

## Legal Certainty Of Guarantee Of Movable And Non-Movable Property In Oral Agreements To Lend Money

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Article Info	ABSTRACT
<b>Keywords:</b> Material Collateral, Borrowing and Lending, Verbally.	Money lending agreements can be made either in writing or verbally, with or without collateral as a form of trust between the parties. Although Indonesian law recognizes the validity of oral agreements based on the principles of freedom of contract and consensualism, in practice it often raises legal problems, especially regarding the legal certainty of the collateral provided. The purpose of this study is to determine the validity of money lending agreements made verbally in the Indonesian legal system, what are the forms of unlawful acts in money lending agreements made verbally with movable and immovable objects as collateral according to civil law, how is the legal certainty of the position and legal protection of the recipient and provider of movable and immovable objects in oral money lending agreements reviewed from. The method used in this writing is the normative legal research method, namely a method that refers to legal norms carried out by means of literature studies, this research is descriptive in nature, and the data is analyzed qualitatively. The results of the study found that oral money lending agreements are still recognized as valid in the Indonesian legal system as long as they meet the requirements in Article 1320 of the Civil Code, even though they have weaknesses in terms of proof. In its implementation, unlawful acts can occur as regulated in Article 1365 of the Civil Code when one party commits a violation such as misuse of collateral or withholding collateral even though the debt has been paid off. However, based on Supreme Court Decision Number 198K/Pdt/2019, legal certainty is still given to the parties through the protection of their rights, as evidenced by a court decision ordering the return of collateral and excess payments to the entitled party, thus showing that even though the agreement was made verbally, the principles of justice and legal certainty are still upheld by the court.
This is an open access article under the <a href="https://creativecommons.org/licenses/by-nc/4.0/">CC BY-NC</a> license 	<b>Corresponding Author:</b> Thesia Elestika Simanjuntak Universitas Pembangunan Panca Budi, Medan, North Sumatera, Indonesia <a href="mailto:thesiasimanjuntak@gmail.com">thesiasimanjuntak@gmail.com</a>

### INTRODUCTION

A money lending agreement is one form of agreement that often occurs in everyday life. In practice, money lending agreements are not only made formally through financial institutions, but are also often made informally or verbally.<sup>1</sup>This verbal money lending agreement has

greater legal risks compared to a formal agreement, especially related to the collateral used in the agreement.

Oral money lending agreements are often based solely on mutual trust between the parties involved. This can cause problems if one party does not fulfill its obligations in accordance with the agreed agreement. Without legally valid written evidence, the injured party will have difficulty in claiming their rights. In addition, oral money lending agreements are also vulnerable to the risk of document forgery or fraud. Irresponsible parties can take advantage of this situation to take actions that are detrimental to other parties.

The practice of borrowing and lending money informally or verbally has become an inseparable part of people's economic activities especially in the lower middle class community. Several factors that caused by, among other things, the difficulty of accessing formal financial institutions. such as banks, complicated requirements, and urgent need for funds and cannot be fulfilled through formal channels. Oral money lending agreements are often chosen because the process is simpler and more flexible, and does not require collateral large or complex ones, even though they carry greater risks. The problem The main thing in an oral money lending and borrowing agreement is located weaknesses related to the guarantee or collateral used in the agreement the.

These weaknesses can cause problems if the debtor does not fulfill his obligations in accordance with the agreement has agreed. Creditors will have difficulty in executing the guarantee to obtain payment for the debtor's debt. Transfer of collateral to third party by the debtor can also make it difficult for the creditor to claim his rights on the guarantee.<sup>5</sup> Another problem that may arise is the use of collateral that is not legally owned by the debtor in an oral money lending agreement, but belongs to another party not related to the agreement. The creditor may be considered to have committed an unlawful act in this situation and may be sued by the legitimate owner of the collateral.

Agreements made formally, such as through a banking financial institution, provide stronger legal certainty regarding the guarantee or collateral provided by the borrower, such as through the imposition of mortgage or fiduciary rights.<sup>7</sup> The imposition of a mortgage or fiduciary right provides preferential rights or priority rights to creditors in the payment of their receivables if the debtor defaults.

Oral money lending agreements often only base collateral on the agreement of the parties, without any strong and clear legal ties. The agreement only binds the parties who made it (the principle of *pacta sunt servanda*), but does not bind third parties who are not involved in the agreement. Problems can arise if the debtor defaults and the creditor has difficulty in executing the collateral that has been given. The difference in legal certainty in this guarantee also has implications for legal protection for creditors. Creditors in formal agreements have stronger legal protection because they can execute the guarantee through mechanisms that have been regulated by

law, such as auctions or *parate execution* (direct execution).<sup>8</sup> Creditors in oral agreements often have to go through longer and more complex legal efforts to obtain their rights, such as through civil lawsuits in court. One case of a loan agreement made verbally

with collateral of movable and immovable property was once handled by the North Jakarta District

Based on this decision, the Plaintiff again filed an appeal to the DKI Jakarta High Court with Decision Number 267/PDT/2018/PT.DKI. At the appeal level, the DKI Jakarta High Court overturned the decision of the North Jakarta District Court. The DKI Jakarta High Court granted part of the plaintiff's lawsuit by stating that there had been a valid loan agreement, where the Plaintiff as the borrower acted in good faith, while the Defendant as the lender acted in bad faith. The DKI High Court also declared the Defendant guilty of committing an unlawful act because he did not return the excess debt payment and ordered the Defendant to return the excess. The collateral was determined to be the property of the Plaintiff. Based on the decision of the DKI Jakarta High Court, the Defendant filed a cassation appeal to the Supreme Court with the Decision Number 198K/Pdt/2019. However, the Supreme Court rejected the Defendant's cassation appeal and upheld the decision of the DKI Jakarta High Court.

Reviewing Article 1131 of the Civil Code, it is stated that: "all assets of the debtor, whether in the form of movable or immovable objects, whether existing or future, shall be collateral for the obligations made by the debtor". In the case of Supreme Court Decision Number 198K/Pdt/2019, the Plaintiff has provided collateral in the form of movable objects (motor vehicles) and immovable objects (building use rights certificates) to the Defendant as a form of collateral for a loan.

Article 1132 of the Civil Code further states that: "these objects become joint collateral for all creditors who have receivables against the debtor, and the proceeds from the sale are divided according to the ratio of each receivable, unless there is a legitimate reason for priority". In this case, a problem arose regarding the legal certainty of the guarantee given by the debtor (Plaintiff) to the creditor (Defendant), because the loan agreement was made verbally without involving a notary. This can give rise to potential disputes if there is a third party who also owns its rights to the collateral.

Based on this, even though Articles 1131 and 1132 of the Civil Code have confirmed the existence of a general guarantee on the debtor's assets, however in the practice of oral money lending agreements, there are obstacles related to legal certainty regarding the guarantees provided. This can be seen from the case in Supreme Court Decision Number 198K/Pdt/2019.

## Literature Review

### Theoretical Framework

An agreement creates a binding force of agreement as if it were a law (*pacta sunt servanda*). Literally, *pacta sunt servanda* means that the agreement is binding or applies as a law to those who make it.<sup>9</sup> This principle is the binding force of the agreement. This is not only a moral obligation, but also a legal obligation whose implementation must be obeyed.

The principle of *pacta sunt servanda* is considered a fundamental principle because this principle underlies the birth of an agreement. The principle of *pacta sunt servanda* comes from Latin which means 'agreements must be kept', so that in positive law the formulation of the norm becomes: "every agreement made legally applies as a law for those who made".<sup>11</sup> The principle of *pacta sunt servanda* or also called the principle of legal certainty. This principle is

related to the consequences of the agreement. The principle of *pacta sunt servanda* is the principle that "judges or third parties must respect the substance of the contract made by the parties, as befits a law. They may not intervene in the substance of the contract made by the parties"

The principle of *pacta sunt servanda* relates to contracts or agreements made between individuals that contain the meaning of the agreement as a law for the parties who make it, and implies that denial of obligations in the agreement is an act of breaking a promise or default. The principle of *pacta sunt servanda* can also be said to be something sacred or an agreement whose focal point of the law of agreements is freedom of contract or what is known as the principle of autonomy.

### **Good Faith Theory**

The Good Faith Theory is one of the fundamental principles that is very important in contract law. This principle emphasizes the obligations of the parties involved in a contract to act honestly, fairly, and in good faith in carrying out the contract. The roots of this concept come from the concept of "bona fides" in Roman law, which was later adopted and further developed in common law and civil law systems throughout the world. In accordance with Canon law, the obligation of good faith is a universal moral norm which is Individual is determined by one's honesty and duty to God. Every individual must hold fast to or must obey his promises. Canon law scholars associate good faith with good conscience.

The theory of good faith has very significant and wide-ranging implications. The parties involved in a contract have an obligation to disclose relevant and material information related to the contract to each other. They must avoid any form of concealment of information that may influence the decision of the other party. The goal is to create transparency and prevent fraud or misuse of information between the parties. With the obligation to disclose honest information, the parties can make more informed contractual decisions and avoid information asymmetry that may harm one party.

The parties must treat each other fairly and not take actions that could harm the other party. This principle prevents exploitative, discriminatory, or arbitrary actions that can disrupt the balance of contractual relations. With fair treatment, it is hoped that a climate of mutually beneficial cooperation can be created and potential conflicts that are detrimental can be avoided. Furthermore, the parties must act honestly, reliably, and strive to fulfill their contractual obligations to the best of their ability. This prevents actions which may harm or prevent the other party from fulfilling the contract. This principle encourages the parties to carry out the contract in good faith, not with the intention of avoiding or ignoring contractual obligations.

The principle of good faith is used as a basis for assessing the actions and motives of the parties. Judges can consider whether the parties have acted honestly and fairly in resolving the dispute that arises. This principle provides guidance for judges in assessing whether the actions of the parties are in accordance with the standards of behavior expected in a contractual context.

Although the good faith theory is an important principle, there are some exceptions and limitations to its application. Contracts that are contrary to applicable laws or social norms

cannot be protected by the principle of good faith. In addition, there is a difference between subjective good faith (based on intention and belief) and objective good faith (based on applicable general standards).

The standard or benchmark for good faith in the implementation of a contract is an objective standard. In the concept of contract law related to the concept of acting according to the concept of good faith refers to compliance with the reasonable commercial standard of fair dealing, which according to the Dutch legislator is called acting in accordance with *redelijkheid en billijkheid* (reasonableness and equity). Judges and competent authorities must be able to carefully assess whether the parties have acted in accordance with the principle of good faith expected in a specific context. The application of the theory of good faith must consider the balance of interests between the parties and efforts to achieve optimal contractual justice.

Overall, the theory of good faith is a very important principle in contract law, which aims to create transparency, fairness, and mutually beneficial cooperation between the parties. This principle provides a moral and ethical basis for the implementation of contracts, and is a guideline for judges in resolving contractual disputes. Its proper application can encourage the creation of a healthy contractual climate and contribute to the achievement of the objectives of the law, namely realizing justice and legal certainty. The theory of good faith can be an analytical tool in answering the second problem related to the form of unlawful acts in money lending agreements made verbally with movable and immovable objects as collateral based on Supreme Court Decision Number 198K/Pdt/2019.

The theory of legal certainty has strong relevance to examine the third problem related to how legal certainty is provided for guarantees of movable and immovable objects in money lending agreements verbally based on Supreme Court Decision Number 198K/Pdt/2019. According to this theory, the law needs to fulfill the principle of clarity and firmness of norms so that individuals know for sure what actions may or may not be done and what the consequences are. Certainty is a characteristic that cannot be separated from law, especially for written legal norms. Law without certainty will lose its meaning because it can no longer be used as a guideline for behavior for everyone.

Certainty itself is referred to as one of the objectives of law. When viewed historically, discussions about legal certainty are discussions that have emerged since the idea of separation of powers from Montesquieu, law, because order is the essence of certainty itself. Order allows people to live with certainty so that they can carry out activities needed in community life.<sup>28</sup>In order to clearly understand legal certainty itself, the following will explain the understanding of legal certainty from several experts.

### **Overview of Agreements in Indonesian Civil Law**

A covenant is an agreement in which one person makes a promise to another party or two people promise to do something for each other. A contract can be said to be a legal relationship between 2 (two) or more people, where one has the right to payment/performance and the obligation to pay for the performance of the other party. granting or making a contract. Failure to do so will result in the defaulting party violating the promise/performance. According to Article 1313 of the Civil Code, the definition of an

agreement is: "An act by which one or more persons bind themselves to one or more persons. Van Apeldoorn, defines an agreement as a contract, where the contract is called a factor that helps form law, while Lemaire says that the contract determines the law.

A contract is an agreement between two parties. In the form of a contract, it is a series of statements containing oral or written promises or obligations. One type of law that plays a very real and important role in the business process is contract law. A contract is an act of one or more people, where one or more people bind themselves to reach an agreement. The contract creates a contract that creates obligations for one or more parties to the contract. The debtor based on the contractual obligation gives the creditor the right in the contract to demand the performance of the contractual obligation. The implementation of the contract provided by the agreement must be consistent with the performance of the achievements in the agreement agreed by the parties. If the creditor does not implement the agreed contract, the creditor has the right to demand that the contract is not implemented, in whole or not implemented at all, or vice versa. with or without the agreed losses and costs incurred in the form of credit or compensation in the form of interest.

In general, a contract is a word derived from the root word "promise" and is understood as an agreement or consent between two parties on the will, desire or decision of both parties. An agreement is an event that is first expressed by one party to another party or that states or regulates a contract or mutual agreement between the two parties. From this agreement, something binding can arise between the two parties.

Salim HS explained that a contract is a legal relationship between one subject and another in terms of property, where one legal subject has the right to obtain and the other legal subject is obliged to show what they have achieved in accordance with what has been agreed upon. This understanding can be further explained with the understanding that a person is bound to another person because the person concerned is legally bound by a contract or law.

Based on all the definitions of the contract above, the contract appears as a series of words containing promises or implementation, both verbally and in writing. From this relationship arises an agreement (abstract understanding) between the two parties, thus the relationship between the contract and the agreement that the contract is one of the sources of the contract besides other sources. An agreement is also called an agreement because two parties can say the same word, both words can be the same, namely agreement and agreement. Article 1338 of the Civil Code states that all agreements (contracts) made legally are legally binding on those who make them. From this article it can be concluded that there is a principle of freedom of contract, but this freedom is limited by mandatory laws, so that the contracting parties must obey the mandatory laws.

#### **Legal Basis for Oral Loan Agreements.**

More or less, people agree to loan agreements money for business capital through a private deed. In this case, of course, private letters may be used as evidence as regulated in Article 1875 of the Civil Code because they have perfect evidentiary power as with authentic deeds as long as the letter or deed can be recognized by the parties. In addition to being able to provide positive from making the private deed, it also has negative aspects where the

borrowing party can deny or not admit that the agreement letter does not exist or was not signed by him. Based on Article 1876 of the Civil Code, if the existence, content or signature of the borrowing party from a private deed can be denied or denied by the opposing party.

In fact, the requirements for the validity of an agreement in a contract or agreement made must meet as regulated in Article 1320 of the Civil Code. By fulfilling the four requirements for the validity of the agreement, an agreement will be valid and legally binding for the parties who make it. Making a written agreement (contract) is necessary to provide legal certainty for the parties.<sup>73</sup> And also the rights and obligations of the parties, namely between the lender and the recipient of the loan agreement, which are regulated in Article 1759 to Article 1764 of the Civil Code. The rights of the lender are to provide the borrowed goods for use up to the borrower. The right of the borrower is to receive the goods borrowed from the lender.

The obligation of the lender cannot request the return of the loaned goods before the time specified in the agreement. The obligation of the borrower is to return the borrowed goods in the same amount and condition and at the time agreed upon based on Article 1763 of the Civil Code. If he is unable to fulfill his obligations, he is required to pay the price of the goods he borrowed, on the condition that he must pay attention to the time and place where the goods are, in accordance with the contract based on Article 1763 of the Civil Code.

In civil procedural law, written/letter evidence is regulated in Articles 138, 165, 167 HIR/Articles 164, 285, 305 Rbg and Articles 1867-1894 of the Civil Code. In principle, in civil matters, written evidence is the preferred evidence or the number one evidence compared to other evidence. Agreements made in writing can be in the form of a deed. In general, a deed is a signed letter containing information about events or matters that are the basis of an agreement. Deeds are divided into 2 forms, namely: Authentic Deeds and Oral Deeds.

An authentic deed is a deed made by an authorized public official, while an oral deed is a deed made by the parties without the intermediary of an authorized public official. We already know that an oral deed is a deed made by an authorized public official. Oral is a deed made by the parties themselves upon agreement of the parties without any intervention from an authorized public official. in this case a notary. For example, a debt agreement, a lease agreement, a receipt and so on. For the making of a deed orally, the presence of witnesses who witness the agreement orally signed and/or thumbprinted by the parties concerned in the agreement is very important, because their presence will be very meaningful if in the future a problem occurs and/or one of the parties denies the contents and provisions contained in the agreement or its signature so that it can be used as a witness in court. Therefore, the witnesses who witness the agreement made orally by the parties concerned can determine whether or not the oral agreement is valid.

The power of proof of an oral deed can be absolute if the deed is legalized or legalized by a notary. Oral deeds that are legalized by a notary are generally made by the parties concerned with the agreement of both parties, while the signatures and/or thumbprints are carried out before a notary. In an oral deed made by the parties themselves and signed or thumbprinted before a notary, responsibility for the contents and provisions contained in the agreement lies with the parties who made it, while the notary's responsibility is limited to the

truth of the signature or thumbprint and the validity of the letter. In the oral deed, it is true that the signature or thumbprint of the interested party is based on the identification owned by the parties in the form of KTP and others.

From the articles that have been explained above, oral deeds are very important/very necessary in society. Because not all agreements made use authentic deeds. For example, Article 1851 of the Civil Code, which essentially requires that a peace agreement is only valid if made in writing. This means that for a peace agreement, at least it must be proven by an oral deed. Based on Article 1867 of the Civil Code which states "proof by writing is done with authentic writings or with oral writings". With this article, an oral deed is also needed. However, an oral deed does not have perfect legal force. Oral deeds are recognized in the Civil Code.

Article 1320 of the Civil Code stipulates 4 conditions for the validity of an agreement. Judging from the 4 conditions of validity referred to, it can be interpreted that a deed that is not made by and before a PPAT is still valid as long as the parties have agreed and fulfilled the elements in Article 1320 of the Civil Code. An agreement arises on the basis of an agreement, occurs because there is an intention from the people concerned, but in practice what is the basis is the statement of will or intention.

Article 1338 of the Civil Code states that an agreement made legally applies as a law for those who make it this article it can be concluded that every agreement made verbally by the parties is valid according to the applicable law/law. So an oral deed has strong legal force as a means of proof. As long as the agreement is made in good faith and meets the requirements of Article 1320 of the Civil Code.

### **Validity of Loan Agreements Made in Person Oral**

The deed is divided into 2 types, namely authentic deeds and oral deeds. Oral deeds can be made in such a way based on the agreement of the parties and the important thing is that the date can be made at any time, while authentic deeds must be made by an authorized official for that purpose. Since the Dutch era, there have indeed been certain officials who were assigned to make records and issue certain deeds regarding a person's civil affairs, such as birth, marriage, death, wills and agreements between the parties, where the results or excerpts from these records are considered authentic deeds.

The true meaning of an authentic deed is: the deeds must always be considered true, unless proven otherwise in court. Regarding the definition of an authentic deed, it is stated in Article 1868 of the Civil Code, which states that; an authentic deed is a deed that is (made) in the form determined by law, made by or before public officials who have the authority to do so, at the place where the deed is made.

## **METHODS**

Legal research is "a process of discovering legal rules, legal principles and legal doctrines in order to answer the legal issues currently being faced."<sup>37</sup>The legal research method is "a system and a process that must absolutely be carried out in research activities and the development of science". The type of research used is normative legal research, which is "library legal research conducted by examining library materials or secondary materials

alone".<sup>39</sup>This research was conducted to obtain materials in the form of theories, concepts, legal principles and legal regulations related to the subject matter. This research was conducted with a sense of trust in the object of research that will be studied by finding out the causes and effects that arise or occur in the object of research.

Legal research is prescriptive, which is a research aimed at obtaining suggestions on what to do to overcome certain problems that can produce new arguments, theories or concepts as prescriptions in solving the problems faced. Prescriptive means that the object of legal science is the coherence between legal norms and legal principles, the coherence between legal rules and legal norms, and the coherence between individual behaviour and legal norms.<sup>40</sup>This thesis research seeks to provide prescriptions related to legal certainty collateral for movable and immovable property in oral money lending agreements.

The approaches that can be used in this study are the statute approach and the case approach. The statute approach emphasizes the analysis of related laws and regulations. Analysis of legal provisions helps to understand the legal basis governing the legal certainty of movable and immovable collateral in oral money lending agreements.

On the other hand, the case approach focuses on the analysis of the Supreme Court decision Number 198K/Pdt/2019 as a case that is the object of research. The things studied include the case, the facts revealed, the legal considerations used by the judge, the legal reasons that are the basis for the decision. This case approach will provide a deeper understanding of the application of the law in the concrete case being analyzed. Combining the two approaches, it is hoped that the analysis of the Supreme Court decision Number 198K/Pdt/2019 will provide a comprehensive understanding of the legal certainty of collateral for movable and immovable objects in oral money lending agreements. This study uses secondary data as the main source consisting of primary legal materials, secondary legal materials, and tertiary legal materials.

a. Primary Legal Materials

Legal materials that have binding legal force such as legislation consisting of: the Code of Law Civil, Decision of the North Jakarta District Court Number 49/Pdt.G/2017/PN.Jkt.Ut, Decision of the DKI Jakarta High Court Number 267/PDT/2018/PT.DKI, and the Supreme Court Decision Number 198K/Pdt/2019.

b. Secondary Legal Materials

Materials that are closely related to primary legal materials, which can provide explanations of primary legal materials, consist of books, literature, and research results related to the problem.

c. Tertiary Legal Materials

Other supporting materials that are relevant to the main problem, provide information, instructions and explanations of primary and secondary legal materials, such as the Indonesian dictionary, the Legal Dictionary.

This research is a normative legal research and uses secondary data, so the technique of collecting legal materials in this research is done through library research, both for primary legal materials, secondary legal materials and tertiary legal materials. The search for legal

materials themselves can be done by reading, watching, listening, and now many internet media searches are carried out.

In this study using qualitative data analysis and is expected to facilitate in analyzing the problems raised, interpreting and then drawing conclusions. This study uses a qualitative method, namely research that is descriptive and tends to use analysis. Data analysis that will be carried out qualitatively is expected to facilitate in analyzing the problems raised, interpreting and then drawing conclusions.

Based on all the definitions of the contract above, the contract appears as a series of words containing promises or implementation, both verbally and in writing. From this relationship arises an agreement (abstract understanding) between the two parties, thus the relationship between the contract and the agreement that the contract is one of the sources of the contract besides other sources. An agreement is also called an agreement because two parties can say the same word, both words can be the same, namely agreement and agreement.

Article 1338 of the Civil Code states that all agreements (contracts) made legally are legally binding on those who make them. From this article it can be concluded that there is a principle of freedom of contract, but this freedom is limited by mandatory laws, so that the contracting parties must obey the mandatory laws. This agreement cannot be terminated for any reason other than the agreement of both parties or for reasons other than those determined by law. However, the contract can be terminated or terminated unilaterally if there is sufficient reason under the law. Good faith means that performance must be adhered to and followed in accordance with ethical norms. It is considered fair to be carried out in accordance with the rules of morality and ethics.

## RESULT

### **Legal Certainty Regarding Position And Legal Protection Of Recipients And Providers Of Collateral Oral Lending Agreements.**

This case began with a loan agreement between Lidya Wirawan as the Plaintiff and Elly Waty as the Defendant. Initially, Lidya Wirawan borrowed Rp3,988,482,200 from Elly Waty. As collateral for the loan, Lidya Wirawan handed over several valuables to Elly Waty, including a certificate of ownership, a car BPKB, and gold jewelry.

The collateral submitted by Lidya Wirawan included several motor vehicles, namely a 2007 Toyota Alphard, a 2013 Toyota Vellfire, a 2014 Toyota Fortuner, and a Nissan March. In addition, there was also a Building Use Rights Certificate Number 7004 in the name of PT Energy Baratama Indonesia for a property in the Artha Gading Niaga area, North Jakarta. Other collateral was a Bank Mayora Giro Bill worth Rp1,686,630,000. Over time, a dispute arose between the two parties regarding the repayment of the debt. Lidya Wirawan claimed to have paid off her debt even exceeding the amount that should have been paid, Meanwhile, Elly Waty thinks that Lidya Wirawan is still own obligations that have not been fulfilled.

Feeling aggrieved, Lidya Wirawan then filed a lawsuit against North Jakarta District Court. In her lawsuit, Lidya Wirawan demanded return of collateral items as well as any excess payments he has made do. He also asked the court to declare that he had paid off her

debt and that Elly Waty had committed an unlawful act. In On the other hand, Elly Waty did not remain silent. She filed a counterclaim (reconvention) which states that Lidya Wirawan still has outstanding debts paid off. Elly Waty demanded that Lidya Wirawan pay the remaining debt along with The interest is 5% per month starting from May 2015.

In its ruling, the High Court granted part of Lidya Wirawan's lawsuit. The court stated that there had indeed been a legal loan agreement between Lidya Wirawan and Elly Waty. Interestingly, the High Court also determined that Lidya Wirawan had paid off her debt, even more than she should have.

Based on the payment evidence from the submitted bank statement, the Court found that Lidya Wirawan had paid a total of Rp8,911,554,050. Given that the initial debt was only Rp3,988,482,200, there was a significant overpayment of Rp4,923,071,850. Based on this finding, the High Court ordered Elly Waty to return the overpayment to Lidya Wirawan. In addition, the Court also stated that the collateral submitted by Lidya Wirawan, including the certificate of ownership, the BPKB for the car, and gold jewelry, were legally owned by Lidya Wirawan and must be returned to her.

The High Court also made several important statements in its ruling. They stated that Lidya Wirawan was a borrower in good faith, while Elly Waty was declared a lender in bad faith. Furthermore, the High Court also stated that Elly Waty had committed an unlawful act in this case.

### **Legal Considerations of Judges in the Decision of the North Jakarta District Decision of the Supreme Court**

Judges, who are the personification of the law, must guarantee a sense of justice for everyone who seeks justice through the legal process, and to guarantee this sense of justice, a judge is limited by guidelines such as accountability, moral and ethical integrity, transparency and supervision. As the integration requirement is the idea that judges should decide cases in a way that makes the law more coherent, giving preference to interpretations that make the law more like a single moral vision. As the judge's decision is a judge's statement uttered in a trial that is open to the public with the aim of ending a case. The emphasis on oral decisions does not mean that there is no need for a written decision, but what is important is that even though the decision is oral, it can be accounted for by judge.

Judge is a job that has a great responsibility for the implementation of law in a country. In other words, judges are the last bastion of law enforcement in a country. Therefore, if a judge in a country has very fragile morals, then the authority of law in that country will be weak or fall.<sup>123</sup>The Judge's duty in civil law is to maintain the civil legal system, to determine what is determined by law in a case. Thus, his main duty is to receive, examine, and try and resolve every case submitted to him.

The judge's legal considerations in the money lending case between Lidya Wirawan and Elly Waty have gone through three levels of trial with different legal arguments at each level. At the first level, the North Jakarta District Court in Decision Number 49/Pdt.G/2017/PN Jkt.Utr stated that the lawsuit was inadmissible (NO/Niet Ontvankelijke Verklaard) considering that the formal aspects of the lawsuit did not meet the requirements. Furthermore, at the appeal level, the DKI Jakarta High Court in Decision Number 267/PDT/2018/PT DKI

overturned the District Court's decision and tried it itself considering that there had been evidence of a valid loan agreement, where the Plaintiff was declared a borrower in good faith who had paid off his loan, while the Defendant was declared a lender in bad faith with the consideration that it has been proven that there is a loan of Rp. 3,988,482,200 with various guarantees, where the Plaintiff has paid more than the amount of the debt, namely Rp. 8,911,554,050 so that there is an excess payment of Rp. 4,923,071,850 which must be returned, and because the debt has been paid off, the Defendant must return the collateral.

In the Decision of the North Jakarta District Court Number 49/Pdt.G/2017/PN Jkt.Utr, the judge considered the lawsuit inadmissible because it did not meet the formal requirements where the Plaintiff did not clearly specify when the loan money was handed over and how much. However, at the appeal level, the DKI Jakarta High Court in Decision Number 267/PDT/2018/PT DKI overturned the PN decision and considered that there had been a legitimate loan based on the evidence submitted. The PT judge was of the opinion that although the agreement was made verbally, it met the requirements for a valid agreement according to Article 1320 of the Civil Code and could be proven by the existence of a legal relationship between the parties through financial transactions recorded in a bank account.

The Supreme Court in Decision Number 198K/PDT/2019 strengthened the PT's consideration that there had been a valid money lending agreement between Lidya Wirawan (Plaintiff) and Elly Waty (Defendant). Borrowing is an action or transaction in which one party gives something such as money or goods to another party with the agreement that what is given will be returned in the future. This may involve the payment of other compensation as compensation for the use or loan.

In the Civil Code, lending and borrowing are included in the category of named agreements (*nominaat*) which are regulated in Article 1754 of the Civil Code.<sup>127</sup>The article defines a loan as an agreement by which one party gives another party a certain amount of goods that are used up due to use, on the condition that the latter party will return the same amount of the same type and condition. A named agreement is an agreement that has its own name and is specifically regulated in the Civil Code based on the type that occurs most often in everyday life. The Supreme Court assessed that the validity of the loan agreement between the Plaintiff and the Defendant was proven by the transfer of loan money of Rp3,988,482,200 accompanied by collateral in the form of a car BPKB, HGB certificate and jewelry, as well as proof of repayment through a bank account. This is an important basis in assessing the rights and obligations of each party in implementing the agreement.

The law has provided provisions regarding general guarantees for debts, where without any requirement, all of the debtor's assets are collateral for the payment of his debt as stipulated in Article 1131 of the Civil Code and 1132 of the Civil Code. However, this general guarantee does not provide debt repayment rights for certain creditors, but is a debt guarantee for all creditors and concerns all debtor's assets. For this reason, a guarantee is needed that provides direct repayment for certain creditors from their assets. Therefore, the guarantee requested by the creditor is generally a material guarantee, namely a guarantee that provides the creditor with an object belonging to the debtor as repayment of the debt if the debtor defaults.

In the first level examination, the North Jakarta District Court did not consider the main case because the lawsuit was declared inadmissible. However, at the appeal level, the DKI Jakarta High Court analyzed the evidence submitted, especially the bank statement which showed that the Plaintiff had made payments exceeding the amount of his principal debt.

The Supreme Court in its decision upheld the consideration of PT DKI and considered that the excess payment must be returned in accordance with the civil law principle prohibiting unjust enrichment. According to the Supreme Court, the fact proving that the Plaintiff had acted in good faith by paying off his debt, while the Defendant had acted in bad faith by not returning the excess payment.

The judge's consideration at the appeal and cassation levels is in line with the principle of justice, where payments that exceed the amount of debt must not benefit the creditor illegally and must be returned to the debtor who has paid. The excess payment also shows that the loan agreement has ended due to repayment, so that the collateral that is being held must be returned to its owner.

Article 1338 of the Civil Code is the basis of the principle of good faith. Good faith and propriety can change or complement an agreement. An agreement is not only determined by the parties in its formulation, but also determined by good faith and propriety, so propriety and good faith affect the contents of the agreement.

Referring to Article 1338 of the Civil Code is the basis of the principle of good faith in Indonesian contract law. In examining this case, the North Jakarta District Court did not consider the good faith of the parties because the lawsuit was declared inadmissible (NO) due to formal defects. However, in the appeal decision, the DKI Jakarta High Court gave in-depth consideration to the good faith of the parties. The PT judge considered that the Plaintiff (Lidya Wirawan) had shown good faith with evidence of having carried out its obligations to make debt payments even exceeding the amount agreed upon. On the other hand, the Defendant (Elly Waty) was deemed to have acted in bad faith because:

- a. Did not refund the excess payment of Rp4,923,071,850
- b. Continue to hold collateral even though the debt has been paid off
- c. Not providing a clear receipt of payment to the Plaintiff The Supreme Court ]

## CONCLUSION

Conclusion Of This Paper Are: The validity of an oral money lending agreement in the Indonesian legal system remains recognized and legally valid as long as it meets the requirements for a valid agreement as stipulated in Article 1320 of the Civil Code, namely: agreement of the parties, capacity to make an agreement, a certain thing, and a lawful cause. Even though it is made orally, the agreement remains binding on the parties as stipulated in Article 1338 of the Civil Code which states that all agreements made legally apply as laws for those who make them. However, oral agreements have weaknesses in terms of proof because there are no written documents that can be used as strong evidence, so that in practice it often causes legal problems when a dispute occurs between the parties. The form of unlawful act in a verbal money lending agreement with collateral can occur when one party violates the provisions of Article 1365 of the Civil Code, such as: misuse of collateral by the creditor,

retention of collateral even though the debt has been paid off, execution of collateral that is not in accordance with procedures, or refusal to return excess proceeds from execution of collateral. This unlawful act can cause losses to other parties and violate rights protected by law, the legal obligations of the perpetrator, morality and propriety in society, so that the injured party can claim compensation based on Article 1365 of the Civil Code. Legal certainty regarding the legal status and protection of the parties in an oral money lending agreement with collateral, based on Supreme Court Decision Number 198K/Pdt/2019, confirms that even though the agreement is made verbally, the rights of the parties are still protected by law. This is evidenced by the decision ordering the return of collateral to its owner after the debt is paid off and the return of excess payments of Rp4,923,071,850.00, which shows that the court recognizes and protects the rights of the parties based on the principles of justice and legal certainty, even though the agreement is made verbally.

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