LEGAL PROTECTION OF THE PARTIES IN THE MEMORANDUM OF UNDERSTANDING

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ABSTRACT

This journal carries the title with the legal protection of the parties in the memorandum of understanding. A Memorandum of Understanding (MoU) or in Indonesian is called a Memorandum of Understanding is the basis for drafting a contract based on the agreement between the parties, both written and oral. The results of this agreement precede the making of a more detailed agreement that contains the rights and obligations of the parties, the position and binding power of a memorandum of understanding (MoU) based on treaty law in Indonesia and compares it with the validity of the MoU in the common law legal system. The Memorandum of Understanding is only a preliminary agreement, the contents of the Memorandum of Understanding are often found to not meet the legal requirements of a contract.

Keyword : Protection, memorandum of understanding contract

Introduction

The State of Indonesia is a legal state, namely a country based on laws and regulations that have been established by the government and are used as guidelines in social life. These regulations aim to achieve a good, peaceful and peaceful Indonesian society. Contract law is part of the law in the State of Indonesia relating to agreements between one party and another. Agreements can be made by various parties, both parties within the country and between countries. The number of business actors who carry out business practices in various countries, especially those who enter Indonesia, will certainly bring changes in the process of implementing cooperation and indirectly giving effect to Indonesian contract law because from these business practices new ideas usually emerge in the business world that can be the background and cause variations in the making of a contract. If you look more deeply, there are indeed many things regarding contracts that are not regulated in detail in the laws and regulations or jurisprudence. Even if there are regulations, not all of them are coercive. Therefore, things that are not regulated later can be arranged by the parties themselves by entering into a contract.[1]

Memorandum of Understanding is an initial promise before the formation of an agreement. There is the principle of freedom of contract as stated in Article 1338 paragraph (1) of the Civil Code, which reads: "All agreements made legally apply as law for those who make them." Based on this principle, the parties in the Memorandum of Understanding can freely make agreements in the form according to their wishes or the parties concerned but not contrary to the law. This principle of freedom of contract can provide a juridical reason for the enactment of the Memorandum of Understanding. As a state of law, in doing business, especially to undergo a cooperation, of course, it requires a guideline in its implementation. This guideline is a rule that can be used as a basic reference in cooperation. These guidelines will form a legal basis for cooperation. Before doing a collaboration, of course there is an agreement of the parties contained in a contract.

The important thing in an agreement is that an agreement is related to legal actions. Because through legal actions, humans can carry out their interests and obligations. Whereas in the agreement basically the interests that are bound by what is written in the agreement in question are the interests of the parties themselves, which have been voluntarily and with their consent deliberately involved.

The thing that has been debated until now is the binding legal force of the MoU (Memorandum of Understanding) as the initial issue of the formation of the agreement. Given that the Indonesian state adheres to the Continental European legal system, which uses dogmatic patterns, in which a transaction can immediately formulate the will of the parties in an agreement.[2]

In the civil law system, something that is not regulated in the agreement, will refer to the provisions of higher legislation. This is different from the common law system, where in an agreement everything must be regulated in detail including all the possibilities that will occur as a result of the signing of an agreement. understanding of thought that is in line with the objectives of the agreement between the parties. Looking at the explanation above, it can be concluded that because the Indonesian state adheres to a legal system of civil law, where every member of the community will refer to the provisions of a higher law, then the position of the MoU (Memorandum of Understanding) must receive attention because there is no explicit regulation in Article 1320 of the Civil Code. In simple terms the concept of a Memorandum of Understanding (MoU) is a memorandum of agreement made by the parties who wish to enter into an agreement. However, if the Memorandum of Understanding (Mou) also refers to Article 1320 of the Civil Code, then it has the same legal force as the legal force based on the agreement contained in the Indonesian legal system, namely the Civil Law legal system.[3]

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[1] Budiono Kusumohamidjojo, Comparison of Contract Law, Mandar Maju, Bandung, 2015 p

[2] H. Salim HS, H. Abdullah, Wiwiek Wahyuningsih, Contract Design & Memorandum of Understanding (MoU), Sinar Graphic, Jakarta, 2014 page 7

[3] J. Satrio, Covenant Law, PT. Citra Aditya Bakti, Bandung, 1992

The term MoU (Memorandum of Understanding) must be familiar in the scope of law, especially in the area of the agreement. As time goes by, MoUs often become the initial basis for the formation of agreements for cooperation between the parties. The term memorandum of understanding comes from two words, namely memorandum and understanding. In Black's Law Dictionary, what is meant by a memorandum is "the basis for starting a formal contract in the future (is to serve as the basis of a future formal contract). another agreement, either orally or in writing (an implied agreement resulting from the express term of another agreement, whether written or oral). "5 From the above understanding, it can be concluded that a memorandum of understanding is the basis for drafting future contracts based on the agreement between the parties, both in writing and orally. MOU can also be interpreted as a preliminary agreement, which regulates and provides an opportunity for the parties to conduct a feasibility study first before making a more detailed and binding agreement for the parties which will later be contained in the contract.

Research methods

The research conducted in this research is a normative juridical research type. This study focuses on examining the arrangements regarding the Memorandum of Understanding (MOU) as the legal protection of the parties in the memorandum of understanding. Normative legal research can also be referred to as doctrinal research. Normative juridical research is a scientific procedure to find the truth based on scientific logic from the normative side whose object is the law itself.

The research approach in this study, the author uses the Legislative Approach (Statue Approach). And the use of legal materials in this study includes primary, secondary, tertiary legal materials obtained through tracing legal materials or literature studies.

Results and Discussion

The principle of the agreement really needs to be studied first before understanding the various provisions of the law regarding the validity of an agreement. A development that occurs in a statutory provision will be easier to understand after knowing the principles in question. If you pay attention to the agreements that are often made in the practice of daily life, it is found that there are agreements that have basically been regulated in the legislation, especially in the civil law code.[4]

There are many opinions of legal experts about the principles in an agreement, but basically it aims to achieve legal certainty, legal order, and justice. All explanations of the principles of the agreement are generally complementary and serve as the basis for the parties to determine and make a contract.[5]

Basically, the contract starts from the negotiation process between the parties. Through negotiations the parties seek to create forms of agreement to bring together the interests of the parties through a bargaining process.[6] In short, in the bargaining process, the parties form a preliminary agreement or memorandum of understanding as the first step in achieving mutual understanding between the two parties to move on to signing the contract.

The parties generally often use a Memorandum of Understanding (MoU), because a Memorandum of Understanding has many practical advantages when compared to other agreements. A Memorandum of Understanding can also be enforced in a timelier manner.[7]In the Anglo American system, the stage of offering and accepting is called offer and acceptance. An offer is a promise to do or not do something in particular in the future. This offer is shown to everyone. Acceptance is an agreement between the receiving parties and the bidder on the terms proposed by the bidder. The acceptance must be conveyed by the bidder to the bidder. The acceptance must be absolute and unconditional of the offer. Acceptances that have not been submitted to the bidder are not yet valid as acceptance of the offer. However, in negotiations conducted by correspondence, receipts sent by the same medium are considered to have been delivered.[8] The agreement of the parties is the stage of conforming to the statement of the will of the parties regarding the object of the agreement. In the Anglo-American system, the agreement of the parties is called a meeting of minds. Meeting of minds, namely the conformity of the statement of will between the parties regarding the object of the contract. If the object is clear then the contract is said to be valid. The conformity of the will must be done honestly, but if the contract is carried out with fraud, error, duress, and abuse of circumstances (undue influence), then the contract becomes invalid, and the contract can be canceled. .[8] *Memorandum of Understanding*in this case it is the pre-contract design stage, where the Memorandum of Understanding is the pre-contractual design stage before proceeding to a more standard and binding contract agreement. Before a business transaction takes place, initial negotiations are usually carried out. The initial negotiation in question is a process of trying to reach an agreement with the other party. It is in this negotiation that the bargaining process takes place. The next stage is making a Memorandum of Understanding. Memorandum of Understanding is recording or documenting the results of the initial negotiations in written form. The Memorandum of Understanding is important as a guide for further use or as a basis for conducting a feasibility study.[9]

*Memorandum of Understanding*is a memorandum of agreement that is considered a preliminary agreement before moving on to another agreement or contract. In the contract, the Memorandum of Understanding is the pre-contract design stage, where this stage is the stage before the contract is designed and drafted. In the precontract design stage there are 4 things that need to be

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[4] Satjipto Rahardjo, Legal Studies, Bandung, Citra Aditya, page 54

[5] http:///legal ideas .wordpress.com/tag/agus yudha hernoko/2.pdf, Principles of national engagement law, accessed 21 May 2012.

[6] *Ibid*

[7] Salim HS, SH, MS, et al., Contract & MoU Design, Jakarta, Sinar Graphic, Loc.cit. [8]Juwana, wisdomanto.tt. Contract Design Module 1 to VI. Jakarta .

[8] Ibid

[9] Fuady, Munir. 2003. Contract Law (from a Business Law Perspective). Bandung, Book 2 [11]Salim HS, SH, MS, et al., Contract & MoU Design, Jakarta, Sinar Graphic, Loc.cit. p. 86.

considered, namely the identity of the parties, preliminary research on related aspects, making a Memorandum of Understanding, negotiation.[11]

The parties to the contract must be clearly identified, it is necessary to pay attention to the relevant laws and regulations, especially regarding their authority as a party to the contract in question, and what is the basis of their authority. [10] The person authorized to make the contract is an adult and/or married person. Basically, the parties hope that the signed contract can accommodate all their wishes, so that what is the essence of the contract is really clearly detailed. The preparation of the contract must explain the things contained in the contract concerned, the juridical consequences, as well as other alternatives that may be carried out. In the end, the drafter of the contract concludes the rights and obligations of each party, paying attention to matters related to the contents of the contract, such as elements of payment, compensation and taxation.[11]

*Memorandum of Understanding*is the pre-contractual stage which includes offer and acceptance. After the offer and acceptance, there is an agreement between the parties, which at the same time continues the pre-contractual stage into the contractual stage. At the contractual stage, a meeting of minds occurs, namely the conformity of the statement of will between the parties regarding the object of the contract.[12]

After going through the pre-contractual stage and the contractual stage, the next stage of the agreement is the post-contractual stage, the post-contractual stage is the stage of implementing the agreement where the agreement has been agreed upon by the parties and implemented.

The contract implementation stage or called the post contractual stage is the implementation stage of the contract made by the parties, as the parties must carry out the rights and obligations as specified in the contract. For example, in the contract it has been determined that the second party is obliged to deposit shares of 3% of the total investment or the second party is obliged to pay a sum of money to the first party. The implementation of these obligations is the implementation of the substance of the contract that has been mutually agreed upon by the parties.[13]

Ray Wijaya stated that the binding power of the Memorandum of Understanding is described as follows:

> "From Indonesia's point of view, it seems that Indonesian legal experts still have different opinions about the meaning of the Memorandum of Understanding. One party is of the opinion that the Memorandum of Understanding is only a gentlement agreement that has no legal consequences, while the other party considers that the Memorandum of Understanding is an initial evidence that there has been a mutual understanding on the main issues. This means that there has been an initial understanding between the negotiating parties as stated in the Memorandum of Understanding by the parties to cooperate. Therefore, this initial agreement is a prelude to pioneering the birth of a real cooperation,

This view only describes the binding force of the Memorandum of Understanding from the views of other legal experts. In this description, Ray Wijaya put forward two views on the binding power of a Memorandum of Understanding, namely that the Memorandum of Understanding is only a gentlement agreement that has no legal consequences, and that the Memorandum of Understanding is initial evidence that a mutual understanding has taken place on the issue – main problem.[14]

Hikmanto Juwana expressed his views on the use of the term Memorandum of Understanding. Described as follows:

> "The use of the term Memorandum of Understanding must be distinguished from a theoretical and a practical point of view. Theoretically, the Memorandum of Understanding document is not legally binding on the parties. In order to be legally binding, it must be followed up with an agreement. The agreement in the memorandum of understanding is more of a moral bond. Practically, a memorandum of understanding is equated with an agreement. The bond that occurs is not only moral, but also legal. The most important point is not the terms used, but the content or material of the memorandum of understanding.[15]

Munir Fuady also expressed two views that discussed the binding strength of the Memorandum of Understanding, namely the gentlement agreement and the agreement is agreement. According to this opinion which is actually more formal and legalistic, if an agreement regulates only the main things, then it binds it only to those main things. Or if the agreement is only valid for a certain period of time, then binding it only for that period as well, the parties cannot be forced to make a more detailed agreement or more detailed follow-up from a Memorandum of Understanding to another agreement (contract) or in a more formal form.[16] Failure to implement the substance of the contract properly by one of the parties will cause a dispute for the parties. Dispute resolution is the stage to end conflicts, conflicts, disputes that arise between the two parties. This dispute arises because one of the parties does not

[10] Fuady, Munir. op.cit
[11] Ibid
[12] Salim HS, SH, MS, 2009, Law of Contracts, Jakarta, Sinar Graphic, loc.cit.
[13] Ibid
[14] Wijaya, IGRAy. Designing a Contract (Contract Drafting) Theory and Practice. page 102
[15] Juwana, wisdomanto.tt. Contract Design Module 1 to VI. Jakarta
[16] Salim HS, SH, MS, et al., Contract & MoU Design, Jakarta, Sinar Grafika, loc.cit. page 56 [19] Ibid p. 85

carry out the substance of the contract as agreed even though they have been given subpoenas three times in a row. There are two ways that will be taken by the parties if there is a dispute in the contract, namely: through dispute resolution outside the court (non-litigation) or through the court (litigation).[19]

In the execution of the contract there may be disputes. The parties are free to determine the way to be taken if a dispute arises in the future. Usually dispute resolution is explicitly stipulated in the contract. The parties can choose through the court (litigation) or outside the court (non-litigation). Each method chosen has its own advantages and disadvantages that must be considered before choosing a method that is considered suitable to be applied.[17]

The contract function can be divided into two types, namely the juridical function and the economic function. The juridical function of the contract is to provide legal certainty for the parties, while the economic function is to move (property rights) resources from a lower use value to a higher value.

Mark Zimmerman also put forward the western view of the function of the contract can be described as follows:

> For westerners, a contract is a legal document that regulates the rights and obligations of the parties who make it. In the event of a dispute regarding the implementation of the agreement between the parties, the document will be referred for settlement of the dispute. If the dispute cannot be resolved easily through negotiation between the parties themselves (because it takes a lot of time and energy), they will resolve it through a litigation process in court. The contents of the contract will be used as the basis by the judge to resolve the dispute."[18]

In addition, the contract serves to secure business transactions. A contract in a business is very important, because the contract can at least be known as follows:

1. What engagement is done, when, and where the contract is performed
2. Anyone who binds themselves in the contract
3. The rights and obligations of the parties, what should be, what is allowed, and what should not be done by the parties
4. Terms of the validity of the contract
5. The methods chosen to resolve disputes and the choice of legal domicile chosen in the event of a dispute between the parties
6. When does the contract end or what things cause the contract to end
7. As a means of control for the parties, whether each party has fulfilled its obligations or achievements or not or has even committed a default.
8. As evidence for the parties if later there is a dispute between them, for example one of the parties is in default. This includes if there are third parties who may object to a contract and require both parties to prove matters relating to a contract in question.[19]

If the opinion is considered, it can be stated that the main function of the contract is a juridical function. The juridical functions of the contract are:

a. Regulate the rights and obligations of the parties
b. Securing business transactions
c. Regulates the pattern of dispute resolution that arises between the two parties.

Given the importance of a contract in a business transaction, of course, in making a business contract certain requirements are needed so that the business contract remains within the corridor of the applicable laws and regulations. In practice in Indonesia and also in countries that adhere to the civil law system, the process of making business contracts often involves a notary.[20]

An agreement can be realized between the parties due to an initial agreement which is generally stated in a memorandum called a Memorandum of Understanding (MoU). from a Memorandum of Understanding (MoU) to a more concrete agreement such as a contract, license agreement and so on.

Without an agreement, licensing has basically emerged with an agreement (consensus) based on the principle of consensuality by using theories about the momentum of the occurrence of conformity of will as well as theories about the incompatibility of statements and intentions.[21]

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[17] Abdurrasyid, Priyatna. Arbitration & Alternative Dispute Resolution An Introduction.Jakarta.
[18] Sjahdeini, Sutan Remy. Freedom of Contract and Balanced Protection for Parties in Bank Credit Agreements in Indonesia. page 131
[19] Abdullah.2006, The Role of Notaries in Making Business Contracts.
[20] Salim HS, SH, MS, et al. loc.cit. page 24
[21] Sendjaja, Gordon Wagirin,. 2011, Legal Protection for Licensees. Medan, National Press Library, page 52.

The license agreement made in oral or written form binds the parties involved in the contents of the agreement, namely the licensor and the licensee so that it has legal consequences like other agreements, both agreements regulated in civil law books and other types of agreements. outside of it considering the principle of freedom of contract which provides the widest possible opportunity for the process of making a new contract as long as it does not conflict with the law, decency and public order.[22]

The contents of the license agreement bind the parties who make it in accordance with the principle of pacta sunt servanda which emphasizes the existence of the agreement as a law for the parties involved in the agreement, especially to the licensor and the licensee.[23]

In practice, there are many types of licensing that are based on an agreement that is stated in writing in the form of a Memorandum of Understanding without being forwarded to the making of a license agreement which in the end raises a polemic over the legality of granting the license.

By being given the freedom to enter into an agreement verbally or not clearly stated in the civil law code, it can be concluded that with an agreement from one party who owns an Intellectual Property Rights to grant a license to another party and an agreement from that party to receive a valid license. concerned, is sufficient to produce an oral license agreement.[27]

However, due to the difficulty of proving an oral agreement, oral agreements are often avoided because they do not contain legal certainty, but the situation will be different, at the time of agreement, to grant a license, it is stated in a memorandum of understanding which also shows the implied understanding that the granting of a license licensing by making a Memorandum of Understanding is basically an oral license agreement that does not need to be followed by a written license agreement, because an agreement made orally is valid if it can be proven. In other words, granting a license with a Memorandum of Understanding is a form of an oral license agreement.[24]

Eddy Damian in his statement as an expert witness in the case of Novotel Indonesia versus ACCOR gave an explanation of the granting of a license with a Memorandum of Understanding without being followed by a license agreement as follows:

1. Whereas the exclusive rights of a brand are owned by the brand holder and if it is to be transferred, there must be permission from the brand holder by making an agreement.
2. Whereas the Memorandum of Understanding is a requirement / statement from the parties to be submitted and there will be a follow-up to the Memorandum of Understanding, in the sense that the Memorandum of Understanding is a statement that must be followed by an agreement.
3. Whereas the Memorandum of Understanding has binding power, after the license agreement, if it is not there, the Memorandum of Understanding becomes a thing called Goodwill Business.
4. That a foreign trademark is also a must to be registered at the Directorate General of Indonesian Intellectual Property Rights.[25]

In his testimony, Eddy Damian tried to give an illustration that the Memorandum of Understanding is a form of memorandum of understanding that is written down, in written form, can contain all kinds of legal actions or actions that will be carried out in the future, but it should be noted that legal actions / actions This has not been done, and is only a plan to implement, so it does not deserve to be seen as a concrete agreement on the content. In conclusion, a Memorandum of Understanding without being followed up by a license agreement, is not a license agreement and applies otherwise.
Meanwhile, Tan Kamelo in his statement as an expert witness in the case of Novotel Indonesia versus ACCOR gave an explanation of the granting of a license with a Memorandum of Understanding without being followed by a license agreement, as follows:

1. That the agreement can be made in sign language, can be done orally and can be done in writing.
2. Whereas the Memorandum of Understanding is not regulated in the Civil Code, but the witness stated that the Memorandum of Understanding is a relationship between two more people regarding a matter that has not yet caused legal consequences, because it has not yet caused legal consequences, the Memorandum of Understanding is in a phase called Pre-contract.
3. Whereas if the Memorandum of Understanding has been implemented in part or in whole, the Memorandum of Understanding will automatically turn into a contract, so the Memorandum of Understanding can turn into a contract if it has been executed but if the Memorandum of Understanding is not executed by the parties, then the Memorandum of Understanding will not be executed. ever turned into law.[26]

In his testimony, Tan Kamelo stated that the Memorandum of Understanding was basically an agreement between the two parties which made him seem to relate to the legal principle of the engagement, namely the principle of pacta sunt servanda, which implies that the agreement made legally applies as law for those who make it.

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[22] Salim HS op.cit, p. 166
[23] Sendjaja, Gordon Wagirin. Op.cit p. 53 [27] Ibid
[24] Yusdinal, Legal Protection of Patent Licenses, Semarang, Udip.
[25] The decision of the Commercial Court at the Medan District Court Number 01/Merek/2008/PN.Niaga.Mdn.
[26] Ibid

He also provides an important description of the existence of a Memorandum of Understanding that has been implemented, or has never been implemented at all, which is the single key to determining the effectiveness of a Memorandum of Understanding for the parties who made it, given that if a Memorandum of Understanding has been implemented its contents are both parties consciously or not, the Memorandum of Understanding has been transformed into law and legislation for the parties who make it without having to make a concrete agreement for the legal action that has been carried out.

In conclusion, the Memorandum of Understanding that occurred between the plaintiff and the defendant has been transformed into a license agreement between the two parties by considering and considering that the contents of the agreement have been implemented by both parties properly, even though the license agreement has never been made before.[27].

Actually, the MOU is the same as any other understanding. The fields also vary, can be about trade, buying and selling, agreements between countries, investment, or other fields. Even at least theoretically, MOUs can be made in any field.[28] From the contract law system there are 2 (two) theories as follows:

1. Contracts are real.

   The theory that says that a contract is teaching where a new contract is considered valid if it has been done in real terms. That is, the contract is binding if an agreement has been made and the lever has been carried out at the same time. The word agreement alone does not have any meaning according to this theory.
2. The contract is final.

   The theory that considers a contract to be final teaches that if an agreement has been formed, then the contract is binding and property has been transferred without the need for a special contract.[33]

An MoU can be said to be a contract if:

1. Material/ Substance in the MoU

   What material or substance is regulated in the articles of the MoU is very important, because whether in the material contained in the MoU there are elements that will make one party harm if any of the material in the MoU is denied. For example, the MoU regarding cooperation to build a project, where the parties agree to cooperate with each other in the construction of the project. However, in the middle of the agreement, one of the parties wanted to cancel the cooperation on the grounds that the project was not good. With the unilateral cancellation, it is clearly detrimental to the other party concerned, because one of the parties feels that they have prepared everything, including the required budgets. So in this case, based on the theory of default, which is about the loss of expected profits, where one party feels a loss and feels he has lost a big advantage from the cancellation of the MoU, the MoU that has been made can be categorized as a contract or equivalent to an agreement based on article 1338 Civil Code. In the theory of trust, it has also been clearly stated that a contract is considered to exist if the contract in question has created trust for the party to whom the promise was given so that the party who receives the promise because of his trust will cause losses if the promise is not fulfilled. then the MoU that has been made can be categorized as a contract or equivalent to an agreement based on article 1338 of the Civil Code. In the theory of trust, it has also been clearly stated that a contract is considered to exist if the contract in question has created trust for the party to whom the promise was given so that the party who receives the promise because of his trust will cause losses if the promise is not fulfilled. then the MoU that has been made can be categorized as a contract or equivalent to an agreement based on article 1338 of the Civil Code. In the theory of trust, it has also been clearly stated that a contract is considered to exist if the contract in question has created trust for the party to whom the promise was given so that the party who receives the promise because of his trust will cause losses if the promise is not fulfilled.[29]
2. Whether or not there are sanctions.

   The MoU is said to be a contract, it must be seen whether the MoU contains sanctions or not. If the MoU does not contain a strict sanction then the MoU cannot be said to be a contract. And if it only contains moral sanctions, the MoU cannot be said to be a contract because it is based on Holmes Theory which states that there is no moral sanction in a contract.[30]

However, it is different if the MoU material only regulates the main reviews where in the MoU article it is stated that cooperation regarding activities carried out by the parties will be determined in the implementation agreement which will be determined by each party. And if it is also stipulated in another article that for financing, it will also be regulated in another, more detailed agreement. If the substance of the MoU regulates such matters, then based on the principle of contract law, it can be called a contract.

[27] *Ibid*

[28] Munir Fuady, 2002, Business Law in Theory and Practice, Fourth Book, Bandung, PT. Image of Aditya Bakti. [33] Ibid

[29] Ibid p. 92

[30] Ibid p. 32

There are two opinions regarding the position of a Memorandum of Understanding, namely:

1. Gentlemen Agreement

   This opinion states that the MoU is only a gentlement agreement. It means that the binding power is only limited to mere moral recognition, in the sense that it has no legal binding power.
2. Agreement is Agreement

   The opinion that whatever form. Oral or written, short or long, complete or detailed or only regulated with the main points, it is still an agreement, and therefore has binding legal force like an agreement, so that all the provisions of the articles concerning the law of the agreement can be applied to it. (Article 1338 of the Civil Code)[31]

Based on this description, it can be concluded that in order to determine the position of the MoU, a clear observation is needed of the substance contained in the MoU, whether the material/content contains elements of non-moral losses or financial losses if achievement is not fulfilled and whether the MoU contains sanctions. or not.

Failure to fulfill achievements, in this case there has been a default that has caused losses by other parties in an MoU. What is meant by Default is a condition caused by negligence or error in carrying out obligations as specified in the agreement made between the creditor and the debtor.[32]

Regarding default in the Civil Code, it is regulated in Article 1243 of the Civil Code which reads "Reimbursement of costs, losses, and interest due to nonfulfillment of an engagement becomes mandatory, if the debtor, even though it has been declared negligent, still fails to fulfill the engagement, or if something has to be given or done. can only be given or done within the time that has exceeded the specified grace period.

The non-fulfillment of obligations in an agreement can be caused by two things, namely:

1. Due to the debtor's fault either intentionally or by negligence.
2. Due to forced circumstances (overmacht or forcemajure).[33]

Conclusion

Based on the discussion above, the author can conclude that a Memorandum of Understanding (MoU) is a memorandum of understanding and describes an agreement in its main parts only. In this case, the legal force contained in the Memorandum of Understanding (MoU) of the State of Indonesia does not explicitly regulate. This shows the existence of a legal vacuum in the making of the agreement and the absence of a strong legal basis. However, there are regulations related to the Memorandum of Understanding (MoU), namely Book III of the Civil Code, which is listed in Article 1338 as a basis for sanctions that if one party has violated the main things stated in the contents of the MoU. Memorandum of Understanding (MoU) Memorandum of Understanding (MoU) as the basis for drafting future contracts based on the agreement between the parties, both written and verbal. The government must make clear laws and regulations regarding the Memorandum of Understanding (MoU), because if the parties want to make a pre-agreement before entering into a contract, then the existence of legal force in it as a coercive provision is important, to minimize acts of violence. negligence by the parties in making such a memorandum of understanding.

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