

## LEGAL REVIEW OF DEBT AGREEMENTS BETWEEN POLICE MEMBERS AND CIVIL PARTIES FROM A CIVIL LAW PERSPECTIVE

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### ABSTRACT

A debt agreement between a member of the Indonesian National Police (Polri) and a civilian party is essentially legally binding for both parties, just like a regular debt agreement, and is regulated by Article 1754 of the Civil Code (KUHPerdata). Being a member of the Indonesian National Police does not eliminate his or her civil obligations. The validity of a debt agreement between a member of the Indonesian National Police (Polri) and a civilian party is essentially legally binding for both parties, just like a regular debt agreement, and is regulated by Article 1754 of the Civil Code (KUHPerdata). Being a member of the Indonesian National Police does not eliminate his or her civil obligations. Indonesian National Police and civil parties are legally valid as long as they fulfill the requirements for a valid agreement according to the Civil Code (KUHPerdata) and if all these requirements are fulfilled, the agreement applies as law for those who make it (principle of *pacta sunt servanda* in Article 1338 of the Civil Code).

### 1. Introduction

Generally, in social life, people constantly interact with one another in various forms. Relationships between individuals, both legal subjects and legal entities, often constitute legal relationships that can be categorized as legal acts. Agreements are legal acts that arise to accommodate the specific interests of community members.

An agreement is an event where one person promises another person or where two people promise each other to do something. R. Subekti said, "An agreement is an event where someone promises to another person or where two people promise each other to do something."

The parties who enter into a debt agreement are bound by the agreement that has been made in accordance with the principle of *pacta sunt servanda*, namely "a promise is binding according to the law for those who make it." However, there are still many parties who deny the agreement that has been



made. The debtor does not fulfill the obligation as it should and the non-fulfillment of the obligation is due to an element of error in it. This action is included in the act of default, namely "the implementation of obligations that are not on time or improper implementation."

A debt agreement between a police officer and a civilian is a civil agreement under Article 1320 of the Civil Code, which prioritizes the principle of *pacta sunt servanda* (binding agreement). This agreement is valid if it meets the requirements of agreement, capacity, a specific object, and a lawful cause. If a breach of contract occurs, the matter remains in the civil realm, unless there is an element of fraud or embezzlement that meets the criminal criteria under Article 378 or Article 372 of the Criminal Code

## 2. Research Method

The nature of the research used in this study is descriptive, namely research that is explanatory in nature and aims to obtain a complete picture (description) of the legal conditions that apply in a particular place and at a particular time that occurs in society. The approach method used is a normative juridical approach, namely an approach used to analyze debt agreements between members of the police and civilian parties from the perspective of civil law and applicable laws and regulations

## 3. Results And Discussion

In principle, agreements are open, meaning that the parties making an agreement can determine freely what they want to agree to, but this freedom is not unlimited freedom. There are limits to the freedom to make agreements, these limits are that they do not conflict with the law, morality and public order. For anyone who has agreed to something, the agreement is binding on the parties who made it, and the power of consent is equal to that of law. Therefore, it can be said that this agreement is a law made by a private party. This principle is a result of the open system adopted in Book III of the Civil Code and is justified because what is done in the agreement is an embodiment of individual or relative rights.

An agreement is an individual right, and the parties entering into it are legally binding. While this is a material matter, how they affirm that agreement is the formal aspect of an agreement. Demonstrating the existence of an agreement can be done verbally or in writing.

Agreements are written because the parties want to demonstrate their rights if one party fails to fulfill its obligations. Written evidence of an agreement





provides for a specific timeframe mutually agreed upon by the parties. These rights can be achieved if the parties have fulfilled their respective rights and obligations.

An oral agreement is similar to a written agreement, except that it is a verbal agreement typically implemented within a family relationship. This form of oral agreement has become a cultural practice, as it is a custom practiced by every ethnic group throughout Indonesia.

In the law of evidence, a letter is a form of evidence, although several other requirements must be met to determine whether it has absolute evidentiary power. This means that not all letters have the same evidentiary power; this depends on the nature of the letter, whether it is a regular deed, a private deed, or an authentic deed.

In contrast to verbal agreements, usually in terms of proving a legal event that occurred for the parties, the dispute resolution party experiences a little difficulty, because each party always differs in expressing the legal event that occurred between them, as well as in terms of determining the rights and obligations for the parties, besides that, it is also often unclear in determining when the performance will begin for the parties who have entered into the agreement.

In principle, an agreement does not require certain formalities, but for special agreements a formality is required, if this formality is not fulfilled, then the agreement becomes null and void by law, for example, this agreement must be made an authentic deed, if it is not done with an authentic deed, then the gift agreement for immovable objects is null and void by law, null and void here means that the agreement, even though it has been agreed upon, does not exist from the start.

In practice in people's daily lives, it can be said that almost all agreements are made in writing, with the exception of agreements relating to movable objects related to daily life, agreements can only be made verbally. However, for agreements relating to movable objects that have a certain value, the agreement is often made in writing.

Civil law recognizes various types of agreements, including named and unnamed agreements. Named agreements are those specifically defined in law, while unnamed agreements are those not defined in law.

A debt agreement between a member of the Indonesian National Police (Polri) and a civilian is a legal agreement, as it is contained in the Civil Code. A debt agreement between a member of the Indonesian National Police (Polri) and a civilian is made in written form, outlined in a standard agreement. A standard agreement (standard agreement) is a form of agreement that regulates the



relationship between the parties, predetermined in a form by the party in a stronger position and cannot be changed unless otherwise specified.

According to Salim HS, a standard contract is a predetermined agreement set out in a formal format. This contract is unilaterally determined by one party, particularly the party with a stronger economic position, against the party with a weaker economic position. A standard contract, or standard agreement, is an agreement containing clauses that have been unilaterally prepared and determined in advance by the business actor, printed in large quantities, and used for every agreement of the same type.

The background to the growth of standard agreements is socioeconomic conditions. Large corporations and government agencies collaborate within an organization, unilaterally determining the terms and conditions for their own benefit. The counterparty (*wederpartij*) is generally in a weak (economic) position, either due to its position or due to ignorance, simply accepting what is offered.

There are three types of standard contracts, namely:

1. A standard unilateral agreement is an agreement whose contents are determined by the party with the strongest position in the agreement. This party is the creditor, who typically has a stronger (economic) position than the debtor.
2. Standard agreements stipulated by the government are standard agreements whose contents are determined by the government for certain legal acts, for example agreements that have land rights as their object.
3. Standard agreements determined by the Notary or lawyer environment are agreements whose concepts have been provided from the start to meet requests from members of the public who ask for assistance from the Notary or lawyer concerned.

A standard contract contains the following characteristics:

1. The contents are determined unilaterally by the creditor whose position is relatively stronger than the debtor.
2. The debtor does not participate in determining the contents of the agreement at all.
3. Driven by his needs, the debtor was forced to accept the agreement.
4. Certain forms (written).
5. Prepared en masse and collectively.

A debt agreement between a member of the Indonesian National Police and a civilian party is valid under civil law as long as it fulfills the requirements for a valid agreement according to Article 1320 of the Civil Code, namely:

1. There is an agreement



An agreement is a statement of agreement between one or more parties. An agreement always begins with an offer by one party and acceptance by the other. If the offer is not met with acceptance, the agreement will not occur. Agreement means there is a free agreement of will between the parties regarding the principal matters desired in the agreement. In this case, the parties must have a free (voluntary) will to bind themselves, which can be stated explicitly or tacitly. Free here means free from error, coercion, and fraud.

An agreement that has been reached can be flawed, commonly referred to as a flawed will or flawed agreement, which can lead to the agreement being cancelled by the party who feels aggrieved by the agreement. Under Article 1321 of the Civil Code, an agreement is invalid if it is due to elements of error, coercion, or fraud.

The principle of consensualism is often interpreted as meaning that an agreement is needed for an agreement to be born. The meaning of this principle is that an agreement is born and is binding immediately after the parties reach an agreement or consensus, even though the agreement has been reached verbally only. This means that in principle an agreement that is binding and valid as an obligation for the parties who promise does not require formalities, however, to protect the interests of the debtor (or those who are obliged to fulfill the performance) forms of formalities are held or certain actions are required.

Agreement here means a congruence of will between the rights holder and the obligations holder regarding the object of the agreement. This means that both parties must have free will. Agreement is a conformity of wills between one or more parties. A conformity of wills is a statement of will that can be seen or known by others. There are five ways in which conformity of wills occurs:

- 1) Perfect and written language;
- 2) Perfect language orally;
- 3) Imperfect language as long as it is acceptable to the other party;
- 4) Sign language as long as it can be accepted by the other party;
- 5) Silent or mute but as long as it is understood or accepted by the other party.

An agreement is not considered valid if it is given because:

- 1) Misunderstanding (dwaling) or mistake.
- 2) Blackmail or coercion
- 3) There is fraud".

A statement of intent doesn't always have to be explicitly stated; it can be expressed through behavior or other means that reveal the parties' intentions. The most common method used by parties is through perfect language, both verbally and in writing. "The purpose of a written agreement is to provide legal



certainty for the parties and to serve as definitive evidence in the event of a future dispute."

An agreement, which is a statement of the parties' will, is formed by two elements: an offer and an acceptance. An offer (*anbod*, *offerte*, offer) is defined as a statement of will containing a proposal to enter into an agreement. This proposal includes the essentials of the agreement to be concluded, while acceptance (*aanvaarding*, *acceptatie*, acceptance) is a statement of agreement from the other party to whom the offer was made.

Consent must be given freely, and consent given due to misunderstanding (*dwaling*), coercion (*dwang*), or fraud (*bedrog*) means that the consent given is clearly a flawed consent. Such consent can be revoked, but it is not automatically void.

A revocable misunderstanding or misapprehension must concern the essence of the agreement. Therefore, it must concern the object or desired performance. A misunderstanding (*dwaling*) regarding the person does not invalidate the agreement. Only a misunderstanding regarding the object does.

Coercion that can eliminate the problem of permission in agreement is coercion in the nature of having no choice. Such is the force of violence that is threatened, that the person concerned has no other choice but to carry out the act that is being forced. Coercion is absolute or absolute in nature which causes a person to be forced to follow the wishes of the person forcing him so that he cannot avoid the coercion.

Unlike psychological coercion, the relative nature of coercion allows the coerced party to make a voluntary choice. The individual can still evade the coercion. Furthermore, if the consent granted in the agreement is obtained through deception, this also results in the consent being deemed non-existent. Consent obtained through deception is considered non-existent. The deception must be deceitful, giving the impression that something untrue represents a truly true picture of the circumstances and events surrounding a matter.

## 2. The existence of skills

Acting capacity is the ability or ability to carry out a legal act. Legal actions are actions that will give rise to legal consequences. The people who will enter into an agreement must be people who are competent and have the authority to carry out legal actions as specified in the law. A person who is competent or has the authority to carry out legal actions is an adult.

## 3. The existence of a certain thing

Certain things according to the law are the performance that is the subject of the relevant agreement. Although the law does not require that an item be present or absent at the time of the agreement, the item referred to in the agreement





must at least be specified. Furthermore, Article 1234 of the Civil Code states that every obligation is to provide something, do something, or not do something.

A specific thing is the subject of a contract, so a contract must have a specific object. A specific thing is the performance that is the subject of the agreement in question. This is to determine the nature and extent of the statements that constitute the obligations of the parties. Statements that cannot determine the nature and extent of the obligations of the parties are not binding (null and void).

#### 4. There is a lawful cause

Cause (causa) is the content of the agreement itself, thus causation is the achievements and counter-performances that are mutually exchanged by the parties." Article 1335 of the Civil Code, states that: An agreement without cause, or which has been made for a false or forbidden reason, has no force. Prohibited causes in Article 1337 of the Civil Code are: A cause is forbidden, if it is prohibited by law, or if it is contrary to good morals or public order. Agreements made for such reasons have no force

#### 4. Conclusion

The validity of a debt agreement between members of the Indonesian National Police and civilian parties is valid under civil law as long as it fulfills the requirements for a valid agreement according to the Civil Code (KUHPERDATA) and if all these requirements are fulfilled, the agreement applies as law for those who make it (the principle of pacta sunt servanda in Article 1338 of the Civil Code).

Liability in the event of default under a debt agreement between a member of the Indonesian National Police (Polri) and a civilian party can include fulfillment of the contractual obligations, compensation, cancellation of the agreement, and/or transfer of risk. The injured party has the right to choose one or a combination of these legal remedies, starting with a summons before filing the case in court or resolving the matter through alternative dispute resolution methods such as mediation or negotiation.

Legal resolution of debt disputes between police officers and civilians can be achieved through non-litigation channels (such as mediation or negotiation) and litigation (through the courts). If mediation fails, the next step is to file a civil lawsuit (a breach of contract lawsuit). It is important to note that debt disputes are strictly within the realm of civil law and cannot be subject to imprisonment unless there is evidence of fraud or embezzlement





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