

Legal Remedies for Resolving Security Disputes in Oral Debt Agreements

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Abstract

Oral debt agreements remain common in Indonesia, especially in communities that rely on trust and kinship, yet the security attached to them is legally fragile. This article examines (1) the legal force of security in an oral debt agreement and (2) the legal remedies available to resolve disputes arising from it. The study uses normative juridical research with statute and conceptual approaches; primary, secondary and tertiary legal materials were gathered through library research and analysed qualitatively, descriptively and interpretively. The findings show that an oral debt agreement is valid and binding under Articles 1320 and 1338 of the Indonesian Civil Code as long as the four conditions of validity are met. However, the security agreed orally is not bound by an authentic deed and is not registered, so it carries no executorial force and its enforceability depends entirely on proof. When the debtor denies the agreement, the creditor must prove both the debt and the security by witnesses, transfer records, presumptions, admission or oath. Disputes may be settled outside court through negotiation and family-based settlement, or in court through a warning letter, a default or small-claims lawsuit, and conservatory attachment (*conservatoir beslag*). The article concludes that debt agreements with security should be made in writing, preferably before a notary, and that creditors should secure supporting evidence at an early stage.

Keywords: oral agreement; debt agreement; security; default (*wanprestasi*); dispute resolution; legal protection.

INTRODUCTION

Indonesia is a state based on law, as stated in Article 1 paragraph (3) of the 1945 Constitution. This means that state action, and the conduct of citizens and legal subjects, is governed by law rather than by power alone. Economic life is inseparable from this legal order: individuals and business entities constantly enter into relationships that require mutual support at every stage of a transaction. Those relationships are generally expressed in agreements or contracts, which may be written or made orally.

An agreement made orally is convenient but risky. If one party later abuses the arrangement, the injured party will find it difficult to prove the agreement in a legal dispute. This is particularly relevant to debt agreements. Under Article 1754 of the Indonesian Civil Code, a loan for consumption is an agreement in which one party hands over a certain amount of consumable goods to another, who must return the same amount of the same kind and condition. In practice, especially in communities outside urban centres, people readily enter into sale and loan arrangements on the basis of trust, including arrangements in which the security is promised orally. Creditors nevertheless expect security

whose value exceeds the debt, because security serves as a preventive safeguard against non-performance and as a repressive tool when non-performance occurs.

The legal relationship between creditor and debtor is not always balanced. Default (*wanprestasi*) frequently arises and usually harms the creditor most. Two routes are available: settlement outside court (non-litigation) or through the courts (litigation). When the debt and its security rest only on an oral promise, the central difficulty is not the validity of the agreement but its proof, and the weakness of the security at the enforcement stage.

Much of the doctrinal discussion on security law concerns formally perfected security such as mortgage rights and fiduciary security. Less attention is given to security that the parties merely agreed upon orally. This article therefore addresses two research questions: (1) what is the legal force of security in a debt agreement made orally, and (2) how can disputes over such security be resolved? The study aims to analyse both questions and to contribute, theoretically, to the development of civil law on debt agreements and security and, practically, to guidance for creditors, debtors and legal practitioners who deal with unwritten arrangements.

LITERATURE REVIEW

The legal state and legal protection

The idea of the legal state has been expressed through the concepts of *rechtsstaat* and the rule of law. Hadjon (2007) explains that *rechtsstaat* emerged from a struggle against absolutism and is therefore revolutionary in character, whereas the rule of law developed evolutionarily; the former rests on the continental civil-law tradition, the latter on common law. Stahl identified four elements of the *rechtsstaat*: human rights, separation of powers, government based on law, and administrative justice. Dicey, for his part, described the rule of law through the supremacy of law, equality before the law, and a constitution grounded in human rights (Termorshuizen, 2011). Later developments moved from the passive liberal “night-watchman” state towards the welfare state, in which the government actively promotes public welfare.

Legal protection is one of the ways in which the legal state operates. Rahardjo (2000) defines it as safeguarding human rights that are harmed by others so that people can enjoy the rights the law confers. Hadjon (2007) distinguishes preventive protection, which aims to prevent disputes, from repressive protection, which aims to resolve disputes, including through the courts. Isnaeni (2016) adds that protection can be internal, packaged by the parties themselves in the clauses of their agreement, or external, provided by regulation. This distinction is useful here: a written and registered security arrangement is a form of preventive and internal protection, while a lawsuit and attachment are repressive protection.

Justice and legal certainty

Aristotle distinguished distributive justice, which gives each person a share according to merit, from commutative justice, which governs the exchange of goods and services (Apeldoorn, 1996). Rawls (2006) advanced justice as fairness, with the principles of equal basic liberty and of difference, which requires social and economic inequalities to be arranged to benefit the least advantaged (Faiz, 2009). Kelsen (2011) understood justice in the positivist sense as legality: a general rule is just if it is applied to every case it covers. For the present topic, these perspectives converge on a practical question: how the law protects a creditor who trusted another person without formal safeguards, without disregarding the debtor's rights.

Agreements and debt agreements

Article 1313 of the Civil Code defines an agreement as an act by which one or more persons bind themselves to one or more other persons. Subekti (1994) describes it as an event in which one person promises another, or in which two persons promise each other, to do something. Although scholars regard the statutory definition as incomplete and too broad (Patrik, 2004), it is the basis of the law of contract in Indonesia. A debt agreement is equivalent to a loan for consumption under Articles 1754–1773 of the Civil Code (Supramono, 2013). The party who lends is the creditor and the party who borrows is the debtor; the creditor holds the right to performance, and the debtor bears the duty to perform.

Article 1320 of the Civil Code sets out four conditions of validity: consent of the parties, capacity to contract, a certain subject matter, and a lawful cause. The first two are subjective conditions and the last two are objective conditions (Prodjodikoro, 2011). Several principles govern agreements: freedom of contract and the binding force of agreements as statutes for those who make them (Article 1338 paragraph (1)); consensualism, under which an agreement binds as soon as the parties reach consent, even if only orally; the personal principle (Articles 1315 and 1340); balance; legal certainty (*pacta sunt servanda*); and propriety and good faith (Articles 1338 paragraph (3) and 1339). Regarding obligations, Articles 1759–1761 provide that the creditor may not demand repayment before the agreed time and must sue in court if no repayment period was fixed, while Article 1763 obliges the debtor to return the same amount within the agreed period, with any agreed interest.

Security law

Salim H.S. (2011) presents security law as the body of rules that gives legal structure to credit facilities secured by assets. J. Satrio, quoted in the same work, defines it more narrowly as rules governing the creditor's claims against the debtor, a definition criticised for neglecting the debtor's rights. Security may arise by statute or by agreement. Statutory (general) security is found in Articles

1131 and 1132 of the Civil Code: all present and future assets of the debtor stand as security for all of the debtor's obligations, shared among creditors unless there are lawful grounds for priority. Special security arises from agreement, for example mortgage rights, pledge and fiduciary security, to overcome the weakness of general security. Security is also classified as real (material) security, which gives the creditor a right over a particular asset, and personal (immaterial) security, in which a third person guarantees the debtor's performance (Subekti, 1994; Salim H.S., 2011).

Security agreements are accessory (*accessoir*) in nature, because they are attached to a principal agreement, here the debt agreement (Winarsasi, 2020). Several principles apply, among them publicity, which requires that security be registered so that third parties know an asset has been encumbered, and specificity. Real security carries priority (*droit de preference*) and follows the object into whoever's hands it passes (*droit de suite*) (Khoidin, 2017; Kurniawati & Hanim, 2017). Where the asset is land, the security is a Mortgage Right under Law No. 4 of 1996. It is created by a deed drawn up by a land deed official (PPAT), registered at the land office, and confirmed by a certificate that carries an executorial title equal to a final court judgment (Khoidin, 2017; Arba & Mulada, 2020).

Default

Default means failing to perform, or performing improperly, what the agreement requires (Salim H.S., 2003; Satrio, 2014). Under Article 1243 of the Civil Code, compensation for costs, losses and interest becomes payable only after the debtor has been declared in default and still fails to perform, or when the time limit has passed. Badruzaman (2001) identifies three forms: no performance, late performance, and defective performance. Subekti (1994) lists four: not doing what was promised, doing it but not as promised, doing it late, and doing what the agreement forbids. For a debt, default typically means no repayment at all, partial repayment, or repayment after the due date (Supramono, 2013). The injured party may demand performance, compensation, performance with compensation, cancellation, or cancellation with compensation.

METHODS

This research is normative juridical (doctrinal) research, which relies on secondary data drawn from written law and legal literature (Soemitro, as cited in Abdulrahman, 2007). It is consistent with the *sui generis* character of legal science and focuses on existing legal materials. Two approaches were used. The statute approach examines the Civil Code, the *Herzien Inlandsch Reglement* (HIR) and the laws on Mortgage Rights (Law No. 4 of 1996), Fiduciary Security (Law No. 42 of 1999) and Bankruptcy and Suspension of Debt Payment Obligations (Law No. 37 of 2004). The conceptual approach clarifies concepts such as agreement, security, default and legal protection, and is used to test the validity of oral debt agreements.

The legal materials comprise three groups: primary materials (the statutes above), secondary materials (books and journal articles on civil law, security law and agrarian law), and tertiary materials (legal dictionaries, encyclopaedias and the Indonesian Official Dictionary, KBBI). They were collected through library research using a card system, recording and understanding each piece of information from the materials. The materials were analysed qualitatively: they were described, interpreted normatively, systematised and evaluated (content analysis), and argumentation was then built to reach conclusions on the research questions (Soekanto, 2012). Because the study is doctrinal, its findings are analytical and do not rest on field data.

RESULTS AND DISCUSSION

The legal force of security in an oral debt agreement

Validity and binding force. Book III of the Civil Code adopts an open system that allows the parties to make any agreement, provided it does not conflict with public order and morality. Article 1338 paragraph (1) also allows the parties to determine the form of the agreement, written or oral. The validity of a debt agreement therefore does not depend on a document, a stamp duty or a notary; it depends on the four conditions in Article 1320. An oral debt agreement that is based on consent, made by capable persons, concerning a definite sum, and for a lawful cause is valid and binds the parties as a statute (Article 1338 paragraph (1)). Under the principle of consensualism, it gives rise to obligations as soon as consent is reached. The same reasoning covers an oral promise to give security: between the parties, it is a binding term of the agreement.

What oral security cannot do. Binding force between the parties is not the same as security strength against the world. First, general security under Articles 1131 and 1132 exists by operation of law and does not require any promise; what an oral arrangement adds is only an agreement that a particular asset stands behind the debt. Second, the strong features of real security depend on formalities. A Mortgage Right, for instance, comes into being when the deed of grant made by the land deed official is registered at the land office, and the resulting certificate carries an executorial title. Publicity is a core principle precisely so that third parties can know that an asset is encumbered. An oral arrangement has no deed, no registration and no certificate. It therefore gives the creditor no priority (*droit de preference*), no right to follow the asset (*droit de suite*) and no right to execute the asset directly through a public auction. In effect, the creditor holds a personal claim whose enforcement requires a court judgment. Third, because a security agreement is accessory, it rises or falls with the principal debt agreement: if the debt cannot be proven, the security cannot be enforced either.

Ownership and third parties. The asset offered must belong to the debtor, or be given with the owner's consent, and no third party may object to its use. The literature warns that creditors often

accept assets that the debtor has no right to pledge, which makes the security invalid. Where the asset is land, a certificate of ownership can only be bound through a Mortgage Right, so an oral promise to “pledge” a land certificate does not by itself produce that right.

The problem of proof. The decisive issue is evidence. A person cannot be declared in default if there is no agreement, and in civil procedure the judge is bound by the evidence the parties present and looks for formal truth. If the debtor admits the oral agreement, the agreement is proven, and the debtor’s default can be established. If the debtor denies it, the agreement may exist or not, depending on what the parties can prove. Because no deed exists, the creditor must rely on the means of proof recognised in civil law (Article 1866 of the Civil Code): witnesses present when the agreement was made, presumptions that are clear and factual rather than speculative, admission, and oath. Supporting evidence such as bank-transfer records and electronic messages can strengthen these means. A single witness is generally not enough on its own (Article 1905 of the Civil Code). The contrast with written forms is shown in Table 1.

Table 1. Comparison of security arrangements by form (author’s synthesis of the legal materials)

Aspect	Oral agreement	Private (under-hand) deed	Authentic (notarial) deed	Registered security right (e.g., Mortgage Right)
Evidentiary strength	Weak; depends on witnesses, presumptions, admission or oath	Perfect if content and signature are acknowledged (Art. 1875)	Perfect, formally and materially	Perfect (deed drawn up by a land deed official)
Real security right (priority and <i>droit de suite</i>)	No	No	Not by itself	Yes
Executorial title	No	No	Not by itself	Yes, through the security certificate

A deed under hand has perfect evidentiary force when the persons who signed acknowledge its content and signature (Article 1875), whereas an authentic deed made before a notary has perfect formal and material force. An oral agreement is at the other end of the range. It is legally valid but evidentially weak, and this weakness is what makes the security “weak in execution.” The creditor’s position is worsened by social context: because such agreements are usually made between relatives or acquaintances, injured parties are often reluctant to bring the case to court, and the debtor may take advantage of this reluctance.

Summary of the first question. An oral debt agreement, together with an oral promise of security, is valid and binds the parties if the conditions of Article 1320 are met. The security, however, has no executorial force and no real-right features. Its legal force is therefore conditional on proof: it is strong when the debtor admits it or when the creditor can prove it, and weak when the debtor denies it and no evidence is available. This finding is consistent with the theory of legal protection reviewed

above: the law protects agreements in any form, but the level of protection actually achieved depends on how well the parties have arranged preventive protection in advance.

4.2 Dispute resolution for security in an oral debt agreement

Default in debt agreements usually takes one of three forms: no repayment, partial repayment, or late repayment. The creditor's dispute-resolution options fall into two routes, non-litigation and litigation, which are examined in turn.

Preparatory steps. Whatever route is chosen, the creditor should first strengthen the evidence and establish the debtor's default formally. Evidence to collect includes transfer records, messages, and the names of persons who witnessed the agreement. Under Article 1243 of the Civil Code, the debtor must first be declared in default; in practice this is done through a written warning that states the latest date by which performance must occur. Only if the debtor remains in default after the warning does liability for compensation begin.

Non-litigation. Civil disputes are no longer resolved only through formal court proceedings; non-formal processes are also available (Febrian et al., 2016). For oral debts, the first practical step is a family-style, amicable collection effort, followed by negotiation aimed at reaching a settlement in good faith. Where the parties remain willing, the most useful outcome is to convert the oral arrangement into a written agreement that records the debt, its repayment schedule and the security. This gives the parties a document that later serves as evidence and, if made before a notary, gains the strength of an authentic deed. A settlement clause is also good practice, since parties who have agreed in advance how to settle disputes do not need to search for a method once a dispute arises. In an oral arrangement, that clause is missing, which is one reason why disputes are harder to resolve.

Litigation. If non-litigation fails, the creditor may file a civil lawsuit. Based on the options open to an injured party in default, the creditor may claim performance, compensation, performance with compensation, cancellation, or cancellation with compensation. Where the amount is modest, a small-claims lawsuit may be used; the literature notes that this route can be used to obtain a determination of the validity of the security and of the right to execute it. In both cases, the creditor must first prove that the oral debt agreement and the oral security agreement exist. The court will examine the elements of Article 1320 and the evidence offered.

Conservatory attachment. A key protective tool for the creditor is a request for conservatory attachment (*conservatoir beslag*, Article 227 HIR) over the assets that the debtor has offered as security, and more broadly over the debtor's property under Article 1131 of the Civil Code. Its purpose is to prevent the debtor from transferring the asset while the case is pending, so that a later judgment can be carried out. The creditor still bears the burden of proving the debt and security, but the

attachment converts an otherwise unsecured claim into one with a realistic prospect of execution. If the debt has no fixed maturity, Article 1761 also directs the creditor to court, where the judge will decide the time of repayment.

Table 2 summarises the sequence of steps that emerges from the legal materials. The order matters: evidence comes first, because every later step, from the warning to attachment, presupposes that the agreement can be shown to exist.

Table 2. Stages of dispute resolution for security in an oral debt agreement (author's synthesis)

Stage	Action	Legal basis and purpose
1. Evidence	Collect transfer records, messages and the names of witnesses to the agreement and the security	Article 1866 Civil Code; proves that the agreement exists
2. Warning	Send a written warning (<i>somasi</i>) stating the last date for performance	Article 1243 Civil Code; places the debtor in default
3. Amicable settlement	Family-based collection and negotiation; record the outcome in writing, preferably before a notary	Good faith (Article 1338(3)); converts an oral agreement into documentary evidence
4. Lawsuit	Default lawsuit or small-claims lawsuit; claim performance, compensation or cancellation	Articles 1243 and 1320 Civil Code; court decides existence of the agreement and default
5. Attachment	Request conservatory attachment (<i>conservatoir beslag</i>) over the pledged asset or the debtor's property	Article 227 HIR; Article 1131 Civil Code; preserves assets for execution

Discussion. Read together, these findings show a consistent pattern. The law is permissive as to form, but it is strict as to proof, and protective remedies (attachment, judgment, execution) are available only after the creditor has met that burden. From the viewpoint of legal protection, oral security relies almost entirely on repressive remedies, which are costly and uncertain, whereas written and registered security provides preventive protection that reduces the chance of dispute in the first place. From the viewpoint of justice, the principle of balance demands that the creditor's strong right to demand performance be matched by a duty of good faith, and that the debtor not be able to escape a genuine obligation by simply denying it. Yet the law can protect this balance only if the facts can be shown; the judge cannot enforce an agreement that has not been proven. The practical lesson is that the weak party in an oral debt is very often the creditor who trusted without documenting, and that both parties are better served by committing their arrangement to writing before problems arise.

Obstacles and implications

Three obstacles recur in oral debt and security disputes. The first is evidentiary: without a deed, witnesses, and documents, the creditor's case depends on the debtor's admission or on circumstantial proof. The second is the debtor's ability to deny the agreement, which leaves the court with no basis to declare default unless the creditor can prove the agreement. The third is the social relationship between the parties. Oral agreements are typically built on trust between

relatives or neighbours, and this trust discourages both careful documentation at the outset and firm enforcement afterwards. In communities where customary ties remain strong, these three obstacles reinforce one another.

The implications are twofold. For private parties, the cost of writing an agreement is small compared with the cost of proving an unwritten one. A short written record that names the parties, the sum, the repayment date and the asset offered as security is already a substantial improvement over an oral arrangement, and a notarial deed is better still. For legal practitioners and policy makers, the findings point to the value of legal education in communities that customarily rely on oral dealings, so that people understand that an oral agreement is valid but that the security supporting it cannot be enforced as easily as registered security. Finally, the interplay between the debt agreement and the security means that lawyers advising creditors should treat the two as a single evidentiary problem: the creditor must prove both the loan and the promise of security, and the failure to prove the first defeats the second.

CONCLUSION

This study set out to determine the legal force of security in oral debt agreements and the remedies for resolving disputes. It concludes, first, that an oral debt agreement remains valid and legally binding under Articles 1320 and 1338 of the Civil Code, provided the parties consent, are capable, agree on a definite subject matter and have a lawful cause. The security promised orally, however, has no executorial force because it is not embodied in a deed or registered, and its enforceability depends on proof. If the debtor denies the agreement, the creditor cannot rely on the agreement alone, since a person cannot be declared in default without a proven agreement.

Second, resolving a dispute requires strong evidence first. The creditor should gather proof from witnesses, transfer records and electronic evidence, then issue a warning before choosing between amicable settlement and a lawsuit for default or a small-claims lawsuit, and may apply for conservatory attachment under Article 227 HIR and Article 1131 of the Civil Code to protect the debtor's assets.

Two recommendations follow. First, debt agreements with security should be made in writing, preferably as a notarial deed, and security over land should be bound through the Mortgage Right procedure. Second, where an oral agreement already exists, the parties should promptly gather supporting evidence, attempt amicable collection, and convert the arrangement into a written agreement. Future research could complement this doctrinal study with empirical analysis of court decisions on oral debt and security disputes.

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