

BACK-DATED AGREEMENTS ACCORDING TO AGREEMENT LAW IN DELI SERDANG

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Abstract

The legal basis of a valid contract according to the Civil Code is regulated in Article 1338 of the Civil Code, namely that all formal contracts apply as law for the parties thereto. From this article it can be concluded that there is a principle of freedom of contract, but this freedom is limited by the law of coercion, so that the contracting parties must submit to the law of coercion. The legal consequences of a previous contract for the parties to the contract can be terminated by one of the parties who submits a request for cancellation, a demand for a refund or even a claim for compensation if misstatements and errors are found in the contract and the backdated date. The validity and date of withdrawal of physical evidence of the contract, it is necessary to first examine the conditions for the validity of the contract, which must meet the prerequisites (agreement of the parties), although Article 1321 of the Civil Code emphasizes the validity of the contract itself, which must not be the result of error, coercion or fraud.

Abstrak

Dasar hukum suatu kontrak yang sah menurut KUH Perdata diatur dalam Pasal 1338 KUHPerdata, yaitu bahwa semua kontrak formal berlaku sebagai hukum bagi para pihak di dalamnya. Dari pasal ini dapat disimpulkan bahwa terdapat asas kebebasan berkontrak, namun kebebasan ini dibatasi oleh hukum paksaan, sehingga para pihak yang berkontrak harus tunduk pada hukum paksaan. Akibat hukum dari suatu kontrak sebelumnya bagi para pihak kontraknya dapat diakhiri oleh salah satu pihak yang mengajukan permohonan pembatalan, tuntutan pengembalian uang bahkan tuntutan ganti rugi apabila ditemukan salah saji dan kesalahan dalam kontrak dan tanggal mundur. Keabsahan dan tanggal penarikan bukti fisik akad, maka perlu terlebih dahulu meneliti syarat sahnya akad, yang harus memenuhi prasyarat (kesepakatan para pihak), meskipun Pasal 1321 KUHPerdata menekankan keabsahan kontrak itu sendiri, yang tidak boleh merupakan hasil dari kekhilafan, paksaan atau penipuan.



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INTRODUCTION

A contract can only exist if there is an agreement made and taken together without any coercion and binding the parties, but it is different if the contract is made with a special retroactive date that is not permitted or prohibited by law. However, it should be noted that if there is a deviation from the valid signing date, the other party is affected or violates the provisions of applicable laws and regulations (for example, to avoid taxes. etc.). So, for clauses in this contract, which are implemented before the implementation date (*back date*), it is necessary to obtain a legal analysis.

According to the Great Dictionary of the Indonesian Language, the definition of a review is to study carefully, observe (understand), form an opinion, or form a judgment (after research, study, etc.). According to the legal dictionary, the word "juridical" comes from the word "yuridisch," meaning law. It can be concluded that legal analysis means to study carefully, to examine a concept or concepts (to understand them) from a legal perspective.

A contract according to Article 1313 of the Civil Code is: "a right that binds one or more parties, one or more parties." The agreement forms a contract between the two parties. In its form, the contract consists of a series of clauses containing verbal or written promises or promises. Regarding the use of retroactive dates in Indonesian contract law, although not prohibited by law, it should be avoided in the conclusion of the contract, because in general the definition of the date in the agreement aims to ensure. For example, in a contract valid for 3 years from the date of signing, only three years from the date of signing the contract. If using a signature *backdate* of 10 days, then the contract begins on *the backdate*.

RESEARCH METHODS

The type of research used is normative research. The research used by the author in compiling this thesis is descriptive research. The data used in this study can be found through library research. Qualitative data analysis was conducted in this study.

RESULTS AND DISCUSSION

1. Legal Basis for the Validity of Agreements According to the Civil Code

According to Article 1313 of the Civil Code, a contract is an act that binds one or more parties to one or more others. A contract is an agreement between two parties. Essentially, a contract consists of a series of verbal or written promises or commitments.

A contract is a set of statements of promises or possibilities, either oral or written. Based on this relationship, there is a (substantial) contract between the two parties, so the relationship between the contract and the contract is that the contract is the source of the contract, the stone in different sources. A contract is also called a contract, because both parties agree to do something, so the two terms, contract and agreement, can be said to be the same.

Contracts and design are conditions that, if any of them are not fulfilled, can result in the contract being terminated. Furthermore, certain legal elements or factors, such as objective conditions, are not included in a contract and are therefore "null and void." In other words, there is no agreement at all.

By creating a balance between the rights of the parties before the contract becomes a binding contract, the Civil Code provides a set of principles, guidelines or general standards, as well as limitations or indicators in the formulation and implementation of the contract until it finally becomes a contract that binds the parties, can be implemented or can be enforced. There are many principles in contract law, but in general there are 5 principles of contracts, namely :

- a. The principle of freedom of contract
- b. The Principle of Consensualism
- c. Principle of Legal Certainty (*pacta sunt servanda*)
- d. The principle of *good faith*
- e. The principle of *personality*.

Acceptance is one reason. A contract creates a contract, which creates obligations for one or more parties to the contract. An obligation imposed on a contractual debtor gives the debtor the contractual right to demand the performance of the agreement arising from the contract. The enforcement of the contractual terms agreed upon by the parties is the enforcement of the contract issued by the contract. If the creditor fails to perform the agreed contract, the creditor has the right to demand further performance of the contract that is

incomplete, incomplete or perfect or made contrary to or no longer contrary to the contract, with or without payment of interest, damages and priority by the creditor.

Contracts bind others. This means that a contract creates an obligation or satisfaction from one or more persons (the parties) to one or more persons (the parties) who are entitled to that satisfaction.

2. Legal Consequences of Backdated Agreements for the Parties

The use of dated or past-dated contracts, while not prohibited by law, should be avoided when concluding a contract, as contracts actually have a fixed date, I believe. For example, if a contract states "this contract is valid for 3 years from the date of signing," then the contract's duration is exactly three years from the date of signing. If the signature uses a 10-day backdate, then the contract begins on *the backdate*.

A backdated contract is a contract whose date is deliberately passed/passed/more precisely, the date is moved back (back date). Termination of the contract if it meets the provisions of Article 1320 of the Civil Code as intended, is not a problem because it is protected by the principle of freedom of contract which, if the contract is signed, applies to legal cases, the parties must maintain the principle of good faith.

The principle of good faith is stated in Article 1338 paragraph (3) of the Civil Code which contains an important provision, namely "agreements must be made in good faith". Positive recognition according to Article 1338 paragraph (3) of the Civil Code is part of contract law, which gives the arbitrator the authority to supervise the implementation of contracts, so as not to violate the law and justice. Regarding the application of the principle of good faith in contracts, it can be explained that when the application of the contract gives rise to inconsistencies or violations of truth. From the above understanding, it can be understood that the principle of good faith is the spirit that animates the parties who enter into an agreement. This principle is the principle of justice in contracts.

In general, contracts are legally binding for the parties making them, and are based on good faith as defined in Article 1338 of the Civil Code. Every legally created contract becomes law for the parties. A contract can be terminated by mutual agreement or for any number of reasons. Work must be taken seriously.

A contract is a legal relationship between a lawsuit and another real estate lawsuit. It should be noted that one attorney is entitled to the certificate, and so is the other attorney responsible for the agreed-upon valuation.

A contract is a unilateral promise, or one in which both parties promise to do something. A contract can also be defined as an agreement, a legal agreement between two or more parties, granting one party the right to perform a task or work, and the other party is obligated to do so. Generally, a contract states or agrees. If the promissory note is not fulfilled, the bankrupt party is said to have broken their promise/defaulted.

In a sale and purchase agreement there are two parties, one is called the seller and the other is called the buyer. The seller needs money and the buyer wants something, this type of contract is regulated in Book III Article 1457-1540 of the Civil Code. In the case of a sale and purchase agreement, the legal provisions are broad. the parties to determine the conditions that must be met. This is in accordance with the principle of the right to contract contained in Article 1338 paragraph (1) of the Civil Code. However, it is unreasonable that the parties are free to buy and sell contracts that can harm public policy, or violate the law, but this freedom must be based on the law of contract provisions in general, and in particular. sale and purchase agreements.

3. of Backdated Agreements in Proving the Material Truth of an Agreement

A contract is the most important instrument of an agreement. According to Subekti, a promise is "a legal relationship between two people or parties, in which one party has the right to demand something from the other, and the other party must comply with that demand."

Commitments can also be made from other sources cited by law. Therefore, there are promises born from "consensus" and there are promises born from "law." Promises born by law can be distinguished into promises born by law alone (Article 1352 of the Civil Code) and promises born by law due to a person's actions. Meanwhile, promises caused by law as a result of another person's actions can be distinguished into promises caused by accepted actions and promises caused by crimes (Article 1353 of the Civil Code).

A contract usually consists of several components, namely:

- a. There must be at least two people. The person acting as the subject of the contract can be an individual or a legal entity. If the party is an individual, they must be an adult and legally responsible. If the person entering into the contract is legitimate, the legal entity must meet the requirements for a legal entity, including possessing various assets, having a specific purpose, having a specific interest, and being an organization.
- b. The agreement between the parties, before or during the execution of the agreement, is free to be negotiated.
- c. There is a goal we wish to achieve, either individually or with another party, as the subject of the agreement. In pursuing their goal, both parties are bound by the principle that the goal must not conflict with the law, morality, or public order.
- d. There are things that have been done that must be done, both parties have rights and obligations, which are contradictory. If on one side produces results, on the other side are rights, and vice versa
- e. There are ways, contracts can be made orally or in writing. When a contract is made in writing, it is carried out under the current terms.
- f. Certain terms in a contract must contain certain limitations, because a valid contract is legally binding on the parties. For a contract to be considered valid, it must meet certain requirements.

On this basis, because the article does not refer to any specific provisions other than the contract made, it can be concluded that every contract is valid (in the sense of binding) if the agreement is stated in the contract.

Regarding the validity of a contract on the final date or a contract made during the final period of the sale and purchase and transfer of land rights carried out by means of a registrar's letter, it is necessary to examine the legal aspects of the conclusion of the contract. Article 1320 of the Civil Code contains the requirements for a valid contract, namely:

- a. A contract, or what is commonly referred to as the consensus of the parties, is the union of the will of one or more people with another party, born from one of the parties who intends to make a contract based on Article 1321 of the Civil Code. Every agreement is void if it is made due to error, coercion, or fraud. If a contract is born under coercion, then the signed contract is void by law as regulated in Articles 1324 and 1325 of the Civil Code.
- b. Caution is a requirement of a contract, although the principle of contract law states that everyone is permitted to enter into an agreement, except those declared incompetent, namely minors and dependents.
- c. Certain elements are conditions in the contract which are generally goods, tangible goods or intangible goods and must be defined and legible.

CONCLUSION

A. Conclusion

1. The legal basis for the Civil Code is regulated in Article 1338 of the Civil Code, which is the regulation that binds parties to all legal contracts. From this article, it can be concluded that there is a concept of contractual rights, but this right is limited by the law of compulsion, so that the parties must comply with the law of compulsion.
2. The consequences of a contract made at a later date for the parties are that the contract can be cancelled, for example if one of the parties requests to cancel the contract, requiring approval and even the right to claim compensation even if there are inaccuracies and errors found in the contract with a retroactive date.
3. The validity and backdating of a contract in the physical evidence of a contract, first need to be examined by the legal requirements of the contract, which must meet the initial requirements (agreement of the parties), although Article 1321 of the Civil Code places more emphasis on the legal aspects of the agreement itself, which must not occur as a result of supervision, coercion or fraud.

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