

LEGAL REVIEW OF CANCELLATION OF AGREEMENT BORROW FOR LAND ORDERLY

Muhammad Fadly, Mhd Syukran Yamin Lubis

Email: mhdfadly2004@gmail.com

Universitas Muhammadiyah Sumatera Utara

ABSTRACT

This research is motivated by the position of the Curator who has the authority in the management and settlement of bankrupt assets, thus demanding independence as a fundamental principle to guarantee justice and protection of the interests of creditors and debtors. Article 15 paragraph (3) of Law Number 37 of 2004 concerning Bankruptcy and PKPU requires the Curator to be independent, honest, and impartial, but does not provide a clear definition or indicator regarding the phrase "independent". The ambiguity of this norm gives rise to different interpretations in practice and has implications for legal uncertainty and the potential for criminal liability of the Curator. Based on this, this research formulates problems regarding the regulation of the phrase "independent", the form of criminal liability of the Curator, and its implications for legal certainty.

This research uses a normative legal research method with a statutory and conceptual approach. The legal materials used include primary, secondary, and tertiary legal materials, which are analyzed qualitatively to obtain a systematic and comprehensive legal understanding and relevant to the research problem. The results of this study indicate that, first, the regulation of the phrase "independent" in Article 15 paragraph (3) of Law Number 37 of 2004 is a vague norm (vague norm) because it does not have a normative definition or objective indicators, so that its interpretation in practice becomes very subjective. Second, the form of criminal liability of curators who are proven not to be independent is subject to general criminal law in Law Number 1 of 2023, which includes the offenses of embezzlement (Article 486), fraud (Article 492), and document falsification (Article 491), as long as the elements of *actus reus* and *mens rea* are proven. Third, the ambiguity of the phrase gives rise to legal implications in the form of significant legal uncertainty. For bankrupt debtors, this has the effect of hindering the process of settling bankrupt assets and delaying certainty about the legal status of assets, which prolongs the debtor's legal and economic burden. Furthermore, this situation raises the risk of excessive criminalization for curators and makes it difficult for commercial judges to

provide objective assessments, ultimately undermining the credibility of the commercial justice system in Indonesia.

Keywords: Oral Agreement, Borrowing, Land Dispute

A. Introduction

An agreement is an event where someone promises to carry out something. From this event a relationship arises between two people, which is called an engagement. In other words, the agreement establishes an agreement between the two people who make it. Regarding its form, the agreement is in the form of a series of words containing promises or commitments that are spoken or written.¹ Despite the widespread use of these agreements, considerable uncertainty and issues remain regarding legal protection for both parties. With technological advancements and social changes, in-depth studies are needed to evaluate the effectiveness of existing regulations and provide the best solutions to protect the rights and obligations of the parties involved in a loan agreement.²

Another type of agreement, namely a loan agreement, is regulated in Articles 1740 to 1753 of the Civil Code. Article 1740 of the Civil Code states, "A loan agreement is an agreement in which one party provides an item to another party for free use, with the condition that the recipient of this item, after using it or after a certain period of time, will return it."

The case discussed in this study represents the intersection of these two problems: the uncertainty of verbal agreements and the fragility of non-formal evidence of ownership in land disputes. This case began with a lawsuit filed by Hajja Bahera Binti Beddu (Plaintiff) against Lel. Tombong and Nurbaya (Defendants) in the Supreme Court registered under Number 2469 K/Pdt/2025. The Plaintiff argued that an oral land loan agreement had been made in 1992 between her parents and the Defendants. The Plaintiff's lawsuit demanded the eviction of the disputed object and compensation on the basis of default because the Defendants were unwilling to return the loaned land. The argument of this lawsuit is based on the assumption that the Plaintiff is the legal owner of the land, which was obtained as part of her parents' inheritance which she proved with the Land and Building Tax (PBB) Tax Payable Notification Letter (SPPT).

However, the lawsuit faced a fatal challenge from the Defendants who cleverly shifted the focus of the dispute from a secondary issue (breach of contract) to a more fundamental primary issue: proving ownership rights (the basis of rights). The Defendants refuted the

¹Serlika Aprita, Mona Wulandari. 2023. Contract Law. Jakarta: Kencana, pages 3-4.

² Siti Hotimatul Husna. (2020). "Legal Protection for Lenders and Borrowers in Lending Agreements". Student Research Science Journal, Vol. 1, No. 2, pages 983-984.

Plaintiff's argument by stating that the disputed land did not belong to the Plaintiff, but to another party named H. Lanre. The Plaintiff's lawsuit, which was based on the argument of breach of contract, became irrelevant if its basic premise of the Plaintiff's ownership rights failed to be proven. This case serves as a very important case study.

about how a litigation strategy that focuses on proving the basis of rights can effectively invalidate a lawsuit based on an agreement, even if the agreement is in principle valid in the eyes of civil law.

In this case, there are several of His words in the Al-Qur'anul Karim, including QS Ali 'Imran Verse 76:³

﴿٧٦﴾ يُجِبُّ الْمُتَّقِينَ God willing, God willing, God willing, God willing

Meaning: Not so! Whoever keeps his promises and is pious, indeed Allah loves those who are pious.

Paying attention to the verses of the Qur'an above, it is clear that Allah SWT establishes promises as a command that must be kept and carried out.⁴ Returning to disputes regarding ownership rights to disputed land in Indonesia, there must be clear regulations regarding oral loan agreements and disputed land.

B. Research Methods

A study cannot be called research if it does not have a research method.⁵ Research methods are one of the factors of a problem that will be discussed. The study was conducted using secondary data which was analyzed qualitatively using the Desk Research Method. The literature materials used in writing this research are several references originating from research results, studies, and reviews of several writings which are then summarized into a scientific paper.⁶

C. Discussion

1. Legal Certainty of Land Loan Agreements Made Orally Based on Civil Law in Indonesia

Legal certainty, as one of the goals of law, must be balanced with other legal goals, including justice and expediency. Likewise, justice and expediency must always be in balance

³A. Rahim. 2022. Fundamentals of Contract Law: Theoretical and Practical Perspectives. Makassar: Humanities, page 9.

⁴Ibid., page 9.

⁵ Hanifah, I., Hariyanto, H., Ginting, L., Koto, I., & Syafriana, R. (2026). Legal Protection of Indonesia's Fisheries from Foreign Investment: A Social-State Approach. *Jurnal IUS Kajian Hukum dan Keadilan*, 14(1).

⁶ Simatupang, R. S. A., Hanifah, I., & Mansar, A. (2025). The Concept of Restitution as Legal Accountability in the Crime of Human Trafficking. *Pena Justisia: Media Komunikasi dan Kajian Hukum*, 24(1), 3554-3462.

with certainty.⁷The Validity of Unwritten Agreements: Under the Civil Code, an agreement does not have to be in written form. The validity of an agreement is based on four factors:⁸

1. agreement between the parties
2. legal capacity of the parties
3. there is a main issue that is agreed upon, and
4. permissible causes.

When the plaintiff's parents died, Article 1743 of the Civil Code came into effect and the obligation was issued and transferred to the heirs. So the plaintiff Hajja Bahera Binti Beddu, which was carried out by her parents, had an oral agreement regarding the loan of land given to Lel. Tombong and Nurbaya, a husband and wife (Defendant I and II) has strong legal force in the loan of land made orally as long as it fulfills Article 1320 of the Civil Code, Article 1740 to Article 1753 of the Civil Code, Article 1338 of the Civil Code, Article 1313 to Article 1314 of the Civil Code along with the legal principles of the loan agreement made orally and it can be proven that an oral agreement means that the agreement exists and binds the parties between the parents of Hajja Bahera Binti Beddu with Tombong and Nurbaya.

2. Legal Consequences of the Cancellation of a Land Loan Agreement Made Orally Under Civil Law in Indonesia.

Legal consequences are any result of a legal act carried out by a legal subject against a legal object or other consequences caused by certain events by law which are something that according to law is considered a legal consequence. Legal consequences are the source of the birth of rights and obligations for legal subjects who carry out the act.⁹

If it is related to Book II of the Civil Code which is closed, the provisions that apply to this matter are mandatory, if not carried out, the contracts are threatened with cancellation.¹⁰ A null and void agreement means an agreement that is void, meaning that it was never created and never had any obligation. A null and void agreement is also known as null and void. A null and void agreement is the legal consequence of not fulfilling the objective requirements (a specific matter and/or a lawful cause) required for a valid agreement.¹¹

⁷Deasy Soeikromo. (2016). "Legal Certainty of Fulfillment of Creditor Rights in Executing Collateral Objects of Mortgage Rights Through Parate Exekusi". De Lega Lata, Vol. 1, No. 1, page 50.

⁸Faizal Kurniawan. "Proving Unwritten Agreements in Court." <https://www.hukumonline.com/klinik/a/bagaimana-membuktikan-perjanjian-tak-tertulis-di-pengadilan-lt51938378b81a3/>. Accessed on January 20, 2026, at 21.23 WIB.

⁹Holijah. 2021. Introductory Study of Legal Science. Jakarta: Kencana, page 87.

¹⁰Ibid., page 36.

¹¹Sufiariani, et.al. 2024. Civil Law: Principles and Developments. Jambi: PT Son Pedia Publishing Indonesia, page 112.

The phrase "null and void" is regulated in Article 1335 of the Civil Code, which reads as follows: An agreement without a reason, or made based on a false or prohibited reason, is void. Therefore, if the object of a particular contract/agreement is unclear.¹² So that the disputed land loan agreement related to Article 1743 and 1751 of the Civil Code against Hajja Bahera Binti Beddu as the Plaintiff whose land belonged to her parents' inheritance which is still used by Lel. Tombong and Nurbaya does not want to return the land which is not her own and does not acknowledge the existence of the oral agreement is categorized as never having existed from the beginning and does not have the force of law of an oral agreement because it does not fulfill the requirements for the validity of the object of an oral agreement in Article 1320 paragraph 3 of the Civil Code, meaning it is null and void (nietig).

3. Analysis Legal Considerations of the Panel of Judges Regarding the Cancellation of an Oral Land Loan Agreement Based on Case Number 2469 K/Pdt/2025.

Regarding oral agreements that do not contain a specific thing, it can be said that such agreements cannot be enforced because it is not clear what is promised by each party. This situation can be immediately seen by the judge. Because there is no oral agreement whose content is unclear or absent so that regarding a certain thing if it is not fulfilled, the agreement is null and void by law. The absence of a specific thing that is the object of an agreement, it is clear that the oral loan agreement never existed, and therefore never gave rise to an obligation between the parties. The plaintiff failed to prove legal ownership (rights) of the object of the dispute.

Civil Code and does not fulfill the legal requirements in Article 1320 paragraph 3 of the Civil Code regarding a certain matter, which results in the Oral Loan Agreement being null and void by law, because the objective requirements of an agreement are not fulfilled, namely the object of the land/building agreement is not known to have the exact owner so that the oral loan agreement is legally flawed or null and void by law.

So the Panel of Judges was wrong in assessing that the defendant did not have compensation for the water tank because there was no written evidence and statements from two witnesses. The judge was also wrong in assessing that in the exception H. Lanre was the initial owner of the disputed object but based on 2 pieces of evidence, namely PBB for 2012 and 2024. Based on the provisions in the PDRD Law (Regional Taxes and Regional Levies) Article 77 paragraph (1), the object of rural and urban PBB is land and/or buildings owned,

¹² Renata Christha. "Article 1335 of the Civil Code concerning the phrase "Void by Law."<https://www.hukumonline.com/klinik/a/pasal-1335-kuh-perdata-tentang-frasa-batal-demi-hukum-lt65b379c86e0f9/>. Accessed on January 21, 2025, at 21:37 WIB.

controlled and/or utilized by individuals or bodies.¹³ In fact, the PBB was owned by the plaintiff in the very old years of 1999, 2000, and 2010, which indicates that the initial owner was Bahera as the plaintiff as a result of his parents' inheritance. The judge was wrong regarding the PBB of the defendant named DG. Pasolong whose name is unknown and not in the case, nor is the name of his father-in-law H. Lanre who is mentioned as the initial owner. Therefore, the Plaintiff's PBB is in accordance with his argument named Bedu B Semma. This is not in accordance with where the actual basis for issuing the PBB is the existence of a previous land ownership certificate.

Evidence in the form of testimony is regulated in Articles 1895, 1902, and 1904 to 1912 of the Civil Code. Essentially, testimony may only contain what the witness saw with his or her five senses and what he or she can know for himself or herself in that way. In other words, testimony is a description of what the witness has seen, heard, and experienced, and this information is solely objective.¹⁴ In addition, according to Sudikno Mertokusumo, testimony must also be presented verbally and in person before the court.¹⁵ Thus, the witness must tell himself what he knows, it cannot be in writing and represented by another person.¹⁶ However, it is important to note that there are people who cannot be heard as witnesses, including:

- a. blood relatives
- b. husband or wife of one of the parties even though they are divorced;
- c. children who are under 15 years old

The judge wrongly assessed the testimony of witness H. Lanre as his father-in-law stating that his daughter-in-law named Nurbaya admitted that the disputed land belonged to her father-in-law, while his own child named Lel. Tombong should have known better and admitted that the land belonged to his father named H. Lanre. Regarding witnesses from the defendant's side, it is stated in Article 1910 of the Civil Code that members of the blood and marriage families of one party in a direct line are considered incompetent to be witnesses.¹⁷

So the Panel of Judges wrongly assessed the testimony of the defendant's witness named H. Lanre as his father-in-law which was not in accordance with Article 1910 of the Civil Code, namely that the witness is considered incompetent to be a witness and should not be

¹³Darwin. 2013. Land and Building Tax in Practical Terms. Jakarta: Mitra Wacana Media Publisher, page 8.

¹⁴Martha Eri Safira. Civil Law. Ponorogo: CV. Nata Karya, 2017, pp. 145-146

¹⁵Ibid., page 146.

¹⁶Ibid., page 149.

¹⁷Ilman Hadi. "The Defendant's Son-in-Law Wants to Testify." <https://www.hukumonline.com/klinik/a/menantu-menjadi-saksi-bolehkah--lt5097bb976e09d/>. Accessed on January 21, 2026, at 23.59 WIB.

heard if he is a family member and in-law, in this case H. Lanre and Lel Tombong have a blood relationship between father and biological child. Furthermore, the testimony of witness H. Lanre as the land owner is odd because he does not know the area of his own land/building, then Witness Syamsul Umar is a *de auditu* witness because the witness was informed by H. Lanre. In principle, *testimonium de auditu* cannot be accepted as evidence. In general, the attitude of legal practitioners is to automatically reject it without analysis and argumentative consideration. For example, Supreme Court Decision No. 881 K/Pdt/1983, which confirms that the witnesses presented if they consist of *de auditu*, so that the information given is not valid as evidence.¹⁸

The Panel of Judges wrongly assessed that the plaintiff was unable to prove that the plaintiff was able to argue along with the evidence of three witnesses named Langsang, Mangkana, and Patampari based on the principle of *unus testis nullus testis* had fulfilled the provisions that the plaintiff's witnesses exceeded two people and acknowledged the existence of an oral loan agreement and three pieces of PBB evidence according to the name of his parents, Beddu. Therefore, according to Article 1866 of the Civil Code, the plaintiff's evidence was stronger and more than the defendant's evidence, only two PBB and 2 witnesses, including his father-in-law named H. Lanre, not according to Article 1910 of the Civil Code, the witness Syamsul Umar was called a *de auditu* witness.

The panel of judges erroneously assessed the testimony of the defendant's mother-in-law, a relative of the defendant's biological family, as the witness's testimony was limited to one person. It should also be understood that Article 1905 of the Civil Code stipulates that the testimony of a single witness in court cannot be trusted. Furthermore, there is the principle of *unus testis nullus testis*. In other words, the testimony of a single witness is not sufficient to establish a case; testimony from several witnesses and/or other evidence is required to constitute valid proof.¹⁹

One of the most frequently violated material principles in this decision is Article 1741 of the Civil Code, which states: "The person who lends remains the absolute owner of the loaned goods." Materially, in a legal relationship of borrowing, there has never been a transfer of rights (transfer of title). Therefore, in a lawsuit for breach of borrowing, the Plaintiff is not obliged to prove his ownership rights as strongly as in a lawsuit for Reivindication. It is

¹⁸Bernadetha Aurelia Oktavira. "The Meaning of Testimonium De Auditum". <https://www.hukumonline.com/klinik/a/arti-testimonium-de-auditum-lt58dcb3732cca3/>. Accessed on January 21, 2025, at 23.47 WIB.

¹⁹Muhammad Raihan Nugraha. "https://www.hukumonline.com/klinik/mitra/si-pokrol-lt4b457ff0c3e1b/muhammad-raihan-nugraha--sh-lt66606b261eeb9/", accessed on January 27, 2025.

sufficient for the Plaintiff to prove the existence of a legal relationship of handing over the goods with the intention of borrowing them. The Judge has misapplied the law by demanding proof of ownership certificates (agrarian) to resolve disputes of a personality/obligation nature (general civil). In fact, the plaintiff and defendant do not have ownership rights.

Based on Article 1338 of the Civil Code, all legally made agreements are valid as law for those who make them (*pacta sunt servanda*). Indonesian civil law adheres to the principles of freedom of contract and the principle of consensualism, where oral agreements have the same legal force as written agreements as long as the material requirements of Article 1320 of the Civil Code are met. The certainty of the special rule that requires that land loans not be made in written form indicates that loans remain within the realm of general civil law which upholds the validity of oral promises.

Thus, in the civil case of Supreme Court Decision Number 2469 K/Pdt/2025, there was a fundamental error in the application of substantive law. The judge tended to view this land dispute as an ownership dispute, even though, in material terms, the lawsuit was based on a binding relationship and an oral agreement resulting from a land lease agreement. Article 1320 Civil Code There is no mention that a loan agreement, specifically for use, must be in writing based on articles 1740 to 1753 of the Civil Code, therefore Oral loan agreements as a form of agreement are still recognized by law because there are no prohibitions governing them.

D. Conclusion

Legal certainty of oral loan and use agreements Based on Article 1320 of the Civil Code, Article 1338 of the Civil Code and adhering to the principle of consensualism which does not require a written form for this type of agreement, then the land loan agreement made orally is regulated in Articles 1740 to 1753 of the Civil Code which is legally valid and binding on the parties from the time an agreement is reached as long as it can be proven by the parties.

Verbal Loan Agreement is legally VALID and binding on the parties, but can automatically become void by law. If fails to prove the basis for ownership of rights as an objective condition (a certain thing) in the agreement according to Article 1320 paragraph 3 of the Civil Code, then the legal consequence of the nullity of the agreement is that the agreement is deemed to have never existed from the beginning.

Legal Analysis of Supreme Court Decision No. 2469 K/Pdt/2025. The Panel of Judges rejected the Plaintiff's lawsuit not because the verbal agreement was invalid, but because the legal facts failed to prove legal ownership (rights) of the disputed object. The evidence submitted in the form of PBB was stated not to be land ownership, but only an obligation to pay taxes. This is inconsistent with the fact that the basis for issuing PBB is the existence of a

previous land ownership certificate. The legal facts in this decision are the PBB certificates registered in the name of Bedu in 1999, 2000, and 2010, as well as three witness statements in accordance with Article 1866 and Article 1910 of the Civil Code.

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