods to the first party in the same amount and condition. It can be seen that because the lending and borrowing agreement has an object of agreement in the form of goods that are consumable in use, the first party, namely the lender, will not be affected by the loss or damage of the loan object when it has been handed over to the recipient of the loan as long as the recipient of the loan can return the loan object. with the same amount and condition previously at the time agreed by the parties to be able to return it.

An oral contract or verbal agreement is an agreement that has been agreed upon by both parties verbally. Unlike a written contract, an oral contract does not explain in detail the terms and

conditions that have been agreed upon in a document. However, like a written contract, an oral contract is still considered valid in the eyes of the law . An oral agreement is an agreement made by the parties with a verbal agreement, while a written agreement is made in written form (contract) either in the form of an authentic deed or a private deed. The legal strength of these two types of agreements actually does not lie in their form, namely whether they are written or verbal, because Article 1320 of the Civil Code stipulates that the validity of an agreement must fulfill the elements of agreement, skill, a certain matter, and a lawful cause. .

In contract law, there is Article 1338 paragraph (1) of the Civil Code which reads "all agreements made legally apply as laws for those who make them", this is in line with the principle of binding force in agreements or *pacta sunt servanda*. Legitimacy or invalidity of an agreement can be ascertained by testing it with legal instruments. The legal requirements for an agreement have been regulated in Book III of the Civil Code. Article 1320 of the Civil Code is the main legal instrument for testing the validity of an agreement made by the parties, because this article determines 4 (four) conditions that must be met for an agreement to be valid, namely:

1. Agree for those who bind themselves;
2. The ability to make an engagement;
3. A certain thing; as well as
4. A lawful reason.

Article 1320 of the Civil Code regarding the legal requirements for an oral agreement does not regulate the form of an agreement, so that in making an agreement, the public is free to determine the form. So that making an agreement in oral form is still valid, as long as it fulfills the legal requirements of the agreement listed in Article 1320 of the Civil Code . It can be concluded that the form of an agreement, whether written or oral or non-contractual, will not affect the binding strength of an agreement as long as the essence of the agreement made does not conflict with applicable legal principles.

### **3.2 Determination of Default in Oral Borrowing and Borrowing Agreements Without an Agreement on Repayment Time Judging from the Law of the Agreement**

Default or broken promise is an act in which one of the parties does not do what has been promised or does not carry out his contractual obligations either because of his mistake or because of his negligence. In Indonesia, the regulations governing default or broken promises are regulated in Book III of the Criminal Code in Article 1243 of the Criminal Code, which reads "Reimbursement of costs, losses and interest due to non-fulfillment of an agreement is required, if the debtor, even though he has been declared negligent, remains negligent in fulfilling that engagement, or if something that must be given or done can only be given or done within a time that exceeds the allotted time.

In 2011 there was a dispute between Manginar Sagala and Absen Malau related to the loan provided by Manginar Sagala to Absen Malau. In the money lending agreement it was agreed that Manginar Sagala would lend Rp. 137,000,000.- (one hundred thirty seven million rupiah) to Absen Malau in which this agreement was made verbally. However, until 2017, Absen Malau had no good faith intention to repay the loan and challenged him by saying that he would just put me in prison. On December 4, 2020 Manginar Sagala through his attorney sent a letter of warning/subpoena to Absen Malau but there was no response at all from Absen Malau.





The money lending agreement is regulated in Article 1754 of the Civil Code which states that: Consumables loan is an agreement, which determines the first party to hand over a number of items that can be used up to the second party on condition that the second party will return similar items to the first party in the same amount and condition. From the sound of Article 1754 of the Civil Code it clearly states that a loan agreement or borrowing money is an agreement between the lender or which in Article 1754 of the Civil Code mentions the first party with the recipient of the loan, the borrower or what is referred to as the second party, as the lender The loan will provide or deliver goods that can be used up, while the recipient of this loan will return similar items to the first party or lender in the same amount and condition. In agreements where the object is an object that is used up, it is difficult to return the object to its original state, therefore it must be replaced with another object of the same/similar value and of equal value. . In lending and borrowing agreements, generally the object that is used as a loan object is money. Even though the case contained in the Medan District Court Decision Number 424/Pdt/2021/PN.MDN does not explain a written agreement, according to the confessions of both parties, both the plaintiff and the defendant, the author can draw the conclusion that the agreement or verbal agreement was made by the parties who explained that the defendant on behalf of Absen Malau intended to borrow money from 2010 to April 2011 totaling Rp.137,000,000.- (one hundred thirty seven million rupiah) to the plaintiff on behalf of Manginar Sagala who until 2017 Absen Malau did not have good faith to return the loan,

In the case contained in the Medan District Court Decision Number 424/Pdt/2021/PN.MDN there is an obligation from the first party or the lender to provide Rp.137,000,000.- (one hundred thirty seven million rupiah) as a loan object for given to the second party or the recipient of the loan, while the second party or the recipient of the loan has an obligation to return the loan object in the form of money in the amount of IDR 137,000,000 (one hundred thirty seven million rupiah) to the lender. In this case the achievement of the first party has been made by giving a loan, while the second party has not fulfilled its achievements by paying the loan even though there is no written agreement or agreement that regulates the obligations of this second party.

Default is the implementation of obligations that are not fulfilled or broken promises or negligence regulated by the debtor either because he does not carry out what has been promised or even does something that according to the agreement cannot be done . The circumstances of the default itself can be in the form of not fulfilling the contents of the agreement at all, carrying out the contents of the agreement but being late, entering into the agreement but not as agreed, and doing something that is prohibited in the agreement. The provisions in Article 1243 of the Civil Code have explained that default or broken promise itself consists of two circumstances, namely if the debtor or the debtor has been declared negligent by a statement of negligence but still does not make an agreement, and if an obligation has been set due but has not been carried out until beyond that maturity.

In general, in a lending and borrowing agreement, a person has been declared in default if the maturity date stipulated in the agreement has passed. However, in the case contained in the Medan District Court Decision Number 424/Pdt/2021/PN.MDN the parties entered into the agreement verbally and without having promised a due date for any return at all, because the defendants are like brother and sister because the defendant's mother and the plaintiff's mother is both Br.Sitanggang so that in Batak custom the plaintiff and the defendant still have blood ties, therefore the plaintiff does not press the defendant too much. Then because the recipient of the loan does not return the funds.

According to the author, the loan agreement entered into by the plaintiff and the defendant orally still does not have a due date for payment or refund, so when viewed from Article 1243 of the Civil Code, this verbal loan agreement cannot be categorized as a default when viewed from a maturity perspective. However, from the author's perspective, he sees defaults in verbal loan agreements that do not promise a determination of the due date for returns between the plaintiff and the defendant. Negligent statements regarding an implementation of this agreement or agreement are regulated in Article 1238 of the Civil Code. The debtor is negligent, if he has been declared negligent by a warrant or by a deed of the same kind, or for the sake of his own engagement, that is, if this stipulates that the debtor must be considered negligent by the expiration of the time specified by a subpoena or a letter of reprimand is a warning or reprimand to the debtor achieves at a time specified in the subpoena, because the subpoena is a reprimand so that the debtor excels, the new subpoena has the nature of declaring that the debtor has not excelled. So basically, if in an agreement does not promise a due date for performance implementation.

#### **4. CONCLUSION**

Provisions regarding verbal lending and borrowing agreements when viewed from the form of both written and oral or non-contractual agreements will not affect the binding strength of an agreement as long as the essence of the agreement made does not conflict with applicable legal principles. Determination of default in the loan agreement verbally without an agreed return time in terms of the law of the agreement when viewed from the cases of Manginar Sagala and Absen Malau it can be concluded that Absen Malau has committed an act of default or broken promises in terms of a subpoena or letter of reprimand given by Manginar Sagala as the plaintiff and lender to Absen Malau as the defendant.

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