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The Legality of Debt Agreement Via Whatsapp Messages

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ABSTRACT

Objective: This paper analyzes and studies the legal power of debt agreements through WhatsApp messages?

***Methodology*:** This research methods was juridical normative to analyze constitutional regulations or other legal sources that concern the legal basis of agreements. It uses a practical approach.

Results: The results showed that the debt agreement has fulfilled the required elements to make an agreement valid. It is a type of written agreement; thus, it can become written legal evidence in civil law trials in Indonesia

Purpose: The chat messages via WhatsApp indicate the creation of debt may become a piece of evidence in court. It is categorized as evidence of a written agreement. There are five kinds of evidencing instruments according to civil law procedures in Article HIR/284 RBG that is amended into Article 1866 of the Civil Law, namely written evidence, witness evidence, presupposition, confession, and oath. Thus, in the case of the debt agreement via WhatsApp messages, that message is categorized as a written agreement. It must be printed and legalized according to the legal stipulations.WhatsApp is a social media application. Thus, it is categorized as a shred of evidence in court according to Article 5 clause (1) of the Law No. 11 of 2008 on Electronic Information and Transaction as changed into the Law No. 19 of 2016 on the Change of the Law No. 11 of 2008 on Electronic Information and Transaction.

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***Novelty/Originality*: The debt agreement via application whatsap was categorized a new legal event.** The most significant novelty value from the results of this research is the legal status of new debt agreement methods, namely the debt agreements through WhatsApp messages. Whatsapp was a social media. the agreement through the WhatsApp messages is legally valid so long as it fulfills the requirements of an agreement as stipulated in Article 1320 BW and that the agreement is categorized as a written agreement. Thus, it contains legal consequences if a party violates that agreement. This agreement is still valid even without a piece of evidence in the form of an authentic letter, as an authentic letter is a deed letter that can be divided into an authentic deed (*Authentiek*) and underhand deed (*Onderhands*).

***Keywords**:* Law; Liberation; Transcendence; Prophetic, Moral.

INTRODUCTION

Nowadays, there is a significant increase in technological advancement each year. This technological advancement may be seen from the abundant technological facilities available, such as machines, mobile phones, laptops, or other sophisticated technologies which ease the life of human beings. These technologies also aid humans in increasing their knowledge of the world, including the usage of the Google application through mobile phones or laptops to find whatever they want. Thus, knowledge and intellect also experienced rapid advancement.

With this rapid technological advancement, the Indonesian saying that states, "The world is not as wide as a moringa leaf (i.e., it is not very wide)" should be changed into, "The world is as wide as a moringa leaf (i.e., it is wide)." This is because, through the rapid access of information in daily life, anyone may know of the events happening in other areas. For instance, someone in Indonesia can know about events happening in the U.S. (Syaifulloh 2021).

According to the study of the *Center of Innovation Policy and Governance* (CIPG) in 2021, internet penetration in Indonesia is currently at the highest rate in Asia, with a rate of 51%. A more phenomenal number may be seen from the number of cellular phone users. In 2016, it is predicted that there were 371,4 million active cellular phone numbers in Indonesia. This number is even greater than the projection of the Indonesian population, namely 261,89 million people.

Whether using the internet network or not, technologies in the form of application that serves as a communication tool, such as phone call or chatrooms in WhatsApp, ease humans in communicating. They even feel closer to their friends and relatives when using the video call or chat facilities from WhatsApp. Regarding the chat facility from WhatsApp, there is a business case in Pasuruan Regency, East Java, where Sisca with Indawati and Riyan (short name), made a debt agreement through WhatsApp messages. Sisca lent 50 million rupiahs to Indawati and Riyan for the latter’s business capital. Indawati and Riyan promised to pay it off after three months, but when the debt deadline came, Indawati and Riyan was unable to pay it off. Thus, Sisca continued to ask about the loan repayment, but Indawati and Riyan failed to repay with the reason that he had no money.

Sisca kept on asking and warned Indawati and Riyan that if he fails to pay, Sisca will bring this case to court by suing him. As there was no sign of repayment, Sisca contacted a lawyer Aditya Anugrah Purwanto to sue Indawati and Riyan to the Bangil Pasuruan Court (Case number: 7/Pdt.GS/2020/PN.Psr). Then, Sisca and the lawyer agreed to make a power agreement to resolve this case of debt.

From the background above, the writer takes two discussion cores that become the problems of this research on debt agreement through WhatsApp messages, namely: (1) Does the debt agreement that is made through WhatsApp messages have legal power as debt with a written agreement? and (2) How is the power of the debt agreement through WhatsApp Messages legal evidence in the face of court?

RESEARCH METHOD

This paper is legal argumentation research that focuses on the main characteristic that analyzes the implementation of a case equipped with legal argumentation/legal consideration made by law enforcers. It also analyzes the interpretation behind this implementation (Hoecke 2011). According to Marzuki, legal research is a process to find legal regulations, legal principles, or legal doctrines to answer legal issues one faces (Marzuki 2005). This is normative/doctrinal research, which positions the law as a normative system that consists of principles, norms, and rules of constitutional regulations, court rulings, as well as doctrines. The normative research is carried out by analyzing constitutional regulations or other legal materials that are related to the legal basis of agreements.

This normative research aims to analyze constitutional regulations or other legal sources that concern the legal basis of agreements. It uses a practical approach. A problem approach is a process to solve problems through determined stages to achieve the aim of research or paper (Muhammad 2004). Then, legal materials are sources of secondary materials, namely literary materials that contain the most current scientific knowledge or new knowledge on existing facts or ideas (Waluyo 2008). Use all of kind of data and approach, authors tried to resolve the research problem and analize finding in the research. Authors believe this data collection, analysis and the approach was suifficient to resove the research problem.

RESULTS AND DISCUSSION

The Legal Power of Debt Agreements through WhatsApp Messages

An agreement is one of the sources of binding. Agreements result in a binding that causes rights and obligations for the parties of that agreement, called performance. According to Article 1313 of the Indonesian Civil Code, an agreement is an action where an individual or individuals bind themselves to other individuals or individuals. This article stipulates that agreements make a person bind herself to others (Muljadi and Widjaja 2008).

Performance is an obligation that must be fulfilled and implemented by one of the parties (the debtors) to the other (the creditors) as stipulated in the agreement. The performance exists also in unilateral agreements. It means that the performance or obligation only exists in one party without the counter-performance or obligation of another (Mahdi, Sjarif, and Cahyono 2005).

According to an expert, Subekti, "An agreement is an event where one promises to the other or two people promise to do a particular thing" (Subekti 1987). Another definition is "A relationship between two people who carried out an agreement caused the emergence of binding in the form of rights and responsibilities of the two parties on a default. The binding is a set of words that contain promises or abilities that are spoken or written" (Syahmin 2006).

Then, according to Projodikoro, an agreement is a legal relation on material items between two parties, where one party promises to carry out or not to carry out certain things based on the agreement, while the other party demands its fulfillment (Prodjodikoro 1981). Then, according to Harahap, "An agreement (*verbintenis*) means a legal relation on wealth/material items that imposes a rightful power on a party to obtain a performance while simultaneously obliges the other party to fulfill that performance" (Harahap 1982). Next, according to Setiawan, "An agreement is a legal action, where one or more individuals bind themselves or bind each other to one or more individuals." Thus, an agreement is a legal action where one or more individuals bind themselves to other individual or individuals (Setiawan 2007).

Syahmin defines it as a relation between two people under an agreement that causes a binding in the form of rights and obligations of the two parties on a performance. A binding is a set of words that contain written or oral promises or abilities" (Syahmin 2006). According to Sudikno, an agreement is a legal relationship that is based on the word of consent to cause legal implications. Legal relations occur between one legal subject and another, where one has the right for a performance, while the other must fulfill that performance according to what has been agreed upon (Sudikno 2008).

Badrulzaman describes the definition of consent as "a requirement that is to be agreed upon *(overeenstemende wilsverklaring)* by some parties. The statement of the party that offers is called an offer *(offerte)*. While the statement of the party that accepts the offer is called acceptance *(acceptatie)"* (Badrulzaman 1994).

According to Rutten in Patrik, an agreement is an action that happens according to the formalities of existing legal regulations depending on the harmony of interest between two or more people, aiming to cause legal implications from the interest of one of the parties on the burden of the other or for the sake of the mutual interest of the parties (Patrik 1988).

Then, according to Article 1313 Staatsblaad No. 23 of 1847 on *burgerlijk wetboek voor Indonesie* (abbreviated BW), "An agreement is an action where one or more people bind themselves towards one or more people." Basically, the two parties must have a promise to bind themselves in an agreement. The word of *the agreement* must be given freely, even though the requirements of this word has been felt or are deemed as fulfilled. There may be an oversight where an agreement that has been made is basically not an agreement if the two parties regard as demanding the same thing while in reality, it is not the case (Meliala 2010).

The Indonesian civil law acknowledges legal certainty. Thus, the law enforcers must provide answers to the various legal problems in this country. The law which is supposedly a social, stately, and a national instrument and ideal are disabled by repressive power. It leads to the birth of repressive law, that submits to the interests of those in control. In such a condition, the law can no longer be hoped to do much to achieve a just and prospering society (Guntur 2001). In an agreement, the two parties must have a free objective to bind themselves and this objective must be realized. An agreement may be deemed invalid if it contains coercion, *(dwang)*, oversight *(dwaling),* or fraud *(bedrog)* (Subekti 1995).

The Principles of an Agreement

According to Scholten as quoted by Jaya, legal principles are basic thoughts in and behind each legal system in the form of laws or court decisions. These stipulations and legal decisions may be deemed as their description. Thus, these legal principles are an important phenomenon. They have a central position in positive law. Legal principles function to support legal development, to create harmony and balance, as well as to prevent overlapping between the existing legal norms. Legal principles also become the point of departure in developing the legal system and in creating legal certainty that applies in society (Jaya 2007).

Smits suggests that legal principles fulfill three functions. First, legal principles that connect the dispersed legal regulations. Second, legal principles function to seek the resolution of new problems that occur and to open coverage of new problems.

Legal principles also justify "ethical" principles that are substances of legal stipulations. These two functions derive the third function, that such principles may be used to "rewrite" existing legal teaching materials, to create a solution to the newly developing issues (Herlin 2008). Book III of the Indonesian Civil Code acknowledges five types of legal principles, namely the principle of the freedom to make contracts, the principle of legal certainty, the principle of consent, the principle of good intention, and the principle of personality.

The principle on “the freedom to make contracts” means that everyone has the right to make agreements, including debt, transaction, and cooperation agreements, etc. The application of this principle is guaranteed by Article 1338 BW, which states that "Every agreement that is created validly applies as law to those who made it." This certainly becomes a legal certainty to create an agreement. It means that parties are free to make any contract whether or not its stipulations exist. The parties are free to determine the contents of the contract. But this freedom is not absolute as there are limitations, namely, it cannot contradict laws, public order, and decency (Bintang and Dahlan 2000).

The principle on the freedom to make contracts is a principle that gives parties the freedom (Salim 2011): To make or not to make agreements, to make agreements with anyone, to determine the contents of the agreement, its execution, and its requirements, and to determine the form of agreement, namely written and oral.

The principle of consent means that consent is enough to create an agreement. That agreement (and the binding it creates) is born the second consent is made. To create an agreement, the harmony of interests that fulfill certain requirements is a valid agreement according to the law (Budiono 2001). Article 1320 clause 1 of the Civil Code states that an agreement is deemed valid if there is consent between two parties. The principle of consent stipulates that in general, an agreement is not implemented formally. But consent between two parties is enough. Consent is the harmony between the interests and the statements created by two parties (Imran n.d.).

The principle of legal certainty *(pacta sunt servanda)* is acknowledged as a stipulation that all agreements mutually created by humans are in essence aimed to be fulfilled. If it is necessary, it can be coerced; thus, it is legally binding. In other words, the agreements that are validly created applies just like applicable laws for the parties that create them (Article 1338 clause (1) and clause (2) of the Civil Code). It means that the parties must comply with what is mutually agreed upon.

The principle of good intention. Article 1338 clause (3) of the Civil Code states that agreements must be carried out with good intention. The “good intention” in that article is stated with the Dutch term “*te goeder trouw”*, which may also be translated as honesty. It can be divided into two, namely: (1) Good intention before making the agreement, and (2) Good intention in implementing the rights and obligations that occur from that agreement (Prodjodikoro 1979). Article 1317 of the Civil Code states that agreements can also be made under the intention of a third party.

This is if an agreement is made for oneself or if it is granted to another person – it contains such a requirement. Then, Article 1318 of the Civil Code does not only regulate an agreement for oneself, but also for one's heir or people who obtain rights from a person.

Apart from these five principles, the Legal Binding Workshop organized by the National Legal Construction Agency, Judiciary Department on December 17-19th, 1985 formulated eight legal principles of national agreement. These eight principles are the principle of trust, the principle of legal equality, the principle of balance, the principle of legal certainty, the principle of morality, the principle of decency, the principle of habit, and the principle of protection (Salim 2010). The meaning of these principles are as follows (Badrulzaman 1994):

First, the principle of trust. If someone creates an agreement with another party, the two parties must develop confidence between one and another that each party will fulfill their performance in the future. Without trust, an agreement cannot be made between the two parties. Trust allows the two parties to bind themselves, and this agreement has binding powers just like law.

Second, the principle of equal rights places parties in the same degree, without differences even though their skin colors, nationalities, beliefs, authorities, positions, and so on are different.

Third, the principle of morality. This principle is involved in a reasonable agreement, where one's voluntary action does not cause rights to her to demand the counter-performance from the party of the debtor. This is also seen in *zaakwaarneming*, where a person who carries out a voluntary (moral) action has the (legal) obligation to complete her action, as stated in Article 1339 of the Civil Code.

Fourth, the principle of decency. This is stipulated in Article 1339 of the Civil Code. It concerns stipulations on the contents of an agreement. Fifth, the principle of habit. This is stipulated in Article 1339 which is amended in Article 1347 of the Civil Code. It is viewed as part of an agreement. Sixth, the principle of legal certainty. Certainty as a legal figure must contain legal certainty. This certainty is uncovered from the binding powers of that agreement, namely as law for the parties. Seventh, the principle of balance is necessary to create protection and justice for the parties in an agreement. Eighth, the principle of protection. The interests of all parties involved in an agreement must be protected.

Civil law also acknowledges the principle, "The freedom to make contracts," meaning that everyone has the right to make contract agreements, including those of debt, economic transaction, cooperation, etc. The application of this principle is guaranteed by Article1338 of

BW, which stipulates that "Every validly created agreement apply as the law for those who made it." This surely becomes a legal basis to make agreements.

As stated before, there was a case of an agreement through WhatsApp messages. The writer will relate this to the requirements of a valid agreement according to the legal stipulations in Indonesia. An agreement is said to be valid if the two parties fulfill the elements of an agreement as stipulated in BW/ Civil Law. According to BW, the requirements for the validity of an agreement are as follows: the agreement they made binds them, the ability to create a binding, it regards a particular issue, and its causes are permissible.

The first two requirements are subjective as they regard subjects of an agreement. Meanwhile, the last two are objective agreements as they concern the object of the agreement. These requirements are described as follows:

First, there is consent between the two parties. Consent is the “harmony of the statement of interests between an individual or individuals and other parties.” The statements must be in harmony, as interests are invisible to others (Salim 2010). In the case of the debt agreement between Indawati and Riyan and Sisca, the two parties have made an agreement. Sisca has lent Rp.50.000.000 to Indawati and Riyan that must be repaid in three months.

Second, the ability to make agreements. Characteristics of people who are incapable to make agreements are regulated in Article 1330 of the Civil Code. Basically, everyone is capable to make agreements according to the stipulations of Law, Article 1329 of the Civil Code except those regulated in Article 1330 of the Civil Code. People are generally deemed as capable to carry out legal actions including making agreements if they are already an adult, namely 18 years of age and are married. Article 1330 of the Civil Code states that people who are deemed as incapable to make agreements are as follows: Minors, those who are under one’s mercy, and married women (with the issuing of Law No. 1 of 1974, this stipulation is no longer applicable) (Komariah 2017).

Third, the agreement must concern a particular issue. This issue may be defined as an object of the agreement. This object must clearly regard an issue or an item. Article 1333 of the Civil Code stipulates that an agreement must contain an item whose characteristics must at least be definable. It does not matter whether or not that item may be determined or counted. An agreement object is a performance that becomes the issue of the aforementioned agreement. This performance may be an action to give something, to do or not to do something. Article 1333 number 1 of the Civil Code stipulates the obligation for an agreement to have an object whose characteristics are definable. The amount can be determined in the future (Masjachan 1980).

Fourth, an agreement must have a permissible cause. The law does not define the meaning of cause *(orzaak, causa*). In this case, the cause is not something that encourages parties to make agreements, as the reason for the parties' motivation to make this agreement does not attract public attention. An impermissible cause is when the contents of an agreement violate laws, norms, or public order. Abdulkadir Muhammad describes that the legal impact of an agreement that contains impermissible things is void (*nietig, void*). There is no basis to demand its fulfillment in the face of a judge, as from the start, the agreement is deemed as. If the agreement is made without a cause (causa) it is deemed as non-existent. This is stated in Article 1335 of the Civil Code (Muhammad 2000).

From the description above, it can be understood that if a subjective requirement is not fulfilled, a party may demand the nullification of that agreement. But, if none of the parties expresses objections, the agreement is deemed valid. Meanwhile, if the objective requirement is unfulfilled, the agreement is legally void. These four requirements must be fulfilled by the parties, and if they are fulfilled, according to Article 1338 of the Civil Code, this agreement has the same legal binding power as a law. It means that this law is not binding as stated in Article 1353 of the Civil Code which states that a binding that is born from the law due to actions of some people are divided into a material action from a permissible action (*Zaakwaarneming*) and a binding born from law-abiding actions (Onrechtmatigedaad). Bindings that are born from the law is for example the obligation of fathers to provide for the children that are born from his wife (Kusumohamidjojo 2008).

It can be concluded that in the case of Indawati and Riyan and Sisca who made a debt agreement through WhatsApp messages, their agreement has fulfilled the elements of an agreement as regulated in Article 1320 of BW. Thus, their agreement is legally valid and that it creates rights and responsibilities.

There are two kinds of agreements in civil law, namely written agreement and unwritten agreement. The former is created by the parties using writing, while the latter is created orally (it is merely an agreement between the parties). The case of the debt agreement via WhatsApp messages is part of the written agreement, as the writing in the chat can be printed into a written form.

There are three types of a written agreement, namely underhand contract, an agreement witnessed by a notary (legalize signature), and an agreement in front of a notary/land deed officer using a notarial deed, which means that the deed is created in front of the authorized officer who has a perfect proving power.

From the explanation above, it can be concluded that the debt agreement via WhatsApp messages is an underhand written agreement. Thus, this agreement creates rights and responsibilities to the parties and that it has legal power.

Power of Legal Evidence in Court

The chat messages via WhatsApp indicate the creation of debt may become a piece of evidence in court. It is categorized as evidence of a written agreement. There are five kinds of evidencing instruments according to civil law procedures in Article HIR/284 RBG that is amended into Article 1866 of the Civil Law, namely written evidence, witness evidence, presupposition, confession, and oath.

Thus, in the case of the debt agreement via WhatsApp messages, that message is categorized as a written agreement. It must be printed and legalized according to the legal stipulations.

WhatsApp is a social media application. Thus, it is categorized as a shred of evidence in court according to Article 5 clause (1) of the Law No. 11 of 2008 on Electronic Information and Transaction as changed into the Law No. 19 of 2016 on the Change of the Law No. 11 of 2008 on Electronic Information and Transaction. The debt agreement through WhatsApp as an electronic information bind and is acknowledged as a piece of valid evidence to provide legal certainty on the Establishment of Electronic System and Transaction.

Moreover, in the case above, Indawati and Riyan confessed to having debt and that he was currently out of money. This confession strengthens the presence of Indawati and Riyan's default in the agreement with Sisca. A confession is a piece of evidence according to the stipulations of Article 164 HIR/284 RBG that is changed into Article 1866 of the Civil Law. Thus, the confession through the WhatsApp message is considered as a piece of evidence in Civil Law. It must be clearly stated that the admittance regards the admittance on the existence of debt and default. Default means the failure or neglect in fulfilling obligations as stipulated in an agreement between debtors and creditors (Salim 2008).

In conclusion, the agreement through the WhatsApp messages is legally valid so long as it fulfills the requirements of an agreement as stipulated in Article 1320 BW and that the agreement is categorized as a written agreement. Thus, it contains legal consequences if a party violates that agreement. This agreement is still valid even without a piece of evidence in the form of an authentic letter, as an authentic letter is a deed letter that can be divided into an authentic deed (*Authentiek*) and underhand deed (*Onderhands*).

An authentic deed is created in front of a general officer that according to the law is tasked to create such deeds (Subekti 1995). A default or a breach of agreement may happen either accidentally or on purpose (Miru 2007). A debtor is deemed negligent if he fails to fulfill his obligation or is late in fulfilling it so that it is not according to the agreement (Subekti 2007).

As stated in the adjudication with the cases number of7/Pdt.GS/2020/PN.Psr, the judge granted the lawsuit with the following considerations: The chat acknowledges the existence of a debt agreement between the two people, meaning that the agreement has been made and that it binds both parties; written agreement (printout of the WhatsApp messages); evidence of confession (from the WhatsApp messages); and evidence of the witnesses of that event.

Based on the adjudication above, the evidence is regarded as a piece of written evidence. Its presence is acknowledged by the judge. The evidencing process is already according to the stipulations of legal procedures, even though that evidence is not as strong as other evidence. Thus, according to the writer, in practice (according to the writer's experiences) there need to be other pieces of evidence to further strengthen it.

CONCLUSION

From the discussion above, the writer concludes that the debt agreement via WhatsApp messages in the case above has fulfilled the requirements of a valid agreement. Thus, it contains legal binding power. Then, the form is categorized as a written agreement, thus it contains legal power.

Then, that debt agreement via WhatsApp messages is a written agreement through an electronic transaction. Thus, it can be used as a shred of evidence (Article 5 clause (1) of the Law on Electronic Information and Transaction) in court, as it is categorized as a written agreement according to Article 164 HIR/284 RBG that is changed into Article 1866 of the Civil Law and the jurisprudence case number 7/Pdt.GS/2020/PN.Psr. Thus, the agreement is legally valid and it contains legal consequences for the parties who violate the debt agreement via WhatsApp messages.

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