Legal Protection for Losses Caused by Online Arisan

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Abstract
The purpose of this research is to analyze (1) The Position of Oral Agreement in Online Arisan According to Civil Law and (2) Legal protection for losses caused by online-based arisan. The type of research used in empirical juridical research, with the type of legislative approach and conceptual approach. The results of the research are (1) The position of Oral Agreement in Online Arisan according to Civil Law is valid and binding for both parties who make it. This is based on the principle of freedom of contract, that contracts can be made in any form, whether written or unwritten (oral). As long as the two parties making the agreement both agree and the contents of the agreement to be made do not at all contradict the laws of decency, public order and laws that apply in society. In addition, oral agreements that occur in online arisan are also included as innominaat contracts or unnamed agreements. An unnamed agreement is an agreement whose form and type are not mentioned in the Commercial Code or Civil Code. (2) Legal protection for losses caused by online-based arisan, protection can be obtained by the injured party in the form of compensation or good faith from the admin or parties who violate the contents of the agreement that has been made. And if all the evidence reported is clear, including the type of agreement. Although in Article 1320 of the Civil Code, the agreement does not have to be in writing, but if the party has carried out the contents of the agreement, the party who committed the violation can be prosecuted legally, it is an effort to protect the parties of online arisan members.

I. Introduction

Nowadays in Indonesia *online media* has developed in the context of communication, *online media* is mass media or press media that can be presented *online* on the internet with news *websites* or news portals, the mass media is also referred to as *cyber media.* Not only *cyber media* that has been created by humans but also a social media, which initially in communication activities carried out by humans such as correspondence with long delivery times and costs are quite

expensive and use paper, with the advanced technology now it is more effective and faster in communicating and sharing information.

As technology develops, arisan is known to only be done in a conventional way, namely by meeting directly with its members. In contrast, arisan can now be done with the help of social media. Such arisan is prone to fraud or embezzlement due to the lack of collateral or written agreements. Arisan activities are designed to be easier without the need for time and place. The lack of time owned by the members will certainly have a positive effect on the existence of this *online arisan* activity. However, *online arisan* also has a negative impact, namely the weak strength of the agreement owned by the *online arisan* members, considering that this arisan is carried out only through social media. As time goes by, nowadays developments occur in the financial regulation system in the implementation of arisan, arisan is not a new thing that is known and implemented, arisan itself is an activity of collecting funds carried out by several people, then withdrawn based on serial numbers, can also be drawn according to the predetermined number sequence. But this time arisan is developing along with existing technology, namely *online-based* arisan, of course all parties involved in it want convenience in the financial system procedures in its implementation. This arisan activity can be said to be a social activity because it is one of the media to give each other, help each other, and can also be used as a gathering place in the form of harmony between fellow members.[1]

The convenience provided by social media gives access to anyone to interact with each other, and can provide benefits for entrepreneurs or groups to develop businesses such as travel agents, transportation modes, digital money to *online* arisan can be done with the current technological advances. Arisan is a joint activity in a community whose application is in the form of collecting funds at each certain period after the money is collected, a kind of lottery will be held to determine the person who will receive the funds. According to the Big Indonesian Dictionary, arisan is said to be the activity of collecting goods or money of the same value by several people and being drawn among them to determine who gets it.[2]

Agreements in online arisan each use a system of mutual trust with each other. Where this agreement is called an agreement made orally where this agreement remains valid and binding on both parties, because it must be based on an agreement and must be carried out in good faith. Usually an oral agreement

[1] Dewa Sang Ayu Made Sugi Yasmarini, *Legal Protection of Losses Caused by Online-based Arisan*, https://ojs.unud.ac.id.
[2] Muhajir Effendy, *Big Indonesian Dictionary*, Ministry of Education and Culture, Jakarta, pp, 50.

is made if the contents of the agreement are relatively simple and of little value. Unlike the case if the agreement is of great value and has a high risk, it is generally made in writing.

Online arisan is generally carried out in groups by collecting money or goods in the same amount each period, then a draw or shuffle is made to determine the winner, for members whose names come out of the shuffle then they are the winners who are entitled to get the money that has been collected from all members. Members whose names have been drawn can no longer be winners, unless they participate in the *online* arisan with more than one number, which is the usual arisan system. This *online arisan* activity can be said to be a social activity because it is one of the media to give to each other, help each other, and can also be used as a gathering place in the form of harmony between fellow members. This social activity is carried out by entering into agreements and agreements between members in an *online* arisan group.

The procedure for doing arisan *Shopee*, the first step that participants can do of course must have a *shopee* account, and have joined the *shopee* arisan feature. For participants who do not have both, participants can install and follow the feature, secondly open the *shopee* feature, then participants will be asked to invite their friends, participants can add friends by pressing the invite friends button, then they can type *shopee arisan*, on the next day participants can *check in* and draw, this *check in* itself is a term used where participants can already log *in* with other participants with a number for example 7.

When already logged in, participants can determine the head of the arisan grub and then participants can choose by just tapping the winner draw button that way, the system will draw a lottery where later participants will find out the winner of the 10 thousand *shopee* arisan point lottery will fall into whose hands, finished, then the arisan participants will do it for 7 days to get a lottery for 7 participants. The *Shopee arisan* agreement can also be classified as a lending and borrowing agreement, because in the arisan where the creditor (arisan holder) receives a loan from the debtor (in the form of contribution money paid by the participants), it means that the arisan is borrowing and lending money.

There are several court decisions related to arisan, including Supreme Court Decision No. 1660 K/Pdt/2009 dated June 22, 2010 which has permanent legal force. The arisan was rotated monthly with a shooting system (bidding system), that the arisan was attended by 17 members where the defendant was the head of the arisan, without being shot, that in the next round the members of the arisan had the right to shoot and whoever shot the highest then the member received the arisan, that the Plaintiffs, Plaintiffs II, III and IV) were members of the arisan who carried out their obligations towards Plaintiff IV Rp.26,000,000, -

. Total 75,300,000 (seventy five million three hundred thousand rupiahs); that the plaintiffs have repeatedly demanded payment from the Defendants but the Defendants did not want to pay. [3]

Decision Number 375/Pid.Sus/2021/PN Bnj. The defendant Ratna Oktavia Dewi Pararat on December 03, 2020 or at least at other times in 2020 has spread false and misleading news resulting in consumer harm in electronic transactions as referred to in Article 28 paragraph (1), the Instagram account used under the name arisan_nsumut where the defendant included a Whatsapp grub link via the chat.whatsapp.com/GPvMP6JSYIL8gf06el3 link. The defendant's post on the defendant's Instagram account offering *online arisan* contained the sentence: Arisan Sumut is trusted, special duos ready every day, interest dm whatsapp.com/GPvMP6JSYIL8gf06el3. The arisan that must be deposited to the defendant amounts to Rp. 5,000,000.00 (Five Million Rupiah) by sending it to BRI Account Number 337601048614534 or BCA. 1750849624. For his actions the defendant committed fraud by means of *online* arisan and was charged with Article 28 paragraph 1 Article 45 paragraph (1) of Law of the Republic of Indonesia No. 19 of 2016 concerning Amendments to Law of the Republic of Indonesia No. 11 of 2008 concerning ITE, therefore the judge sentenced the defendant to 2 (two) years imprisonment and a fine of Rp. 100,000,000.00 (One Hundred Million Rupiah), provided that if not paid, it will be replaced with imprisonment for 1 (one) year.[4]

RANTAU District Court Decision Number 141/Pid.B/2021/PN Rta dated September 27, 2021 with the defendant Siti Wahdatus Saniah Binti Muhammad Jawari. After the witness Jakfar Sodik saw the defendant's status, the witness Jakfar Sodik sent a whatshap message to the defendant asking how the online arisan system was and whether it was safe or not. after that the defendant said that the online arisan was safe and the defendant also participated in the online arisan. Then the defendant said that the online arisan could be purchased from Rp.500,000 (five hundred thousand rupiah) to Rp.2,000,000 (two million rupiah).[5] This is what underlies the author to conduct a research conducted by the author, with the research title "Legal Protection of Losses Caused by *Online* Arisan" within the identification problem: What is the position of oral agreement in *online arisan* according to civil law? *And,* How is legal protection for losses caused by *online*-arisan?

[3] https://putusan3.mahkamahagung.go.id/search.html/?q=arisan accessed on August 1, 2023.
[4] Ibid.
[5] https://putusan3.mahkamahagung.go.id/search.html?q=arisan&page=8&courtos=38 accessed on August 3, 2020.

2. Research Method

The approach method used in this research is empirical juridical. Empirical juridical research is legal research on the enactment or implementation of normative legal provisions *in action* on each specific legal event that occurs in society.[6] This research uses the concept of law where, law is positive norms in the national legal statutory system, the research is doctrinal, namely the law is a manifestation of the symbolic meanings of social behavior as seen in the interaction between them. Non-doctrinal legal research, the approach uses qualitative research. This research is based on the legal positivist concept which suggests that legal norms are identical to norms that are written and made and promulgated by authorized state institutions.[7]

The type of data used in the doctrinal approach is secondary data, when viewed in terms of the information provided, library materials can be divided into 3 (three) groups, namely primary legal materials, secondary legal materials, and tertiary legal materials. Primary data, namely data obtained directly from the main source in the form of views, thoughts, aspirations, actions, events and legal relationships and words.[8] This type of data provides information or information directly about everything related to the object of research, which is obtained directly through the field in the form of words and actions by means of *in-depth* interviews *(indepth* interviews*)*. Secondary data is data obtained from *library research* such as laws as a juridical basis, official documents, books, research results, theses, dissertations. Secondary data is used as primary data support. Legal materials used to obtain secondary data are: primary legal materials, secondary legal materials and tertiary legal materials.

Primary legal materials are all legal materials that are binding and directly related to the object of research conducted by understanding the basis for writing this research. Primary legal materials used are: 1945 Constitution, Civil Code, Law Number 10 of 1998 concerning Banking. Secondary legal materials provide explanations of primary legal materials, such as books, research results, scientific works from practitioners and academics. Tertiary legal materials are materials that provide guidance and explanation of primary and secondary legal materials, such as legal dictionaries, the Big Indonesian Dictionary and encyclopedias.

The data collection techniques used in this research are using document studies and interviews. Data processing used in this research is editing. Editing

[6] Abdulkadir Muhammad, 2004, *Law and Legal Research*, Jakarta: Citra Aditya Bakti, p.134.
[7] Ronny Hanitiyo Soemitro, 1990, *Legal Research Methodology,* Jakarta: Ghalia Indonesia, p.132.
[8] Lexy J. Moleong, 1998, *Qualitative Research Methodology*, Bandung: Remaja Rosdakarya Offset, p.112

is data processing by re-examining records, documents and information collected by data seekers in the hope of improving the quality of the data to be analyzed.[9] The data analysis that researchers will use is descriptive qualitative. According to Soerjono Soekanto, the qualitative analysis method is a research that produces descriptive data analysis, what the respondent states in writing or verbally, as well as the real culprit is researched and studied as a whole.[10]

The analysis is carried out by means of 2 (two) stages: namely a). The first stage is based on a doctrinal approach, the analysis is carried out using a qualitative normative analysis method. b). The second stage is based on an empirical approach, the analysis is carried out using qualitative analysis which is carried out using an interactive analysis method *(interactive model of analysis)*. The three stages are: Data Reduction *(data* reduction*)*, Data Presentation *(data display)* and Drawing conclusions *(conclusion data)*.

3. Results and Discussion

1. The Position of Oral Agreement in *Online* Arisan according to Civil Law.

The law of agreements in Indonesia actually still uses Dutch colonial regulations in which it explains the *open* nature of the agreement *(open system)* which means that the parties are free to enter into contracts with other parties. Anyone, determine the terms, implementation, and form of the contract either in writing or orally. In addition, it is allowed to make contracts, both those that have been recognized in the Civil Code and outside the Civil Code. This is in accordance with Article 1338 paragraph (1) of the Civil Code which reads: "All agreements made legally shall apply as laws for those who make them".

It should be noted that arisan *Online* adheres to an oral agreement system in which the parties do not write the agreement on a piece of paper, the agreement in arisan *Online is* only based on mutual agreement between members by putting trust. This means that this has also fulfilled the legal requirements in making an agreement The legal requirements of the agreement include:[11]

a. Agreement of both parties

[9] Bambang Waluyo, 2008, *Legal Research in Practice,* Jakarta: Sinar Grafika, p.17

[10] Soerjono Soekanto, *1986, Introduction to Legal Research*, Jakarta: University of Indonesia Press, p.10

[11] Lidya Puspita & Ariawan Gunadi, "*Analysis of the Legal Strength of Oral ArisanOnline Agreements Using the Facebook Messenger Application Media in Court Evidence from the Electronic Information and Technology Law Number 11 of 2008*", Adigama Law Journal, Volume 2 Number 2, December 2019.

Agreement is the willingness of the parties to carry out obligations and accept rights that have been determined to achieve common goals. Agreement also means that both parties to an agreement have a free will to bind themselves, and that willingness must be expressed firmly and silently. Agreement is also a bargain that occurs, if the bidder offers and the offered accepts the offer then there has been an agreement, in other words, there is a conformity of will between the two parties.

Where the agreement itself is something that is difficult to formulate when the agreement occurs, for this reason, according to Article 1320 paragraph (1) of the Civil Code, the conformity of the statement of will is in the form of:[12]

1) Complete and written language
2) Spoken perfect language
3) Imperfect language, as long as it can be clearly understood by the other party
4) Sign language as long as it is acceptable to the other party
5) Silence or silence, but as long as it is understood by the other party,

Usually, the most done is with perfect language orally and in writing, because a written agreement has a plus point because it has legal certainty as evidence in the future if a dispute occurs. In oral agreements in arisan Online, the part that constitutes the existence of an agreement is when the agreement occurs between the parties concerned, the agreement is in the form of a matter of who is the order of pull / japo in arisan, dues and what system has been agreed upon, as well as administrative costs, fines as well as what kind of payment methods are mutually agreed upon by the group or arisan members.

b. Capacity to perform legal acts.

Capacity is the ability to perform legal acts. Talking about capacity means being able or worthy to make a n agreement. A person's capacity is determined by law, people who are adults over 21 years old or who are married, this is stated in Article 330 of the Civil Code: "Immature are those who have not reached the age of twenty-one years, and have not previously been married."

However, capability is not necessarily about the age of maturity. Proficiency is also related to a person's eligibility to perform legal acts, whether a person understands the legal consequences of his actions. In addition, capability is also a matter of authority. The authority in question

[12] Salim H.S, *Contract Law Theory and Contract Drafting*, Sinar Grafika, Jakarta, 2019, pp. 33

is a person's capacity to carry out these legal actions. If the age of legal adulthood has been met, as well as the eligibility to perform legal acts but he does not have the authority, he is not entitled to sign or approve an agreement or contract. If he does, even though he does not have the authority, then it is clear that the contract is invalid. Proficiency in *online* arisan is marked not just by being an adult or more than one year old, because it is rampant that *online* arisan is carried out by people under the age of 21 because it is seen from the millennial generation who often make *online* transactions and most of them are teenagers, because this does not mean that they are not legally capable, but as long as both parties understand each other's intentions and objectives and are aware of the rights and obligations they are burdened with, it is enough to be a capable party in making an agreement.

c. Existence of Objects

The existence of an object is something that is promised or the Dutch language is Onderwerp *van de Overeenkomst*. According to Article 1333 of the Civil Code, the agreement must have a promised object. The object can be in the form of goods or objects and achievements. The achievement in question is something that is to be achieved. There are three forms of achievement, namely giving something, doing something and not doing something. If it does not have an object in the form of goods or objects, then the object of the agreement in the form of achievement is an explanation of the agreed rights and obligations.

The agreed rights and obligations must also be clear and detailed, so that they can become an object of agreement. If there is nothing that is promised, then there is no object of the agreement, resulting in null and void *(vanrechtwegenitig)* and the agreement is considered to have never existed.

The object of the agreement referred to in the *online* arisan agreement is the rights and obligations of the members, starting from what kind of arisan will be carried out, for example, arisan goods, arisan money. Furthermore, the obligations that are fulfilled such as the obligation to pay arisan contributions, grace period or maturity.

d. Existence of a Halal Cause

The last valid condition of the agreement is the existence of a halal causa or halal cause. According to Article 1335 of the Civil Code which reads: "an agreement without cause, or made under a false or forbidden cause is of no force." It is clear that an agreement has a specific purpose. Halal contained in the Civil Code is not explained. However, according to Article 1337 of the Civil Code, there is a prohibition in making an agreement

if the agreement has a cause that is: Contrary to the law, Contrary to decency, Contrary to public order. The halal clause referred to in the oral agreement in *online arisan* is that the arisan should not conflict with the applicable laws, for example *online* arisan in the form of goods, the goods used as the object of arisan are not goods that conflict with the law. For example, narcotics and illegal drugs. When referring to the elements of the agreement, the oral agreement in *online* arisan has also fulfilled the elements that have been described, namely, the existence of a legal relationship, the existence of a legal subject, the existence of an achievement. The first is the existence of a legal relationship. The legal relationship referred to in the *online* arisan oral agreement is based on an agreement, when an agreement has been said, a legal relationship automatically occurs between the *owner* or admin of the arisan and all members who have been collected. Next is the element of the existence of a legal subject. The subject of law is a person who is entitled to exercise rights and obligations.

In *online* arisan, the legal subjects consist of admins and members. The admin is the person who organizes the arisan. The admin is usually chosen by the members. His obligations are to run the arisan such as collecting arisan members, collecting funds when they are due and being responsible for the arisan. The rights that the arisan admin has, usually receiving money or rewards that he gets at the beginning in exchange for his responsibilities. From what is described above, we can understand that the oral agreement made in *online* arisan is one type of *innominaat* agreement or anonymous agreement that has no information mentioned in the applicable legislation, based on the principle of freedom of contract.

online arisan is a valid agreement and has legal force, as mentioned in Article 1320 of the Civil Code that the validity of the agreement does not have to be written. Therefore, oral agreements in *online* arisan are called valid if they fulfill the valid requirements of the agreement and the elements mentioned above. In positive law in Indonesia, agreements are regulated in Book III of the Civil Code on Binding. The obligation is generated by the agreement. In accordance with Article 1313 of the Civil Code, an agreement is an act by which one or more people bind themselves to one or more other people. As previously described, arisan is an obligation born out of an agreement based on an agreement between the parties. So as to find the legal force in the agreement. There must be clear and firm provisions to establish formal certainty that the parties involved in an agreement or engagement are subject to goodwill and consequence.

Online arisan involves electronic media as a means of running

arisan, so the involvement of the ITE Law (Electronic Information and Transactions) as a basis for legal force is also related. In the ITE (Information and Electronic Transactions) Law, namely Law No. 19/2016 Article 5 states that:

a. The existence of electronic information or its printouts is a valid legal evidence.
b. Regarding electronic information or its printouts as referred to in paragraph (1) is an extension of legal evidence in accordance with the applicable Law of Procedure in Indonesia.
c. Regarding electronic information and/or electronic documents that are declared valid when using an electronic system must be in accordance with the rules and regulations of the Law.
d. Referring to the rules / provisions on electronic information as in paragraph (1) does not apply to designations such as :

1) Where a letter according to the law must be made in written form; and
2) Where letters and documents according to the law must be made in the form of notarial deeds or deeds made by deed-making deed.

Based on the explanation of the ITE Law above, it is clear that in order for the agreement in the *online* arisan to have legal force, at least there is evidence that must be attached when the agreement is running. As supporters, for example, printouts or *screenshots* that the members in the arisan have agreed or agreed to the terms of the arisan. Plus, printouts of proof of payments that have been made.

When viewed from the Civil Code, especially regarding agreements as stipulated in Article 1320 of the Civil Code concerning the validity of agreements, the oral agreement in *online* arisan has fulfilled the validity of the agreement, namely; the existence of an agreement from *online* arisan participants, the existence of the ability to act legally to conduct *online arisan*, then the arisan activity is the object of the *online arisan*, and the activity is not prohibited by law. Thus, the oral agreement in *online* arisan that has fulfilled the valid requirements of the agreement as determined by Article 1320 of the Civil Code has legal force for the participants in the *online* arisan as stipulated in Article 1338 of the Civil Code which reads: "Agreements made legally shall apply as law to those who make them".

2. Legal Protection for Losses Caused by Online-based Arisan

Arisan activities are very common, especially among women, arisan activities are an activity where we gather together then collect money with an agreed nominal regularly at a predetermined time, after the money or goods

have been collected then there will be a draw of names that will be declared winners in the draw. However, with the development of the times, arisan, which used to be carried out by meeting face-to-face, switched to using an *online* system. arisan activities carried out *online are* indeed rampant among the people of Indonesia, Arisan *online* is an agreement made with electronic media, so that in its activities it can also be referred to as electronic transactions. Electronic transactions are regulated in Law Number 19 of 2016.

Online arisan is not much different from arisan in general, as we see that in general an arisan must gather and meet face to face and then be drawn, but the system is different from this type of arisan, because the activities can be through the media or in other words there is an intermediary to connect the *online arisan* participants and all transactions or interactions. Protection must still be provided by the manager or it can also be said to be consumer protection, as well as consumers here are *online shopee arisan* members who depend on one of the arisan groupings, and in which there are parties who make defaults. For the sake of running the arisan, the parties who use the arisan management funds must be able to pay off according to the specified time period because it must also include several agreements regarding the procedures for repayment.

In the implementation of *online* arisan, it can also be said that the relationship between business actors and consumers, where the arisan manager can be said to be a business actor because he offers services in the form of *online shopee arisan business* activities and arisan members as consumers because the arisan manager provides objects in the form of goods to consumers, such as the definition of consumers described in the GCPL Law, consumers are everyone who uses goods and or services available to the community for their own interests, family or others, as is the case in *online shopee arisan* where arisan members receive goods in the form of money.

In addition, considering that now all electronic transactions have been regulated in Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions (ITE Law) where every electronic transaction activity is regulated in the ITE Law, including every act of electronic crime (*cybercrime)* arisan managers who commit criminal acts such as not carrying out according to the rules of arisan on members' money, always asking for the tempo but never carrying out their obligations, and will be held criminally responsible, criminal responsibility is a reprehensible act by individuals or groups that must be accounted for by the maker for the actions committed.

4. Conclusion

The Position of Oral Agreement in Online Arisan According to Civil Law, is valid and binding for both parties who make it. This is based on the principle of freedom of contract, that contracts may be made in any form, whether written or unwritten (oral). As long as the two parties making the agreement both agree and the contents of the agreement to be made do not at all contradict the laws of decency, public order and laws that apply in society. In addition, oral agreements that occur in online arisan are also included as innominaat contracts or unnamed agreements. An unnamed agreement is an agreement whose form and type are not mentioned in the Commercial Code or the Civil Code. Legal protection for losses caused by online-based arisan, protection can be obtained by the injured party in the form of compensation or good faith from the admin or parties who violate the contents of the agreement that has been made. And if all the evidence reported is clear, including the type of agreement. Although in Article 1320 of the Civil Code, the agreement does not have to be in writing, but if the party has carried out the contents of the agreement, the party who committed the violation can be prosecuted legally, it is an effort to protect the parties of online arisan members.

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