

JURDICAL REVIEW RESOLUTION OF TORT DISPUTES IN ARISAN ACTIVITIES

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Abstract— Gathering activities are often carried out by the surrounding community which are unknowingly recognized as a form of agreement. Such as the gathering activity in Margomulyo Village, Tuban Regency, where the practice of the gathering agreement is carried out verbally based on a mutual agreement which gives birth to rights and obligations to be fulfilled. Wanprestasi, namely when the rights and obligations are not fulfilled properly which results in losses for other parties. This research method, namely empirical law, is the law of reviewing or looking at itself from outside elements (law) based on social phenomena in the real world (empirical) that influence legal behavior both personally and institutionally in society and institutions. law. The approach used in this study is a qualitative approach. Legal materials in research are primary legal materials, secondary legal materials, and tertiary legal materials. The results of the study can be concluded that the arisan agreement is verbalhas the legal force to bind the parties who make it, so that if a default occurs it can be used as a basis for declaring someone to have committed a wanprestasi. Meanwhile, settlement of default disputes can be resolved either through litigation or non-litigation.

Keywords— Gathering, Wanprestasi, Dispute Resolution.

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I. INTRODUCTION

Arisan is part of the activities of some groups in Indonesian society, especially women. The arisan activity is an activity where we get together by collecting a certain amount of money or goods with the nominal and conditions agreed upon by the parties which are carried out regularly at a predetermined time, then after the money or goods have been collected there will be a lottery of names which will be declared as the winner in the arisan lottery, which is a very common arisan activity, which is usually carried out by women, both mothers and even young adults. Arisan is carried out by the parties concerned without them knowing the occurrence of the agreement as a form of agreement.

The agreement in the arisan activity uses an agreement based on mutual trust between fellow members or can be called an oral agreement. A rule that has been mutually agreed upon gives birth to rights and obligations, and rights and obligations must be fulfilled, considering that all members of the arisan have bound themselves to one another [1]. The relationship between one party and another party, which means that there has been a legal relationship, the legal relationship between the two that is mutually agreed upon in the social gathering is said to be a reciprocal legal relationship based on rights and obligations so that achievements arise.

Achievements in the provisions of article 1234 of the Civil Code are "Each engagement is to give something, do something, or not do something" [2]. Achievement in the agreement is an implementation of the things that have been agreed upon by both parties so that if the achievements are not fulfilled or when the promises as rights and obligations are not carried out properly which will cause losses to the other party, this is a form of default.

Defaults that often occur where each action must be proven and fulfill the elements of the default act itself, in this case the arisan manager has committed an act of default where the arisan manager does not fulfill some of his obligations such as not paying arisan contributions which results in giving money to the winner of the arisan does not match the agreed amount, uses the arisan contribution money for personal needs which should not be the full right of the arisan manager, does not carry out what has been promised based on the agreement, namely paying repayment money for members to the detriment of other arisan members. In this case, it may be constrained in terms of proof if it is sued in a civil manner with a default case because the agreement entered into by the parties is simple only on the basis of mutual trust in one another [3]. So that the members who feel aggrieved by the arisan manager ask for accountability and good faith to pay the redemption money, but until now the problem has not yet come to light, which is the background for the author to raise the title "JURIDICAL

REVIEW OF DEFENDANT DISPUTE SETTLEMENT IN ARISAN ACTIVITIES". Agreements in arisan still give birth to rights and obligations that must be fulfilled by each member and the management.

II. METHOD

The author uses empirical juridical research methods, or sociological legal research or also field research. Empirical or sociological legal research, is the law of reviewing or looking at itself from elements outside of itself (law) [4]. Namely based on social phenomena in the real world (empirical) that influence legal behavior both personally and institutionally in society and existing legal institutions. Law in the sense of reality (cent).

In this study, the author uses a qualitative data analysis method where in this method, the data processing process is in-depth with data from interviews, observations and supported by literature related to the research topic.

III. RESULT AND DISCUSSION

1. Legal Strength of Oral Agreements in Gathering Activities

Making an agreement is basically not bound by a certain form. The Civil Code does not systematically mention the form of the agreement. Each party that enters into an agreement has the freedom to make an agreement, in the sense of being free to make an agreement verbally or in writing. The principle of freedom of contract is a principle that gives freedom to the parties to:

- a. Making or not making an agreement;
- b. Enter into an agreement with anyone;
- c. Determine the contents of the agreement, its implementation and conditions; And
- d. Determine the form of the agreement, namely written or oral.

An oral agreement is an agreement that has been made by the parties in oral form with sufficient agreement by the parties. Article 1320 of the Civil Code is the main legal instrument for testing

the validity of an agreement made by the parties, because the article determines that there are 4 (four) conditions that must be met to enter into an agreement, namely:

- a. Agree for those who bind themselves; what is meant is the conformity of the will between the parties, namely the meeting between the offer and acceptance. This agreement can be reached in various ways, both written and unwritten.
- b. The ability to make an engagement; Proficiency is the ability according to law to carry out legal actions (agreement).
- c. A certain thing; For this agreement to be valid, it explains that there must be a clear object of the agreement. So an agreement cannot be made without a specific or clear object.
- d. A lawful reason. It is a requirement regarding the contents of the agreement which means that the contents of the agreement cannot conflict with the Law.

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 [5]. Making an agreement in oral form is still valid, as long as it fulfills the requirements for the validity of the agreement listed in Article 1320. Based on this description, an oral agreement also has the force of law to bind the parties who make it, so that if there is a default in the oral agreement it can be used as a basis for declaring someone defaulted. If a problem or dispute arises related to this oral agreement, especially in social gathering activities where the process of proving is very important in the civil court process. In civil court proceedings, the Civil Procedure Code applies. regarding 5 (five) types of legal evidence, which are regulated in Article 164 Herziene Inlandsch Regulation (“HIR”), namely:

- a. Letter;
- b. Witness;
- c. Predictions;
- d. Confession;
- e. Oath.

An oral agreement is valid evidence to be used before a court as long as the agreement does not conflict with the provisions contained in Article 1320 of the Civil Code. However, proof in the arisan agreement orally is required to include other evidence because if you only rely on witnesses in the verification process, it will be difficult to achieve a proof. In this case, submission of other evidence is crucial because with this evidence, the judge will be able to decide whether the agreement made orally has permanent legal force or not. The process of proving an oral agreement is very dependent on other existing evidence such as an example in an oral sale and purchase agreement, existing receipts to prove that a transaction has occurred or the presence of a witness who is present and witnesses the verbal agreement being made. The process of proving an agreement orally will be difficult without other supporting evidence.

2. Efforts to Settle the Default Dispute in Arisan Activities

According to Dean G Pruit and Jefferey Z, conflict is a difference regarding interests (perceived divergence of interest), that a belief in the aspirations of the conflicting parties is not achieved simultaneously. A conflict or dispute can sometimes be resolved peacefully, but sometimes a conflict creates continuous tension resulting in losses by the parties. So that in defending the interests of each party the parties do not exceed the limits of the prescribed norms, the act of vigilante (eigenrichting) must be avoided. If the parties feel that their rights have been harmed, then they can decide to find ways to resolve the dispute which they think can resolve the conflict that has occurred.

Basically every agreement made by the parties must be carried out voluntarily or in good faith, but in reality the agreements made are often violated [6]. Dispute resolution patterns can be divided into 2 (two), namely; 1) Alternative dispute resolution is a method that can be used in resolving non-litigation disputes including; consultation, negotiation, mediation, conciliation, expert judgment. and 2) Litigation in which the dispute resolution process is carried out by proceedings in court.

1). Non-Litigation Dispute Resolution.

Dispute resolution outside the court (non-litigation), namely dispute resolution through consultation, negotiation, mediation, expert judgment and conciliation. Everything that has been agreed upon is a joint decision of the parties to the dispute.

a) Consultation is an action that is "personal" between a certain party (client) and another party who is a consultant party, where the consultant gives his opinion to the client according to the needs and needs of his client.

- b) Negotiation is an effort to resolve disputes between parties without going through a court process with the aim of reaching a mutual agreement on the basis of more harmonious and creative cooperation.
- c) Mediation means of resolving disputes through a negotiation process to obtain an agreement between the parties assisted by a mediator.
- d) The mediating conciliator will act as a conciliator with the agreement of the parties by seeking an acceptable solution.
- e) Expert Assessment opinion of experts for a matter that is technical in nature and in accordance with the field of expertise.

Based on Article 6 paragraph (1) of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, it is stated that civil disputes or differences of opinion can be resolved by the parties through alternative dispute resolution based on good faith by excluding litigation in the District Court. The provisions of the laws and regulations indicate that basically the parties to the dispute have the right to resolve disputes that arise between them on their own without the need for proceedings in court.

Based on Article 6 paragraph (2) of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, it can be seen that basically the parties can resolve disputes that arise between them themselves in a direct meeting. Furthermore, the agreement regarding the settlement is set forth in the form of legal provisions regarding peace contained in Articles 1851 to Article 1864 Book III of the Civil Code.

2. Litigation Dispute Resolution

The dispute resolution process by the disputing parties can be carried out through litigation channels or state court institutions. This means that the dispute will be examined by a court judge in a series of trials. The administration of justice is carried out by a Supreme Court and judicial bodies under it within the General Court, Religious Court, Military Court, State Administrative Court, and by a Constitutional Court [7].

With this, if the selection of default dispute resolution is through the court, then the procedure and process follow the provisions in the Civil Procedure Code. The advantage in litigation dispute resolution is that court decisions have definite legal force, are final, create legal certainty with the win or lose position of the parties, and can be forced into implementing the decision if the losing party does not want to carry out the contents of the court decision. (execution).

Settlement of disputes on verbal arisan agreements that took place in the village of Margomulyo, based on the results of interviews with several members of the arisan, they made use of collective negotiation or deliberation efforts because the agreements made by the parties were verbal with an element of mutual trust so that if the dispute was resolved through litigation or being sued civilly under the pretext of default will be constrained in terms of proof because without strong evidence at trial, it is possible that the manager as the defendant will be free from all charges [8]. Given the losses experienced by the members of the arisan reached Rp. 712,500,000 (seven hundred and twelve million five hundred thousand rupiah) in a fairly large amount, through considerations by the parties where the members continue to defend their rights, of course they ask for accountability for compensation or their money back. So that in order to overcome these problems, the parties agreed to resolve the problem amicably by waiting for good faith from the manager [9]. With the agreement made by the manager with the members of the arisan, it is hoped that the good will of the manager to compensate for the loss can be fulfilled and goes according to the wishes of the parties so that the settlement or way out of a problem ends peacefully with the fulfillment of the rights and obligations of each party in implementation of the arisan agreement orally.

IV. CONCLUSION

a). Conclusion

Oral social gathering agreements on the basis of mutual trust between one another will give rise to rights and obligations among the participants. This agreement will have legal force if the arisan parties have agreed and committed themselves to hold arisan activities with a mutually agreed upon amount of money within a certain period of time so that it can be said that the arisan participants have basically entered into an agreement which gives rise to a legal relationship .

The legal relationship in the arisan agreement is carried out by the parties referring to the legal rules or provisions that have been agreed upon by the parties to the agreement, the terms of the validity of the agreement as referred to in Article 1320 of the Civil Code have been regulated regarding the rights and obligations of the parties. With this arrangement, the participants of the arisan are obliged to follow or comply with the applicable agreement. If one of the parties reneges on the agreement, there will be a default or broken promise between the parties. The occurrence of default in the arisan agreement where the party who feels

disadvantaged can of course take legal action in resolving disputes through litigation and non-litigation channels.

b). Suggestion

Prior to carrying out the Agreement in Arisan activities which was made in oral form on the basis of knowing and trusting each other, even though the agreement made is valid based on the legal terms of an agreement, this does not guarantee the consequences or losses that will be incurred in the event of default. Judging from the problems that occur, resolving disputes over agreements made orally is not so easy, so it has become a lesson for us so that before entering into an agreement, we must be prepared to accept the consequences in the future if a problem or dispute occurs.

To minimize disputes that arise, it would be nice for the community to be more careful not to be easily influenced even though the arisan is recommended by the closest person, because the arisan activity using an agreement in oral form will create a binding legal relationship for the parties so that it can result in huge losses if it occurs. breach of contract, because resolving a problem, let alone a problem in a more serious matter, would be very difficult to prove with this form of verbal agreement. Therefore, if an agreement has been obtained, the parties to the dispute should obey and do so in good faith as written in Article 1338 paragraph (3) of the Civil Code which reads "Agreements must be implemented in good faith".

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